



# BI-MONTHLY LEGAL NEWS

## Vol. No. 7(I) Jan-Feb 2014

*Partners for Law in Development*

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## Updates from the UN

### UN High Commissioner for Human Rights denounces new anti-homosexuality law in Nigeria

The UN High Commissioner denounces the draconian law passed by the Nigerian Government against same sex unions. The Law has been claimed as violating a range of human rights and also reinforces existing prejudices and towards members of the LGBT Community. The High Commissioner has expressed that the Supreme of Nigeria should look into the constitutionality of the law and attempt to protect the community from discriminations and violations.

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14169&LangID=E>

### Group of Independent Experts speaks out against tactics used to create civilian sufferings in the Syrian conflict

A group of Independent Experts, comprising of several Special Rapporteurs, have spoken out against the wanton violence and deprivation from basic necessities that civilians are being made to suffer in the Syrian conflict. They urged all parties involved in the Syrian Conflict to restrain from depriving common civilians access to basic living amenities, like access to water, food, shelter, sanitation and health. The group of independent experts stressed that such violations of human rights are nothing short of war crimes under customary international humanitarian law. The group also noted that attacks were carried out with the apparent aim of starving out an entire population and cause mass displacement.

The group consisted of several Special Rapporteurs including the SR on the Right to Food, SR on Right to enjoyment of highest standards of mental and physical health, the SR on Adequate Housing, the SR on extrajudicial and arbitrary executions, the SR on Torture and other Cruel, Inhuman and Degrading Treatment, and the SR on the Right to Safe Drinking Water and Sanitation.

Source: [http://www.wunrn.com/news/2014/02\\_14/02\\_03/020314\\_syria2.htm](http://www.wunrn.com/news/2014/02_14/02_03/020314_syria2.htm)

### CEDAW responds to ICPD 2014 Review and emphasizes the need for ensuring reproductive rights of women

The Committee on the Elimination of Discrimination against Women, at its recently concluded session, issued a statement on sexual and reproductive health and rights, which is its contribution to the ICPD@20 review process. The Committee reminds us that it the failure of a state party to extend services and particularly criminalising women specific health services is a violation of women's reproductive rights. The provisions for safe abortion and post abortion care, maternity care, timely diagnosis and treatment of sexually transmitted diseases, breast and reproductive cancer, infertility and accurate and comprehensive information about sexuality and reproduction are all part of the right to sexual and reproductive health. The committee has also urged the states

to ensure full respect and protection of sexual and reproductive rights of women as per the human rights obligations of the states.

Source: <http://pldindia.org/wp-content/uploads/2014/02/CEDAW-SRHR-26Feb2014.pdf>

## International Developments

### Asia

#### Pak Govt. offers employment to 3 transgendered persons in Sindh Province

In an unprecedented move, the Government in Pakistan's Sindh Province has offered jobs to three transgendered persons.

Even though the Supreme Court of Pakistan, in 2011, recognised the transgender person's right to equality and inheritance and their right to be registered as the third gender in the National Database and Registration Authority, the community still faces discrimination. The judgement has failed to change mind-sets of the public towards the community. According to official estimates, there are approximately 500,000 "gender confused" people in Pakistan including eunuchs, hermaphrodites, transsexuals, transvestites and homosexuals in addition to castrated men

Source: <http://indianexpress.com/article/world/asia/transgenders-get-government-jobs-in-pakistan/>

<http://www.thehindu.com/news/international/south-asia/govt-jobs-for-three-transgenders-in-pakistan/article5649769.ece>

Op-ed: <http://blogs.tribune.com.pk/story/20841/three-transgender-people-employed-well-done-sindh-government/>

#### Afghan President withholds bill banning relatives from testifying against rape accused

The controversial bill amending the Afghanistan criminal prosecution code has been withheld by the President. Section 26 of the amended bill, which would effectively have banned relatives of the accused person from testifying as witnesses, have been ordered to be revised by the Cabinet.

Section 26 of the Bill, in the manner in which it is currently worded, if passed, would have made prosecution in cases of domestic violence, forced marriage and child abuse nearly impossible. In a country like Afghanistan, where forensic evidence is relatively undeveloped, as law such as this would halt prosecution in most cases of violence against women.

The Bill was passed by the Afghanistan Parliament. The Parliament has, on previous occasions, expressed apprehension and resisted efforts on amending Section 26. The revised law will now be sent back to the Parliament. The Bill also does not define relatives, which in some villages in Afghanistan could potentially include dozens of people linked by blood or marriage.

