

Annual Newsletter Digest

2013

Partners for Law in Development



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- ❖ Thailand government to introduce landmark civil partnership law that will extend most marriage benefits to same sex couples
- ❖ Hijras to be recognized as third gender in official documents in Bangladesh
- ❖ Afghanistan rules out restoration of public stoning as a punishment for adultery

Beyond Asia

- ❖ France's parliament approves 'marriage for all' bill

- ❖ Marriage equality is in the air as New Zealand, Uruguay, England, Wales and 3 states in United States say yes
- ❖ Netherland: Lower house passed the much awaited amended gender recognition bill
- ❖ The Supreme Court of the United States rejects the anti prostitution pledge as unconstitutional
- ❖ Nigeria, Uganda and Russia pass draconian and homophobic anti-gay bills. Uganda also passes anti-pornography legislations.
- ❖ Feminist and human rights activist AminataTouré named Prime Minister of Senegal
- ❖ Brazil legislates a protocol for treatment of rape victims in public hospitals
- ❖ South African Constitutional Court decriminalizes consensual sex between adolescents
- ❖ Cuba bans discrimination at the workplace on the basis of sexual orientation

National

New Law/Amendments

- ❖ Criminal Law Amendment Act passed amidst deeply sexist parliamentary debate
- ❖ The Marriage Laws (Amendment) Bill passed by Rajya Sabha
- ❖ Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act comes into force
- ❖ Stringent law to prohibit manual scavenging passed and notified
- ❖ Parliament passes new legislation on land acquisition
- ❖ National Food Security Act comes into force
- ❖ Maharashtra passes Anti Superstition Bill criminalizing practices related to black magic and ritualistic sacrifice

Judgments/Orders

- ❖ Supreme Court passes directions and orders on curbing acid attack in two separate matters
- ❖ Non-bailable arrest warrant for husbands defaulting maintenance payment, holds Bombay High Court
- ❖ Supreme Court holds that 'two finger test' is a violation of rights
- ❖ Madras HC grants woman maintenance of Rs. 500 after 13 years of struggle
- ❖ Supreme Court affirms Mumbai High Court's rejection of the Maharashtra government's ban on dance bars
- ❖ Supreme Court rules against reduction of sentence based on compromise between rape survivors and rapist

- ❖ Patna High Court acquits all twenty-six accused in Laxmanpur Bathe Dalit massacre
- ❖ Supreme Court instructs states to refrain from making Aadhar a mandatory requirement for receiving government services
- ❖ Special Court for rape cases in Delhi calls upon women for abstaining from pre marital sex
- ❖ Supreme Court overrules Delhi High Court's verdict on Sec 377 of the IPC, recriminalizes homosexuality.
- ❖ Supreme Court frames guidelines for determining 'live-in' relationships for the purpose of PWDV Act
- ❖ Supreme Court declares that registration of FIR cannot be avoided in cognizable offences.
- ❖ Supreme Court panel comes to a prima facie finding of Justice Ganguly's misdoings on charges of sexually harassing an intern

News and events

- ❖ Delhi gets 6 fast track courts for trying rape cases
- ❖ Health Ministry and Maharashtra government take significant steps to make medico-forensic procedure in rape cases more victim sensitive
- ❖ 16 years after Vishaka, Supreme court to finally set up anti-sexual harassment committee for women lawyers
- ❖ Maharashtra Government does away with irrelevant medical tests for sexual assault survivors
- ❖ Children of transgender and sex workers no longer need father's name or address proof to enroll: School Education Department of Maharashtra Govt
- ❖ Government sets up expert committee to study the problems affecting the transgendered community
- ❖ Statistics released by Delhi government show alarming growth in cases of rape, molestation in the city

Programmes/Policy/Institution

- ❖ NHRC's visit to Chhattisgarh a disappointment
- ❖ Central government announces Nirbhaya Fund for women's safety
- ❖ NCW asks centre to take steps to prevent sexual harassment at workplaces
- ❖ MHA issues directions to register Zero FIR if jurisdiction not known

RESOURCES

'Those who did not die- Impact of the Agrarian Crisis on Women in Punjab'	RanjanaPadhi
'Pursuing Elusive Justice: Mass Crimes in India and the Relevance of International Standards'	Ed. VahidaNainar and Saumya Uma
'Rising from the Ashes: Women's Narratives of 1971'	The University Press Limited
'Erasing 76 Crimes'	Colin Stewart
'The Integration of Gender and Human Rights into the Post-2015 Development Framework'	ed by RadhikaBalakrishnan, Diane Elson and James Heintz
'Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law'	OHCHR
'Sexual Orientation, Gender Identity and Justice'	ICJ comparative law casebook
'Broken Dreams: A report on the Rana Plaza collapse'	Odhikar
Towards Gender Inclusivity: a study on contemporary concerns around gender'	Alternative Law Forum &LesBit.
'Muslim Leadership and Women's Education'	Nasreen Ahmed
'Feminist Reflections: UN's High Level Panel Report on Post-2015 Development Agenda'	Centre for Women's Global Leadership, Feminist Task Force and Women's International League for Peace and Freedom
'Breaking the Binary: Understanding concerns and realities of queer persons assigned gender female at birth across a spectrum of lived gender identities'	LABIA
'Gender and Land Tenure Security: Challenges and Barriers to Women's Entitlement to Land in India'	UN Women
'Piecing together Perspectives on Witch Hunting: A review of literature'	Partners for Law in Development
'Women's Human Rights- CEDAW in International, Regional and National Law'	Ed. Anne Hellum and HenrietteSindingAasen
'Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalization and Change'	Institute of Commonwealth Studies
' Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India'	YükselSezgin
'Regional Report: The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV'	UNDP, IDLO and APF
'Women, Sexuality and the Political Power of Pleasure'	Ed. Susie Jolly, Andrea Cornwall and Kate Hawkins
'Masculinity, Son Preference & Intimate Partner Violence'	UNFPA and ICRW
'Database mapping gender provisions in constitution around the world'	UN Women

UPDATES FROM THE UN

[UNHCHR submits report on promotion and protection of human rights to peaceful protest](#)

The United Nations High Commissioner for Human Rights (UNHCHR) submitted its report on 'Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests' to the Human Rights Council. The report was based on the input provided by various Special Procedures and Treaty Bodies as well as best practices by States, NHRIs and UN agencies and outlines examples of effective measures and best practices to promote and support the promotion and protection of human rights in the context of peaceful protests. The report concludes by stating that peaceful protests are a fundamental aspect of a vibrant a democracy and States should recognize the positive role of peaceful protests as a means to strengthen human rights and democracy.

The report can be accessed [here](#).

[UNHRC passes resolution on promoting reconciliation and accountability in Sri Lanka](#)

The United Nations Human Rights Council (UNHCR) passed a resolution ([A/HRC/RES/22/1](#)) on promoting reconciliation and accountability in Sri Lanka which was adopted by a vote of 25 in favour (including India and South Korea, the only two South-Asian countries to vote in favour), 13 against and 8 abstentions. In its resolution, the Council welcomed the report of the High Commissioner on promoting reconciliation and accountability in Sri Lanka and encouraged the Sri Lankan Government to implement the recommendations made in the report. Further, the Council also called upon the Sri Lankan Government to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law.

The [report](#) which was welcomed by the UNHRC was submitted, in February 2013, by the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka. The report examined the recommendations of the [Lessons Learnt and Reconciliation Commission](#) and the plans of the Government of Sri Lanka to implement them, and to address alleged violations of international law.

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13167&LangID=E>

OHCHR submits summary report in pursuance of the controversial HRC resolution on traditional values

Since 2009, the Russian Federation has tabled three resolutions at the HRC attempting to give legal force to the concept of ‘traditional values’. The third resolution, adopted in 2012, affirmed ‘traditional values’ as a vehicle for promoting human rights and fundamental freedoms, and called on the OHCHR to report on ‘best practices’ in their application. The OHCHR summary in pursuance of these resolutions shows that although traditional values are closely related to human rights and dignity, they are also invoked to maintain the status quo and undermine the rights of marginalized groups. The OHCHR’s response to the Human Rights Council Resolution of October 2012 (A/HRC/RES/21/3) submitted a summary of information from state members of the United Nations and other relevant stakeholders on the best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity. The report highlights that traditional values are invoked equally in order to justify the status quo and undermine the rights of the most marginalized and disadvantaged groups. Of significance are the examples that indicate that in a conflict between liberal approaches and traditional values, it is traditional values that gain ideological monopoly.

The complete summary can be accessed [here](#).

Vienna +20 considers ways of ‘Strengthening the Human Rights Movement Globally’

In 1993, the Vienna Conference on Human Rights that highlighted indivisibility of human right to address the separation between civil, political and the economic, social and cultural rights, and most significantly, by declaring women’s rights as human rights. It also called for the creation of the office of the UNHCHR. Twenty years later, on June 25-26, CSO’s once again met in Vienna to consider challenges and propose ways of ‘strengthening the human rights movement globally,’ particularly in respect of the gaps for complaining against transnational violations of ICESCR. The CSO’s Vienna+20 declaration demands accountability and binding regulation of transnational corporations and intergovernmental organizations and reminds States of their human rights obligations in the context of international cooperation and assistance. It further demands that trade and investment laws, policies and agreements be assessed from the human rights perspective, the need to anchor extraterritorial human rights obligations in national laws; and amongst other things, to establish a World Court on Human Rights. The declaration also calls for a third world conference on human rights to be held in 2018. The CSO declaration clarified that civil society organisations be clearly distinguished from corporate sector or even, philanthropic foundations sourced by the corporate sector.

Source: <http://www.theguardian.com/sustainable-business/human-rights-charities-business-partnerships?INTCMP=ILCNETTXT3487>

Op-ed: <http://www.apark.net/2013/08/14/civil-society-to-foundations-we-reject-you/>

<http://www.etoconsortium.org/en/news/detail/vienna-20-cso-declaration-issues-call-to-strengthen-etos-21/>

The Declaration can be accessed [here](#).

UN adopts resolution on protecting women human rights defenders

The General Assembly of the UN has adopted a historic resolution for the protection of women human rights defenders. The resolution (A/RES/68/181) recognizes that, because of who they are and the nature of their work, women human rights defenders in all regions of the world face significant violations and abuses, from smear campaigns to sexual and gender-based violence.

The resolution also calls on States to protect women human rights defenders from reprisals for cooperating with the UN and to ensure their unhindered access to and communication with international human rights bodies and mechanisms.

Though it remains an important resolution, it does not comprehensively address all the concerns of women human rights defenders. Particularly, concerns of women human rights defenders working on issues of sexual and reproductive health, reproductive rights and matters related to sexuality were not addressed in the resolution.

Source: <http://www.ishr.ch/news/un-adopts-landmark-resolution-protecting-women-human-rights-defenders>

You can access a draft of the resolution [here](#).

