



BI-MONTHLY LEGAL NEWS

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Partners for Law in Development

Updates from the UN

- UN SR on VAW submits her third thematic report to HRC
- UN SR on trafficking submits her annual report to HR Commission
- UN SR on contemporary forms of slavery submits report on servile marriage

International Developments

Asia

- Witch-hunt against the founder of Bangladesh's Grameen Bank continues
- Thai Govt rethinking proposed plan to deport pregnant migrant workers
- Iranian Universities ban women from enrolling for BA and BSc courses in the coming academic year
- Singapore Court of Appeal acknowledges the unwanted manner in which law criminalising homosexuality affects community
- Minor Christian girl becomes victim of the blasphemy law in Pakistan

Beyond Asia

- ECHR condemns Spain's racist and sexist attacks against Nigerian woman
- Namibian High Court awards damages to 3 women sterilised without consent
- Tunisian draft constitution refers to women as 'complementary to women'
- Transgender no longer labelled as a mental health disorder in USA
- Somalian Constitution bans female genital mutilation
- Imprisonment of Russian punk rock group highlights the intolerance of the Russian Government to criticism
- Belizean Domestic Bank and Financial Institution Act proposes to widen the scope of 'spouse'
- Ukrainian govt. introduces bill in parliament to ban publication and distribution of LGBT information
- U.S. Dept. of Justice defers removal of gay Jamaican under CAT
- Russia proposes procedurally flawed resolution on 'traditional values' at 21st HRC Session

National

Judgements/Orders

- Son wins paternity suit against veteran politician, N.D. Tiwari
- Delhi Sessions Court sentences sorcery practitioner
- SC grants divorce before expiry of the statutory six month 'cooling off' period
- BJP politician amongst others convicted for massacre, rape and molestation in Gujarat carnage, 2002
- Matrimonial matters taken away from Karnataka HC judge for comments condoning domestic violence, following protests.
- No straitjacket formula to determine consent: SC

News

- Legal vacuum on sexual assault and impunity for moral policing make India unsafe for all women
- Santhi Soundarajan's case and IOC's new policy highlight new frontiers of gender discrimination
- TN Govt. announced pension for impoverished transgender
- Lok Sabha passes Sexual Harassment at Workplace Bill, without much discussion
- Union Cabinet clears controversial Criminal Law (Amendment) Bill 2012
- Maharashtra government proposes to make abortion a crime

Resources

- 'Injustice at Every Turn: A Look at Asian American, South Asian, Southeast Asian, and Pacific Islander Respondents in the National Transgender Discrimination Survey': NCTE and NQAPIA
- 'Sexual Orientation, Gender Identity, and Justice: A Comparative Law Casebook': ICJ
- 'Born Free and Equal': United Nations Human Rights Office
- Blog on sexuality and disability launched

Events

- 'Developing Legal Aid Strategies and Guide Book to Protect Rights of Informal Workers, Women and Children': Delhi, 25 August 2012
- 'Security of Women in Delhi: An open discussion among concerned citizens': Delhi, 29 July 2012
- Citizens Collective against Sexual Violence protest against sexual assault: 27 July 2012
- Candle Light Vigil to united against Assam riots and backlash: 22nd August 2012

Forthcoming Events

- 'The Good, Bad and the Ugly: Introspecting Violence Against Women & the Law': October 27-31, 2012

Updates from the UN

UN SR on VAW submits her third thematic report to HRC

The UN Special Rapporteur on violence against women, its cause and consequences submitted her third thematic report to the Human Rights Council. The report focuses on the comprehensive approach which should be adopted by governments in addressing the gender related killings of women, and key recommendations to that end. In her report she notes that 'rather than a new form of violence, gender-related killings are the extreme manifestation of existing forms of violence against women. Such killings are not isolated incidents that arise suddenly and unexpectedly, but represent the ultimate act of violence which is experienced in a continuum of violence.'

The report also notes that religious, cultural, and social norms and beliefs are largely the causal factors for harmful practices resulting in violence against women. Therefore countries' efforts to comply must also address these structural causes.

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

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/ImpunityForVAWGlobalConcern.aspx>

UN SR on trafficking submits her annual report to HR Commission

The UN Special Rapporteur on trafficking in persons, especially women and children submitted her annual report and recommendations on measures required to uphold and protect the human rights of the victims to the Commission of Human Rights. The report outlines the activities of the SR from 1 July 2011 to 29 February 2012, and contains a thematic analysis of the integration of a human rights-based approach in the administration of criminal justice in cases of trafficking in persons.

It further outlines the international legal framework and reviews key components, including the criminalization of trafficking offences and the non-criminalization of trafficked persons drawing on State responses to her questionnaire; the SR provides an overview of trends in State practice, highlighting emerging good practices and common challenges.

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

Source: <http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>

UN SR on contemporary forms of slavery submits report on servile marriage

The UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences submitted her thematic report on the issue of servile marriage, in which a spouse is reduced to a commodity over whom any or all the powers of ownership is attached. The report discusses the root causes of servile marriage, which include gender inequality, ideas of family honour, poverty, conflict and cultural and religious practices. It also outlines the various forms of servile marriage, as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and highlights the need to view

such marriages as forms of slavery so as to better inform and shape actions to prevent servile marriage and support victims.