Source: <http://www.trust.org/item/20140218052310-x9oge/>

<http://www.theguardian.com/world/2014/feb/17/karzai-change-domestic-abuse-law?INTCMP=ILCNETTXT3487>

<http://www.theguardian.com/world/2014/feb/17/hamid-karzai-law-afghan-women>

<http://www.aljazeera.com/news/southasia/2014/02/afghan-government-rewrite-anti-women-law-201421715352793228.html>

## UN Report on human rights violations in North Korea highlights rampant crimes against humanity

The UN human rights investigators have released a 372-page report detailing widespread crimes against humanity in North Korea that they believe should be brought to the International Criminal Court. This report is the outcome of the Commission of Inquiry established in March last year by the UN Human Rights Council to ‘investigate the systematic, widespread and grave violations of human rights in the Democratic People’s Republic of Korea ..... with a view to ensuring full accountability, in particular where these violations may amount to crimes against humanity.’ The report includes excerpts of witness testimony taken from the statements of more than 80 victims and witnesses in South Korea, Japan, Britain and the US. The report further describes violations ranging from murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence to the enforced disappearance of people and knowingly causing starvation.

Various UN bodies and mechanisms have over the years reported the wide spread human rights violations in North Korea pertaining to access to food, political prison camps and enforced disappearances, including in the form of abductions of nationals of other states.

North Korea, however, has rejected the report on the ground that it was based on false material and is meant to sabotage and defame the country.

Source: <http://jurist.org/paperchase/2014/02/un-north-korea-rights-violations-may-constitute-crimes-against-humanity.php>

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14242&LangID=E>

## ***Beyond Asia***

### Morocco amends provision allowing rapists to marry the under aged survivor

In a positive development, the Morocco parliament unanimously amended Article 475 of the Moroccan penal code that allowed a rapist to escape prosecution if he married his underage victim. The regressive article was brought to light in March 2012 when a 16 year old was forced to marry her rapist by her parents and the judge. The young girl committed suicide later that year.

Though the official age of marriage in Morocco is 18, it is routine practice for judges to allow unions with women below the minimum age. Prior to the amendment, the law stated that anyone who ‘abducted or deceives a minor’ could face a prison sentence. However the second clause stated that when the victim marries the perpetrator, ‘he can no longer be prosecuted, except by persons empowered to demand the annulment of the marriage – and then only after the annulment has been proclaimed’. Effectively, this meant that prosecutors were not allowed to pursue rape

charges independently. Though in 2011 Morocco adopted a new constitution, the spirit of which is gender equality, the same is not put in practice. A bill proposed by the Moroccan government, threatening prison sentences of up to 25 years for perpetrators of violence against women, is still in the drafting stage.

Source: <http://www.aljazeera.com/news/africa/2014/01/morocco-repeals-rape-marriage-law-2014123254643455.html>

<http://www.bbc.com/news/world-africa-25855025>

Op-ed: <http://www.theguardian.com/global-development/poverty-matters/2014/feb/07/ngo-change-morocco-rape-law>

## Nigeria and Uganda enact draconian anti same-sex laws

**Nigeria:** The President of Nigeria signed into law the Same Sex Marriage (Prohibition) Act, a law that provides for 14 years imprisonment for same sex contract or civil unions. The Act, which was passed by the House of Representatives in May last year, also prohibits the operation of any organisation or society for homosexual rights and public show of same-sex relationships directly or indirectly.

Consensual same sex relationship was already illegal in Nigeria – violating rights to privacy and to freedom from discrimination – both of which are protected by the Nigerian Constitution and the International Covenant on Civil and Political Rights. The new law has already started affecting the lives of sexual minorities, with dozens of men being arrested and tortured by the police for being part of organisations for homosexual rights.

**Uganda:** The Ugandan president, Yoweri Museveni signed the controversial anti-same-sex sex bill into law. The new law, which was passed by both the Houses in [December last year](#), imposes harsh penalties on same-sex sexual relationships. This law, similar to the Nigerian law, criminalised ‘promotion or recognition of homosexual relations through or with the support of any government entity in Uganda or any other non-governmental organization inside or outside the country’. It prescribes a term of 14 years in prison for first conviction, and for repeat convictions, termed ‘aggravated homosexuality’, the punishment is life imprisonment.

Source: [http://www.nytimes.com/2014/01/14/world/africa/nigerian-president-signs-ban-on-same-sex-relationships.html?\\_r=0](http://www.nytimes.com/2014/01/14/world/africa/nigerian-president-signs-ban-on-same-sex-relationships.html?_r=0)

<http://america.aljazeera.com/articles/2014/2/24/uganda-s-presidentsignsantigaybill.html>

Op-ed: <http://www.gaystarnews.com/article/18-horrors-ugandans-now-face-under-anti-gay-law270214>

## Scotland becomes 17<sup>th</sup> country to legalise same-sex marriage

While Nigeria made same sex a punishable offence, Scotland became the 17th country in the world to legalize same-sex marriage, after the Scottish Parliament passed the Marriage and Civil Partnership (Scotland) Bill.

The Bill was opposed by the Scottish Catholic Church and the Presbyterian Church of Scotland but the law will not compel religious institutions to hold ceremonies on their premises. LGBT Rights campaigners in Scotland welcomed the bill calling it a milestone for lesbian, gay, bisexual and transgender equality in Scotland. Currently in Scotland, same-sex couples can enter into civil partnerships.