UNHRC adopts resolution against child, early or forced marriages

The UN Human Rights Council, noting the deep-rooted gender inequities that cause child marriages and early or forced marriages to be so pervasive as well as the disproportionate impact it has on girls and women, adopted a procedural resolution seeking to have a panel discussion on the issue in its twenty-sixth session. In keeping with the resolution, the office of the OHCHR had called for responses from nation-states, scholars, research institutions and policy think tanks, community movements, children and youth organizations and networks to consolidate context concerns and views from diverse stake holders.

The resolution can be accessed [here](#).

The letter seeking responses can be accessed [here](#)

ILO convention on the rights of domestic workers comes into force

The ILO Domestic Workers Convention, 2011 came into force on September 5, 2013 on being ratified by the required number of states (eight: Bolivia, Italy, Mauritius, Nicaragua, Paraguay, Philippines, South Africa and Uruguay). The Convention requires that domestic workers have basic labour rights, just like workers in other sectors, including limited working hours, weekly days off, minimum wage, maternity leave and overtime payments.

The convention also requires governments to prevent child labour in domestic work. Since the treaty was signed in 2011, around thirty countries have legislated to extend such rights to domestic workers, who are often at a heightened risk of exploitation and abuse. As of now, however, it is only these eight countries that are bound by the terms of the Convention.

Source:http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_220793/lang--en/index.htm?shared_from=media-mail
http://www.ginsc.net/home.php?option=article&id=27078&lang=en#.UoU8O_mnrkg

INDEPENDENT MECHANISMS AND REPORTS

UN SR on Right to Food submits report on women's rights and the right to food to HRC

The Special Rapporteur on the right to food submitted his report on women's rights and the right to food to the Human Rights Council. The report discusses the threats to women's right to food, identifying the areas that demand the most urgent attention. It examines successively the obstacles women face in access to employment, social protection and the productive resources needed for food production, food processing and value chain development. The SR noted that disempowerment of women results in women facing discrimination as economic agents. This in turn means women are less economically independent, are exposed to violence and have a weaker bargaining position within the household and the community. As a result, they continue to assume a highly unequal share of tasks and family responsibilities within the household. He recommended that States effectively respond to women and girls needs and priorities in their food security strategies and to relieve women's unpaid work burden in the household, while at the same time address the specific constraints women face and transforming the existing gendered division of roles.

The report can be accessed [here](#).

UN SR on torture and other cruel, inhuman or degrading treatment or punishment submits report to HRC

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment submitted its report to the Human Rights Council. The report focuses on certain forms of abuses in health-care settings that may cross a threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment.

The report examines a number of the abusive practices commonly reported in health-care settings and describes how the torture and ill-treatment framework applies in this context. The intention of the report is to analyse all forms of mistreatment premised on or attempted to be justified on the basis of health-care policies, under the common rubric of their purported justification as "health-care treatment", and to find crosscutting issues that apply to all or most of these practices. It also identifies the scope of State's obligations to regulate, control and supervise health-care practices with a view to preventing mistreatment under any pretext.

The report can be accessed [here](#).

SR on situation on human rights defenders submits report with focus on human rights institutions being recognized as human rights defenders

The UN Special Rapporteur (UNSR) on the situation of human rights defenders submitted her report to the Human Rights Council. The main focus of the report was the role of national human rights institutions in the promotion and protection of human rights, highlighting the fact that they can be considered as human rights defenders. The report outlined a number of measures currently in practice in institutions in various Member States which could be replicated in other contexts. She also pointed to a number of areas where national institutions need strengthening in order to effectively protect human rights defenders. The recommendations at the end of the report included those to member states, to the national human rights institutions, to ICC and regional networks and also to defenders and civil society.

The report can be accessed [here](#).

The UN Special Rapporteur on trafficking in persons, especially women and children submits her report to the HRC

The Special Rapporteur on trafficking in persons, especially women and children, submitted her report to the Human Rights Council. The report comprised a thematic analysis by the Special Rapporteur of the integration of a human rights-based approach in measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and which lead to human trafficking. It further examines the role of such demand in fostering exploitation and trafficking in persons, and provides an overview of various international and regional legal and policy frameworks and initiatives as well as different approaches and measures undertaken by States and other stakeholders. In addition, the report drew attention to some of the remaining challenges in integrating human rights-based approach, and provided a set of recommendations for addressing them. The SR has recommended that the States should identify and analyze factors that generate demand for exploitative sexual services and labour, and take strong legislative policy and other measures to address these issues. Further, she recommended that States have a responsibility to protect against human rights abuses by third parties, through appropriate policies, regulation and adjudication.

The complete report can be accessed [here](#).

UN Working group on discrimination against women submits its annual report on discrimination in public and political life

The UN Working Group on discrimination against women submitted its annual report, recording current achievements in women's political representation and looking at challenges to women's equal, full and effective participation in political and public life in the context of human rights and democracy. It identifies and addresses issues crucial for eliminating gender discrimination in

political and public life and presents a framework to eliminate discrimination in law through examples of good practices.

The report can be accessed [here](#).

UN SR in the field of Cultural Rights submits report on the writing and teaching of history at the 68th Session of the General Assembly of the UN
UN SR on human rights defenders submits her 5th report to GA

The SR in the field of cultural rights, Ms Farida Shaheed submitted her report on the writing and teaching of history at the 68th session of the General Assembly. In the report, the SR sought to identify the circumstances under which the official historical narrative promoted by the State in schools becomes problematic from the perspective of human rights and peace, in addition to proposing a set of recommendations to ensure a multi-perspective approach in history teaching.

You can access the report [here](#), and [here](#).

UN SR on extreme poverty and human rights submits report on unpaid care work

The UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona submitted a report on women care workers whose contribution usually goes unrecognised, and almost always unremunerated. The report noted that unequal responsibilities in care work (including domestic work) stand as a barrier to gender equality, especially amongst women who live in poverty, and recommended that states take active measures to transform care work into a social and collective responsibility and increase women's access to public services, care services and time-saving technology.

The report can be accessed [here](#).

CEDAW RELATED NEWS

LBT organisations submit memo to CEDAW during discussion on women's access to justice

Committee on the Elimination of Discrimination Against Women (CEDAW) held a discussion on Women's Access to Justice, to commence the Committee's process of elaborating a general recommendation (GR) on 'access to justice'. The purpose of the general recommendation was to provide appropriate and authoritative guidance to States Parties on the measures to be adopted to ensure full compliance with their obligations to protect, respect and fulfill women's human rights to access to justice. The discussion was held on 18th February 2013.

At the discussion, forty-three organizations from around the world jointly submitted a memo to CEDAW to encourage the Committee to include explicit reference to the barriers women face in access to justice because of their sexual orientation or gender identity in its forthcoming GR. Lesbian, bisexual and transgender (LBT) people face obstacles in accessing justice because as women, they are subject to the same barriers as all other women, and as people persecuted because of their sexual orientation or gender identity, they are subject to additional barriers that multiply the effects of discrimination.

The memo can be accessed [here](#).

Source: <http://www2.ohchr.org/english/bodies/cedaw/accesstojustice.htm>

[CEDAW formulates general recommendation on economic consequences of marriage, family relations and their dissolution](#)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) submitted its general recommendation on Article 16 of the CEDAW, which provides for the elimination of discrimination against women in marriage and family relations. The recommendation sought to act as a guide for state parties in achieving an egalitarian regime under which the economic benefits and liabilities of family relations and their dissolution are borne equally by men and women.

The complete recommendation can be accessed [here](#).

[CEDAW committee adopts General Recommendation on women in conflict prevention, conflict and post conflict situations](#)

The CEDAW Committee adopted the 30th General Recommendation on women in conflict prevention, conflict and post-conflict situations. The Recommendation provides an authoritative interpretation of state-parties' obligations under the convention in the context of conflict situations. It covers international and non-international conflicts, foreign occupations, internal disturbances, protracted and low-intensity civil strife, political strife, ethnic and communal violence, states of emergency and suppression of mass uprisings, war against terrorism and organized crime. Some of these are not classified as armed conflict under international humanitarian law.

The Recommendation stresses the point that state-parties' obligations under the Convention are unbroken by conflict, and apply equally to citizens and non-citizens as well as to anybody under the state's effective control (even if such control is not exercised within the state's territory). It also requires that states exercise due-diligence in terms of the acts of private parties, such as security contractors, and ensure that they are held accountable for crimes against women.

The whole document can be accessed [here](#)

REGIONAL HUMAN RIGHTS SYSTEMS

Landmark ruling: European Court of Human Rights rules that religious beliefs do not trump LGBT rights

In a promising decision, European Court of Human Rights (ECHR) ruled in *Eweida and Others v the United Kingdom* that an individual's religious beliefs do not trump the rights of an LGBT person and may not be used to discriminate against them. The Court, in Strasbourg, France, examined four cases brought by Christians from the UK, two of which related to their refusal to provide professional services to same-sex couples on the grounds it violated their religious beliefs.

In all cases the applicants claimed that their right to 'freedom of thought, conscience or religion', guaranteed by Article 9 of the ECHR, as well as their right to non-discrimination, guaranteed by Article 14 of the ECHR, had been violated.

For details click [here](#)

Op-ed: <http://www.guardian.co.uk/law/2013/jan/15/christian-gay-rights-strasbourg>

The Inter American Commission on Human Rights (IACHR) decides to create Rapporteurship on the Rights of LGBTI persons

The IACHR decided to create a Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI). It will be focussing the work of the Commission on the promotion and protection of the rights of LGBTI persons in the Americas. The Rapporteurship has officially commenced functioning on the 1st of February, 2014. It will continue the work of the LGBTI unit of the IACHR which was established in November 2011 to address various human rights violations and discriminations faced by LGBTI persons in the Americas.

The IACHR is an autonomous body of the Organization of American States (OAS), and receives its mandate from the OAS charter, and the American Convention on Human Rights.

Source: http://www.oas.org/en/iachr/media_center/PReleases/2013/094.asp

INTERNATIONAL LEGAL DEVELOPMENT

Asia

Secular Bangladesh demands accountability of war crimes committed by Jammate-Islami during 1971 Liberation war

After the Bangladesh International Crime Tribunal sentenced Abdul Quader Mollah, accused of committing atrocities during the nine-month war against Pakistan in 1971, to life imprisonment, Bangladesh witnessed what was being referred to as the biggest mass demonstration in 20 years. The protesters believed that life imprisonment was too less a punishment for Mollah for the war crimes committed by him. The demand for death sentence for Mollah, as was given to Abdul Kalam Azad, co-accused, who was sentenced in absentia, was being aggressively pressed for by the Shahbagh protesters.

Since Bangladesh's independence, the state had done little to bring people such as Mollah to justice. The erasure of the war began in 1972 with the granting of amnesty to the Pakistani army officers who led the killings. Internationally, charges of genocide were never formally brought to the United Nations. During the decades of political turmoil that followed in Bangladesh, the war, and its crimes, were buried, while one regime after another contributed to the rehabilitation of the Jamaat party. These protests are viewed by many as a reassertion of secular democratic principles on which the nation was originally founded, that over the years have diminished under onslaught of political Islam. Boycott of Jamaat institutions and ban of Jamaat from Bangladesh politics was also charted as one of the demands of the protestors.

