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Partners for Law in Development

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UPDATES FROM THE UN

UN Special Representative on Sexual Violence in Conflict Appointed

Margot Wallström has been appointed as the UN Special Representative to the Secretary General (SRSG) as per the Security Council Resolution (SCR) 1888. Upon her appointment, according to Ms. Wallström her priorities included lobbying for recognition of sexual violence in war as a war crime and including women in the decision-making process in conflict resolution and peace making.

A Special Representative of the Secretary-General (SRSG) is appointed by the UN Secretary-General to represent him on a certain issue or in a region of particular importance to the work of the UN. The role of an SRSG is not specifically defined in the UN Charter, and has evolved throughout the history of the UN. For gender justice advocates, this SRSG appointment opens a vital channel of communication to the UN Secretary-General as SRSGs often conduct widespread consultations with various stakeholders and hold meetings where interested parties, such as local groups and NGOs, can raise concerns or bring a pressing issue to their attention.

Source: http://www.iwtc.org/gnets/364.html

UNESCO lays down human rights standards in support for broad and accurate sex education

UNESCO has released international sex education guidelines that encourage age-appropriate discussion on masturbation, condom use, emergency contraception, as well as access to safe abortion services and post-abortion care. The guidelines urge teachers to give young people complete and accurate information about their bodies, sex, pregnancy, birth control so that they know how to avoid pregnancy and diseases. Through these guidelines, UNESCO aims to promote comprehensive sex education to reduce teen pregnancy and STDs.

Source: http://reproductiverights.org/en/feature/unesco-calls-for-comprehensive-sex-ed

INTERNATIONAL LEGAL DEVELOPMENTS

<u>Asia</u>

Nepal SC orders Government to set up abortion fund and promote availability of abortion services

Nepal's Supreme Court ordered the government of Nepal to enact a comprehensive abortion law to guarantee that women have access to safe and affordable abortion services. Since 2002, Nepalese law has permitted abortion under most circumstances, but multiple barriers have prevented women from accessing safe abortion services. As per the court ruling, the government must set up a fund to cover the cost of abortion for poor and rural women; and invest enough resources to meet the demand for abortion services and to educate the public and health service providers of the existing abortion law.

At the center of the petition was Lakshmi Dhikta. Dhikta, who comes from an extremely poor household in the rural western region of Nepal, could not afford to pay the fee charged for abortion at a public hospital and as a result, was forced to continue an unintended pregnancy.

The case was filed in the Nepalese Supreme Court in 2007 by the Center for Reproductive Rights (Asia) and Forum for Women, Law, and Development, Nepal.

Source: http://reproductiverights.org/en/press-room/court-orders-nepal-to-improve-women%E2%80%99s-access-to-abortion

Bangladesh High Court orders protection for victim of extra-judicial punishment

Bangladesh's High Court has ordered authorities in an eastern district to protect and produce in court a 16-year-old girl who was lashed 101 times after becoming pregnant as the result of a rape. The girl received the punishment on the orders of village elders in the Brahmanbaria district who issued a "fatwa," declaring that she be flogged for immoral behavior. The elders pardoned the 20 year-old rapist. The girl's father was also fined and another fatwa was issued saying the family would be ostracized if he failed to pay it. The father said the elders' group was keeping a close watch on the family to ensure they would not take legal action. This is not the first such incident in Bangladesh when in case of rape the question is raised on the woman's integrity while the accused has been pardoned. PLD in its October newsletter reported a similar case of extra-judicial punishment where the Bangladesh High Court had intervened.

Source: http://www.cnsnews.com/news/article/60499

Beyond Asia

Czech Court awards full compensation to women for illegal sterilizations

In a significant move, the High Court in Prague has awarded two women full compensation for being illegally sterilized by doctors without their permission. In the past there have been other such incidents where Roma women have been sterilized without their consent and the hospital authorities either have refused to compensate them or have done so only partially. This is the first instance where the Court has directed the doctors to respect women's right to bodily integrity and freedom of choice and awarded them full compensation to somewhat ameliorate the harm caused by these violations.