Source: <http://www.reuters.com/article/2014/02/04/us-britain-scotland-marriage-idUSBREA131N320140204>

## Zimbabwe Court exempts GALZ from registering under Private Voluntary Organisation Act

In a welcome ruling, a Harare Magistrate in Zimbabwe dropped charges brought against the chairperson of Gays and Lesbians of Zimbabwe (GALZ), for allegedly running an 'unregistered' organization. The State had filed charges against the chairperson claiming that the organisation was running in contravention of the Private Voluntary Organisation Act.

The High Court of Zimbabwe had earlier this year ruled that GALZ is not obliged to register in terms of the Private Voluntary Organisations Act as it is not a private voluntary organisation and is specifically exempted by the Act. Citing this order, the Magistrate held that GALZ need not register under the Private Voluntary Organisation Act and the order of the High Court would be binding.

Source: <http://allafrica.com/stories/201402280900.html>  
<http://www.lgbtqnation.com/2014/02/zimbabwes-gay-community-wins-a-landmark-court-victory/>

## Irish Equality Tribunal awards trans-woman 5000 Euros compensation for being discriminated against by Allied Irish Banks

The Irish Equality Tribunal has awarded a trans woman compensation amounting to 5000 euros for being discriminated against by Allied Irish Banks. After undergoing transition surgery, the complainant had approached the Bank to inform them of her change of name. The Bank refused to change the name and gender on her cash-save account and instead asked her to close the account.

The Tribunal found that the complainant had been discriminated against on gender grounds under the Equal Status Act. Though the complainant had also stated that she was discriminated against on the disability ground since she was suffering from gender dysphoria, the Tribunal rejected it on the ground that the Bank was not aware of the same. Apart from awarding compensation, the Tribunal also directed the bank to review its policies in relation to people who change their name.

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

Source: <http://transvanilla.hu/news/transgender-woman-awarded-eur-5-000-in-gender-equality-case-against-aib>

## Bureau of Justice Statistics Report notes rise in sexual assault in US prisons and jails

In a report published by the U.S. Justice Department's Bureau of Justice Statistics, allegations of sexual victimization in prisons, jails and other adult correctional facilities have increased by 4 percent from 2010 to 2011. The report defines sexual victimization as any non-consensual sexual acts including abusive touching, threats and verbal sexual harassment.

In 2003 the U.S. Congress passed the Prison Elimination Act, 2003. The issue of prison rape has, since then, received heightened attention. The Act requires prisons and jails to keep detailed records of incidents of rape, to be published by the government annually. According to the report, women prisoners experience a disproportionate numbers of sexual assaults, though they consist of a small part of the total number of inmates and staff. The report, however, does not indicate whether the increased incidence of rapes and sexual assaults in prisons and jails are due to actual increase in numbers or because of more reporting by inmates or because of heightened awareness of the problem by prison staff.

The Report is available [here](#).

Source: <http://america.aljazeera.com/articles/2014/1/26/guards-may-be-responsibleforhalfofprisonrapes.html>

## Tunisia adopts gender equal constitution

In a progressive move, after detailed debates with the elected assembly of Islamists, leftists and liberals, Tunisia adopted its new constitution which enshrines gender equality within its text. Article 20 of the new constitution states that, 'all male and female citizens have the same rights and duties. They are equal before the law without discrimination'. This move comes after Tunisia, in 2012, unveiled a draft constitution which referred to women as '[complementary to men](#)'.

Rights groups though, have expressed certain reservations about Article 20. The Article merely prohibits non-discrimination on the ground of gender and is extended to citizens. Article 20 should specify that discrimination, direct and indirect, is prohibited on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Source: <http://www.france24.com/en/20140106-tunisia-enshrines-gender-equality-constitution-women-rights/>

<http://www.theguardian.com/world/2014/jan/27/tunisia-signs-new-constitution-progressive>

[http://www.huffingtonpost.com/2014/01/07/tunisia-gender-equality\\_n\\_4547963.html](http://www.huffingtonpost.com/2014/01/07/tunisia-gender-equality_n_4547963.html)

## Zambian Court acquits rights activist on charges of 'encouraging homosexuality'

In a refreshing move, a Zambian court acquitted prominent rights activist Paul Kasonkomona on charges of soliciting for immoral purposes after he called on live television for gay rights to be recognised. Kasonkomona was arrested in April 2013 and charged shortly after he appeared on a live television show where he openly advocated for gay rights in order to address HIV. The

magistrate held that the State had failed to prove its case. It went on to observe that public discussion is important, even on issues that otherwise might be controversial or illegal.

This ruling came a days after Uganda enacted the controversial anti same-sex sex law prescribing 14 years imprisonment for same-sex sexual relationships and life sentence for ‘aggravated homosexuality’.

Source: <http://www.bbc.com/news/world-africa-26342543>

[http://www.citypress.co.za/news/zambia-court-acquits-activist-calling-gay-rights/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=zambia-court-acquits-activist-calling-gay-rights](http://www.citypress.co.za/news/zambia-court-acquits-activist-calling-gay-rights/?utm_source=rss&utm_medium=rss&utm_campaign=zambia-court-acquits-activist-calling-gay-rights)

## Arizona’s Senate Bill 1062 permitting discrimination on LGBTI vetoed

The Governor of Arizona vetoed the Senate Bill 1062, which, if passed, would have allowed individuals and businesses to legally refuse service to anyone based on ‘religious freedom’, effectively permitting discrimination based on sexuality.