The Shahbag protest has been unique for Bangladesh for its prevalence and visibility of women, who are among the core organisers. In light of these protests, the 1973 International Crimes Tribunal Act was amended to arm the government with the right to appeal against verdicts of the Tribunal.

Source: <http://www.livemint.com/Opinion/HyyZvse0sL8nsuLi30nZQJ/Crowds-and-justice-at-Shahbag.html>

<http://www.guardian.co.uk/world/2013/feb/23/protest-death-penalty-bangladesh>

<http://www.guardian.co.uk/world/2013/feb/13/shahbag-protest-bangladesh-quader-mollah>

<http://bdnews24.com/bangladesh/2013/02/17/parliament-changes-ict-law-to-try-jamaat>

Op-ed: <http://bangladeshwarcrimes.blogspot.in/>

<http://www.thehindu.com/opinion/interview/cauterizing-the-wounds-of-1971/article4452583.ece>

<http://kafila.org/2013/02/23/india-slept-through-a-revolution-in-bangladesh-richa-jha/Pakistan's>

Singapore HC dismisses challenge to sodomy law, stating that it's for the Parliament, not the judiciary to decide

A Singapore High Court, while rejecting a petition filed by a gay couple for repealing of Section 377A of the Penal Code which criminalizes sexual intercourse between men, observed that the legislative change should come from the Parliament and not the judiciary. The Court, while referring to the October 2007 Parliamentary debates that took place in Singapore, wherein Section 377 was repealed from the Penal Code, but Section 377A was retained, stated that the purpose of Section 377A was to criminalize a conduct that was not acceptable by society.

The judgment by the Singapore High Court is starkly different from that of the Delhi High Court, on the same issue. While the Singapore High Court cited public morality and culture to dismiss the constitutional challenge, the Delhi High Court placed emphasis on the distinction between 'popular morality' and 'constitutional morality', holding the latter to be the litmus test for assessing the validity of restrictions placed on fundamental rights.

It is of import to note that later in the year, the Supreme Court of India applied the same judicial logic when it re-criminalized Sec 377, laying the burden of amending the law on the parliament.

Source: <http://76crimes.com/2013/04/09/singapores-high-court-upholds-anti-gay-sex-law/>
<http://www.straitstimes.com/breaking-news/singapore/story/high-court-upholds-anti-gay-sex-law-dismisses-legal-challenge-20130409>

Domestic Violence Act passed by Sindh Assembly in Pakistan

The Sindh Assembly unanimously adopted the Domestic Violence (Prevention and Protection) Bill, 2013. The passage of this Act came after 5 years of struggle by the Aurat Foundation, in collaboration with activists, jurists, lawyers and women legislators.

The Act defines domestic violence as inclusive of but not limited to all acts of gender-based, and other physical or psychological, abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship. The Act will be enforceable in the entire province of Sindh.

The new law provides for up to 2 years of imprisonment for offenders, and fines ranging from Rs 1000 and Rs 50,000, and also calls for the formation of a special committee to educate the complainants about their rights.

Source- <http://tribune.com.pk/story/529300/celebrating-milestones-with-the-domestic-violence-act-the-hurly-burlys-done-but-the-battle-hasnt-been-won/>

Op-ed: <http://www.blog.learningpartnership.org/2013/03/pakistan-domestic-violence/>

UN Special Rapporteur on violence against women completes her mission to India and Bangladesh

Ms. RashidaManjoo, UN Special Rapporteur (SR) on violence against women completed her country missions to India and Bangladesh in the months of April and May respectively. Her country mission to India was from 22nd April to 1st May, 2013. In the course of her visit, the SR met with the officials from the central and state governments, members of the National Commission for Women and the National Human Rights Commission. In a series of meetings hosted in New Delhi, Jaipur, Mumbai, Ahmedabad, Chennai and Imphal, the SR also met with civil society organizations and members of the women's movement. Although close on the heels of the Delhi gang rape protests and the criminal law amendments, the mission was not in response to the incident but firmed much prior to that, clarified the SRVAW.

In a preliminary statement issued by her at the end of her visit, the SR noted the number of existing laws, and urged that the government to go beyond legislative activity to address root causes of VAW and redress its consequences holistically. She called upon the government to acknowledge linkages of violence with structures of oppression and discrimination, so as to address the core structural causes as part of its responses to violence against women. We look forward to the SR's final report that she will present before the Human Rights Council, in June 2014.

MsManjooalso concluded her 10 day visit to Bangladesh, from 19th to 29th May 2013. She noted that the most dominant form of violence against women was domestic violence, and other forms of violence like rape, trafficking, forced marriages were also common. One of the main reasons for the dismal condition of women according to her was 'the absence of effective implementation of existing laws, the lack of responsive justice systems, and impunity for acts of violence'. She also noted that the regressive and stereotypical views on the role of women in society played a big role in perpetuating violence against women.

The official press release of the SR VAW can be accessed here:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13282&LangID=E>

Her press release after the Bangladesh mission can be accessed [here](#).

UN High Commissioner for Human RightsNaviPillaiconcludes visit to Sri Lanka and Afghanistan, flags serious concerns

Upon conclusion of her country mission to Sri Lanka, the UN High Commissioner for Human Rights NaviPillai was sharply critical of growing authoritarianism and military presence. In a press conference after the mission, she highlighted the main areas of concern, particularly regarding the vulnerability of women and girls to sexual harassment and abuse, especially in female headed households. She raised the issue with several ministers and provincial governors, and asked them to rigorously enforce a zero tolerance policy for sexual abuse.

She also expressed concern at the level of militarization, even of civilian activities and urged the government to speed up the process of de-militarization in the war affected provinces. She also stressed the need for an independent judiciary, and a strong witness and victim protection legislation. She also highlighted the state harassment that was visited upon the human rights activists who had met with her, or planned to meet with her.

She also visited Afghanistan for the first time in September 2013. Noting that there had been significant human rights achievements over the years since Hamid Karzai assumed office, she stressed the need to strengthen systems to uphold human rights. She pointed to the Elimination of Violence against Women law as being a landmark law, but sought that its implementation be improved to do away with 'endemic' violence against women. Following the refusal of the legislature to discuss the EAW law (that was signed into force by the President while the legislature was not in session), Development and Support of Afghan Women and Children Organization has sent out a national call for a million signatures (which the President has signed) asking for the law to be ratified by parliament. Human Rights Watch too has called for better implementation of the law.

Source- <http://www.bbc.co.uk/news/world-asia-23899082>
<http://www.hrw.org/news/2013/09/04/letter-president-karzai-redouble-efforts-implement-elimination-violence-against-wome>

For the entire press release following the Sri Lanka mission, click [here](#).

Nepal's Supreme Court rules against granting of amnesties for serious human rights violations committed during internal conflict

The Supreme Court of Nepal ruled that the provisions for amnesty in the ordinance by which the Truth and Reconciliation Commission was set up the Nepal government contravened fundamental rights guaranteed in the Constitution of Nepal as well as international law. Earlier, in March of 2013, Nepal's government had established a Truth and Reconciliation Commission to look into the human rights violations in the 1996 to 2006 internal strife which claimed around 13,000 lives. However, the ordinance by which the Commission was set up also had provisions for amnesties, limitation on criminal prosecution and a 35 day limit on filing cases.

The UN High Commissioner for Human Rights Navi Pillay welcomed the decision taken by the Supreme Court. In her statement, she stressed the significance of the judgement in actualizing criminal investigations and prosecutions in conflict areas. She also stressed that the OHCHR was willing to provide support and advice to the Government of Nepal through the process.

Source: <http://www.un.org/apps/news/story.asp/story.asp?NewsID=46872&Cr=Nepal&Cr1=#.UxQ8q-OSyjs>

Afghan Appellate Court releases in-laws of child bride, despite conviction by a lower court for torturing her

In a decision that constitutes a serious blow to the hopes of a large number of women fighting cases of domestic and sexual violence in Afghanistan, an Appellate Court ordered the release of three members of a family who had been convicted and sentenced to ten years imprisonment by a lower court for torturing and attempting to murder child bride Sahar Gul, married into the family at the age of 14. Her husband had not been arrested by the police and was still at large.

Sahar was confined, starved and tortured in the most horrifying manner by her in-laws, after being forced into prostitution. The lower court sentenced the in-laws to 10 years before they were released by the appellate court. Sahar is now planning to challenge the decision in the Supreme Court.

Source- <http://www.theguardian.com/world/2013/jul/11/afghan-judges-free-sahar-guls-torturers>

You can also access a detailed report translated from the Persian by human rights activist Mohammad Danish [here](#).

Two women arrested in Bangladesh for marrying each other

Police in Dhaka arrested two women for eloping and marrying each other. The girls, one of whom is a Muslim and the other a Hindu, moved into Dhaka of their own accord and were living with each other after exchanging garlands. The girls were arrested after one of the girl's fathers filed a complaint stating that his daughter had been abducted.

It is noteworthy, that while there is nothing in Bangladesh's law that recognises such a 'marriage', there is nothing that prevents a social/non-legal ceremony of this kind from taking place either. Yet the police arrested the two for something that is not a crime. Also, there is no law in Bangladesh that prevents any two persons, whether of the same or opposite sex, from living together. Yet the police arrested the two in contravention of all legal provisions. This is in a context where custodial violence of women is common and there is a genuine risk that the arrested girls may be subjected to sexual and/or physical assault under detention.

The Bangladesh government had committed to the UNHRC at the time of its last Universal Periodic Review that it would protect LGBT people from state abuse. In spite of the commitment, ground realities continue to be difficult for the LGBT community in Bangladesh, estimated to be 1.6 to 4.8 million people strong.

Source: <http://www.asianews.it/news-en/Same-sex-marriages-in-Bangladesh:-two-girls-arrested,-threatened-with-life-imprisonment-28560.html>

Saudi Arabia passes landmark law against domestic violence

In a watershed year that has seen women in the country gain the right to vote, gain entry into several professions like law and engineering, Saudi Arabia adopted a “Protection from Abuse” law directed at violence against women, children, domestic workers and non-domestic workers. While whether the law is effectively implemented or not is yet to be seen, it puts in places several progressive provisions. It protects the anonymity of the complainant (including third parties), does not require a man to accompany the woman to a police station, and grants immunity to the complainant from litigation should the complaint fail to be proven in court. The law provides for social, psychological and physical care to complainants, if required, in addition to criminal sanctions against perpetrators.

Sources: <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130908179666>

<http://www.aljazeera.com/news/middleeast/2013/08/20138290272119559.html>

Thailand government to introduce landmark civil partnership law that will extend most marriage benefits to same sex couples

The Thai government is planning to introduce landmark legislation on civil partnerships that would extend most marriage protections, rights, and benefits to same-sex couples. If approved by the Thai Parliament, it would be the first such civil partnership law to be adopted in Southeast Asia.

