

BI-MONTHLY LEGAL NEWS

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UPDATES FROM THE UN

UN establishes expert group on role of women in peace and security

The United Nations has appointed a group of independent experts to advise on ways to better protect women in conflict situations, and to ensure that their voices are heard in peace processes and that they are included in post-conflict reconstruction and governance structures. The establishment of the group comes on the tenth anniversary of the resolution 1325 and will be tasked with assessing the impact of resolution 1325 on women in the context of armed conflict over the past decade.

The group will consult civil society organizations around the world to identify time-bound goals and targets, along with measurement and accountability mechanisms to inform and guide the work of a UN High-Level Steering Committee set up by Deputy Secretary General Asha-Rose Migiro and look at ways of scaling up resources involving women in times of conflict.

Source:

<http://www.un.org/apps/news/story.asp?NewsID=33992&Cr=gender+equality&Cr1>

Special Rapporteur on freedom of religion or belief releases report

The Special Rapporteur on freedom of religion or belief, Asma Jehangir has presented her new report to the Human Rights Council on the *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. With respect to gender dimensions, in her report, she has called attention to a number of restrictions imposed on different forms of religious expression like forced dress codes for women, religion based laws for electoral gains, state support to religion or tradition based practices like genital mutilation which entrench discrimination and violence against women.

The report is available at: <http://www2.ohchr.org/english/issues/religion/docs/A-HRC-13-40.pdf>

INTERNATIONAL LEGAL DEVELOPMENTS

Beyond Asia

EU adopts resolution against all forms of sexual violence against women

The European Union Parliament has adopted a resolution recognizing sexual violence as a crime and offenders should be automatically prosecuted by all EU Member States. The resolution calls for a recognition of targeted sexual violence, including within marriage and intimate informal relationships and cultural practices and traditions as a mitigating factor in cases of sexual violence against women. The resolution also called on Member States to combat crimes of honour, forced marriages and FGM as violating human rights

and in particular the rights to life, safety, dignity, physical and mental integrity and sexual and reproductive choice and health.

While referring to the consistent increase of gender based violence, the resolution recognized that male violence against women, irrespective of men's age, education, income or social status as a structural problem across European Union Member States.

Direct Link to European Parliament Resolution on Violence Against Women - 11/26/09:
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2009-0098+0+DOC+XML+V0//EN&language=EN>
http://www.europarl.europa.eu/news/expert/infopress_page/014-65220-327-11-48-902-20091124IPR65219-23-11-2009-2009-false/default_en.htm

Iceland bans strip clubs

In a bid to close down its sex industry, Iceland has passed a law to shut down all strip clubs in the country and make it illegal for any business to profit from nudity of its employees. Iceland is the first Nordic country to pass such a law in the environment of pro and anti legalizing prostitution debates are UK. The feminist campaign upheld the law as reiterating that women are equal citizens and not as commodities to be sold or bought and hope that it will strengthen the campaign against the sex industry which according to them is 'both a cause and a consequence of gaping inequality between men and women'.

Source: <http://www.guardian.co.uk/lifeandstyle/2010/mar/25/iceland-most-feminist-country>

Supreme Court of Chubut (Argentina) decriminalises abortion in case of rape

The Supreme Court of Chubut (a province in Argentina) and a panel of the Court of Appeals of the same province deciding on two cases where young girls sought permission for abortion following rape have established that abortion is never punishable in case of rape. The decision is landmark as it overturns the earlier restrictive understanding by the courts and allows for abortion to even non-mentally retarded victims of rape. It also paves way for the changes that would lead to avoid future denials of legal abortions.

The decisions were taken with regard to two cases of 15 year old girls who were denied a legal abortion by the lower courts despite evidence being given that the girls' health was at risk. Finally the Supreme Court taking cognizance of the multiple victimization suffered by the girls reversed the order of the lower court citing various human rights treaties like CRC and CEDAW. The Supreme Court drew attention to the General recommendation 19 of CEDAW, the Recommendations made to Argentina by the Human Rights Committee (CCPR/CO/70/ARG) on the relationship between restrictive abortion laws, clandestine abortions and threats to women's lives; and the Report of the Special Rapporteur on Violence against Women (E/CN.4/1999/64/ADD.4).