The bill, which was passed by the state legislature, came under criticism from activists, lawmakers and business interests both in Arizona and nationally. Shockingly, Arizona isn’t only state that had been pushing a bill such as this. Similar bills have been introduced into state legislatures in Tennessee, Kansas, South Dakota and Maine.

Source: [http://www.huffingtonpost.com/2014/02/26/jan-brewer-vetoes\\_n\\_4854003.html](http://www.huffingtonpost.com/2014/02/26/jan-brewer-vetoes_n_4854003.html)

## National

### Judgments/ Orders

#### Supreme Court commutes death sentence of 15 prisoners, frames guidelines to safeguard the rights of death row convicts

In a landmark judgement (*Shatrughan Chauhan & Anr vs UoI*), the Supreme Court commuted the death sentences of 15 prisoners on the grounds of delay in the disposal of their mercy petitions by the President. The Apex Court held that the fundamental right to life and liberty, guaranteed under Article 21 of the Indian Constitution inheres even in a death row convict till his last breath, and the gravity of the crime cannot be an excuse for the agonizing delay caused to the convict. The Court recognized that ‘keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death.’

With this judgement, the Supreme Court ruled as bad law a previous judgement of the court (*Devinder Pal Singh Bhullar vs State of N.C.T of Delhi*) wherein the same court, while dismissing the petition of death row convict Devinder Pal Singh Bhullar, held that prisoners convicted of terrorism-related offences could not appeal for commutation on grounds of inordinate delay.

In the present judgement, the Supreme Court also held that the execution of convicts suffering from mental illness would be unconstitutional, and commuted the execution of 2 of the 15

convicts on the same grounds. The Supreme Court also laid down guidelines for the treatment of death row convicts. The guidelines include the right of the convict to receive legal aid, be informed about the rejection of their mercy petitions in writing and have their medical and physical health regularly checked. The Court emphasized that solitary confinement of a death row convict was unconstitutional; and that the convict's family members should be allowed to meet the convict before execution, which is critical, in light of the secretive manner in which Afzal Guru was executed.

The centre has subsequently filed a review petition, arguing that the President's decision in disposing of a mercy petition is beyond judicial review.

Though the judgement is a welcome one as it establishes the importance of due process of law as well as the centrality of fundamental rights in dealing with death row prisoners, we hope that it is also a step in the direction of bringing into judicial and legislative discourse, the fundamental illegality of the death sentence in a democratic society.

You can read the judgement [here](#).

Source:[http://zeenews.india.com/news/nation/supreme-court-commutes-death-sentence-of-15-on-grounds-of-delays\\_905630.html](http://zeenews.india.com/news/nation/supreme-court-commutes-death-sentence-of-15-on-grounds-of-delays_905630.html)

<http://www.thehindu.com/news/national/presidents-decision-on-mercy-plea-beyond-review/article5740031.ece>

Oped:<http://www.livemint.com/Opinion/rSZ5NXi3SKNCZQM7jtsWeL/Supreme-Courts-judgement-on-death-penalty-a-humane-approach.html>

## Jharkhand High Court directs State Government to deploy a woman constable in every police station to respond to harassment of women

The Jharkhand High Court has directed the state government to deploy at least one woman constable in every police station in the state to deal with increasing reports of sexual harassment. Taking note of the directions of the Supreme Court in *Deputy Inspector General of Police & Anr vs S. Samuthiram* the Court urged the state government to enact legislation along the lines of the Tamil Nadu Prohibition of Eve Teasing Act, 1988 and the Delhi Prohibition of Eve Teasing Act, 1998. The Court asked the state government to take effective measures by deploying lady constables particularly near educational institutions, girl's hostels, working women's hostels, bus stands, and railway stations. The Court also issued instructions to the State Legal Services Authority to create legal awareness among the different stake holders including police officials, paralegals, volunteers, and general public regarding the latest amended provisions of the Indian Penal Code introducing offences of voyeurism and stalking among other sexual offences.

While it is encouraging to see the High Court acknowledge the gravity of sexual harassment, the euphemism 'eve teasing' only serves to misrepresent the structurally entrenched nature of sexual violence in our society as some form of mischievous and prurient teasing.

You can read the directions of the High Court [here](#).

Source:<http://ibnlive.in.com/news/deploy-women-cops-in-every-police-station-hc-tells-government/443875-3-233.html>

## Nagpur High Court orders Maharashtra government to implement protocol for medical examination in cases of sexual assault

At the concluding hearing of a 4 year old PIL (*Dr Ranjana Pardhi vs Union of India*), the Nagpur bench of the Maharashtra High Court directed the Maharashtra government to start implementing the protocol for medical examination in cases of sexual assault. The protocol, formulated by the Health Department of the Maharashtra government after an earlier order of the High Court in 2013, does away with irrelevant and degrading procedures like ‘two finger tests’, that have been described the Supreme Court as violative of the dignity of the victim. The Maharashtra protocol, while doing away with the two finger test, retains aspects such as ‘natural elasticity of the vagina and anus’.