Until now, under Section 1448 of the Thai Civil and Commercial Code, marriage is necessarily a heterosexual union. However, under the proposed law, homosexual men and women above the age of 20 would be permitted to enter into a civil partnership. The draft legislation also provides that same-sex couples are to be accorded insurance, pension, tax reduction, and inheritance benefits, without the existing law on marriage being altered.

However, the law does not permit adoption of children as a couple. Under Thai laws, only individual filing for an adoption by one of the partners is allowed for those not in a traditional marriage.

Though there is no specific timeline for introducing the law, the drafting committee has indicated that parliamentary deliberations would take about 2 months once the legislation is submitted.

Sources: <http://online.wsj.com/news/articles/SB10001424127887324807704579085093047702738>
http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403745_text

Hijras to be recognized as third gender in official documents in Bangladesh

The Bangladesh government has approved a proposal of the Social welfare Ministry to identify 'Hijra' as a third gender identity. Under the new policy, Hijras will be enabled to identify themselves as a third gender in official documents like passports. The decision was taken at a cabinet meeting chaired by Prime Minister Sheikh Hasina.

The human rights situation of sexual minorities remains a highly fraught one in Bangladesh, as is evidenced by the case of two lesbians in Dhaka being arrested for marrying each other in July, 2013. The Bangladesh government had in fact committed to the UN HRC at the time of its last Universal Periodic Review that it would protect the rights of the LGBTI community.

However, this new change in the government policy will be welcomed by the Hijra community, which is a sizable chunk of the LGBTI community in Bangladesh, as they are now officially recognized as a gender identity, and can receive state benefits.

Earlier in 2011, the Supreme Court of Pakistan, another country not known for its record in championing LGBTI rights, had ruled that Pakistanis who do not consider themselves to be either male or female should be allowed to choose an alternative sex when they apply for their national identity cards.

Sources: <http://www.pinknews.co.uk/2013/11/12/bangladesh-third-gender-hijra-to-be-recognised-in-official-documents/>

Afghanistan rules out restoration of public stoning as a punishment for adultery

Afghanistan's president Hamid Karzai declared that his government will not re-introduce public stoning as a punishment for adultery, stating emphatically that the Ministry of Justice had rejected it.

The president's statement came after reports emerged that the draft revision of the country's penal code included provisions for public stoning as a punishment for sex outside marriage. The provision on stoning was apparently drawn up by a sub committee working on Sharia law, and it had to be further approved by the Working Committee under the Ministry of Justice, and then by the President before it would be passed by the Parliament.

The reports understandably raised an alarm in the international human rights community, which had to be allayed by the President himself, as the practice of public stoning is a barbaric one, reminiscent of the kind of inhuman justice handed out by the Taliban.

Sources: <http://www.rferl.org/content/afghanistan-stoning/25183779.html>

<http://www.theguardian.com/world/2013/nov/25/afghanistan-reintroduction-public-stoning-adulterers>

Beyond Asia

France's parliament passes 'marriage for all' bill

Same-sex marriage in France came one step closer to legality as President Francois Hollande signed a bill on Friday legalizing marriage for same sex couples.

The French National Assembly has approved a law legalizing gay marriage by a majority of 329 in favor to 229 against. The bill then went before the senate, and was finally signed by the President and affirmed by the Constitutional Council. The new law allows marriage for all, regardless of sexual orientation. This would mean gay couples – who have had the right to civil partnerships since 1999 – could, through marriage, take their partner's name and gain inheritance and pension rights. Adoption would also become legal for married same-sex couples.

Source: http://www.cbsnews.com/8301-202_162-57568950/french-national-assembly-approves-same-sex-marriage/
<http://www.advocate.com/politics/marriage-equality/2013/05/18/vive-la-france-hollande-signs-marriage-equality-bill>

Marriage equality is in the air as New Zealand, Uruguay, England and Wales and 3 states in United States say yes

April of 2013 had turned out to be a great month for marriage equality, with four countries, New Zealand, and Uruguay, England and Wales legalizing same sex marriages, in addition to three states in United State of America adopting marriage equality.

New Zealand- New Zealand parliament extended civil union rights to its gay citizens by amending the country's 1955 marriage act. Conservative religious organizations have voiced opposition to the bill, saying it would undermine the traditional family institution. The amended law will allow gay couples to jointly adopt children for the first time and will also allow their marriages to be recognized in other countries. The law will take effect in late August.

Uruguay- *Uruguayan congress* voted to legalise same-sex marriage, making Uruguay the second country in Latin America and the third in all the Americas to do so. 71 of 92 lawmakers in the lower house voted in favor of the proposal, one week after the senate passed it by a wide majority. In Uruguay, critics of the bill included the Catholic Church and other Christian organizations, which said it would endanger the institution of the family.

Uruguay has created a single set of rules for all people, gay or straight. Instead of the words 'husband and wife' in marriage contracts, it refers to the gender-neutral 'contracting parties.' All couples will get to decide which parent's surname comes first when they have children. All couples can adopt, or undergo in-vitro fertilization procedures. The legislation also updates divorce laws in Uruguay, which in 1912 gave women only the right to unilaterally renounce their wedding vows as a sort of equalizer to male power. Now either spouse will be able to unilaterally

request a divorce and get one. The law also raises the age when people can legally marry from 12 years old for girls and 14 for boys to 16 for both genders.

England and Wales- England and Wales became the 10th European jurisdiction to introduce marriage equality, as the Marriage (Same Sex Couples) Bill received assent from the queen after it was passed by both houses of the Parliament. The new law allows same-sex couples to marry in civil or religious ceremonies. However, religious organizations must explicitly "opt in" if they want to perform such ceremonies, and the religious minister conducting the ceremony must also agree. The law also protects religious organizations and their representatives who don't wish to conduct marriages of same-sex couples from being challenged in the courts. It will allow couples in civil partnerships to convert to marriage if they wish. The new law also allows married men or women who wish to change their gender to do so without ending their marriage. This Bill comes close on the heels of the Marriage and Civil Partnerships Bill passed by the Government of Scotland recently.

United States of America- The senates' of Nevada and Rhodes Island have said yes to marriage equality. On the other hand, Delaware's state House voted to narrowly approve marriage equality in a 23-18 vote. The measure now heads to the Democratic-controlled Senate where another close vote is expected.

Source:

http://www.huffingtonpost.com/joe-mirabella/325000-all-out-members-celebrate-french-marriage-victory_b_3140271.html

http://www.huffingtonpost.com/2013/04/10/uruguay-legalizes-gay-marriage_n_3057458.html#slide=957607

www.australianmarriageequality.com/wp/2013/04/25/nevada-senate-passes-marriage-equality/

http://www.washingtonpost.com/national/following-house-passage-delaware-senate-panel-takes-up-gay-marriage-bill-supported-by-markell/2013/05/01/25dac56a-b216-11e2-9fb1-62de9581c946_story.html

<http://www.nydailynews.com/life-style/new-zealand-legalizes-same-sex-marriage-article-1.1319661>

<http://www.bbc.co.uk/news/uk-politics-23338279>

Netherlands: Lower house passed the much awaited amended gender recognition bill

Dutch legislation concerning transgender took a big leap as the lower house passed the Gender recognition bill that amends the article 28 of civil code that granted transgender individuals legal recognition of their gender identity, albeit under onerous legal conditions. Under the article 28, transgender individuals were required to undergo surgery and permanent sterilization if they wished to register their new gender on official documents to gain legal recognition.

Although the Dutch trans people were lobbying with ministers on the issue of how the legislation was adversely affecting their daily lives, the government began to pay heed only after the Human rights watch presented a report on the situation of trans people in the Netherlands.

Practically the Legal gender recognition bill says:

- Be 18 or older
- Be of Dutch nationality or be a resident
- Get an expert's letter (a doctor or psychologist of the gender team) stating that the person is gender dysphoric (serves as proof of durable conviction)
- Go to civil registry for name and gender change
- A must evaluation after 5 years

No physical medical intervention needed anymore, thus no required permanent infertility. No judge to double check the conviction of the individuals.

Source: <http://www.vreerwerk.org/legal-gender-recognition-in-the-netherlands-an-update/>
<http://www.hrw.org/node/101483/section/2>

The Supreme Court of the United States rejects the anti prostitution pledge as unconstitutional

The United States Supreme Court, in the case of *United States Agency for International Development v. Alliance for Open Society International, Inc*, declared the Anti-Prostitution pledge which was a provision in the United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 as violative of the First Amendment to the US constitution.

The pledge, part of the Act adopted ten years back, mandated that for non-governmental organizations to qualify for funding, they must explicitly adopt an anti-prostitution policy. The chief fallout of this pledge was that it led to the conflation of activities around HIV prevention and treatment of sex workers with actual promotion of prostitution. As a result, a number of NGOs working with sex-workers suffered and lost their funding. However, the fundamental problem with the pledge was its highly myopic moral understanding of sex work that failed to recognize it as work in itself, and thus rendering the struggles of sex workers for better and more dignified work conditions as illegitimate.

In this context, the VeshyaAnyayMuktiParishad (VAMP), a collective of sex workers based in Sangli, Maharashtra, working for better work conditions and reducing HIV among sex workers there, took a very courageous stand and protested the pledge provision as being coercive. Led by SampadaGraminMahilaSanstha (SANGRAM), they preferred to return all the USAID funding they received (Rs 11 lakhs) over signing the anti prostitution pledge. According to their statement, 'In one voice, VAMP refused to sign the pledge, which directly contradicted what we knew -- that adult sex workers, empowered by collective solidarity had the right to choose their work with dignity and to find their own solutions to HIV and other challenges.'

The Supreme Court of the US, rejecting the pledge as constitutional by a majority of 6 to 2, held that the pledge was a clear violation of the First Amendment's compelled speech doctrine as it sought to leverage funding by regulating speech outside the contours of the program.

Op ed: <http://lawprofessors.typepad.com/conlaw/2013/06/court-decides-prostitution-pledge-case.html>

Source: <http://edition.cnn.com/2013/06/20/politics/scotus-anti-aids-program/index.html>

<http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/of-a-pledge-and-a-people/article4871421.ece>

Nigeria, Russia and Uganda pass draconian and homophobic anti-gay bills; Uganda also passes anti-pornography legislations.

Nigeria- The House of Representatives in Nigeria passed the Same Sex Marriage (Prohibition) Bill, a law that provides for up to 14 years of imprisonment for same sex marriage. It also prohibits the formation of any organization for homosexual rights and public show of same-sex amorous relationships directly or indirectly." Those who violate these laws would face 10-year imprisonment as well. The European Parliament, the directly elected parliamentary institution of the European Union called upon the Nigerian Parliament to reject the homophobic and draconian Bill.

Russia- President Vladimir Putin signed into law an 'anti gay propaganda bill', passed earlier by both houses of the Russian parliament. The new law criminalizes propaganda of 'non traditional sexual relations' to minors through the internet or any other media. This new law is likely to be used to stifle all forms of homosexual expression and activities by conveniently creating a category for 'traditional' sexual intercourse.

Uganda-The Ugandan government has passed two regressive and draconian laws, banning homosexuality and pornography respectively within a day of each other.