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

Source: http://www.wunrn.com/news/2012/08_12/08_20/082012_servile.htm

International Developments

Asia

Witch-hunt against the founder of Bangladesh's Grameen Bank continues

In yet another repressive move to take over the Grameen Bank, the cabinet recently approved an amendment to the Grameen Bank Ordinance 1983, giving full power to the Bank chairman to pick the future managing director of the microfinance institution. The proposed amendment gives the present Chairman, powers to over-ride the views of the majority of the Board of Directors, including the 9 rural women representing its borrowers, in deciding the composition of the search committee that will appoint the managing director. This development follows successive actions against Prof. Yunus, the founder of Grameen Bank. The first in the series of such actions was a letter from the Bangladesh Bank charging Prof Yunus for being improperly appointed 11 years back as Managing Director, as at the time he had passed the official retirement age. Prof Yunus's writ to the High Court against this charge was rejected on the ground he lacked locus standi. Thereafter, his appeal against the writ order was rejected by the Appellate Court, closing the door for him to even defend himself and have the case heard on merits. The 9 rural women board members too filed a writ to challenge Bangladesh Bank's letter of dismissal, alleging that Prof Yunus's appointment was not wrongful. Their writ too was rejected on grounds that they lacked locus standi. The recent development seeks to over-ride the voices of these 9 women Board members who demand that the selection committee for the appointment of the new managing director include Prof Yunus. The series of actions of the Bangladesh bank and the Bangladesh government have effectively muzzled all voices that stand in the way of the motivated take-over of the Grameen Bank.

Source: <http://www.thedailystar.net/newDesign/news-details.php?nid=244824>

<http://www.thedailystar.net/newDesign/news-details.php?nid=245393>

<http://www.thedailystar.net/newDesign/news-details.php?nid=246271>

Thai Govt rethinking proposed plan to deport pregnant migrant workers

Thailand Government is rethinking a controversial plan proposed by the Thai Labour Minister, Padermchai Sasomsap, to deport migrant workers who are three to four months pregnant. Owing to the strong backlash and criticism, the ministry is now reconsidering plans aimed at keeping migrant children out of the factories their parents worked in. The Thai Department of Employment director-general Prawit Khiangphol has assured that there is a proposal to allow pregnant migrant workers to stay and receive access to social security networks which would include access to public health services, schools for their children and full maternity leave.

Source: <http://www.phnompenhpost.com/index.php/2012072557604/National-news/thai-government-reconsiders-deportation.html>

Iranian Universities ban women from enrolling for BA and BSc courses in the coming academic year

Around 36 Universities in Iran have announced that about 77 Bachelors in Arts and Bachelors in Science courses in the coming academic year will be ‘single gender’ exclusively for men. Under the new policy, women undergraduates will be excluded from a broad range of studies in some of the country’s leading institutions, including English literature, English translation, hotel management, archaeology, nuclear physics, computer science, electrical engineering, industrial engineering and business management.

The new policy has been criticised by Iranian parliamentarians, who summoned the deputy Science and Higher Education Minister to explain. However, the minister, Kamran Daneshjoo, dismissed the controversy, saying that 90% of degrees remain open to both sexes and that single-gender courses were needed to create ‘balance’.

It may be noted that Iran has highest ratio of female to male undergraduates in the world, according to UNESCO. Interestingly, in the last few years, Iranian women students have outperformed men, a trend at odds with the traditional male-dominated outlook of the country’s religious leaders. Women outnumbered men by three to two in passing this year’s university entrance exam.

Source: <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/9487761/Anger-as-Iran-bans-women-from-universities.html>

Op-ed: http://www.huffingtonpost.com/adam-pourahmadi/iran-ban-university-women_b_1821611.html

Singapore Court of Appeal acknowledges the unwanted manner in which law criminalising homosexuality affects community

The Singapore Court of Appeal overturned a high court decision and allowed an application challenging the constitutionality of Section 377A of the penal code which criminalises homosexuality, on the ground that the issue was ‘of real public interest’.

The appeal was filed after the high court struck out the application on the ground that it did not disclose any cause of action. Though the Appeal Court did not go into the merits of the case, it acknowledged that Section 377A, its current form affects the lives of a significant portion of the community in a very real and intimate way. It further noted that an unwanted effect of Section 377A was that it made criminals out of victims.

Source: http://www.singaporelawwatch.sg/slw/index.php/headlines/12927-377a-in-the-spotlight-again?utm_source=web%20subscription&utm_medium=web

Minor Christian Pakistani girl becomes victim of the Pak blasphemy law

In another case highlighting the motivated use of blasphemy law to target minorities in Pakistan, a mentally disabled minor Christian girl was accused of desecrating the Qur'an by a Muslim clerk.

The girl was arrested following public outrage at blasphemy, taken into custody for 3 weeks but subsequently granted bail.

After her arrest, certain witnesses came forward alleging that the girl had been framed by the clerk and he was accused, by his own deputies, of adding pages torn from the Qur'an to a plastic bag of burned rubbish that the girl had been carrying. People living in the neighbourhood said that the clerk helped to whip up anti-Christian sentiment in the town and then publicly welcomed the mass departure of hundreds of Christians who fled to other parts of Islamabad after demonstrations leading to the arrest of the girl.

