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- 'The Integration of Gender and Human Rights into the Post-2015 Development Framework': edited by Radhika Balakrishnan, Diane Elson and James Heintz
- 'Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law'; OHRC
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- Justice JS Verma, former Chief Justice of India and an outstanding defender of women's rights passes away

Updates from the UN

CSW 57 outcome document leaves a lot to be desired

The 57th session of the Commission on the Status of Women (CSW 57) took place at United Nations Headquarters in New York from 4th to 15th March 2013. The outcome of the Commission's consideration of the priority theme took the form of agreed conclusions by the member states. While the negotiations resulted in a set of agreed conclusions, member states failed to reach consensus on language related to violence against women on account of their actual or perceived sexual orientation and gender identity. Feminists and women's organisations expressed concern over the 'attempts by some conservative member states and groups to derail the process and undermine previous agreements'. On the positive side, for the first time the outcome document acknowledged the risks faced by women human rights defenders and the state's obligation to support and protect them.

The statement of feminist and women's organisations on the very alarming trends in the negotiations of outcome document of the 57th session of the UN Commission on the Status of Women can be accessed [here](#).

The Outcome Document can be accessed [here](#).

Source: <http://www.guardian.co.uk/global-development/2013/mar/16/activists-welcome-un-agreement-womens-rights>

<http://www.un.org/womenwatch/daw/csw/57sess.htm#ac>

SR on situation on human rights defenders submits report with focus on human rights institutions being recognised 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 is 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 outlines a number of measures currently in practice in institutions in various Member States which could be replicated in other contexts. She also points 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 include 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](#).

UNHRC passes resolution on promoting reconciliation and accountability in Sri Lanka

The United Nations Human Rights Council (UNHRC) 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>

OP-ICESCR, placing all human rights on equal footing, enters into force

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), entered into force in May 2013, expanding possibilities of redress and accountability for all human rights within the UN system. Individuals and groups may now pursue justice in an international forum if their government fails to ensure access to an effective remedies for violations of economic, social and cultural rights at the national level, thereby placing all human rights on an equal footing.

OP-ICESCR establishes a vital tool for people to seek realization of all human rights and to hold their government accountable for any economic, social or cultural violations. It was adopted on 10th December 2008 by the UN General Assembly. Uruguay triggered the coming into force of the Optional Protocol when it became the tenth country to ratify it.

Source:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12968&LangID=E>

<http://www.escr-net.org/node/365074>

International Developments

Asia

South Korean court allows transsexuals to change sex on documents without undergoing surgery

In a landmark judgement, a court in Seoul, South Korea, ruled that South Korean transsexuals can change their gender on official documents without having to undergo genital-altering surgery.

The judgement came after 5 female-to-male (FTM) transgender individuals, none of whom had had genital-altering surgery, requested to have their family register listing altered to be classified as male. Although significant, this being a judgement by a district court does not reverse the 2006

Supreme Court ruling that transgender people may alter their legal gender status only after the individuals' external genitalia matched their new genders (in accordance with guidelines which were drafted the following year).

Source: <http://www.gaystarnews.com/article/transsexual-people-can-amend-official-gender-without-surgery-south-korean-court-rules180313>

<http://www.gayexpress.co.nz/2013/03/landmark-ruling-in-south-korean-transgender-case/>

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 criminalises 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 criminalise 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.

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>

Kurdish men dress as women to change judicial attitudes about women in Iran

Kurdish men from Iran found a unique way to advocate for women's rights by dressing up in women's clothes and posting their pictures online. The campaign, Kurd Men for Equality was planned as a response to an Iranian judge's decision to 'punish' a man convicted of domestic abuse by forcing him to walk the streets dressed as a woman.

After a trial court found a man guilty of domestic abuse, it sentenced him to walk down the street dressed in women's clothes in an attempt to humiliate him. A local feminist group held protests calling the punishment misogynistic. In solidarity with the protest a man named Massoud Fathipour posted a photograph of himself in women's clothes, launching a cross-dressing campaign to challenge outmoded concepts of masculinity and femininity. So far hundreds of men have uploaded photographs of themselves dressed as women in a gesture of solidarity, and some women have followed suit in male clothing. The campaign's tagline reads: 'Being a woman is not a tool to humiliate or punish anyone.'