Source: http://www.roma.lt/en/news/en_news/news_item/224

Albania passes Anti-Bias Law

The Albanian government showing its commitment to rights and freedoms has passed an antidiscrimination bill which seeks to protect against all forms of discrimination, including on the grounds of sexual orientation and gender equality. The bill is a result of yearlong lobbying by Albanian human rights activists and Human Rights Watch, that highlighted the need for a broad anti-discrimination law that would expressly protect lesbian, gay, bisexual, and transgender Albanians against unequal treatment.

To read Human Rights Watch's letter to the Prime Minister of Albania, please visit: http://www.hrw.org/en/news/2010/02/12/letter-prime-minister-republic-albania

Spain approves new abortion law to ease restrictions on abortion

The Spanish government has allowed women to undergo abortion without the threat of facing imprisonment by easing restrictions and passing a new law that allows abortion without restrictions up to 14 weeks. The law permits abortion up to 22 weeks if two doctors certify there is a serious threat to the health of the mother, or fetal malformation; and beyond 22 weeks, it would be allowed only if doctors certify fetal malformation deemed incompatible with life or the fetus were diagnosed with an extremely serious or incurable disease. The law also allows minors to have abortions by informing their parents or legal guardian but not necessarily taking their permission. However if the minors can prove that the above condition would expose them to violence, threats or coercion within their family, then they are exempted from informing their parents.

Source: http://www.msnbc.msn.com/id/35565952/ns/world_news-europe/

NATIONAL

Judgments/Orders

Supreme Court allows adoption for German surrogate twins

The Supreme Court by circumventing its own procedures has helped a German couple to adopt their surrogate children born of an Indian mother. The case came to light when the German embassy refused to grant visa's to the children since surrogacy is considered contrary to human dignity in Germany. The Indian government was as a consequence approached for an Indian passport for the twins, following which the Centre asked the Solicitor General to look into the matter. The Solicitor General then responding to the government query said that the couple could adopt the children through inter-country adoptions as provided by the Hague Convention.

The surrogacy industry has been growing in India, presently the industry operates without legal sanction. The Assisted Reproductive Technology (Regulation) Bill, 2008, has yet to become law. The Bill has provisions for protection of rights of surrogates (like payments in installments to ensure she is paid even in miscarriage) as well as couples (to ensure surrogate doesn't refuse to hand over baby etc). If the law comes into force, India would become the first country to have a legal sanction on 'paid' surrogacy regulations

Source: http://www.indianexpress.com/news/surrogate-twins-wont-get-german-visas/569035/
http://www.mid-day.com/lifestyle/2009/dec/301209-surrogacy-Dr-Nayana-Patel-gynaecologist.htm

http://www.msnbc.msn.com/id/22441355/

Supreme Court asks the government to curb sex tourism

The Supreme Court has asked the government to come out with foolproof measures to curb 'sex tourism' in the country and register cases of rape against those pushing children into prostitution rackets or having sex with them. The court upheld that prostitution of girls less than 18 years of age amounted to rape and the police should register such cases under 376 of the IPC. In the absence of a separate law on child sexual abuse the children are unprotected from a range of sexual assault. Further, the rescued children should be provided with food, shelter, medical care, counseling and education for as long as they need- sometimes several years. However, in India, in the absence of a rehabilitation policy and infrastructure, many children are left to fend for themselves which leads them back to the brothels.

Source: http://www.indianexpress.com/story-print/567786/

Supreme Court expresses Concern for Witness and Victim Protection

The Supreme Court has asked the Chhattisgarh Government not to interfere in any manner or create any obstacle to prevent Sodi Shamboo from coming to Delhi for medical treatment. The SC directive is in response to a PIL that alleged that on January 2 when Sodi. Shamboo was on her way to Delhi treatment of her leg which had been shot, she was taken by the police to Dantewada for questioning. Sodi Shamboo is one of the victims and a witness to the Gompad killings by Chhattisgarh police. The People's Union for Democratic Rights while welcoming the Supreme Court order expressed hope that the State would refrain from similarly harassing and intimidating other witnesses. It said the State must stop obstructing Sodi Shamboo's access to medical care besides other fundamental rights so that her treatment could continue and that the Dantewada police must be restrained from approaching or otherwise pressurising her.