A partial advancement, this protocol remains gender insensitive on some fronts. For one, it omits mention of psychological first aid or counselling, therefore restricting the role of health professionals to merely forensic aspects. It also does not recognize the differential nature of access to health facilities that survivors of sexual assault face depending on their caste, religion, class, sexual orientation or disabilities, and the duty of the state towards medical care. The protocol fails to provide legal guidance to health care providers, in situations where a survivor reaches a hospital for health care but is not prepared to file a police complaint. It appears to expect the health professionals to coerce survivors making a police complaint. There is also no guidance provided to health professionals on eliciting the details of sexual assault from the survivor in a sensitive manner.

Ironically, the protocol continues to rely upon genital and physical injuries especially hymeneal injuries, though the recent rape law amendments clarify that the lack of injuries is irrelevant in determining consent. Likewise, the height and weight of the victim as one of the parameters of forensic medical examination remains to assess the extent of resistance she may have put up. These shortcomings have been critiqued by Centre for Enquiry into Health and Allied Themes (CEHAT), which has been consistently advocated for the adoption of comprehensive medico legal gender sensitive protocol.

Source: <http://timesofindia.indiatimes.com/city/nagpur/Implement-new-sex-assault-exam-protocol-in-8-weeks-Bombay-high-court/articleshow/30695565.cms>

## Supreme Court safeguards the rights of prospective parents to adopt a child irrespective of religious background

The Apex Court has ruled that prospective parents have the right to adopt children according to the legally prescribed procedure irrespective of their religious background. While disposing of a writ petition filed in 2005 by social activist Shabnam Hashmi (*Shabnam Hashmi vs Union of India*) the Court held that the Juvenile Justice (Care and Protection of Children) Act, 2000, which entitles adoption by people belonging to any religion as long as they do not submit themselves to personal law ‘cannot be stultified by principles of personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a uniform Civil Code is achieved.’

However, the Court refused to declare the right of a child to be adopted and right of a parent to adopt a fundamental right under the Constitution, stating that in view of conflicting practices and beliefs such an order could not be passed.

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

Source:<http://www.tehelka.com/people-from-any-religious-background-are-free-to-adopt-child-sc/>

## Delhi High Court issues interim directions to protect people from the North East against racist attacks

A bench of the Delhi High Court which had earlier taken suo moto cognizance of media reports regarding the death of Nido Tania, a victim of a brutal racist attack, issued directions to the Centre and state governments to deal with the growing spate of racial hate crimes against people from the North East. The Court asked the Central government to consider amending the Protection of Civil Rights Act, 1995 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to prevent such hate crimes. It also asked the government to implement measures including employing more people from the North East, fast tracking of 26 pending cases of hate crimes, and increasing police presence in areas where the population of people from the North East is high. The Court also asked the Delhi Legal Services Authority to implement outreach programmes to make people from North-Eastern states aware of their legal rights and render legal aid to them.

The Court observed that ‘no native of any state of India can be allowed to, by harassing, offending and by other criminal acts, prevent people from another state to settle and carry on any business or vocation’.

While it is commendable that the Court took cognizance of the gravity of the offence of racist attacks against people from the North East, it is also important to address racism in its structural and psychological dimensions, rather than addressing only overt acts of violence. It operates in subtle ways, through operations of exclusion, alienating the ‘other’. Racism, like sexism, requires a far more comprehensive strategy for attitudinal change, along with legal and administrative reform which is necessary as well. It is also important that the logic of protection against racism should not be limited to ‘citizenship’ and ‘nationalism’, because it is necessary to address the racism that non citizens, particularly African nationals in India have to face.

Source:<http://timesofindia.indiatimes.com/city/delhi/Nido-death-Delhi-high-court-wants-new-law-to-prevent-hate-crimes/articleshow/30299657.cms?referral=PM>

## Supreme Court upholds Delhi High Court decision quashing the appointment of NCPCR member

Hearing a case challenging the Delhi High Court's judgment quashing selection of Dr. Yogesh Dube as member of National Commission for Protection of Child Rights (NCPCR) the Supreme Court stalled ongoing selection process for membership of NCPCR till guidelines for selections are notified by Union Government and public advertisements are made for calling applications against existing vacancies in NCPCR. Upholding the High Court's decision to quash the appointment of NCPCR member Yogesh Dube, the Supreme Court took serious note of the process of receiving applications and nominations from Ministers, MPs and other functionaries who have no role to play in the process of selection. With this order, the current selection process by which 5 names have been shortlisted pursuant to the Delhi High Court decision is stalled, and a fresh process has to be started after notification of guidelines and putting out advertisements for vacancies.