Source: <http://www.gaystarnews.com/article/men-iran-don-women%E2%80%99s-clothes-protest-cross-dress-punishment230413>

http://www.huffingtonpost.co.uk/2013/04/25/kurdish-men-cross-dress-facebook-campaign-champion-womens-rights-iran-pictures_n_3153327.html

<http://www.independent.co.uk/news/world/middle-east/crossdressing-kurds-in-iran-to-support-womens-rights-8586857.html>

Calls for accountability for security and safety in garment industry in the midst of building collapses in Bangladesh

The Dhaka High Court has directed the Bangladesh Bank to impose restrictions on withdrawal or transfer of money by the owners of Rana Plaza and the owners of the five factories situated in the Plaza, the building that collapsed in Dhaka killing hundreds of people. The Court, taking suo moto action has also issued a rule nisi to the concerned authorities to show cause as to why compensation should not be given to the victims and action taken against those responsible.

Hundreds of garment workers – mostly women, were killed when a building with five garment factories collapsed in Dhaka, Bangladesh. Even though cracks were seen in the building the day before the incident, the supervisors, declaring the building to be safe, called all the workers back in the next day, the day of the incident. The Rana Plaza collapse is fast becoming the biggest industrial disaster that Bangladesh has witnessed.

This incident is however not an isolated incident and Bangladesh has, over the years, seen many such building collapses such as the Phoenix building collapse in 1997, the Spectrum building collapse in 2005, and the recent fire in the Tazreen Fashions Ltd factory in 2013. Though the High Court has earlier issued directions and orders on the Government to take action in these cases of building collapses resulting in the deaths of scores of citizens, no action appears to have been taken

Source: <http://www.guardian.co.uk/world/2013/apr/28/bangladesh-garment-factory-collapse-owner-held>

<http://world.time.com/2013/05/04/bangladesh-toll-547-search-becomes-more-gruesome/>

Philippines police to undergo gender and sexuality training

In a laudable effort, the Philippines National Police in partnership with International Gay and Lesbian Human Rights Commission (IGLHRC) and LADLAD Party has convened a national Gender and Sexuality training program to sensitize police officers when engaging with the LGBT community. This move has come after the Police Chief Supt. expressed concerns over complaints being received of police misconduct on LGBT people by the police.

The training will include six three-day gender and sexuality workshops and also a capacity-strengthening element.

Source: <http://www.fridae.asia/newsfeatures/2013/03/01/12248.philippines-police-officers-to-undergo-lgbt-sensitisation-training?n=sec>

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

April of 2013 had turned out to be a great month for marriage equality, with three countries, France, New Zealand, and Uruguay legalising 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.

France- Despite the violence, intimidation and lying rhetoric from those opposed to the bill, France's National Assembly on Tuesday voted 331 to 225 in favour of France's marriage equality legislation, which also include adoption rights for same-sex married couples. While this was largely procedural as the lower chamber had previously approved the bill and was simply giving a nod to reconcile the legislation with the Senate-approved version, there was always very remote chance that lawmakers might cave to pressure and withdraw the bill. They did not, and marriage equality is expected to be law by 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.

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/2013/04/23/france-gay-marriage-law-_n_3139470.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>

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

Dutch legislation concerning transgender has taken 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>

Canada and Australia: Strengthening the rights of trans citizens through legal protection

A landmark bill that would make it illegal to discriminate against transgender Canadians was approved by the House of Commons. The bill passed by a vote of 149 for and 137 against, with the crucial support of 16 Conservatives, including four cabinet ministers. The bill is now to go before the Senate, which is unelected and expected to approve it. Prime Minister Stephen Harper opposed the bill.

In Australia, The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 was introduced into the lower house of Federal Parliament . The bill contains measures to extend the protection from discrimination to the new grounds of sexual orientation gender identity, and intersex status.

The Bill also extends the existing ground of 'marital status' to 'marital or relationship status' and ensure that same-sex relationships are now treated in the same way as other de facto relationships for the purposes of Commonwealth entitlements and programs, including taxation, superannuation, health, aged care, immigration, child support and family law. These amendments give effect to the Government's commitment to introduce new protections against discrimination on the basis of sexual orientation and gender identity.

Source: <http://www.gaystarnews.com/article/canada-passes-transgender-rights-bill210313>
<http://www.timebase.com.au/topics/2013/03/23/sex-discrimination-amendment-sexual-orientation-gender-identity-and-intersex>

British Queen signs new Commonwealth Charter, maintaining the general rhetoric against discrimination

The signing of the new Commonwealth Charter is welcomed, as it underpins the commitment of the Commonwealth to human rights, gender equality and democracy. In many ways, the new Charter is historic. For the first time, the Commonwealth articulates the shared values that underpin the organisation's existence and provides unequivocal support for human rights, gender equality, rule of law and democracy.