The controversial anti pornography bill outlaws anything that shows sexual parts of a person such as breasts, thighs, buttocks or any erotic behaviour intended to cause sexual excitement or any indecent act or behaviour tending to corrupt morals. The law is, to say the least, worrying as it seeks to regulate and control women's autonomy and free expression by making 'provocative' clothes like mini-skirts illegal. It will also cause widespread censorship of movies, music videos and TV shows.

The second law that was passed was the anti homosexuality law, a flagrantly regressive piece of legislation imposing a harsher punishment on people engaging in same sex relationships. This law, like the Russian gay propaganda law, criminalizes the 'promotion or recognition of homosexual relations through or with the support of any government entity in Uganda or any other nongovernmental organization inside or outside the country'. It prescribes a term of 14 years in prison for first conviction, and for repeat convictions, termed 'aggravated homosexuality', the punishment is life imprisonment.

In Uganda, homosexuality is already illegal but the new law responds to an increasingly intolerant and homophobic section of society which demands greater punishment for what they see as 'deviant' behaviour. The new law has already started affecting the lives of sexual minorities, with the arrest of transgender activist Beyonce Amooti Karungi as she was taking a walk in Kampala. She was reportedly arrested on grounds of 'impersonation', being someone she is not.

Source: <http://www.lgbt-ep.eu/press-releases/nigeria-adopts-harshest-homophobic-law-in-recent-history/>
<http://www.lgbt-ep.eu/press-releases/european-parliament-calls-on-nigeria-to-stop-persecuting-lgbt-people/>
<http://www.pinknews.co.uk/2013/06/30/russia-putin-signs-anti-gay-propaganda-bill-into-law/>
http://www.nytimes.com/2013/12/21/world/africa/ugandan-parliament-approves-antigay-law.html?_r=1&
<http://www.independent.co.uk/news/world/africa/no-thighs-please-uganda-bans-miniskirts-as-mps-pass-antipornography-bill-9016686.html>

Op-ed: <http://akopsa.wordpress.com/2012/09/05/a-day-in-kampala/>

Feminist and human rights activist AminataTouré named Prime Minister of Senegal

In a very significant and remarkable development, noted feminist, human rights and reproductive rights activist AminataTouré was named the new Prime Minister of Senegal. Before this, she was the Minister of Justice in Senegal, and was also a champion of the anti corruption movement within the country. She was also a strong advocate of reproductive rights of women, arguing that women's empowerment and gender equality are key to any health process. She was also the Chief of the Gender, Human Rights and Culture Branch at the UNFPA (United Nations Population Fund).

She appointed SidikiKaba, former head of the International Federation of Human Rights, and a proponent for decriminalizing homosexuality as the new Minister of Justice in her cabinet.

Aminata was also a footballer, playing for the Dakar Gazelles- another feather in her illustrious cap.

Source- <http://www.theguardian.com/world/2013/sep/05/senegal-prime-minister-aminata-toure>
<http://www.euronews.com/newswires/2097304-senegals-sall-appoints-aminata-toure-as-prime-minister/>

Brazil legislates a protocol for treatment of rape victims in public hospitals

The new law, passed by President DilmaRousseff, guarantees the rights of women who suffered sexual violence to access health care and emergency contraception in public hospitals. It introduces regulations for authorised procedures for multi-disciplinary care in the public health system for female victims of sexual violence, without actually modifying the country's law on abortion.

In Brazil, abortion is illegal, except only in exceptional cases when the mother's life is at risk; when the foetus has been confirmed by three doctors to be anencephalic (lacking a large part of its brain and skull); or when the pregnancy is the result of rape.

This law is very significant for women in the context of rising cases of sexual violence in Brazil. According to reports, in the last 5 years, the number of reported rape incidents has increased by 168% there.

Source: <http://www.ipsnews.net/2013/08/new-brazilian-law-guarantees-protocol-for-rape-victims/>

Op-Ed : http://www.stopvaw.org/brazil_new_law_guarantees_protocol_for_rape_victims.html

South African Constitutional Court decriminalizes consensual sex between adolescents

The South African Constitutional Court struck down Sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act to the extent that they criminalised consensual sexual activity between adolescents. Having heard expert testimonies, the Court unanimously found that these provisions violate adolescents' right to dignity and privacy and the best-interests principle contained in section 28(2) of the South African Constitution. The Court opined that intimate relationships between adolescents are developmentally normative (not merely significant), hence the criminalisation of such behaviour harmed the very children it sought to protect. The parts of the provision dealing with sexual intimacy between adults and minors remain valid.

The judgement can be accessed [here](#).

Source: <http://www.dailymaverick.co.za/opinionista/2013-10-10-teen-sex-the-law-cant-replace-parenting/#.UoUZxvmnrki>

Cuba bans discrimination at the workplace on the basis of sexual orientation

The Cuban government approved a proposal to amend the country's labour law to ban discrimination at the workplace based on sexual orientation. Cuba's employment laws broadly reference 'the equality of the worker', but heretofore did not specifically ban discrimination based on sexual orientation and other factors in the workplace. The new amendment, introduced by President Raul Castro's daughter Mariela Castro, will be the first of its kind in Cuba, where homosexuality is not illegal in law but in reality persecution and discrimination is rife. Cuba also doesn't recognize marriages or civil unions between two persons of the same sex.

Source: <http://www.gaystarnews.com/article/cuba-passes-%E2%80%98historic%E2%80%99-ban-anti-gay-workplace-discrimination231213>

National

New Law/Amendments

Criminal Law Amendment Act passed amidst deeply sexist parliamentary debate

The Criminal Law (Amendment) Act was finally passed by both houses of the Parliament on 22nd March 2013, replacing the Ordinance [PLD Newsletter Vol. 6 (I) Jan-Feb 2013]. Although a step forward, the amendments are still a far cry from the full implementation of the Verma Committee report. The tenor of parliamentary debates was a reminder that attitudinal change was a crying need, including for those holding high public offices.

Some of the positive features of the new amendments include, broadening the definition of sexual assault beyond peno-vaginal penetration, introducing for the first time, a strict definition of consent that places upon the accused the responsibility of demonstrating unequivocal agreement to the sexual act in question; it also introduced graded sexual offences such as stalking, disrobing, throwing acid on women and several other substantive and procedural changes. While these are positive developments, many important areas of reform remain unchanged. The victim of rape is only a woman, excluding legal protection to men, transgender and others; age of statutory rape is 18 instead of 16, facilitating criminalisation of consensual sex amongst young persons; omission to include sexual violence against Dalit and Adivasi women as aggravated sexual offences, maintaining the immunity available to the security forces against prosecution for sexual offences. These issues would be areas of future struggle for the women's movement in its quest for making the law governing sexual offences, gender just.

Source: <http://www.ndtv.com/article/india/who-amongst-us-has-not-followed-girls-sharad-yadav-s-shocker-during-anti-rape-bill-debate-344473>

Press release by women's groups: <http://feministsindia.com/activists-call-cla-bill-historic-but-slam-tenor-of-its-parliamentary-debate/>

The Marriage Laws (Amendment) Bill passed by RajyaSabha

The RajyaSabha passed the Marriage Law (Amendment) Bill to facilitate divorce among Hindus. The bill, which is an amendment of the Hindu Marriage Act, 1955, provides for divorce on grounds of irretrievable breakdown of marriage, provided the spouses have lived separately for at least three years and their differences are irreconcilable. Divorce can be granted not only on a joint petition by both spouses but also on a single party petition. The bill thus allows people trapped in unhappy marriages to part without years of litigation.

It also allows the court to order the husband to make compensation on the petition of the wife. The compensation shall include a share in his share of the immovable property (other than inherited or inheritable immovable property). She can only be compensated from self acquired or gifted immovable property. The bill has been criticized on various grounds. It addresses substantive rights of women to matrimonial property as an amendment to divorce provisions,

rather than an independent law available to all women regardless of their faith or the personal law under which their marriage is solemnised. It fails to make a distinction between the rights of women based on the tenure of marriage. Further, many of these terms are unclear and therefore hard to compute. There is no provision made for women whose spouses do not have immovable property, making security contingent upon class and status. Further, it has also been critiqued for its failure to take cognizance of the fact that even in the self acquired property of the husband, other female relatives such as the mother or sister may have claims intestate. Allowing the wife to be compensated from the property might prove deleterious to the interests of other female relatives who invested unpaid labour on that property.

Source-<http://www.financialexpress.com/news/a-house-divided/1163180/0>

Op-ed: <http://www.asianage.com/columnists/bill-without-benefits-043>

You can access a copy of the bill [here](#).

Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act comes into force

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act has finally come into force after being notified in the Official Gazette of India on 9th December, 2013. The Act had received the assent of the President on 23rd April 2013, after being passed by both houses of the Parliament, but the rules of the Act were drafted and notified in December, after a long wait of 7 months, making the legislation the law of the land. Hereafter, this Act will provide the normative and legal framework for dealing with sexual harassment at the workplace.

With this law, the Vishakha guidelines provided by the Supreme Court in the case of Vishakhavans State of Rajasthan have finally been given legislative backing. The new law builds upon the Vishakha guidelines, and moves beyond the traditional definition of the workplace to include client-principal relationships, unorganized sectors and domestic workers within its ambit. Places that are visited in connection with employment also are included. The statute defines what sexual harassment means, and sets out the employer's responsibility to prevent, protect and redress sexual harassment at the workplace, and even provides for mechanisms that provide civil redress within the workplace, like an Internal Complaints Committee. The Complaints Committee is in fact mandatory under the law, and failing to constitute it would lead to a heavy fine.

However, it should be borne in mind that the act is still very complicated and requires a great deal of demystification, particularly in relation to the powers of the Complaints Committees, both at the internal level and the local/district level.

You can access a copy of the act [here](#), and its rules [here](#).

Stringent law to prohibit manual scavenging passed and notified

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill was passed by both Houses and notified. It seeks to provide alternate employment and rehabilitate those employed as scavengers. The Act also enhances penalties for continuing to use insanitary latrines

and employing persons as manual scavengers; it permits summary trials for offences with up to five years imprisonment, though this runs counter to the CrPC (which permits summary trials only for offences with punishment ranging to two years). Those using insanitary latrines are expected to convert (within nine months of the Act coming into force) at their own cost (though State governments may choose to give financial assistance) and each local authority, railway authority and cantonment board is expected to survey insanitary latrines within their own jurisdiction.

While the law is long due, it is left to be seen whether implementation of the Act will manage to put an end to the practise, especially given the status of the Indian Railways and municipalities as the largest employers of manual scavengers.

The Act can be accessed [here](#).

Sources: <http://indiatoday.intoday.in/story/manual-scavengers-bill-parliament/1/308799.html>

<http://www.thehindu.com/news/national/stringent-antimanual-scavenging-bill-passed/article5105129.ece>

Parliament passes new legislation on land acquisition

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013 was passed by Parliament and received the President's assent. The Act replaces the century old colonial legislation on the subject and, for the first time, makes rehabilitation and resettlement a statutory requirement. All State legislations on the point will now have to follow the Central law. The Act requires a Social Impact Assessment before acquisition and the consent of 80% of displaced people in case of acquisitions for private companies and public-private partnerships (PSUs are not covered).