Debates on why the blasphemy law in Pakistan has not been repealed re-emerged after this case came to light. The highly criticised blasphemy laws in Pakistan are as vague as they are harsh. Intent to commit an act of blasphemy is not required. The law provide that an offense against the prophet can be committed by ‘any imputation, innuendo or insinuation, directly or indirectly’ i.e., unwittingly.

Source: <http://www.guardian.co.uk/world/2012/aug/30/pakistan-girl-blasphemy-rimsha-masih>
<http://www.guardian.co.uk/world/2012/aug/30/pakistan-blasphemy-case-muslims-law>

Op-ed: http://www.huffingtonpost.com/farahnaz-ispahani/pakistan-blasphemy-law_b_1882381.html

Beyond Asia

ECHR condemns Spain's racist and sexist attacks against Nigerian woman

In a landmark ruling, the European Court of Human Rights (ECHR) condemned Spain for violating the right to freedom of a Nigerian woman, resident of Spain from cruel, inhumane and degrading treatment by failing to comply with the obligation to effectively investigate the racist and sexist violent acts alleged. The woman was attacked on two separate occasions by the Spanish police under the guise of performing identity checks wherein she was beaten and called racial abuses. After exhausting domestic remedies, the case was brought before the ECHR in light of the failure by all national courts to investigate the facts of the case.

Source: http://www.wunrn.com/news/2012/07_12/07_30/073012_gender.htm

<http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4029409-4701569>

Namibian High Court awards damages to 3 women sterilised without consent

In a much awaited judgment for patients' and women's rights, the Namibian high court passed an order in favour of three women, awarding damages, who claimed they had been sterilised without their informed consent. The case, which began two years ago, was brought by the country's legal assistance centre on behalf of three women aged between 22 and 47 who had caesarean deliveries to reduce the risk of transmitting HIV to their babies. The sterilisations were carried out at the same time as the caesareans.

While passing the judgement, the Court observed that the three women in the case had dealt with hospital staff who could not speak their language. They were handed consent forms containing unintelligible acronyms. The forms were produced while the women were in labour, minutes

before they were wheeled into the operating theatre. While admitting that health workers in Namibian state hospitals face tremendous pressures, the judge called on the government to institute group counselling about contraception and to make information available in all languages necessary.

Source: <http://www.guardian.co.uk/global-development/2012/jul/30/namibia-hiv-women-sterilised-without-consent>

Tunisian draft constitution refers to women as ‘complementary to women’

In what is seen as a push by the Tunisian government for constitutional changes that would degrade women's status, the government has unveiled a draft constitution which refers to women as ‘complementary to men’. Women's rights advocates are concerned that the proposed Constitutional changes erode the pioneering 1956 law that granted women full equality with men, and demand retention of sex equality.

Activists fear the terminology changes will gradually roll back women's rights. Tunisia, alone among Arab countries, permits abortion. Women of all classes play a prominent role in public life and the economy, including as bus drivers and police officers. Married women frequently make their own career and lifestyle decisions. As thousands of people took to the streets to protest the draft constitution, activists were concerned that once approved, the new rules would lead to future setbacks.

Source: <http://www.guardian.co.uk/world/2012/aug/14/tunisians-demand-protection-womens-rights>

Transgender no longer labelled as a mental health disorder in USA

In a welcome move, the Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association will be replacing the term ‘Gender Identity Disorder’ with ‘Gender Dysphoria’. This change is a result of years of lobbying the American Psychiatric Association to change or remove the ‘mentally ill’ characterization given to all who are transgender. Individuals may now be diagnosed with Gender Dysphoria, ‘a marked incongruence between one’s experienced/expressed gender and assigned gender.’

Source: <http://dot429.com/articles/1119>

Somalian Constitution bans female genital mutilation

In a positive development, the new Constitution of Somalia had banned female genital mutilation/cutting (FGM/C). The provisional constitution states: ‘Circumcision of girls is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited.’

However, experts and activists say that carrying out community empowerment programmes, raising awareness of the health effects of the practice and delinking it from Islam, must necessarily complement the law to avoid collision with deeply rooted cultural beliefs.

Source: <http://www.guardian.co.uk/global-development/2012/aug/17/female-genital-mutilation-banned-somalia>

Imprisonment of Russian punk rock group highlights the intolerance of the Russian Government to criticism

The members of a feminist punk rock group, Pussy Riot, were sentenced to two-year imprisonment by a Russian Court, being found guilty of ‘hooliganism motivated by religious hatred’ for protesting against the Putin government in a Moscow cathedral. The judge rejected the defence's argument that the band's performance of an anti-Putin ‘punk prayer’ was a form of political protest and ruled that it was motivated by hatred for Russian Orthodoxy.

The act of the authorities in charging the group with criminal misdemeanour, in effect, punishes them for their speech. Further, by making the group await trial in jail for almost six months, the authorities made clear how they plan to set boundaries for political criticism.

This case has sent out a disturbing message about the state of the rule of law and freedom of expression in Russia. What was also disconcerting was the role the Judge believed feminism played in the case. The Judge found nothing political about the action of the group and instead saw it as feminism. She asserted that the superiority of one ideology (feminism) at the expense of another (religion), can be grounds for enmity, hatred, and conflict. In other words, the women’s assertion of feminist ideals was the core of the problem.