But there are major lacunae in the charter as it does not address criminalisation of those at higher risk of HIV; the Commonwealth must honour its previous commitment to repealing all discriminatory legislation which hampers the HIV response. The Charter calls on the Commonwealth Ministerial Action Group to address violations of Commonwealth values, but it fails to introduce the figure of a Commonwealth Commissioner with a mandate to oversee states' compliance with human rights, democracy and the rule of law. Instead of explicitly mentioning the words 'gay' or 'homosexuality' specifically, the charter reads: 'We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.' The wording drew criticism from some quarters, with campaigners talking of a silence that sent a signal of exclusion. Many member nations of the Commonwealth still have restrictions and laws against homosexuality in place, and it appears as though the document purposely has ensured it retains a more general rhetoric against discrimination and human rights.

Source: <http://www.independent.co.uk/news/uk/home-news/queen-set-to-sign-new-charter-in-watershed-backing-of-equal-rights-for-women-and-gay-people-8528058.html>

Op-ed: <http://www.aidsalliance.org/NewsDetails.aspx?Id=291514>

National

Judgments/ Orders

Death penalty for 'terrorists' justified, reasons the Supreme Court of India

In *Devender Pal Bhullar v NCT of Delhi*, the Supreme Court dismissed the plea to commute the death sentence given to the petitioner, on extremely problematic grounds. The Court was asked to decide whether a delay in deciding a mercy petition under Articles 72 or 161 of the Constitution would, by itself, be a sufficient ground for commuting a sentence of death to life imprisonment. The court answered this question while making a distinction between cases involving 'terrorists' and other cases involving serious offences, for which death penalty is awarded. The two judge bench opined that while undue delay in execution of a death sentence was indeed a factor to be taken into consideration while deciding mercy petitions, the same did not have any constitutional relevance for cases involving terrorists. The principle guiding the award of death sentence is that it must be awarded only in the 'rarest of the rare' situations. The reasoning used by the Court in

this case imports a sub-categorization within the category of rarest of the rare. Additionally, the categorization is done on the basis of a person being deemed a ‘terrorist’, which itself has shaky legal foundation.

At a time when the significance of death sentence even for violent crimes, is being debated by lay people as well, it is unfortunate that the Supreme Court should decide this case, in utter disregard of our constitutional ethos or sound reasoning.

Source: <http://www.thehindu.com/todays-paper/tp-opinion/succumbing-to-the-bogey-of-fear/article4655701.ece>

<http://www.indianexpress.com/news/justice-less-majestic/1106280/>

Non-bailable arrest warrant for husband 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 Sagar Sudhakar Shendge vs Naina Sagar Shendge. 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

Restrictive interpretation to the PWDVA by the Bombay High Court, ignoring precedent

In a case of domestic violence, the Bombay High Court recently held that for an aggrieved woman to claim a right under the Protection of Women from domestic Violence Act 2005, she must be in a domestic relationship with the respondent, at the time of making the claim. The High Court was hearing the case of a woman, who was based in the United States with her husband and children. She came back to India alone in 2009 and a year later filed a case of domestic violence against her husband. The lower court however dismissed her petition on the ground that she was no longer in a domestic relationship with the respondent. On appeal before the High Court, the ruling of the lower court was upheld.

This however, is not the correct position of law. To be able to make a claim, the law requires that the woman “is or has been” in a domestic relationship, thus indicating that even if she is not living with the respondent at the time of filing her complaint, she is entitled to reliefs under the law. Additionally, there are judgments from other High Courts, including the Bombay High Court have held that a woman need not reside with the respondent at the time of filing her complaint. The retrospective invocation of the law has also been upheld by the Supreme Court in V.D. Bhanot v. Savita Bhanot [SLP (CrI.) No. 3916/ 2010].

Source: <http://www.indianexpress.com/news/no-relief-for-wife-under-domestic-violence-act-if-relationship-is-history-bombay-high-court/1088641/>

News

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

Ms. Rashida Manjoo, UN Special Rapporteur (SR) on violence against women visited India on a country mission, from 22nd April to 1st May, 2013. In 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.

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>

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/>

All-women courts in Maharashtra, for trying cases of sexual offences against women

The Bombay High Court has directed that cases of sexual assault against women must be assigned to courts presided by women judicial officers. This step has been taken in a bid to ensure that victims of sexual violence are able to testify before the court without embarrassment or hesitation. This recent initiative is part of several similar procedural steps to make the trial process less traumatic for the victim of sexual offences. Holding the trial *in-camera* (in a closed courtroom) or using a screen to shield the accused from being seen by the victim/ witness, were suggestions mooted by lawyers and activists handling cases of sexual violence against women. Its functioning over time has shown that without attitudinal and systemic change such measures are tokenistic and do not reduce the victim's trauma.