Earlier in 2013, the Delhi High Court quashed the appointment of Mr Yogesh Dube as a member of the NCPCR as he had no eligibility for the position. The Court had also expressed concern at the lack of any objective guidelines for selection to NCPCR, and took strong exception to how appointments to the Commission were made without adopting any ranking or an evaluation system. Despite this, the Ministry of Women and Child Development immediately shortlisted 5 new candidates for the post of member without putting out any advertisements or framing guidelines as recommended by the High Court

The opacity of the selection and appointment process however this is not restricted to the NCPCR by any means, but afflicts the appointment procedures in other commissions like the NCW and the other thematic statutory bodies, most of which do not stand the test of autonomous as set out in the Paris Principles of 1993 which provides the framework for the composition of such national human rights institutions.

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

### Bombay High Court holds that the victim's account and experience will decide the nature of touch in molestation cases

A division bench of the Bombay High Court, while hearing a petition to quash an FIR and charge sheet under charges of molestation filed against an accused, held that 'the intention of an accused in a molestation case could be gauged only after hearing the victim's version'. In the case before it, the accused had, during a scuffle with the victim, pushed her in a way 'that made her feel ashamed'.

The High Court referred to the Supreme Court decision in *Rupan Deol Bajaj vs KPS Gill* wherein the act of patting the backside of the complainant was considered molestation by the Supreme Court. With this decision, the Bombay High Court has stressed the importance and centrality of the victim's account and experience in cases of sexual violence. The history of law reform around sexual violence has been centred around getting the victim's narrative and experience to be taken more seriously and not get vitiated by irrelevant factors such as her past sexual history or her confidence in the trial room.

Source: <http://timesofindia.indiatimes.com/india/Only-girl-can-decide-nature-of-touch-HC/articleshow/31124506.cms>

### Supreme Court passes order allowing the intervention application of 4 women's organizations in the former law intern sexual harassment case

The Supreme Court accepted the impleadment petition of 4 women's groups: Vishakha Group For Women's Education And Research, Rajasthan, Women's Rehabilitation Group, Jaipur, Jagori, Delhi and Kali for Women, Delhi in the case of the former official law intern who alleged that she had been sexually harassed in 2011 by Justice Swatantra Kumar, then a sitting judge, now the Judge of the National Green Tribunal.

The four organizations were also the petitioners in the historic *Vishakha vs State of Rajasthan* case in 1992 in which the Vishakha guidelines for dealing with sexual harassment at the workplace were formulated. In the current case the four organizations moved the Supreme Court praying that the Supreme Court ensure a mechanism for the prevention and redressal of sexual harassment of women for the entire judiciary, (including Judges and Judicial officers) from the Supreme Court

downwards to the magisterial court. The Court, accepting their impleadment petition, issued notices to the Secretary General of the Supreme Court of India, the Union of India and Justice Swatantra Kumar, presently chair National Green Tribunal on their impleadment.

You can read the press note of the women's organizations [here](#).

## News

### Government allocates Rs 1000 crores for Nirbhaya fund for the safety and empowerment of women after a year of letting it lie unused

The Finance Minister in the interim budget allocated an additional Rs 1000 crore for the Nirbhaya fund for the safety and empowerment of women. The minister, announcing the non lapsable fund, also proposed to contribute another Rs 1000 crore to the fund next year.

The symbolic Nirbhaya fund, launched hastily last year after the national outrage following the gangrape of December 16, 2012, was already allocated Rs 1000 crores last year at its inception. However, a reply by the Under Secretary of the Economic Affairs Department of the Finance Ministry to a RTI application reveals that not a single Rupee from the fund has been used even after a year of creating it. However, the government claims that there are two proposed projects to track and monitor public transport, link them with police stations and improve public safety of women that will receive funding from the Nirbhaya fund. Despite the government's claims, the fact that the fund has not been used at all to implement any of these facilities and measures even after a year of its inception reveals the government's lack of commitment and initiative to ameliorate public safety of women.

Source: <http://www.thehindu.com/news/national/one-year-later-nirbhaya-fund-lies-unused/article5558716.ece>

<http://www.firstpost.com/india/nirbhaya-fund-unused-why-another-rs-1000-cr-for-it-mr-fm-1394339.html>

### HIV/AIDS Bill tabled in Rajya Sabha

The long awaited HIV/AIDS Bill has finally been tabled before the Rajya Sabha 8 years after it was first drafted, in 2006. The draft bill was drafted after nationwide consultations with various stake holders' including people affected by HIV, high risk communities, health care workers, children's organizations, women's groups, and State AIDS Control Societies. The Bill prohibits discrimination 'in any form by the State or any other person in relation to any sphere of public activity' against any person affected by HIV. It also prohibits any form of victimization as well spreading of hate and discriminatory propaganda against an affected person. It also provides for access to testing, treatment and counselling to be provided by the state to persons affected by HIV.

The Bill is now expected to go to the Parliamentary Standing Committee on Health and Family Welfare for their recommendations, after which it will be reintroduced in the Parliament to be passed.

You can access the 2006 draft bill [here](#).