The Act, however, permits temporary acquisition for three years, without making any provision for rehabilitation in such cases. Neither will the Act apply to acquisitions made under sixteen other legislations, (such as the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989) that govern land acquisition in specific situations.

The Act can be accessed [here](#).

Sources: <http://www.deccanchronicle.com/130905/news-current-affairs/article/land-acquisition-bill-passed-rajya-sabha>

<http://www.dnaindia.com/india/report-land-acquisition-bill-to-be-notified-in-two-months-jairam-ramesh-1895651>

<http://www.ndtv.com/article/india/president-pranab-mukherjee-gives-nod-to-land-acquisition-bill-424675>

<http://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/LARR%20-%20Final%20Brief.pdf>

National Food Security Act comes into force

The National Food Security Act came into force after a long struggle by various actors to make the Parliament enact a comprehensive law to ensure minimum food security and protection from starvation in millions of households throughout the country. The Act was promulgated as an ordinance before it was passed as a law by the Parliament. Under the new law, 'eligible families', which include priority households and Antyodayayahouseholds are entitled to food grains at a highly subsidized price, available through Public Distribution System (PDS). The law also provides for specific entitlements for children as well as pregnant or lactating mothers. It also provides for the constitution of State Food Commissions whose main purpose would be to monitor the implementation of the Act.

You can access the Act [here](#).

Maharashtra passes Anti Superstition Bill, criminalizing practices related to black magic and ritualistic sacrifices

The Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Bill, which faced immense opposition for over seven years, was finally passed by the Maharashtra Vidhan Sabha.

One of the chief advocates of the law, anti superstition activist Narendra Dabholkar, was earlier killed by unknown assailants in Pune, allegedly commissioned by his detractors whose death threats he paid scant attention to. He had made the first draft of the Bill in 2003, and had since been tirelessly campaigning for the law to be passed. His tragic assassination led to mounting pressure on the government, precipitating the passing of the law.

The act criminalises practices related to black magic, human sacrifices, use of magic remedies to cure ailments and other such acts which exploit people's superstitions. It also criminalizes witch hunting, that is branding someone as a witch or a sorcerer and then harming them.

You can access the bill [here](#).

Source: <http://www.dnaindia.com/india/report-maharashtra-assembly-passes-anti-superstition-bill-1934706>

Judgments/Orders

Supreme Court passes directions and orders on curbing acid attack in two separate matters

The Supreme Court, in two separate matters before it, gave pointed orders and directions pertaining to curtailing the increasing menace of acid attacks in the country. In the first matter, while hearing a public interest litigation filed by an acid attack victim, the Apex Court enquired

what steps the government had taken towards enacting a comprehensive legislation to address this growing phenomena..

The Supreme Court directed the government to bring in a legislation not only criminalizing acid attacks but also providing for care, treatment and rehabilitation of the victim and regulation of the sale of acid in the open market. The Criminal Law Ordinance 2013 has incorporated Sections 326 A and B in the Indian Penal Code, which provide for punishment for throwing, administering or attempting to throw or administer acid as well as compensation for the victim. However, the clause makes compensation to the victim contingent upon conviction of the accused and the financial capacity to pay, which makes its reach rather limited. A comprehensive legislation on the issue would be a welcome opportunity to push for more holistic rehabilitation and prevention measures.

In the second matter, the SC issued directions to States and Union Territories to frame rules to regulate sale of acids and other corrosive substances within three months and make acid attack a non-bailable offence. The directions came in the wake of the struggle launched by acid-survivor Laxmi and her advocate AparnaBhat who had filed a petition in the SC in 2006 seeking for the ban of over-the-counter acid sales.

According to the directions, only licensed retail shops can sell acid and non-compliance would amount to fines and possible imprisonment. Acid sold in retail must be so diluted that it does not have any corrosive effect on humans. All dealers should sell the chemical only after the buyer, who must be above eighteen years of age shows a government-issued photo identity card and specifies the purpose of purchase. The seller should submit the details of sale to the local police within three days of the transaction; no acid should be sold to any person under 18 and all stocks must be declared with the local sub-divisional magistrate in 15 days. Undeclared stocks can be confiscated and the defaulter fined up to Rs.50,000. While welcoming the step, it is also important to for law enforcement mechanisms to take swift cognisance of the build-up to such incidents, and evolve preventive interventions to ensure action is taken before the attack occurs.

The court also said compensation by state governments was ‘grossly inadequate’, and prescribed Rs.3 lakh as the compensation to facilitate immediate medical attention and relief. Out of this, Rs.1 lakh will be paid to the victim within 15 days of the incident and the rest will be paid ‘as expeditiously as possible’ and possibly within two months. Acid attack victims have to undergo years of painful surgeries including facial and bodily reconstructions which are extremely expensive costing much more than Rs.3 lakhs. There have been demands from other quarters for free treatment of the victim in addition to compensation as a more just alternative, as to cover the multiple kinds of damage suffered by the victim

Source: <http://www.thehindu.com/news/national/acid-vengeance/article4446924.ece>
<http://www.thehindu.com/news/national/no-acid-sale-sans-id/article4927343.ece>
<http://www.hindustantimes.com/India-news/NewDelhi/Supreme-Court-steps-in-to-stop-acid-attacks-help-victims/Article1-1094323.aspx>
<http://www.theguardian.com/global-development/poverty-matters/2013/jul/23/india-acid-attack-survivors>

Non-bailable arrest warrant for husbands defaulting maintenance payment, holds Bombay High Court

Even when women manage to secure paltry sums of money as maintenance from their husbands, the court orders are difficult to enforce. Husbands either do not respond to court summons or when pulled up by the courts, pay a portion of the arrears and then stop paying again. Absence of enforcement mechanisms has been one of the biggest challenges facing the law of maintenance.

Recently the Bombay High Court confirmed an order passed by a magistrate, issuing a non-bailable arrest warrant against a person who had defaulted in paying maintenance to his wife on several occasions. The court was hearing the case of SagarSudhakarShendgevsNainaSagarShendge. The husband was given ample opportunity to deposit interim maintenance, but he did not. When despite his failure to pay the arrears the magistrate issued a non-bailable warrant against the husband, he challenged it before the High Court. The court clarified that the rules governing a claim of maintenance under the Domestic Violence Act were the same as those operational for a claim under Section 125 of the Code of Criminal Procedure. A magistrate therefore has the power to issue a non-bailable warrant even while hearing a case under the primarily civil law of domestic violence.

Given the particular facts of the case, this is a favourable judgment. However, we also need to consider the implications of such legal precedents in cases where the husband does not have the means to pay at all.

Source: http://articles.timesofindia.indiatimes.com/2013-04-05/mumbai/38305450_1_nbw-maintenance-violence-act

Supreme Court holds that 'two finger test' is a violation of rights

In a landmark judgment, the Supreme Court of India held that the *'two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.'*

Taking into consideration the views taken in International Covenant on Economic, Social, and Cultural Rights 1966, United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, the Court noted that rapesurvivors are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity. Further, it observed that the survivors arealsoentitled to medical procedures conducted in a manner that respectstheir right to consent.

The two-finger test has been widely used during medical examination of the rape survivors to determine whether they are 'habituated to sexual intercourse' or not.

The judgments can be accessed [here](#).

Source: <http://www.indianexpress.com/news/twofinger-test-violates-rape-victims-right-to-privacy-supreme-court/1117816/>

Madras HC grants woman maintenance of Rs. 500 after 13 years of struggle

In a case that created a furore for its extraneous pronouncements on premarital sex, the Madras High Court awarded maintenance to a woman whose legal status as wife was challenged by the husband. The Court, merely reiterating judicial precedence, observed that both the petitioner and the respondent lived as husband and wife and had two children together and thus their relationship could be seen as that of marriage.

While the court upheld the presumption of marriage on the basis of evidence produced and the consequent right of the wife to claim maintenance, it failed to award even a remotely adequate sum for maintenance.. The Court directed the man to pay the woman a monthly maintenance of Rs. 500 per month! Interestingly, the trial and appeal court dedicated all attention to ascertaining marriage and entitlement, without going into the question of the man's income or the needs of his deserted wife and children. The 2001 amendment to the maintenance provision removed the statutory ceiling of how much could be awarded to the wife – paving the way for reading economic rights into marital relationships. Disturbingly however, women claimants continue to be awarded paltry sums that in no way constitute maintenance or even ward off destitution, the original objective of the law.

Source: <http://www.legallyindia.com/201306193766/Bar-Bench-Litigation/read-full-madras-high-court-judgment-on-pre-marital-sex-marriage-more>
<http://www.firstpost.com/living/misreading-the-madras-hc-ruling-premarital-sex-is-not-marriage-883429.html>

Op-ed: http://www.business-standard.com/article/beyond-business/the-reactions-were-flippant-and-uncalled-for-flavia-agnes-113062200622_1.html

Supreme Court affirms Mumbai High Court's rejection of the Maharashtra government's ban on dance bars

The Supreme Court in a landmark judgment struck down the ban on the dance bars which had been sanctioned by the Maharashtra Government since August 2005 under Sec. 33(a) and Sec. 33(b) of The Bombay Police (Amendment) Act of 2005. The Act had prohibited 'any type of dancing' in an "eating house, permit room or beer bar" while allowing dance performances in three star upward hotels and other 'elite' establishments. The Bombay High Court lifted the ban on the grounds that the ban amounts to an unreasonable restriction on the fundamental right of the bar owners and bar dancers of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The Government of Maharashtra filed an appeal in the Supreme Court contending that the performances were vulgar and left women performers vulnerable to trafficking and exploitation. The Supreme Court while admitting the appeal issued a stay order on the dance bars until the final verdict was out.

The apex court upheld the judgment of the High Court allowing for licensed dance bars to be reopened. The ruling was primarily based on the bar dancer's right to livelihood as under Art. 19(1)(g) of the Constitution; the Court took cognizance of the loss of livelihood of 75,000 women who were employed in the dance bars in various capacities. The judgment marks a nuanced approach by the court where the rights of the bar dancers gained priority over discourses of what is considered immoral and vulgar.

Source:http://articles.timesofindia.indiatimes.com/2013-07-17/mumbai/40634155_1_dance-bars-dance-girls-bar-girls
<http://www.ndtv.com/article/india/maharashtra-minister-defies-supreme-court-order-says-dance-bars-will-remain-closed-395535>
<http://www.firstpost.com/india/supreme-court-overturns-maharashtra-ban-mumbai-dance-bars-to-reopen-958313.html>

The judgment can be accessed [here](#).