Source: http://www.thehindu.com/2010/01/09/stories/2010010959430300.html

Delhi High Court Judges declare their assets

The Delhi High court upheld its order that the office of the Chief Justice of India (CJI) comes within the purview of the Right to Information (RTI) Act and details of judges assets should be revealed under that. A Delhi high court judgment on January 12, 2010 upheld an earlier judgment that the CJI is a "public authority" and falls under the purview of the RTI. This judgment has proven to be controversial and presently a proposal to exempt the office of the Chief Justice of India from the purview of the Right to Information (RTI) Act is under the government's consideration.

Source: http://economictimes.indiatimes.com/news/politics/nation/Move-afoot-to-exempt-CJI-from-RTI-Act/articleshow/5649187.cms

Ruchika Gihrotra's Case and the Sexual Offences Bill

The Ruchika Girhotra case highlighted major lacunae in the Indian law including lack of any special provision for child victims of sexual molestation. The Government worked on a new law called Sexual Offences (Special Courts) Bill to provide quick justice to victims of sexual abuse. It has been indicated that the Sexual Offences Bill, which is currently before a special Parliamentary Select Committee will be passed shortly. The Bill has been criticized by women's organizations as it stops short of making the kind of definitional change, recognizing the various forms of sexual assault on women and children, that would make a

substantial difference. There is also no reference to an already existing piece of draft legislation, "The Criminal Law Amendment Bill 2002", painstakingly prepared by women's organisations and vetted by the National Commission for Women:

Source: http://www.frontlineonnet.com/fl2704/stories/20100226270403600.htm http://www.frontlineonnet.com/fl2704/stories/20100226270403600.htm http://www.stabroeknews.com/2010/stories/02/24/2010-is-women%E2%80%99s-development-year-manickchand/

Amendments to criminal procedure come into effect

The Criminal Procedure Code (Amendment) Act, 2008 came into effect from December 31, 2009. It incorporates the recommendations of the Law Commission, the Justice Malimath Committee's report and the guidelines issued by the Supreme Court to prevent overcrowding of jails with under trials. However, following protests from lawyers, the government has decided not to notify Sections 5, 6 and 21b (amendments relating to arrest, notice of appearance before a police office and adjournments).

The Act gives protection to rape victims and confers rights; provides for compensation to victim for illegal arrest and police harassment. A rape victim with the courts permission can engage an advocate to help the prosecution. The statement is to be recorded by a woman officer in the presence of parents or guardian at the victim's home or in a safe place or a place of her choice. Under the new law, statements can be recorded through audio/video or other electronic means. Investigations of rape/child sexual abuse are to be completed in three months from the date when information was recorded by the officer in charge of the police station.

Source: http://www.thehindu.com/2010/01/02/stories/2010010253101200.htm

Court orders that conviction for rape is possible without corroboration

The Supreme Court has held that a person can be convicted for rape if the victim's testimony, though not fully corroborated, is credible and even if there is slightest penetration without rupturing the hymen. And that minor discrepancies like non- examination of the medical doctor by the prosecution cannot be a ground for giving the benefit of doubt to the culprit. The court upholding the conviction of the rapist by the Madhya Pradesh High Court said that any Indian girl or woman would not make such allegations against a person as she is fully aware of the repercussions and thus corroboration is not the *sine qua non* for conviction in a rape case. Although the reasoning in relation to corroboration is laudable, it must be noted that such reasoning is unevenly applied by the courts and continues to invoke problematic stereotypes of the Indian women to justify it.

Source: http://www.indianexpress.com/news/conviction-for-rape-possible-even-without-corroboration-sc/561084/2

Sex after an intentionally false promise of marriage is rape

The Delhi High Court has held that having sex with a girl on the promise of marriage and later refusing to tie the knot on flimsy grounds amounts to commission of rape. The court dismissed an anticipatory bail application of a boy who had tricked a girl into having sex with him on the promise of marriage and later refused to fulfill it on the ground that she had hidden her real gotra from him. The judgment said that "a case where the girl agrees to have sexual intercourse on account of her love and passion for the boy and not solely on account of the misrepresentations made to her by the boy or a case where a boy, on account of

circumstances, which he could not have foreseen or which are beyond his control, does not marry her despite having all good intention to do so, has to be treated differently from a case such as the present one." The judge while commenting on the intention of the boy said that "the petitioner from very inception had no intention of marrying the prosecutrix to whom he was a complete stranger before he met her to consider the proposal for marriage with her".