Source: <http://www.livemint.com/Politics/bWfH8nmMkMCfyP6zvPJEKL/Pending-since-2006-HIVAIDS-Bill-tabled-in-Parliament.html>

## Payment denied to NREGA workers without Aadhar cards, in spite of Supreme Court's order to not make Aadhar mandatory

NREGA workers who do not have the UIDAI card have been denied the payment of wages in Khunti district in Jharkhand, according to an affidavit filed by economist Jean Dreze in the Supreme Court. According to the affidavit, while the names of the workers were entered in the list of workers to be paid, they were missing from the e-Muster Roll which is actually used for their payment.

This is despite the Supreme Court's interim order in 2013 instructing states to refrain from making the Aadhar card a mandatory requirement for receiving government benefits and services. The decision came in the wake of several schemes and benefits being made contingent upon having an Aadhar card, especially in Delhi. For government schemes meant for the economically marginalized to be made conditional on having an Aadhar card is a disturbing trend, and one that the Supreme Court needs to take notice of.

Source: <http://www.thehindu.com/todays-paper/tp-national/payment-denied-for-nrega-workers-without-uidai-cards-in-jharkhand/article5675494.ece>

## Parliament passes the Whistleblower's Protection Bill

The Rajay Sabha passed the Whistleblower's Protection Bill, two years after it was passed by the Lok Sabha. The Bill, which seeks to ensure the safety of those exposing corruption in the government was passed without any amendments. The Bill provides for confidentiality of any person making a disclosure relating to an act of corruption, misuse of power and any criminal offence committed by a public servant. The disclosure shall be made to the Central or State Vigilance Commission and the Vigilance Commission shall not disclose the identity of the complainant except to the head of the department if s/he deems it necessary

However, the Bill in its present form has been criticized for being inadequate and ambiguous. The Bill does not define what constitutes 'victimization'. The Bill also doesn't allow anonymous complaints, making it a necessary condition for the complainant to disclose his or her name to the Vigilance Commission. Such a measure might prove counter productive since it makes it difficult for people who don't want to disclose their identity at all from making complaints.

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

Source: <http://timesofindia.indiatimes.com/india/Parliament-passes-bill-to-protect-whistleblowers/articleshow/30800579.cms>

Op Ed: <http://www.firstpost.com/blogs/dont-believe-rahul-heres-why-the-whistleblower-bill-wont-matter-1400249.html>

## Department of Health Research frames guidelines for psychological support for victims of sexual violence

The Department of Health Research of the Ministry of Health and Family Welfare has drawn up guidelines for providing psychological support and counselling to victims of sexual violence. According to the guidelines, a counsellor must tell a victim what might happen in court and discuss methods by which they can handle the situation. Visualisation techniques can be employed to help the victim recover from the trauma soon after being questioned; conversations with friends and family can be used to prevent the victim from thinking about the ordeal. The new guidelines also recognize the 'secondary victimization' that victims of sexual violence have to face, due to inadequate support from family, service providers and the criminal justice system.

According to the guidelines, the counsellor/nurse/doctor should provide the victim with clear, accurate, unbiased information regarding her medical options and then, regardless of her choices, be supportive and non-judgmental of the decisions she makes. In a context where medico-forensic procedures are just part of the spectrum of violence that victims of sexual violence have to face, starting from the police station, to the family and community, and finally the trial room, such guidelines will go a long way in making the legal and medical process more victim sensitive.

Source: <http://www.thehindu.com/news/national/new-guidelines-for-psychological-support-to-molestation-victims/article5554590.ece>

## RESOURCES

### 'Laws and Son Preference in India' - UNFPA

The study published by United Nations Population Fund (UNFPA) examines whether the Indian law addresses the issue of son preference. There is also an effort to look into the absence of adequate laws in certain spheres leads to lack of recognition and perpetuation of violence and discrimination against women.

The report recommends the need for strong implementation of the law and removal of discriminatory legal provisions. There are also suggestions regarding formulation of new laws and amending the critical laws in place to improve the effectiveness of the legal system in place to remove discrimination against the girl child and women.

Source: <http://india.unfpa.org/drive/LawsandSonPreferenceinIndia.pdf>

### 'Born Equal and Free: Sexual Orientation and Gender Identity in International human Rights Law' - UNHRC

The last few months has witnessed a homophobic response from various Governments across the globe and the UN Human Rights Council has in effect come up with this report to document such forms of growing discrimination against the LGBT community. The document provides categorical evidence of systematic violence and discrimination inflicted on the LGBT community in different avenues of society, ranging from health, education, employment and others. The

UNHCR also enlists a set of recommendations addressed to the states for strengthening protection of human rights of the community.

The report points out a set of obligations of the state towards protecting the LGBT community by preventing violence and discrimination and repealing laws which criminalize homosexuality to safeguard the Right to equality of every individual as per the UN Charter.

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

### ‘Reclaiming and Redefining Rights: ICPD+20 Status of Sexual and Reproductive Health and Rights in Middle East and North Africa’- The Egyptian Initiative for Personal Rights

On February 23, 2014, the Egyptian Initiative for Personal Rights held an event to launch its new report, evaluating the progress made by a select number of countries (Egypt, Kuwait, Yemen, Palestine, Turkey and Tunisia) in the region towards fulfilling their commitments under the International Conference for Population and Development (1994) Programme of Action.