Supreme Court rules against reduction of sentence based on compromise between rape survivors and rapist

As a part of a spate of Supreme Court decisions discussing the power of the court to reduce sentences under the proviso to Section 376(2) following a compromise, a three-judge bench of the Supreme Court ruled, in *Shimbu and Another v State of Haryana*, that the fact of a compromise cannot be used to reduce a sentence below the minimum prescribed. It pointed out that rape survivors are likely to be pressurised into compromises, if such a leeway was granted by the law. Stressing that the factor relevant to sentencing is the gravity of the offence, the Court stated that “[r]eligion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute.” It also opined that, given the long line of precedent upholding this point of law, the decision by Justice Katju and Justice Misra in *Baldev Singh v State of Punjab*—a judgement which permitted the compounding of an offence of gang-rape following a compromise—could not be seen as valid precedent.

The full judgement can be accessed [here](#).

Sources:<http://www.thehindu.com/todays-paper/tp-opinion/muchneeded-clarity/article5083839.ece>
<http://www.thehindu.com/news/national/compromise-in-rape-cases-out-of-the-question-sc/article5064363.ece>

Patna High Court acquits all twenty-six accused in Laxmanpur Bathe dalit massacre

In keeping with a series of acquittals of those accused of committing atrocities against dalits in Bihar, the Patna High Court overruled the district court decision convicting twenty-six persons (who allegedly belong to the RanvirSena) for the murder of fifty-eight dalits in Laxmapur Bathe, sixteen years ago. Finding all prosecution witnesses to be unreliable, the High Court acquitted the accused, granting them the benefit of doubt. This comes close at the heels of acquittals in the BathaniTola, Nagari Bazaar and Miyapur massacre cases. The unconscionable acquittals have sparked widespread dissatisfaction and a call for the Amir Das Commission to be reopened to query the political links of the RanvirSena. The Commission, set up to investigate the role of the RavirSena in several violent incidents against dalits, was dismantled (before it could submit its report) by the Nitish Kumar government in 2005.

Sources:<http://www.thehindu.com/news/national/other-states/patna-high-court-acquits-all-26-accused-in-laxmanpur-bathe-massacre-case/article5218083.ece>
<http://www.firstpost.com/politics/laxmanpur-bathe-massacre-no-one-killed-58-dalits-1166975.html>
http://www.telegraphindia.com/1131102/jsp/bihar/story_17520085.jsp#.UoCboPmnrkg
<http://www.sacw.net/article5937.html>

Supreme Court instructs states to refrain from making Aadhar a mandatory requirement for receiving government services

Pursuant to a PIL filed by a retired judge of the Karnataka High Court, the Supreme Court has issued an interim order mandating that no person be disadvantaged in the context of any government scheme, on account of the lack of an Aadhaar card. It has, thereby, negated rules by governments that made an Aadhaar card mandatory for receiving government services. The Court also required those issuing these cards to ensure that they do so only to individuals who are entitled to it under the law.

Source:<http://indiatoday.intoday.in/story/aadhaar-cards-not-mandatory-for-gas-connections-sc/1/311231.html>

Special Court for rape cases in Delhi calls upon women for abstaining from pre marital sex

VirenderBhat, the presiding judge in a Delhi court dedicated to expediting rape trials, dismissed a case of rape arising from ‘breach of promise to marry’ – reportedly, a growing trend where rape is alleged after a sexualrelationship founded allegedly on a promise to marry is terminated. While rejecting the complaint as neither promise to marry nor rape was made out in the facts and circumstances of the case, the judge advised that women are morally and socially bound not to have pre-marital sex, and ought not cry rape in case they do. Commenting on this ‘disturbing trend’, the judge stated that he was unwilling to believe that women aged between nineteen and twenty-four years were naïve enough to believe any representation made to them; observing

instead, that they elope ‘voluntarily’ to ‘explore the greener pastures of bodily pleasure and then fabricate such tales to avoid social back-lash. Such comments, although of no bearing upon the verdict, highlights that women’s sexuality gets judged, commented on and castigated regardless of its relevance to the case.

Interestingly, a month later the Delhi High Court took suo motu cognizance of remarks made by the presiding judge of the Dwarka fast track court on pre marital sex, and advised him to be counseled for gender sensitivity. The High Court observed that the remarks were generalized and sweeping in nature, and that they are ‘are prima-facie insensitive observations and are capable of influencing the police to take up women harassment cases lightly, resulting in an insensitive investigation and complete evidence not being brought before the Court.’ The High Court’s intervention, though well intentioned, comes across as a bit otiose as the main issue at hand, which is of women’s (and men’s) sexual autonomy in pre marital consensual sexual relationships is not addressed by the High Court; instead, the observations approach the issue yet again in terms of the suffering of women in general, calling for sensitivity towards women as a ‘victimized’ group

Sources: <http://www.indianexpress.com/news/girls-morally-bound-not-to-have-sex-before-marriage-says-fast-track-court-judge/1184017/>

<http://indiatoday.intoday.in/story/judge-says-girls-shouldnt-have-sex-before-marriage-ex-cji-calls-ruling-absurd/1/316969.html>

You can access the High Court’s decision [here](#).

Supreme Court overrules Delhi High Court’s verdict on Sec 377 of the IPC, recriminalizes homosexuality

In a major blow to the development of constitutional law, and in particular to the aspirations and the fundamental rights of the LGBTI, the Supreme Courts declared that Sec 377 of the IPC, which criminalizes adult consensual sexual intercourse ‘against the order of nature’, as not suffering from any ‘constitutional infirmity’. The decision by a two judge bench of Justice Singhvi and Justice Mukhopadhyay in the case of *Suresh Kumar Koushal & Anr vs Naz Foundation & Anr* overruled the landmark judgment of the Delhi High Court in the *Naz Foundation*, that de-criminalized homosexuality, as it violated Articles 14, 15 and 21.

Holding that the LGBT community constitutes ‘a miniscule fraction of the country’s population’, and that prosecutions under 377 have been very rare, the Supreme Court deferred the matter of de-criminalization to the ‘competent legislature’. The judgment evoked protests across the country, including by the Government of India, which immediately filed a review petition. Many civil society organisations too, have sought a review of the judgment.

The UN OHCHR too has responded, with the High Commissioner Navi Pillai reminding India that ‘*criminalising private, consensual same-sex sexual conduct violates the rights to privacy and to non-discrimination enshrined in the International Covenant on Civil and Political Rights, which India has ratified*’.

The full judgment can be accessed [here](#).

Sources: <http://www.thehindu.com/news/national/supreme-court-sets-aside-verdict-decriminalising-gay-sex/article5446939.ece>

<http://www.reuters.com/article/2013/12/12/us-india-rights-gay-un-idUSBRE9BB09V20131212>

Supreme Court frames guidelines for determining 'live-in' relationships for the purpose of PWDV Act

The Supreme Court formulated guidelines on determining whether 'live in' relationships would fall within the expression 'relationship in the nature of marriage' in the Protection of Women from Domestic Violence Act of 2005. The guidelines constitute of 8 indicators, which in the words of the Court are 'not exhaustive but will give some insight to such relationships'.

The indicators include duration of period of relationship, pooling of financial resources and arrangements supporting each other, whether the household was shared or not, domestic arrangements, sexual relationships, presence of children, socialization in public, and intention and conduct of the parties. Each of these indicators are further explained in the judgement. What is worrying however, is that the recent jurisprudence by the Supreme Court has tended towards collapsing diverse intimacies and conjugalities in India, under a catch all phrase 'live in relationships', and by setting out conditionalities, has reduced the scope of legal protection against domestic violence. Public policy goals are better served by expanding legal protection to all women, in all domestic and intimate situations, rather than in limiting protection to conjugalities that reflect select attributes. The Supreme Court in its judgement also decried the lack of any express statutory provision to regulate live-in relationships upon termination

Sources: <http://news.outlookindia.com/items.aspx?artid=818941>

<http://www.ndtv.com/article/india/supreme-court-frames-guidelines-for-determining-live-in-relationship-453024>

You can access the entire judgment [here](#).

Supreme Court declares that registration of FIR cannot be avoided in cognizable offences

A 5 judge constitutional bench of the Supreme Court held that if a cognizable offence is disclosed to the police, then it cannot avoid registering an FIR and setting the criminal law process in motion. The Court, hearing the case of *Lalita Kumari vs State of UP*, was deciding upon the issue of whether the police officer has the power to first conduct a preliminary inquiry before the FIR to test the veracity of the information disclosing the cognizable offence. The Court has also issued several directions where it unequivocally makes clear that under Section 154 of the CrPC, upon disclosing of cognizable offence, no preliminary enquiry is permissible and the police must register the FIR. The Court also made clear that if the information received does not

disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The Court emphasized that action must be taken against erring officers who do not register the FIR if information received by them discloses a cognizable offence.

The Court reiterated as a general principle what has been mentioned clearly in Sec 166 A (c) of the Indian Penal Code, introduced by the Criminal Law Amendment Act of 2013, in the context of offences relating to sexual violence. The above mentioned section penalizes public servants for not filing an FIR on information given to him in relation to cognizable offences punishable under several sections of the IPC relating to sexual and gender based violence like rape, acid attack, sexual harassment etc. Both the Section 166 (c) of the IPC and the Supreme Court's judgement are of cardinal importance from the point of view of fighting sexual violence through the law, as one of the biggest hurdles that victims of sexual violence often face, especially in rural and marginalized contexts, is the refusal to file an FIR by the police.

Source:<http://www.indianexpress.com/news/police-cannot-avoid-an-fir-in-cognisable-offences-supreme-court/1193935/>

You can access a copy of the judgement [here](#).

Supreme Court panel comes to prima facie finding against Justice Ganguly on charges of sexually harassing an intern

A 3 member panel of Supreme Court judges constituted by the Chief Justice has concluded its investigation of the accusation of sexual harassment made against retired judge of the Supreme Court, Justice Ganguly by a law intern, and indicted him of committing an 'act of unwelcome behaviour' and 'conduct of sexual nature'. However, in view of the fact that Justice Ganguly had already demitted office on the day of the incident, the Chief Justice of India stated that 'no further follow up action is required by this Court'.

Justice Ganguly was the Chairperson of the West Bengal Human Rights Commission at the time of the allegations, but he resigned after the Union Cabinet approved a Presidential Reference to be made to the Supreme Court under Article 143 of the Constitution for his removal as chairperson of the West Bengal Human Rights Commission.

Source:<http://www.deccanchronicle.com/131205/news-current-affairs/article/complaint-law-intern-sc-panel-indicts-justice-ganguly-lets-him>

News and Events

Delhi gets 6 fast track courts for trying rape cases

Following the brutal gang rape and murder of a woman on a bus in Delhi in December 2012, the Delhi High Court set up six fast track courts – one each at Saket, Rohini, Karkardooma, Dwarkadistricts and two at Tis Hazari. While there is a widespread concern about delays, and need to avoid protracted delays and ensure expedite trials in rape cases, this aspect alone does not ensure justice to the victim. The larger goals needs to go beyond speedy trial to encompass sensitivity towards the victims including through victim-centric procedural and substantive guidelines laid down by the Supreme Court in various cases, over the years.