Source: http://beta.thehindu.com/news/cities/Delhi/article98711.ece

Court orders that an unborn child can be treated as a minor in matters of accident compensation

The Delhi High Court said that an unborn child can be treated at par with a minor child, in matters of accident compensation claim. The court said this while directing Reliance General Insurance company to pay compensation to a man who lost his pregnant wife in a road accident. The man filed the appeal with the court when his plea for compensation for his unborn child was ignored by the Motor Accident Claim Tribunal (MACT).

 $Source: \underline{http://www.hindustantimes.com/rssfeed/newdelhi/Treat-unborn-child-at-par-with-minor-child-Delhi-HC/Article1-506135.aspx}$

Delhi High court asks the state to rehabilitate slum dwellers

The Delhi High Court has pulled up the state agencies for demolishing slum clusters in the name of beautifying the city by asking them to rehabilitate the slum dwellers even if they were encroaching on public land. The court was hearing a *suo moto* case on a newspaper report that highlighting the plight of people rendered homeless in the Delhi winter when the MCD demolished their night shelters to beautify the city for the upcoming Commonwealth Games. Due to the demolition of their *jhuggis* many slum dwellers succumbed to the cold. The court ordered the state agencies to protect and the respect of the rights to life and dignity which the Constitution guarantees all and to relocate them with a surety of basic amenities consistent with the rights to life and dignity.

Source: http://economictimes.indiatimes.com/news/politics/nation/HC-directs-Delhi-to-rehabilitate-all-slum-dwellers/articleshow/5563003.cms
http://economictimes.indiatimes.com/news/politics/nation/HC-directs-Delhi-to-rehabilitate-all-slum-dwellers/articleshow/5563003.cms
http://economictimes.indiatimes.com/news/current-affairs/rehabilitate-slum-dwellers-rules-court-12769037-7693d73192d00e8d29bdb3f76331fe7b805c4752-rhp.html

Court rules that a woman's caste does not change upon marriage

In a significant judgment, the Bombay High Court has held that the caste of a woman born into a scheduled caste or scheduled tribe does not change on her marriage to a person from a forward caste. The ruling was in response to a petition filed by a man who sought anticipatory bail after his wife who is from a scheduled caste, accused him and her in-laws of dowry harassment and casteist atrocities. The man who is from a forward caste, argued that since the woman was married to him she could not seek protection under Prevention of Atrocities Act (PAA). He contended that after marriage a woman loses her original caste status and gains that of the man she marries.

 $Source: \underline{http://www.hindustantimes.com/Women-s-caste-does-not-change-with-marriage-\underline{HC/H1-Article1-501046.aspx}$

News

AMU suspends gay teacher

The Aligarh Muslim University has suspended a teacher, on charges of "misconduct" on campus for having consensual sex with someone of the same sex within the privacy of his home. The university's decision to suspend the professor goes against the Delhi High Court's judgment on interpreting Section 377 last year which decriminalized homosexuality. Further, there were either cameras placed by students within Dr Siras' house or television reporters got into the house and made a video film of the alleged incident that was then passed on to the university authorities. However instead of taking stern action against those who have violated his right to privacy and dignity, the university suspended the professor. Several academicians from all over the country have issued a petition letter condemning this homophobic attitude and moral policing by the university. PLD supports the petition letter.

Source: http://www.indianexpress.com/news/amu-suspends-gay-teacher/580269/http://www.hindustantimes.com/Whose-morality-is-this/H1-Article1-510347.aspx http://epaper.hindustantimes.com/ArticleImage.aspx?article=19_02_2010_012_008&mode=1

Khap panchayats annul couple's marriage for violating caste norms

A caste panchayat at Kheri village in Rohtak district of Haryana has annulled a couples marriage and ordered the man and his wife to treat each other as siblings. The couple fell in love and got married with their parents consent two years back. However the villagers discovered that the couple belonged to two separate gotras (Beniwal and Berwal), members of which accepted each other as 'brothers and sisters'. The custody of the couple's child however has been given to the mother and henceforth the father of the child will be considered his maternal uncle. The panchayat also asked the boy's family to pay a fine of Rs. 3 lakh for concealing the daughter-in-law's gotra. Earlier the police refused to intervene but when the case gained publicity, the matter was sorted out and the couple were reunited but asked to live outside the village.