Source: <http://www.guardian.co.uk/music/2012/aug/17/pussy-riot-sentenced-prison-putin>
<http://www.hrw.org/news/2012/08/17/pussy-riot-and-russias-surreal-justice>
<http://www.hrw.org/news/2012/08/23/we-were-there-pussy-riot-verdict>

Belizean Domestic Bank and Financial Institution Act proposes to widen the scope of ‘spouse’

The Belize Senate, while passing the Domestic Banks and Financial Institutions Act, redefined the term ‘spouse’. The new definition is now considered as one of the most liberal definition of the term in Belize’s law to date. The bill is now pending before the Governor General, whose assent is the final step in passing of the same.

As per the new definition, spouse would now mean a husband, wife or ‘other individual’ with whom the a person is engaged in an ‘ongoing conjugal relationship’, whether in common common-law union as defined by section 148(D) of the Supreme Court Judicature Act, ‘or not’ and whether or not the two people are living together. According to the counsel for the Ministry of Finance, in view of the existing criminal law, which outlaws same-sex relationships, the definition of ‘spouse’ only extends to inclusion of a boyfriend or girlfriend or couples who live together for less than the current 5-year limitation stated in existing laws.

Source: <http://www.plustvbelize.com/Featured/NewsDetails/tabid/63/ArticleId/3817/Government-redefines-the-word-spouse-in-most-Liberal-definition-ever.aspx>

<http://amandala.com.bz/news/blame-imf-controversial-banking-bill-gian-ghandi/>

Ukrainian govt. introduces bill in parliament to ban publication and distribution of LGBT information

The Ukrainian government is seeking to amend the existing laws on the protection of public morality; media and publishing; and the criminal code by introducing two bills in Parliament, Bill 8711 and Bill 10290, which bans the publication and distribution of the majority of LGBT information.

Bill 8711 and Bill 10290 harshly discriminate against members of the LGBT community by criminalising so-called homosexual ‘propaganda’, with the threat of up to five years imprisonment. The bills, if passed would prohibit media articles about homosexuality and ban LGBT and human rights organisations from raising awareness of LGBT rights. Further cultural events would also come within the purview of the ban.

Protests by various LGBT activists and groups have been taking place across Ukraine. According to protesters, the authorities are increasingly worried about the so-called decline of morality in society, but it only diverts attention from pressing problems of social insecurity of the population of Ukraine.

Source: <http://www.article19.org/resources.php/resource/3357/en/ukraine:-mps-should-reject-bills-that-ban-homosexual-%E2%80%98propaganda%E2%80%99>

U.S. Dept. of Justice defers removal of gay Jamaican under CAT

In a Board of Immigration Appeals decision, yet unpublished, the United States Department of Justice, deferred the removal of a homosexual Jamaican national under the U.N. Convention Against Torture (CAT).

The Immigration Judge had denied the application for deferral of removal of the applicant on the ground that the applicant had not met his burden of proof under CAT. The Appellate Board however was persuaded by the arguments of the Applicant. It noted that the evidence on record indicated that the situation in Jamaica involved more than isolated instances of discrimination or harassment based on homophobic societal attitudes in Jamaica. Further, the Board also observed that the Immigration Judge’s decision made no mention of the pattern and practice of societal violence directed at homosexuals in Jamaica – a violence which was either directly or indirectly condoned by the Jamaican government.

While deferring the Applicant’s removal under CAT, the Appellant board stated that it was more likely than not that the Applicant would be tortured if removed to Jamaica.

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

Russia proposes procedurally flawed resolution on ‘traditional values’ at 21st HRC Session

Pursuant to the controversial and heavily criticised draft report prepared by the drafting group of the Human Rights Council Advisory Committee titled '[Preliminary study on promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind](#)', the Russian Federation has proposed a resolution on ‘traditional values’ as a basis for

human rights at the 21st session of the Human Rights Council (HRC). This proposed resolution is premature and procedurally flawed as it comes before the Advisory Committee has had a chance to prepare its final report on traditional value as requested for by HRC thereby undermining the process mandated by the HRC. Further, there is absolutely no recognition in Russia's draft resolution that many practices inconsistent with human rights derive its foundation from traditional values. Numerous UN experts have emphasised that traditional values are frequently invoked by States to justify human rights violations, such as family violence, marital rape, forced marriage and female genital mutilation.

Note for the reader:

The proposed resolution will be negotiated over the next two to three weeks and the vote is scheduled to take place between September 26th and 28th 2012. Please get in touch with your Foreign Ministry and express your concerns over passing the resolution. The list of countries which are members of the HRC can be accessed [here](#). However, all States, whether or not they are Council Members, can participate in negotiations and oppose the text.

For convenience, the contact details of the Foreign Ministry of your country can be accessed at http://www.ediplomat.com/dc/foreign_ministries.htm. Send your Foreign Ministry a copy of the [attached backgrounder](#) expressing concerns and write a short cover note calling on your government to oppose the resolution.