The idea of all-women courts is based on the assumption that women are more sensitive to other women, and by merely replacing men with women staff, i.e. bench clerks, stenographer, interpreter, typist-cum-clerk, havildar/peon, would make courts less hostile. Although welcomed by several women's rights activists, it is necessary to question the assumption that women are essentially empathetic to other women. Two recent incidents challenge such assumptions. In April 2013, a ten year old girl in Bulandshahar, UP, was taken to the police station by her mother, to file a complaint of rape. Instead of taking down her complaint, the all women police staff at the police station, put the minor girl in the lock-up and asked the mother to leave. The girl was released only after protests by local people. In a second case, the Madras High Court came down heavily upon a magistrate who, remanded a rape victim to judicial custody, thus treating her as an accused. When brought to the notice of the magistrate, the victim was released on bail, thus once again treated as the victim. The High Court ordered a compensation of Rs. 1 lakh to the victim, to be deducted from the magistrate's salary. Just like the previous case, here too, the magistrate was a woman.

Source: <http://www.thehindu.com/news/national/other-states/for-women-by-women/article4522471.ece>

<http://www.indianexpress.com/news/women-cops-put-minor-rape-victim-in-lockup/1099988/>

http://articles.timesofindia.indiatimes.com/2013-04-17/chennai/38615047_1_woman-magistrate-judicial-custody-victim

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://supremecourtfindia.nic.in/staff/officeorder15042013.pdf>

New forensic examination manuals advise doctors, to not use the term ‘rape’ in their reports

The medical examination of the rape victim is a crucial source of evidence used in rape trials. The understanding behind this is that although women might lie about rape, their bodies would not. And hence, medical text books since the colonial times advised doctors to check if the vagina of a woman alleging rape admitted two fingers to go in. If it did, then it was taken to indicate that the woman was ‘habituated to sexual intercourse’, which in turn implied that judges must be circumspect about her allegation of rape. Similarly, textbooks advised doctors to look for marks of injury on the body of the victim. The absence of such marks signifying, that she did not resist the sexual intercourse, from which it could be inferred that the sexual intercourse was consensual.

Feminist as well as health rights activists, have for long demanded that doctors must be forbidden from conducting these tests, for they not only lead to subjective inferences that affect the outcome of the rape trial, but the test itself is demeaning and a breach of a victim’s bodily integrity. Intense lobbying with the health department finally seems to have yielded results. The health ministry recently brought out the Instruction 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 is a significant development, which would need to be followed up with proper training for the doctors to use this Manual.

Source: <http://www.thehindu.com/sci-tech/health/policy-and-issues/dont-use-legal-term-rape-in-medical-reports-manual/article4492370.ece>

Barrier to enforcement of maintenance orders removed in Maharashtra

For women claiming maintenance from their husbands under the Hindu Adoption and Maintenance Act 1956, the process of enforcing a maintenance order has been easy by the Bombay High Court. Earlier when a husband would default in payment, courts could issue arrest orders against the defaulting husband, only after the wife deposited a sum of money for the upkeep and transportation of the husband, known as ‘jail bhatta’. This was a barrier for a large number of women, who could not bring legal action against their defaulting husbands, because they did not have the means to pay the jail bhatta.

Due to the efforts of the Bombay based feminist group, Majlis, the High Court recently issued a notification amending the law, whereby maintenance cases are exempted from the requirement of jail bhatta. The already less amount paid as maintenance by the courts is rendered meaningless by a weak enforcement system. Seen in this context, this recent move by the High Court is a welcome development.

Source: http://articles.timesofindia.indiatimes.com/2013-02-26/mumbai/37308307_1_maintenance-case-jail-fee-district-courts

NHRC’s visit to Chhattisgarh a disappointment

The National Human Rights Commission’s (NHRC) visit to Chattisgarh last month 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/>

Cabinet approves amendments to the manual scavenging bill

The cabinet recently cleared a list of amendments to the Prohibition of Employment as Manual Scavengers and Rehabilitation Bill, which was introduced in the Lok Sabha in September last year. The Bill is meant to replace the 1993 enacted Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, which proved to be ineffective in stopping or discouraging the practice of employing people from certain Dalit castes for manually cleaning human excreta. The new Bill has an expanded definition of both what constitutes manual scavenging and who is a manual scavenger. The latter also includes sewage and septic tank cleaners, thus giving them a modicum of legal protection that does not exist at present. Rehabilitation of ex-manual scavengers is also a thrust area in the Bill, which was absent in the 1993 Act. The Bill also has higher penalty for violating the prohibited acts and stricter monitoring mechanisms.