Additionally, rape cases get delayed due to a number of reasons, which include delay in receiving forensic reports, key witnesses such as doctors not being present in the court or periodic adjournments sought by the accused. It remains to be seen how these issues are tackled by the new fast track courts and whether their mandate of speedy justice is realised.

Source: <http://www.hindustantimes.com/India-news/NewDelhi/Crime-against-women-Judges-take-charge-of-fast-track-courts/Article1-984989.aspx>

http://articles.timesofindia.indiatimes.com/2013-01-02/delhi/36112321_1_special-courts-trial-courts-high-court

Health Ministry and Maharashtra government take significant steps to make medico-forensic procedure in cases of rape more victim sensitive

Feminist as well as health rights activists, have for long demanded that doctors conducting medical examinations of rape victims must be forbidden from conducting tests that not only lead to subjective inferences that affect the outcome of the rape trial, but also breach the victim's bodily integrity. Intense lobbying with the health department finally yielded results asboth the Ministry of Health and Family Welfare and the Maharashtra government took significant steps to make medical and forensic procedure in rape cases more sensitive to the victim.

The Health Ministry brought out anInstruction Manual for Forensic Medical Examination Report of Sexual Assault (Victim). The Manual asks doctors to not use the word 'rape' while recording their findings, for rape is a legal category to be decided by the judge, and not a medical category. Similarly, doctors are asked to take consent of the victim before conducting the medical examination. The Manual also mentions that marks of injury could be absent or fade due to a number of reasons and asks the doctors to desist from using phrases such as 'habituated to sexual intercourse'. This significant development, however, would need to be followed up with proper training for the doctors to use this Manual.

The Maharashtra Government issued a Government Resolution to do away with irrelevant medical practices, including the 'two finger test'. As per the General Resolution, doctors, paramedics and medical officers of the state health department would have to adhere to a new

manual that details the manner in which the medical examination should be conducted. They would be trained to deal with victims of sexual assault in a sensitive manner.

However, this move by the Maharashtra government has been criticized for retaining several problematic medical practices. Centre for Enquiry into Health and Allied Themes (CEHAT), an organization for research and advocacy on health and other similar themes has raised several concerns with the revised sexual assault examination proforma and manual. The manual mandates recording the status of the hymen and over-emphasizing on injuries by noting height-weight of the survivor and accused and several others. The manual doesn't use the Criminal Amendment Act of 2013 while defining rape but instead defines 'what comprises sexual intercourse'. The manual mandates that every accused must undergo a potency test to determine whether he is capable of performing the sexual act. The proforma does not include crucial details from the survivor which may be necessary for treatment and for evidence collection, like forms of sexual assault, body parts touched, details regarding emission of semen and condoms used. The manual does not use the definition of rape as given in the Criminal Amendment Law, 2013, but only defines 'what comprises sexual intercourse', which doesn't include non penile penetration

Source: <http://www.thehindu.com/sci-tech/health/policy-and-issues/dont-use-legal-term-rape-in-medical-reports-manual/article4492370.ece>
: <http://www.indianexpress.com/news/maharashtra-does-away-with-finger-test-on-rape-victims/1114702/>
<http://www.firstpost.com/india/finally-maharashtra-does-away-with-finger-tests-on-rape-victims-773799.html>
<http://www.indianexpress.com/news/maharashtra-rape-examination-norms-fall-short/1114982/>

16 years after Vishaka, Supreme court to finally set up anti-sexual harassment committee for women lawyers

Although the Supreme Court of India gave the working women of the country, the legal framework to address sexual harassment at workplace, the women at the Supreme Court have had no legal recourse against sexual harassment.

Following an incident of voyeurism against a woman lawyer at the Delhi High Court, in March this year, two lawyers filed a writ petition before the Supreme Court asking for immediate steps to address this issue. The Court asked the National Legal Services Authority (NLSA) to collect data on such committees in other courts across the country, before going ahead with a model for the Supreme Court. As an interim measure however, the Court constituted a complaints committee with the mandatory 50% representation of women lawyers and court administrators. In a significant development, the Court broadened the scope of the committee, empowering it to receive complaints relating to harassment within the Supreme Court premises, as well as the lawyers chambers around the Court. On April 23rd, the NLSA submitted its report on complaints committees in other courts in the country, which showed that even where they existed, such committees were non-functional. The guidelines for the functioning of the committee are currently being framed.

Source: http://articles.timesofindia.indiatimes.com/2013-03-24/india/37980734_1_vishaka-judgment-harassment-of-women-employees-women-lawyers
http://articles.economictimes.indiatimes.com/2013-04-23/news/38763011_1_apex-court-vishaka-medha-kotwal-lele

The notification constituting the committee can be found here:
<http://supremecourtindia.nic.in/staff/officeorder15042013.pdf>

Children of transgender and sex workers no longer need father's name or address proof to enroll: School Education Department of Maharashtra Government

In a welcome move, the School Education Department of the Maharashtra Government instructed schools to not insist on the father name and/or proof of address of children of transgender parent(s) and sex workers while enrolling in school. This Government Resolution, issued under the Right to Education Act, interpreted the definition of 'child belonging to disadvantaged group' as including children of sex workers (being socially and economically disadvantaged) and transgender, to whom the 25% reservation as stated in the law, is applicable.

Source: http://articles.timesofindia.indiatimes.com/2013-06-04/news/39739676_1_aastha-parivar-address-proof-transgenders

Government sets up expert committee to study the problems affecting the transgendered community

The Ministry of Social Justice and Empowerment constituted an expert committee to study their issues and suggest measures to improve their situation. The expert panel consists of 19 members, including professors from universities and representatives from the ministries of Health, Home Affairs, External Affairs and Human Resources Development. The expert committee also has some representatives from the trans community.

A group of 74 trans men have written a letter to the Ministry indicating how the current policies and programmes have overlooked trans men and their needs, and have requested to be allowed to make a direct submission to the expert committee.

Source: <http://www.dailymail.co.uk/indiahome/indianews/article-2477959/Government-sets-problem-solving-committee-help-transgender-people.html>

You can find the letter to the Ministry from the trans men [here](#).

Statistics released by Delhi government show alarming growth in cases of rape, molestation in the city

The Delhi Government, appearing before the Supreme Court through Additional Solicitor General Siddharth Luthra, has furnished data revealing the exponential rate at which reporting of crimes against women has grown in the capital over the last few years. The statistics, taken from the Delhi police reveals that there were 1330 reported rapes till 15th of October, 2013, as against 706 in 2012. Reported molestation cases have grown four fold from 727 in 2012 to 2,844 in 2013. Other crimes against women have also increased over the past four years, with crimes of cruelty against wives by husbands and in laws have increased from 1297 cases in 2009, to 2487 in 2013, while kidnapping/abduction of women has risen from 1,655 in 2009 to 2,906 in 2013.

The significance of this data released by the Delhi government is that while it shows that Delhi remains to be an unsafe city for women, both on the streets and in the homes, more and more women are getting cases registered and seeking legal redressal, leading to the spurt in numbers of cases of crimes against women.

The 3 judge bench of the Supreme Court was hearing a writ petition filed by Beenu Rawat and 18 others seeking a probe by a special investigation team into the lathi-charge on Aam Admi Party workers who went to the police station seeking a copy of an FIR relating to registration of a rape case.

Source: <http://www.thehindu.com/news/cities/Delhi/rape-cases-double-molestation-up-4-times-in-delhi/article5298622.ece?homepage=true>

Programmes/Policy/Institution

NHRC's visit to Chhattisgarh a disappointment

The National Human Rights Commission's (NHRC) visit to Chattisgarh proved to be a disappointment. The Commission heard 27 selected cases of human rights abuse in Raipur, recommended Rs 20 lakh relief for some victims and visited a relief camp in Dantewada, which was suggested by the state government. The NHRC delegation also met Soni Sori and gave a clean chit to the state government on the treatment meted out to her.

A team from the National Commission for Women had visited Sori in December last year [PLD Newsletter Vol. 5 (VI) Nov-Dec 2012]. After the visit, one of the team members had made stray comment that Sori needed psychological counselling, which was subsequently contested by another member of the team, Annie Raja and several women's groups. That stray remark provided the Chhattisgarh government the pretext to carry out a psychiatric evaluation on Sori. Recently women's groups in Delhi issued a statement condemning the step taken by the Chhattisgarh government, which could be used by the government to label her as mentally unsound. The NHRC statement however glossed over this aspect while assessing the response of the state government.

Source: <http://www.thehindu.com/todays-paper/tp-national/nhrc-gives-clean-chit-to-chhattisgarh-government-on-soni-sori/article4618718.ece>

<http://www.indianexpress.com/news/nhrc-cgarh-visit-ends-with-27-cases-one-camp/1101702/>

Central government announces Nirbhaya Fund for women's safety

While presenting the 2013 Union Budget, Finance Minister P. Chidambaram announced a central fund with a corpus of Rs. 1000 crore for the safety of women. The fund is named 'Nirbhaya' – the name given by the media to the woman who was gang raped and murdered on a bus in Delhi in December 2012. Women's groups and activists however are not swayed by this move. For years they have demanded better budgetary allocations to implement the anti domestic violence and anti sex selective abortion laws. Announcing a new fund for women's safety, while sidestepping long standing demands for better implementation of existing laws is being called by many as tokenistic.

Source: <http://www.deccanherald.com/content/315528/nirbhaya-fund-safety-women.html>

NCW asks centre to take steps to prevent sexual harassment at workplaces

Pointing to the number of complaints that it receives about sexual harassment at workplaces, the NCW asked the central government to direct all its departments, institutions and autonomous bodies to set up internal complaints committees and to advertise the same. The NCW stressed on the need to ensure that women who complain do not find themselves singled out and further harassed.

Source: <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/take-steps-to-prevent-sexual-harassment-at-work-place-ncw-tells-centre/article5242426.ece>

MHA issues directions to register Zero FIR if jurisdiction not known

Implementing Section 166A of Criminal Law (Amendment) 2013, the Ministry of Home Affairs directed that all police stations across the country should register a Zero FIR on receipt of complaint or information about a crime irrespective of jurisdiction. According to the Ministry, the police shall, on receipt of a complaint or information, immediately register an FIR and upon investigation, if it is found that the subject matter relates to a different jurisdiction, the case would accordingly be transferred.

Though this is a welcome move, however it is left to be seen how well this directive is implemented. Another problem that this directive does not seem to address is the refusal to register FIRs even though the subject matter relates to the jurisdiction of that station, on frivolous grounds such as the crime not being serious enough.

Source: <http://www.indianexpress.com/news/jail-term-for-refusing-to-file-fir-centre/1124220/0>

PLD is a legal resource group working in the fields of social justice and women's rights in India and South Asia. We view law as an essential resource in the struggle for social justice and consider gender equality as central to the attainment of social justice. Our belief is that social justice goals are best shaped by human rights laws which establish a framework for the realization of the rights of the disadvantaged and the marginalised. Our understanding of rights and dignity of all persons is drawn from human rights law as well as the contextual realities of disadvantaged groups.

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