Source: <http://arc-international.net/global-advocacy/human-rights-council/hrc21/tv-concerns>

National

Judgments/ Orders

Son wins paternity suit against veteran politician, N.D. Tiwari

In a case that could set precedence, Shri. N.D. Tiwari was declared the biological father of Rohit Shekhar. Rohit Shekhar had filed a paternity suit against Shri N.D. Tiwari in 2008, inter claiming that Shri Tiwari was his biological father. Mr. Shekhar had, in a paternity suit, sought a declaration from court that Mr. Tiwari is his biological father. The court battle between Mr. Tiwari and Mr. Shekhar went on for five years with the veteran leader sparing no legal tactics to get the suit dismissed, and avoid giving his blood sample for the DNA test. His appeal to the Supreme Court, arguing against being compelled to give his blood sample also failed. Ultimately, he gave his blood sample was taken and paternity established.

The petitioner can now seek inheritance rights under Hindu law to claim his share in the properties of Mr. Tiwari. This significant case highlights the legal obligations of a man, who, though out of wedlock, has fathered a child; and the legal rights of a Hindu child born out of wedlock, to claim his rightful share from his biological father.

Source: <http://www.thehindu.com/todays-paper/article3695091.ece>

Delhi Sessions Court sentences sorcery practitioner

Even as this Delhi case dispels the myth that targeting of women as witches for ulterior motive is not limited to the remote recesses of the country, it confirms the difficulty in legal redress in such cases. A 63-year-old sorcery practitioner, Sallamuddin, employed by a victim's husband to rid her of the purported spell of evil spirit was sentenced to 2 years rigorous imprisonment for outraging her modesty and assaulting her, by a Sessions Court in Delhi. He was however, acquitted of charges of rape. The offender was hired by the victim's husband because she was 'suffering from the effect of evil spirits'. However, a complaint was lodged by the husband when, after coming to the victim's house, Sallamuddin sent the husband to a nearby temple to bring holy water and, as per the complaint, raped the victim.

Source: <http://www.indianexpress.com/news/sorcery-practitioner-jailed-for-2-yrs-for-assaulting-woman/981932/>

http://www.ptinews.com/news/2838186_Sorcery-practitioner-jailed-for-2-yrs-

SC grants divorce before expiry of the statutory six month 'cooling off' period

The Supreme Court (SC), while adjudicating upon a case of divorce by mutual consent, granted the same to a couple after a four month, of the statutory six month, 'cooling-off' period. The SC held that in a divorce by mutual consent, the court would be justified in using its constitutional powers under Article 142 'for doing complete justice' in certain cases.

The judges made it clear, however, that they did not accept a proposition that in every case of dissolution of marriage under Section 13-B (divorce by mutual consent) of the Hindu Marriage Act the court has to exercise its powers under Article 142 of the Constitution. The article empowers the SC to pass orders in the interest of achieving justice when required.

Source: <http://timesofindia.indiatimes.com/city/mumbai/SC-relaxes-law-okays-divorce-after-4-months/articleshow/15785460.cms>

BJP politician amongst others convicted for massacre, rape and molestation in Gujarat carnage, 2002

In a landmark judgment passed Justice Jyotsna Yagnik of the Special Court, 32 persons were convicted and sentenced in the Naroda-Patiya massacre case for crimes including rape and molestation. This is also the first judgment convicting and sentencing Babu Bajrangi (leader of the Gujarat Bajrang Dal, a Hindu right organisation), to life imprisonment, and a BJP woman member of the state legislative assembly and also a gynaecologist, Dr. Kodnani, to 28 years imprisonment. Suresh Langdo, was sentenced to 31 years imprisonment for rape and murder. This is only the second case, after the famous Bilkis Bano case where the conviction, inter alia includes charges of rape and molestation.

Although reports and testimonies indicate that sexual brutality is integral to all communal violence in India and was well documented in the Gujarat carnage, this was the second conviction for rape thus far. This case is symbolic of the tenacity of the survivors and the perseverance of human rights defenders in their pursuit of justice for 10 years. The judgment is also outstanding for its reasoned rejection of the death penalty for heinous crimes, opting instead of consecutive sentencing of the convicted.

Source: <http://www.thehindu.com/news/states/other-states/article3835078.ece?homepage=true>

Op-ed: <http://www.thehindu.com/opinion/editorial/article3836698.ece>

Matrimonial matters taken away from Karnataka HC judge for comments condoning domestic violence, following protests

In a welcome move, the Chief Justice of Karnataka High Court, withdrew all matrimonial matters from Justice Bhaktavatsala of the High Court for condoning domestic violence and coercing women into reconciliation despite evidence of violence. The step was taken immediately after a petition by women's rights activists protested the successive comments by Justice Bhaktavatsala, seeking the intervention of the Chief Justice in removing him from adjudicating over matrimonial cases.

The protests were triggered by reports of comments of Justice Bhaktavatsala in a case where the husband sought return of his wife who had deserted him, taking away their two sons. When the cause of desertion was explained by the wife's lawyer, as being on account of physical abuse, the Judge said, '*Women suffer in all marriages. You are married with two children, and know what it means to suffer as a woman. Yesterday, there was a techie couple who reconciled for the sake of their child. Your husband is doing good business, he will take care of you. Why are you still talking about his beatings? I know you have undergone pain. But that is nothing in front of what you undergo as a woman.*' Upon being shown pictures of the woman with a swollen face, the judge persisted in asking the woman 'to adjust', and even questioned her 'agenda' of wanting the husband's money.