The report examines the status of women’s rights in these countries, specially focusing on maternal care, abortion, fertility and family planning and reproductive cancers. The states’ responsibility to protect sexual and reproductive rights through monitoring various areas like sexuality education, sexually transmitted infections, HIV, early marriage, human trafficking and gender based violence has also been highlighted in the study.

The report also comes up with policy recommendations for countries in the region on reproductive and sexual rights. The role of the countries in ensuring and guaranteeing access to affordable and quality sexual and reproductive health services has been highlighted in the report. The report also recommends reviewing of laws that limit access to these services.

Source: [http://eipr.org/sites/default/files/pressreleases/pdf/report\\_-\\_reclaiming\\_and\\_redefining\\_rights.pdf](http://eipr.org/sites/default/files/pressreleases/pdf/report_-_reclaiming_and_redefining_rights.pdf)

### ‘Report of the Operational Review of the Implementation of the Programme of Action of the International Conference on Population and Development and its Follow-up Beyond 2014’

The operational review of the implementation of the programme of the Action of the International Conference on Population and Development, 1994 has cautioned that sustainable progress in global health cannot be achieved without protection and inclusion of the marginalised groups – including women and girls affected by violence and lacking access to education.

The report shows significant drop in rates of maternal mortality and rise in opportunities for women and girls in jobs and education. The gains have however remained limited to the privileged sections of the society. The report emphasizes on extending the available services to the marginalized communities and also focuses on the need to end violence against women.

Source: [http://icpdbeyond2014.org/uploads/browser/files/icpd\\_global\\_review\\_report.pdf](http://icpdbeyond2014.org/uploads/browser/files/icpd_global_review_report.pdf)

## ‘Ending New Born Deaths: Ensuring every baby survives’ – Save the Children

The new report on newborn deaths claims that one half of the first day deaths around the globe could be averted if maternal health care was made accessible to all. The study also states that an additional 1.2 million babies are stillborn each year due to childbirth related complications, maternal infections and hypertension.

In this effect, Save the Children has urged world leaders to commit to the “Five Point Newborn Promise” which aims to provide trained health workers to ensure that no baby is born without proper medical help. Removal of fees for pregnancy and birth services has also been recommended in the study.

Source: <http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/ENDING-NEWBORN-DEATHS.PDF>

## ‘Engaging with Empowerment- An Intellectual and Experiential Journey’ – Srilatha Batliwala

Feminist, thinker and practitioner, Srilatha Batliwala narrates the evolution of the concept of empowerment in the last few decades. She traces this development through the lived experiences of women working for this cause.

This text also discusses education, politics, grassroot movements in context of women’s rights movements.

Source: [http://www.womenunlimited.net/catalogue/academic\\_50.htm](http://www.womenunlimited.net/catalogue/academic_50.htm)

## OBITUARIES

### Social activist and legal scholar Vasudha Dhagamwar passes away

Socio-legal activist and academician Vasudha Dhagamwar passed away in Pune on February 10, 2014 at the age of 74. She was suffering from cancer and succumbed to multiple organ failure.

Vasudha was a lawyer by training and taught at the Department of Law in Pune University before moving to Delhi. In 1985, Dhagamwar founded Delhi’s Multiple Action Research Group (MARG), an NGO that works towards socio-legal issues and engages in legal awareness, advocacy and public interest litigation activities. Vasudha became a Ashoka fellow in 1982 and continued her work for the rights of displaced people. MARG also looked into issues of land acquisition and displacement due to the Sardar Sarovar Project in Gujarat. She was also a member of the legal experts committee of the National Commission of Women and was part of the fact-finding committee set by National Commission of Women to study the Post-Godhra genocide situation in Gujarat.

Vasudha's along with other Delhi University Law Professors was a signatory to the open letter to the Supreme Court which questioned the acquittal of the rapists accused in the Mathura case, which triggered influential debates leading to the first set of reforms relating to the rape law.

## **Ilaben Pathak passes away; Gujarat loses a dedicated crusader for social justice**

Social activist Ilaben Pathak passed away on January 9, 2014 in Ahmedabad. Pathak was a founder of Ahmedabad Women Action Group (AWAG) and campaigned against dowry harassment, rape, sex selective abortion and honour crimes.

Ilaben began her career as a English Literature teacher in H.K. College of Arts in Ahmedabad and worked as a freelance journalist on women's issues. She began her activism in the early seventies against misogynist content in Gujarati plays, against sexism in popular media and textbooks. Her persistent efforts made the Government mandate for evaluating mass media content within the framework of equality and gender justice.

Through AWAG, she took up issues of living conditions of tribal migrant workers in Ahmedabad, initiating income generating activities like beadwork and other indigenous handiwork; provided support services to women victims of violence, and was an active supporter of Manipur's Irom Sharmila's agitation against the Armed Forces Special Powers Act(AFSPA).