There have been many incidents of young couples being separated and ostracized for marrying against the wishes of their community by their 'khap panchayats', or caste councils as being against social norms. In some cases the couple are killed to restore the 'honour' of the community.

Source: http://wp.me/pqrag-ly http://www.indianexpress.com/story-print/578765/ http://www.indianexpress.com/story-print/576576/

RTI cannot be used to get medical treatment history without consent

The Bihar State Information Commission (SIC) delivered a first of its kind judgment saying that a husband/wife cannot use the RTI Act to get her/his spouse's medical treatment history from the hospital without the spouse's consent. The SIC judgment is based on different Sections of the RTI Act, 2005 and also on the oath taken by doctors at the time of their registration, pleading confidentiality towards their patients.

The case related to a man whose wife was treated in the government-owned Patna Medical College and Hospital (PMCH). He submitted an application to the PMCH's public information officer (PIO) seeking details of his wife's treatment history for using it against his

wife in an ongoing litigation. The PIO, however, sought the wife's consent which she did not give. The husband was denied the information and he then moved the SIC which too upheld the PIO's stand.

Source: http://timesofindia.indiatimes.com/city/patna/Hubby-cant-access-wifes-treatment-details-sans-consent/articleshow/5521083.cms

Transgenders seek recognition as a Backward Class

The transgender community in Karnataka including hijras, kothis, jogappas and Female to Male (FTM) transgender persons have deposed before the Karnataka State Backward Classes Commission and have demanded to be officially recognised as a "Backward Class" so they can benefit from government schemes and also work towards a situation similar to Tamil Nadu, where there are a number of state-targeted programmes aimed at this community. The hearing follows a petition filed by organizations such as Karnataka State Sexual Minorities Forum (KSMF) and those funded by Karnataka Health Promotion Trust and Karnataka State AIDS Prevention Society. They spoke about a range of issues from the need for medical facilities to discrimination and the violence and stigma they face within families, schools, work places, in police custody etc.

Human rights activists at the hearing called the state agencies to address discrimination faced on the basis of gender identity through legislation and policy and give the community the rights due to them.

Source: http://www.hindu.com/2010/03/04/stories/2010030455740600.html

Ministry calls for an end to sex selective abortions by celebrating women's roles as 'mothers-of-famous sons'

On the occasion of the National Girl Child Day, to promote awareness about sex selective abortions, the Women Child Development Ministry issued an advertisement which called for a "campaign against female foeticide". While the advertisement was criticized by many for it included the picture of a Pakistani General along with Kapil Dev and Virender Sehwag and Amjad Ali Khan, which invoked an apology from the PMO. The advertisement also highlights a complete lack of understanding of gender equality or even sex selection that is the subject of the poster – as it portrays women's contribution to society only as mothers of famous sons, rather than as individual citizens in all areas of public life. Even as the minister, Ms. Krishna Tirath pointed out that "the message is more important than the image.... The girl child should be protected, that is more important. The real motive behind this advertisement is to encourage girls to become mothers and stop female foeticide," The message reinforces the value of women only as 'mothers-of-sons'.

 $Source: \underline{http://www.india-server.com/news/advertisement-on-female-foeticide-19951.html} \underline{http://www.indianexpress.com/news/former-pak-air-chief-flies-into-govt-of-india-ad-pmo-apologises-orders-probe/571347/0}$

http://www.expressbuzz.com/edition/story.aspx?Title=What+is+Pakistani+air+chief+doing+in+Indian+ad?&artid=tpTO|KGPE7I=&SectionID=b7ziAYMenjw=&MainSectionID=b7ziAYMenjw=&SEO=&SectionName=pWehHe7IsSU=

RESOURCES

Gender, Religion and the Quest for Justice in Pakistan: Farida Shaheed

By analysing how Islam was completely changed from a religious identity to a system that dictates every part of life in Pakistan, WEMC Acting Director Fairda Shaheed unveils the real force that disempowers women in the name of religion and culture. In her report, Shaheed highlights the unjust world dominated by restrictive gender rules and entrenched paternalistic attitudes in culturally traditionalist countries like Pakistan. Shaheed found that rescinding women's rights, however, did not take place rampantly until the 'Islamisation' during the rule of General Zia-ul-Haq (1977-1988), which was actually a fusing of politics and religion with paramount concern to capture state power and to assert political influence. This Report has been prepared for the project Religion, Politics and Gender Equality of the United Nations Research Institute for Social Development (UNRISD).