Source: http://articles.economictimes.indiatimes.com/2013-05-01/news/38958298_1_manual-scavengers-official-amendments-vigilance

RESOURCES

‘The Integration of Gender and Human Rights into the Post-2015 Development Framework’: edited by Radhika Balakrishnan, Diane Elson and James Heintz

This report is based on the discussion that took place at the “Post-2015 Expert Group Meeting” held at the Centre for Women’s Global Leadership (CWGL) from December 13-14, 2012. This meeting was convened to try to integrate issues of gender and human rights into the development of a post-2015 framework for social and economic development that is applicable to all countries. The Millennium Development Goals (MDGs), which were derived from the more comprehensive Millennium Declaration, established a timeframe ending in 2015 for the achievement of the goals and targets laid out. As the debate on the post-2015 agenda has already commenced, this report is an attempt to identify critical components of a post-2015 framework that fill gaps associated with the MDGs and promote economic and social rights and gender equality.

Source: http://cwgl.rutgers.edu/component/docman/doc_download/576-integrationgenderpost-2015report

‘Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law’; OHRC

‘Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law’, which was originally issued in English in September 2012, is now available via the OHCHR website in all UN languages (i.e. English, French, Spanish, Arabic, Chinese and Russian) as well as in Vietnamese and Portuguese, and can be easily downloaded

The booklet sets out the source and scope of some of the core legal obligations that States have to protect the human rights of lesbian, gay, bisexual and transgender (LGBT) people. It is designed as a tool for States, to help them better understand the nature of their obligations and the steps

required to meet them, as well as for civil society activists, human rights defenders and others seeking to hold Governments to account for breaches of international human rights law.

Source: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/BornFreeEqualBloket.aspx>

Sexual Orientation, Gender Identity and Justice: ICJ comparative law casebook

The International Commission of Jurists' comparative law casebook is a searchable database. This database was launched last September. The same is available on ICJ's website.

The new cases have been added to the database. The new cases come from many different countries, including Brazil, Colombia, Ireland, Germany, Austria, Mexico, Lithuania and Uruguay, among others. The new cases are organized by chapter according to topic.

For many but not all of these cases have corresponding short English-language summaries. For other cases, a pdf of the case in its original language is given

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

EVENTS

National Training Workshop on the role of United Nations Special Procedures with a Special Focus on Violence against Women and Adequate Housing, 14 & 15 March 2013, New Delhi

The Working Group on Human Rights in India and the UN (WGHR), Partners for Law in Development (PLD), and Housing and Land Rights Network (HLRN), conducted a two-day National Training Workshop on the role of United Nations (UN) Special Procedures, in New Delhi on 14 and 15 March 2013. The Training Workshop was organised in view of the forthcoming visits of the UN Special Rapporteur (SR) on violence against women and the SR on adequate housing, and was attended by 30 participants, including human rights activists, NGOs and academics from around the country.

The workshop used the 'indivisibility of human rights' approach to discuss the Special Procedures mechanism of the UN Office of the High Commissioner for Human Rights (OHCHR), with a special focus on the mandates of the Special Rapporteur on Violence against Women, and Adequate Housing. While several overlaps and linkages exist between the two mandates, there are also issues specific to each one. The workshop, therefore, consisted of joint plenary sessions as well as separate sessions on violence against women and adequate housing to enable organizations working on these issues to explore them in greater depth.

OBITUARY

Justice JS Verma, former Chief Justice of India and an outstanding defender of women's rights passes away

Justice J.S. Verma, former Chief Justice of India passed away on April 22nd, at the age of 80 leaving behind an outstanding legacy of advancing women's rights. In 1997 he delivered the

celebrated Vishaka judgment, which laid down the legal framework for addressing sexual harassment at the workplace, for which till then there was no law. In 2002 as the chairperson of the National Human Rights Commission, he initiated a case at the Supreme Court to hold the Gujarat government accountable for mass crimes against minorities. More recently, Justice Verma headed the committee that suggested major changes in the criminal law on sexual offences. It is agreed widely, that the report submitted by the committee is the first official document in the history of India that takes the demands of the women's movement seriously, engages with them and recommends thoughtful steps to address violence against women. His demise is a loss to the legal fraternity, progressive movements and to the nation.