Women's rights activists tracked successive examples where this judge has pressurised women to return to abusive marriages, to establish that he was not fit to uphold the law and constitutional rights of women litigants.

Source: <http://www.punemirror.in/article/4/2012090220120902081003279398906/HC-judge-tells-abused-wife-to-%E2%80%98adjust%E2%80%99.html>

<http://www.bangaloremirror.com/index.aspx?page=article§id=1&contentid=20120901201209010631363244a6bd42c>

<http://www.hindustantimes.com/India-news/NewDelhi/Judge-who-made-wife-beating-remark-shifted-from-family-matters/Article1-926399.aspx>

No straitjacket formula to determine consent in rape: SC

While adjudicating upon a case of alleged rape, where the question of consent was the issue, the Supreme Court observed that sex with the consent of the girl on a promise to marry her will not constitute rape unless it was shown that such consent was obtained by the man under coercion or threat. In the case in hand, both the trial court and the Patna High Court had dismissed the plea of the appellant/accused for discharge from the case. The discharge was sought on the ground that the girl had given consent for sexual relationship and hence no offence was made out.

The respondent/victim in the case had filed a complaint for rape and breach of trust at the trial court on the ground that the appellant/accused had given her a promise of marriage pursuant to which she had agreed to have a sexual relationship with him; however he did not marry her.

On the question of consent, the Supreme Court opined that consent requires voluntary participation in the sexual act after exercise of intelligence based on the knowledge of the significance and moral quality of the act. The Bench said that there was no straitjacket formula for determining whether consent given by the girl was voluntary or given under a misconception of fact, viz ‘promise to marry.’ The Court expressed difficulty in validating all consent in such cases, distinguishing between promises that are patently false, intended purely for purposes of securing sexual consent, from those that are not. Remitting the case back to the trial court for reconsideration of evidence, the Court observed that *‘the court has to see whether the person giving the consent has given it under fear or misconception of fact and the court should also be satisfied that the person doing the act, i.e. the alleged offender is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given.’*

The proposition that a reneged promise of marriage can transform consensual sex into rape in some situations has implications for the evolving legal discourse on sexuality. The discussion needs to consider ways in which this position reinforces notions of chastity and honour in which the law remains embedded; and how this might impact the struggle for recognition for women’s sexual autonomy and agency. Penal regulation of sexuality still dominates the discourse, through the use of previous sexual history, adultery, and kidnapping/ abduction charges that punish women for positive expressions of sexuality. It must also consider the demand for criminalisation of marital rape that refutes the assumption of blanket consent in marriage (or indeed, the promise of marriage).

Source: <http://www.hindu.com/2007/08/29/stories/2007082961551600.htm>

Op-ed: <http://lawandotherthings.blogspot.de/2007/08/does-consensual-sex-based-on-false.html>

News

Legal vacuum on sexual assault and impunity for moral policing make India unsafe for all women

In a span of a month, two cases of sexual assault from different parts of India demonstrated that the default institutional responses favour impunity for sexual offences. The sexual assault of a young woman in Guwahati by a mob of more than 40 men in the middle of a busy street and the molestation of young women at a birthday party by right wing ‘moral police’ gang highlighted the shortcomings in our law, the role of the media, and ironically, the incompetence of the women’s machineries mandated to protect women’s rights and dignity.

When a young woman was being sexually assaulted by a mob on a busy Guwahati street, a media person present at the site filmed 40 minutes of the crime, trying hard to capture the victim’s identity, without once alerting the police. The police upon arrival rescued the young woman without arresting a single perpetrator. Two days later, with a public outcry against the film of the molestation going viral on internet, the police charged and arrested the culprits. The National Women’s Commission in its fact finding team, appointed a member with no background in

women's rights, who revealed details and the identity of the victim to the press even before the fact finding was concluded.

In Mangalore, activists of a right wing group barged into a birthday party at private premises and physically assaulted a group of young boys and girls under the pretext of moral policing. The activists were caught on camera slapping and groping the women. Yet again, a TV cameraman managed to film the incident without alerting the police. The Karnataka State Women's Commission blamed the guest house, sought a probe into the 'motive' of the boys at the birthday party, but said nothing of the right wing vigilante group that committed the crime.

The cases brought to light the legal vacuum in the law to appropriately redress cases of gang molestation, groping and public stripping of women. The penal provisions of unlawful restraint and/or outraging the modesty of a woman are responses that barely capture the gravity of the crime. As bailable offences they attract small sentences. These cases highlight yet again, the impunity for sexual assault in the law and through misplaced institutional responses.

Source: <http://www.indianexpress.com/news/women-should-dress-carefully-ncw-chief/975888/>

<http://indiatoday.intoday.in/story/mangalore-attack-state-women-panel-questions-party-organisers-motive/1/211526.html>

http://www.huffingtonpost.ca/2012/06/13/best-and-worst-g20-countries-for-women_n_1593942.html

Op-ed: <http://www.thehindu.com/opinion/editorial/article3636327.ece>

<http://www.deccanherald.com/content/270657/wanted-ncw-teeth.html>

Santhi Soundarajan's case and IOC's new policy highlights new frontiers of gender discrimination

Santhi Soundarajan, a middle distance runner, who had won accolades for India at the 2006 Asian Games, was found working as a daily-wage labourer in a brick yard in Tamil Nadu. Santhi was stripped of her medals in 2006 after she failed a gender test. In contrast, when South African athlete Caster Semenya was stripped off her medals after she failed a gender test in 2009, she managed to have the ban against her revoked with the backing of her country.