Source: http://www.wemc.com.hk/web/e-bulletin/01-2010/files/df.pdf

Gender Stereotyping: Rebecca J Cook and Simone Cussack Pennsylvania Studies in Human Rights, December 2009

Gender Stereotyping draws on domestic and international law as well as judgments given by courts and human rights treaty bodies to offer perspective on ways gender stereotypes might be eliminated through the transnational legal process in order to ensure women's equality and the full exercise of their human rights.

Human rights reports relating to India at the United Nations: WGHR

The resources section in the Working Group on Human Rights (WGHR) website contains important and useful resources on India engagement at the Human Rights Council. It can be accessed at: http://www.wghr.org/resources.html. WGHR is a group of civil society organizations and independent experts working in the field of human rights in India.

Primer on Women's Economic, Social and Cultural Rights by ESCR-Net

ESCR-Net in collaboration with IWRAW Asia Pacific and COHRE's Women and Housing Programme has released a Primer on Women's Economic, Social and Cultural Rights. The Primer serves as an advocacy tool for engagement with the CEDAW and ESCR Committees to recognize the implementation of ESCR as a strategy to increase women's equality. This resource is available for download in English, French, Arabic and Russian below.

Primer in English: http://www.escr-net.org/usr_doc/Primer_WESCR-lowerres.pdf
Primer in other languages: http://www.escr-net.org/usr_doc/Primer_WESCR-lowerres.pdf

net.org/resources more/resources more show.htm?doc id=1134974

Equity or Equality for Women? Understanding CEDAW's Equality Principles: IWRAW AP

As part of its Occasional Paper Series IWRAW Asia Pacific has released its Paper No. 14 on *Equity or Equality for Women? Understanding CEDA W's Equality Principles*. The paper has been written by Alda Facio and Martha I. Morgan.

The paper is available at: http://www.iwraw-ap.org/publications/doc/OPS14_Web.pdf

The Right of Everyone to take part in Cultural Life, General Comment 21: UNSCR

The UN Committee on Economic, Social and Cultural Rights has released its General Comment 21 on the 'Right of Everyone to take part in Cultural Life'

The text of the comment is available at: http://www2.ohchr.org/english/bodies/cescr/docs/gc/E-C-12-GC-21.doc

EVENTS

National Consultation on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2009: Anhad

Anhad with the support of civil society groups from all over the country organized a National Consultation on the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2009 in New Delhi on February 12 and 13 to collectively respond and lobby against the structural inadequacies in the bill.

Civil society groups have been lobbying with the government for changes in the bill since 2005, when the first version of the bill was made public. The government now has introduced a new version of the bill, but has yet again failed to make any substantial changes towards protecting the citizens. The draft bill does not address impunity for mass crimes; does not refer in any way to gender based crimes or make any mention about accountability for inaction and complicity of state officials in communal violence. The civil society's recommendations to the government are available on the website of Anhad.

Source: http://www.anhadin.net/article97.html

CEDAW Capacity Building training in Jharkhand and Bihar: PLD

PLD organized second round of state level trainings in Bihar and Jharkhand in February. The trainings focused on the developing an understanding of gender and human rights, scope of CEDAW and effective application of its principles in local contexts. At both the trainings the participants expressed concern over the increasing cases of witch hunting against destitute and widowed women, amongst both the Hindus and Muslims and other impoverished communities.

National Consultation on HPV Vaccines: Sama and Saheli

Sama and Saheli called for a public meeting on the concerns regarding HPV vaccines on 28th December, 2009 in New Delhi. The recommendations and press release is available at: <a href="http://www.google.co.in/search?client=firefox-a&rls=org.mozilla%3Aen-US%3Aofficial&channel=s&hl=en&source=hp&q=Sama+and+Saheli+call+a+public+meeting+on+HPV+vaccines+on+28th+December+&meta=&btnG=Google+Search