Source: http://www.wunrn.com/news/2010/04_10/04_19_10/041910_argentina.htm
More information on the cases can be found in Spanish at: www.despenalizacion.org.ar

Asia

Bangladesh High Court rules that wearing a veil is woman's personal choice

The Bangladesh High Court has directed its Ministry of Education to ensure that no woman working in any educational institution, public or private is forced to wear a veil or cover her head, and may exercise her personal choice whether or not to do so. The court asked the government to implement the Sexual Harassment Guidelines (formulated in the BNWLA vs Bangladesh Case) in all educational institutions, public and private sector which clearly state that compelling a woman to wear a veil is a violation of her fundamental rights and hold public officials accountable for acts of gender based discrimination.

The directions were given in a writ petition that was filed by an advocate following a newspaper report that the Headmistress of a school was verbally abused by a public official during a public meeting of her school because she had not covered her head in public.

Source: http://www.wunrn.com/news/2010/04_10/04_05_10/040510_bangladesh.htm

Pakistan passes act to prevent sexual harassment at workplaces

In a significant move, the Pakistan Assembly has passed a Bill to prevent sexual harassment at workplaces and provide a safe working environment. The Act which punishes harassment of women at workplaces has been opposed for many years. The Act was finally passed with amendments that extended protection also to men. Punishment for the guilty, or violators of a code of conduct, will range from a censure to dismissal and an unspecified fine. The law defines harassment as *“any unwelcome sexual advance, request for sexual favours or other verbal and written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with the work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made condition for employment.”*

According to the act all federal and provincial government ministries, departments, corporations, educational institutions, private commercial organisations and registered civil society associations, will be required to constitute inquiry committees of at least three members each-one of them being a woman-to probe complaints and give their findings within 30 days to a concerned competent authority that will award recommended penalties.

Source: <http://southasia.oneworld.net/todaysheadlines/pakistan-clears-landmark-bill-against-workplace-harassment>

NATIONAL

CIC rules that pay details of government employees are not personal information

The Central Information Commission (CIC) has ruled that the pay particulars of a government employee cannot be considered personal information. The ruling comes in the wake of a RTI application filed by a woman with the South East Central Railway seeking the pay particulars of her husband as well as a copy of his service book, which has all the details of a government servant's pay details including information about increment etc. The Public Information Officer (PIO) refused information that his pay particulars were personal information.

The case related to a woman whose husband had remarried a second time while being married to her, wanted to know if her husband entered the name of his second wife in the service book and in this connection she wanted a copy of the service book, besides pay particulars. The CIC ruled that pay particulars of a government employee cannot be considered as personal information by any means. Further in the view of the harassment faced by the woman at the hands of her husband, the CIC directed the PIO to also provide an attested copy of the first page of the service book to the appellant giving details of the name of the spouse entered.

Source: <http://expressbuzz.com/nation/woman-uses-rti-to-get-salary-details-of-husband/164003.html>

Women get permanent commission in armed forces

The Delhi High Court upheld the right of women in the armed forces by granting them permanent commission on par with the male officers with all consequential benefits. The order will also hold for those women who have been in non-combat roles in the army since 1993. The case was filed by women officers who were granted short service commission in the Indian Air Force and Army and who sought permanent commission challenged the government's refusal to consider them for permanent commission rather given extensions to the short service commissions. The consequence of not being granted permanent commission was that they were deprived of certain benefits and privileges such as pension, 'ex-serviceman status' and medical facilities.

The Court found merit in the argument of the petitioners that their plea for permanent commission was based on the principle of legitimate expectation. The Central government argued that there could be no legitimate expectation since the women officers knew that their induction into the IAF was on an experimental basis for five years, to be reviewed thereafter. Further while noting that there are countries that have given opportunities to women even in combat areas, the judgment laid out that in India, there is reluctance on the part of the armed forces to induct women as permanent commission officers.

Source: <http://www.indianexpress.com/news/women-get-permanent-commission-in-armed-forc/590079/>

<http://www.deccanherald.com/content/57682/women-get-permanent-commission-military.html>

<http://www.frontlineonnet.com/stories/20100409270703600.html>

Armed Forces Tribunal directs the government to treat military nurses on par with officers

The Armed Forces Tribunal has directed the government to treat military nurses on par with regular commissioned officers of the three Services in terms of rank and entitlements. The order was pronounced on a petition by a woman officer from the Military Nursing Service (MNS) who sought that Nursing Officers be treated at par with all other officers.