The case of Santhi, just like that of Caster, are outcomes of the new International Olympic Committee's (IOC) sex-testing policy that impose new bio medical standards to determine female. The standards strike at women whose bodies produce high levels of testosterone, resulting in what can only be called a 'gender witch-hunt' against women who 'play like men' or look too masculine. What is shocking in the case of Shanthi however is that she was not just stripped of her medals, but also her job, dignity and hard won achievements prior to the introduction of the standards. The trend in defining 'female' narrowly in sport through rigid bio medical standards is less to do with sporting standards and more a discomfort with gender variance. As the case of Shanthi demonstrates, the rule was used to de-humanise, disgrace and impoverish Shanthi in all areas of her life - not on grounds of cheating or criminal wrong, but simply for her biology.

Source: <http://indiatoday.intoday.in/story/asiad-games-medallist-santhi-soundarajan-turns-brick-kiln-labourer/1/209925.html>

Op-ed: <http://www.guardian.co.uk/commentisfree/2012/jul/02/ioc-supwerwoman-complex-flawed-sextesting-policy>

TN Govt. announced pension for impoverished transgender

According to the proposed ‘Pension Scheme for Destitute Transgender’, an effort is being made, by the Tamil Nadu government, to integrate the neglected community of transgender into the mainstream by introducing a monthly pension of Rs. 1000 to those transgender who are above 40 years of age and living below the poverty line.

The transgender community has been a sidelined community where the people see them with hated view, and deprive them of all the facilities which a human being and a citizen of India are entitled to. This move, however, is being welcomed as recognition of their plight and daily struggles.

Source: <http://www.legalindia.in/transgenders-to-get-monthly-pension>
<http://www.thehindu.com/news/states/tamil-nadu/article3713461.ece>

Lok Sabha passes Sexual Harassment at Workplace Bill, without much discussion

The Lok Sabha, has passed the controversial Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2010. The move itself, though welcomed, the bill was passed without much discussion on the objectionable provisions.

The bill that has been passed still contains the much critiqued chilling provision that seeks to penalise women for false complaints, defeating the very purpose sought to be achieved by the law. Further the purview of the bill has also been limited to certain sectors, excluding from its purview agricultural labourers and women in the armed forces.

The bill that was passed by the Lok Sabha can be accessed at:

<http://xa.yimg.com/kq/groups/25274660/334149171/name/Sexual%20Harassment%20at%20Workplace%20Bill%202012.pdf>

Source: <http://www.thehindu.com/todays-paper/tp-national/article3856442.ece>

<http://www.thehindu.com/todays-paper/article3856629.ece>

Op-ed: <http://www.thehindu.com/opinion/lead/article3796010.ece?homepage=true#>

Union Cabinet clears controversial Criminal Law (Amendment) Bill 2012

The Union Cabinet cleared the proposal for the introduction of the Criminal Law (Amendment) Bill, 2012 in the Parliament. The bill however is flawed, inadequate and fails to introduce the much needed holistic reforms. There were neither any consultation with women's groups who have been pressing for law reform, submitting petitions and recommendations to the Criminal Law Amendment Bill 2010. Further the bill is laden with infirmities. While the bill expands the definition of rape, it has introduced a highly problematic gender neutral definition. It seeks to make the perpetrator of sexual assault gender neutral in non-custodial situations, despite no

empirical data for this. The women's groups and concerned citizens from across the country have rejected the bill and petitioned the government to initiate consultations towards developing compressive amendments that address all forms of sexual assault, graded to cover the spectrum of grave to the lesser offences.

Maharashtra government proposes to make abortion a crime

The Maharashtra government has recommended to the Centre that the Pre-conception and Pre-natal Diagnostic Techniques (PCPNDT) Act be amended so that sex-selective abortion or 'female foeticide' is treated as 'murder' punishable under section 302 (punishment for murder) of the Indian Penal Code. Under Section 23 (3) of the PCPNDT Act, any act of determination of sex of the foetus attracts a jail term of up to three years and a fine of Rs 10,000. Repeat offenders may be jailed up to five years and fined up to Rs 50,000.

This recommendation encroaches upon a woman's safe and legal right to abortion. Women have a right to decide when and whether they should bear and give birth to children. Making sex-selective abortions a murder charge, would only increase illegal abortions and also make access to safe abortion difficult. To undergo a sex-selective abortion, the woman would have to first determine the sex of the child, which is a crime under the PCPNDT Act. The government should ensure proper implication of the Act instead of criminalising the freedom of choice of a woman.

Women's rights activists have always demanded the continuous and strict monitoring of sonography centres, hospitals and nursing homes and strict action against all unlicensed centres. The government, instead of concentrating on the issue illegal sex determination tests are focusing on abortions. This step is in part an outcome of the short-sighted populist and highly problematic labelling of sex selection as female foeticide.