The Tribunal gave the order while quashing the Army order of April 2004, which stated that MNS officers were not at par with rest of the officers of the Services. After the Tribunal order, the MNS officers would be allowed to display flags and star plates on their official vehicles, which symbolise their rank and status.

Source: <http://www.indianexpress.com/story-print/601253/>

Married women and daughters have coparcenary rights

The Karnataka High Court validated that the Hindu Succession (Amendment) Act, 2005 upholding that the daughter has an equal share in coparcenary property. Those daughters born after June 17, 1956, when the parent Hindu Succession Act came into force, can challenge proceedings with regard to their coparcenary properties. The Hindu Succession Amendment Act is curative, remedial in nature and wants to undo the injustice done to her in the last 50 years, the Bench said. The amendment wants to give such rights from the day the Act came into force. This is the will of the people, the Bench observed.

Source: <http://timesofindia.indiatimes.com/city/bangalore/Equal-rights-in-property-for-girls-/articleshow/5704505.cms>

<http://www.mangaloreheadlines.com/show-contents.php?id=3120>

<http://www.deccanherald.com/content/58991/hc-upholds-equal-property-right.html>

Divorced women loose right to property and custody of children in Mizoram

Women who are divorced on Mizoram have lost the right to property and the custody of children as the state has allowed the Mizo Divorce Ordinance, promulgated in 2008, to lapse by not bringing in a Bill to replace it. Instead the state government said that the divorced women will be governed by the Mizo customary laws, which do not ensure their rights over property or maintenance. This means a Mizo wife loses property and custody of children the moment her husband utters 'ka ma che (I divorce you)'. She is entitled to take back only the customary 'hmeichhe thum' (a mattress, two pillows and her clothes). However, if she is divorced for allegedly committing adultery then she is not entitled to even these few things and will have to leave with just the clothes she is wearing. The Indian Divorce Act, 1869 does not apply to Mizoram and other Northeastern states.

Source:

<http://www.indianexpress.com/news/divorcetomakemizoramwomenpoorer/599041/>

High Court orders that mutual elopement cannot be regarded as ‘kidnapping’

The Delhi High Court has ruled that a person cannot be charged with kidnapping of a minor girl if she leaves her parents’ home of her own will and gets married to him. Citing earlier judgments of the High Court and Supreme Court, the court even said that if the couple marries after elopement then the marriage is not void and should be legally recognized. In the particular case the judge said that there was no evidence of coercion from the boy’s side and she left her parents house on her own accord, got married on her free will and then got the marriage registered.

This judgments comes in the background of many cases where the parents often file kidnapping charges against the boy to stop young couples from exercising choice in matters of intimacy and marriage, and coerce the girl to return home – often followed by ‘honour killing.’

Source: <http://www.hindustantimes.com/rssfeed/newdelhi/No-kidnapping-case-if-elopement-mutual/Article1-525583.aspx>

State of Assam guarantees healthcare for all emergency patients

Assam has become the first state to guarantee all its citizens the right to healthcare by passing the Assam Public Health Bill, 2010. The new law makes it mandatory for all government and private nursing homes and hospitals to provide free healthcare to an emergency patient of any kind for the first 24 hours.

According to the law, patients who cannot afford treatment in a private hospital can later be shifted to a government hospital after getting immediate necessary treatment for the first 24 hours. Further in case a patient fails to receive attention in a government hospital or health establishment because of the absence of doctors or any other medical staff, such patients would be entitled to monetary compensation. In addition, the act provides every patient the right, that his or her complete medical records of at least two years be maintained by the hospitals and nursing homes.

Source: <http://www.hindustantimes.com/india-news/guwahati/Assam-shows-the-way-provides-healthcare-for-all/Article1-525519.aspx>

Bombay HC directs family court to hear petition of Muslim woman seeking restitution of conjugal rights

The Bombay High Court has directed the family court to hear fresh the petition of a Muslim woman seeking to restore her right to companionship and sexual relations within her marriage. The Muslim woman got married in 2005 and after a year of marriage had a son, the husband visited her just once in the hospital and after her delivery refused to take her back home and demanded 5 lakh for the same, even her in-laws did not allow her into the house. She then moved to the family court which refused to reinstate her back in her marital home stating that Mohammedan law does not allow a wife to make such an application.