Source: <http://www.indianexpress.com/news/make-law-tougher-treat-female-foeticide-as-murder-state-to-centre/997557/>

Op-ed: <http://kractivist.wordpress.com/2012/09/09/petition-to-union-health-minister-abortion-is-not-murder-vaw-womenrights-reproductiverights/>

RESOURCES

'Injustice at Every Turn: A Look at Asian American, South Asian, Southeast Asian, and Pacific Islander Respondents in the National Transgender Discrimination Survey': NCTE and NQAPIA

The National Gay and Lesbian Task Force, and the National Center for Transgender Equality (NCTE) along with the National Queer Asian Pacific Islander Alliance (NQAPIA), have released a publication called "Injustice at Every Turn: A Look at Asian American, South Asian, Southeast Asian, and Pacific Islander Respondents in the National Transgender Discrimination Survey". The publication is based on the data from the National Transgender Discrimination Survey (NTDS) and has been released in English, Hindi, Tamil, Vietnamese, Tagalog, Korean, and Chinese - Traditional, with Khmer forthcoming.

The Report can be accessed at:

http://www.thetaskforce.org/reports_and_research/ntds_asianamerican_respondents

'Sexual Orientation, Gender Identity, and Justice: A Comparative Law Casebook': ICJ

The International Commission of Jurists have compiled a casebook titled 'Sexual Orientation, Gender Identity, and Justice: A Comparative Law Casebook' consisting of a collection of 14 chapters, which included national court decisions, addressing questions concerning sexual orientation and gender identity. It did so because it had become evident that battles over some of the most controversial issues of the day were being waged in domestic courts.

The casebook is available at: <http://www.icj.org/sogi-casebook-introduction/>

'Born Free and Equal': United Nations Human Rights Office

The Office of the High Commissioner, United Nations had released a booklet on sexual orientation and gender identity in international human rights law titled 'Born Free and Equal'. The booklet sets out the source and scope of State obligations under international human rights law to protect the human rights of lesbian, gay, bisexual, transgender and intersex people.

The booklet is available at:

<http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

Blog on sexuality and disability launched

A website on disability and sexuality, <http://www.sexualityanddisability.org/>, created with the active support of women with disabilities and activists has been launched. The website is a joint effort of Point of View and CREA. The website starts with the premise that women who are disabled are sexual beings, just like any other woman. It concentrates on questions a woman with a disability might have -- about her body, about the mechanics and dynamics of having sex, about the complexities of being in an intimate relationship or having children, about unvoiced fears or experiences of encountering abuse in some form.

EVENTS

'Developing Legal Aid Strategies and Guide Book to Protect Rights of Informal Workers, Women and Children': Delhi, 25 August 2012

Nidaan, an organisation working for informal workers, women and children in Delhi, Bihar, Uttar Pradesh, Jharkhand, Rajasthan, Haryana and Uttarakhand, organised a day long workshop on the 25th of August 2012 to brainstorm on the issues related to rights violations being faced by the informal workers, women and children and to sharpen strategies through developing a Guide Book and Legal Literacy, Legal Education and Legal Aid.

'Security of Women in Delhi: An open discussion among concerned citizens': Delhi, 29 July 2012

What's up Bharat, a network and platform that delivers services for people who want social change in India, hosted a open forum on the topic of "Security of Women in Delhi" on 29th July

2012 as part of it's Gender initiative, the overall objective of which was to create a community, content tools (multimedia) and data (polls & surveys on social issues) that can benefit the NGOs, activists and everyday citizens who are fighting for equality of the sexes and the political, economic and social reform it entails.

Citizens Collective against Sexual Violence protest against sexual assault: 27 July 2012

Citizens Collective against Sexual Violence protested against the rising rate of sexual assault in delhi and NCR, at Nehru Place, on 27th July 2012, demanding zero-tolerance towards any form of sexual harassment or assault on our streets, metros, buses, colleges, workplaces and homes.

Candle Light Vigil to united against Assam riots and backlash: 22nd August 2012

Delhi Solidarity Group and Citizens' Collective against Sexual Assault held a candle light vigil at India Gate on 22nd August 2012 to condemn the violence in Assam and the backlash being faced by people from the North East in other states and other religious communities. The vigil was held after news of the sudden rise in threats to the North-Eastern community during the Assam riots.

FORTHCOMING EVENTS

'The Good, Bad and the Ugly: Introspecting Violence against Women & the Law'

October 27-31, 2012

Partners for Law in Development, is organising a 5-day workshop, which amongst other things seeks to explore many of the concerns, recent developments and dilemmas being faced vis-a-vis the criminal law. The discussion would, amongst other things, include tracing the journey of the women's movements engagement with the law in respect of violence against women and contrasting feminist notions of justice with the limits and possibilities of criminal law, and finding ways to address the gaps

The workshop is open to senior and mid level activists with a familiarity with the law relating to violence against women, grounded through experiences in case work, law reform, or legal education. Affiliation to an organization or collective activism is desirable but not necessary. The workshop can accommodate about 26 participants. The resource pool will comprise of leading lawyers and academics with a background in activism on the diverse areas covered.

Workshop dates: October 27-31, 2012

Registration Fee: A registration fee of Rs 1000 will be charged from participants.

Application form attached. Last date for applying: September 28, 2012

The form can also be downloaded from the website of <http://cedawsouthasia.org/>. Please send your completed applications to trainings@pldindia.org .