Source: <http://timesofindia.indiatimes.com/india/HC-relief-for-Muslim-woman-seeking-conjugal-rights/articleshow/5785814.cms>

Abortion rights for 13-yr-old rape victim to be decided by Gujarat High Court

A 13-year-old girl, who conceived after being repeatedly raped, has moved the Gujarat High Court and sought permission to medically terminate her pregnancy after a sessions court rejected her plea there was no evidence on record to show that the health of the girl would suffer because of her pregnancy. The girl was raped by her neighbour, when her parents found out that she was pregnant, they took her to a local clinic for abortion but the doctors refused, asking them to first secure permission from the court.

Racing against time to get legal permission to abort within a medically safe period, the girl moved the High Court, saying pregnancy from rape was mental agony and could impact her mental health. The counsel for the girl submitted that it had been established beyond doubt that rape had led to her pregnancy. The Gujarat High Court as a reply asked the doctors to ascertain if the girl is physically fit for abortion or not.

Source: <http://www.indianexpress.com/story-print/609082/>
<http://www.indianexpress.com/story-print/612631/>

Human rights activists condemn human rights violation in Kalinganagar

The Working Group on Human Rights in India and the UN (WGHR) has condemned the severe repression of adivasi protesters in Kalinganagar, Orissa. The adivasi's have been opposing the forceful acquisition of their agricultural lands for the construction of a Tata steel plant since 2006. The police along with private militia have been repressing the protestors by indiscriminate firing which has killed many protestors. Further the injured are not being allowed out of the villages as a result of police *gherao* and private militia which has killed many tribals (including women and children) due to lack of access to medical treatment.

In wake of call such a mass scale of repression, the WGHR has called upon the state government to immediately cease the police repression, and begin honest dialogue on land acquisition with the adivasi communities of Kalinganagar along with Tata Steel. In addition other demands include: 1) an immediate halt to the building of the common corridor, 2) withdrawal of all false criminal cases against protestors, 3) the removal of private militias and police *gherao* from the affected villages, and 4) medical treatment to be made immediately available.

Press release 14 and 19 April 2010 and about WGHR: <http://www.wghr.org/index.html>

Sessions Court condemns and convicts for honour crimes sanctioned by the Khap Panchayats

In a first of its kind judgment, a court in Karnal has awarded capital punishment to five persons and life sentence to one for murdering a couple following an order of the khap panchayat that they belonged to the same gotra and their marriage should be resolved. As a backlash to the judgment, an assembly ('*Sarv Jaati Khap Mahapanchayat*') of representatives 36 'khap panchayats from Haryana, parts of UP, Rajasthan and Delhi,

was convened which resolved to fight the court verdict. In addition they also demanded:- firstly, that court marriages and marriages in temple should be considered valid only if they were performed in the presence of parents of the bride as well as the bridegroom and their signature must be made compulsory while issuing a marriage certificate; secondly that khap panchayats should be given the status of Lok Adalats and thirdly amendment to the Hindu Marriage Act 1955 for making it illegal to marry in the same gotra (sub-caste).

The Khaps have done gross injustice to hundreds of young men and women who have either aspired or married for love by ostracizing them and their families and ordering extra judicial punishments.

Source:

<http://www.indianexpress.com/story-print/597690/>

<http://www.indianexpress.com/story-print/606139/>

<http://www.indianexpress.com/story-print/605860/>

<http://www.indianexpress.com/story-print/611030/>

http://www.telegraphindia.com/1100428/jsp/opinion/story_12388910.jsp

RESOURCES

Bringing Human Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis: ESCRnet

The Association for Women's Rights in Development (AWID), the Center of Concern, Center for Economic and Social Rights (CESR), the Center for Women's Global Leadership at Rutgers, the State University of New Jersey (CWGL) and the International Network for Economic, Social and Cultural Rights (ESCR-Net) jointly release a new report *Bringing Human Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis*. This report aims to deepen an understanding of how governments have conducted themselves and how effective economic policies have been in defending and strengthening the enjoyment of human rights in a time of multiple and interlocking social and economic crises. Report is available at:

http://www.escrnet.org/usr_doc/HRResponsestoEconCrisis_Final.pdf

No justice in Justifications: Violence against Women in the Name of Culture, Religion, and Tradition: Shaina Greiff

Shaina Greiff has published a report on violence against women in the name of culture, religion and tradition. The report is available at:

[http://stop-stoning.org/files/No%20Justice%20in%20Justifications%20-Violence%20against%20Women%20in%20the%20Name%20of%20Culture,%20Religion%20and%20Tradition%20\(Greiff\).pdf](http://stop-stoning.org/files/No%20Justice%20in%20Justifications%20-Violence%20against%20Women%20in%20the%20Name%20of%20Culture,%20Religion%20and%20Tradition%20(Greiff).pdf)

Gender Dimensions of Racial Discrimination: OHCHR

The United Nations Office of the High Commissioner has released a resource on gender dimensions in racial discrimination. The resource is available at:

http://www.wunrn.com/news/2007/08_07/08_20_07/082607_gender2_files/082607_gender2.pdf

Criminalizing Sexuality: Zina Laws As Violence Against Women In Muslim Contexts: Ziba Mir Hosseini

The resource is available at:

[http://stop-stoning.org/files/Criminalizing%20Sexuality%20-%20Zina%20Laws%20as%20Violence%20Against%20Women%20in%20Muslim%20Contexts%20\(Mir%20Hoessini\).pdf](http://stop-stoning.org/files/Criminalizing%20Sexuality%20-%20Zina%20Laws%20as%20Violence%20Against%20Women%20in%20Muslim%20Contexts%20(Mir%20Hoessini).pdf)

Reclaiming and Redefining Rights - ICPD+15 and Status of Sexual and Reproductive Health and Rights in Asia

ICPD has released its report of 15 years of ICPD implementation in 12 Asian countries. This report covers areas of women's empowerment, reproductive health, reproductive rights, sexual health and sexual rights. The report is available at:

<http://www.arrow.org.my/images/publications/ICPD+15/Reclaiming&RedefiningRightsICPD+15.pdf>

Women's Initiatives for Gender Justice: Gender Report Card 2009

Women's Initiatives for Gender Justice has released the 2009 Gender Report Card which analyses the institutional developments at the ICC (International Criminal Court) during 2009, as well as the Court's substantive work which includes a summary of the investigation and prosecution strategy of the Office of the Prosecutor, analysis of key judicial decisions particularly on issues affecting victims and witnesses, and the work of the Registry and Trust Fund for Victims. It also contains a new section on trial proceedings that highlights testimony by victims of sexual violence in the ICC's first trial.

Report available at: http://www.iccwomen.org/news/docs/GRC09_web-2-10.pdf

Power, Voice and Rights: A Turning Point for Gender Equality in Asia and the Pacific: UNDP

UNDP has launched a new regional human development report, "Power, Voice and Rights: A Turning Point for Gender Equality in Asia and the Pacific." One of the key findings of the report is that despite the economic transformation in Asia and the Pacific there has not been a simultaneous progress on gender equality. Asia-Pacific has one of the world's worst gender gaps with more women "disappearing" and very few countries adopting laws prohibiting violence against women.

The full report is downloadable from: <http://www2.undprcc.lk/ext/pvr/>

EVENTS

Justice for Dr. Siras

Following the unnatural death of Dr. Srinivas Ramachandra Siras, protest marches were organised in Bombay (9th April), Thrissur (11th April) and Delhi (12th April) to condemn the harassment he faced, including the unlawful and unethical suspension he faced on account of his being gay which led to his death.

The fact finding report following Dr. Siras's suspension from AMU can be found at: <http://altlawforum.org/news/Amumoralpolicingfinal10.03.pdf>

National Consultation on Sexual Assault Laws 12th and 13th May 2010

Forum Against Oppression of Women with the support of civil society groups from all over the country organized a National Consultation on the Sexual Assault Laws on the 12th and 13th May in Mumbai to collectively respond to the Criminal Amendment Draft Bill, 2010 put up by the Home Ministry.

While the new version of the Bill does attempt for a more broader definition of sexual assault it still does not completely address all forms of sexual violence like recognition of marital sexual abuse as a crime, situations of sexual violence in areas under Armed forces and in situations of communal/caste violence etc. The participants at the Bombay meeting which included women's groups, child rights and queer groups met to debate and formulate their position on the definition of sexual assault, age of consent, gender neutrality and gender specificity and the need for a separate and comprehensive Bill on child sexual abuse. A follow up meeting has been scheduled for 13 and 14 May 2010.

The Bill is available on the website of the Home Ministry: http://www.mha.nic.in/writereaddata/12700472381_CriminalLaw%28Amendment%29Bill2010.pdf