



BI-MONTHLY LEGAL NEWS

Vol. No. 7(II) March-April 2014

Partners for Law in Development

Updates from the UN

- UN Special Rapporteur on situation of human rights reports on Republic of Iran
- Core group members of UN urge Human Rights Council to address the lack of access to contraceptive and family planning
- UN High Commissioner for Human Rights comments on Nigeria's draconian laws against the LGBT community
- UN Human Rights office criticizes Brunei's introduction of death by stoning in revised penal code

International Developments

Asia

- Philippine Supreme Court upholds historic reproductive health law
- Nepal introduces sexuality and gender diversity in their school curriculum
- Lebanon court delivers landmark judgment advancing transgender rights
- Kyrgyzstan draft law seeks to curtail LGBT rights
- Malaysian politician Anwar Ibrahim jailed for 5 years on sodomy charge
- Iraq proposes to legalize child marriage
- Brunei's revised penal code violates human rights of sexual minorities

Beyond Asia

- Civil Society files petition challenging Ugandan Anti Homosexual Act
- Egypt and UK prosecute doctors for FGM
- UK Law Society issues disturbing 'sharia-compliant' wills guidance
- Kenyan Parliament passes law allowing polygamy without prior consent from existing wife
- US SC upholds federal law prohibiting DV offenders from keeping guns
- Zimbabwean Supreme Court holds State liable for not providing rape survivor with emergency contraceptive
- Australian High Court recognises non-specific sex in landmark ruling
- Malta becomes first country in Europe to recognise gender identity in Constitution

National

Judgements/Orders

- Supreme Court recognizes 'self identified gender', declares discrimination against transgenders unconstitutional
- Supreme Court rules that a Central Government woman employee can get 2 years uninterrupted leave for child care
- Delhi Trial Court holds that the law cannot discriminate against a victim of marital sexual abuse
- Supreme Court upholds Juvenile Justice Act in response to petition challenging its validity
- Bombay Trial Court sentences gangrape accused to death under the new anti rape law
- Chhattisgarh High Court upholds draconian Special Public Security Act
- Supreme Court rules in favour of presumption of marriage in cases of long term live-in cohabitation

News

- SC/ST Prevention of Atrocities Amendment Ordinance cleared by Cabinet
- Ministry of Health and Family Welfare releases guidelines and protocols on medico legal care for survivors of sexual violence
- Department of Health Research frames guidelines for psychological support for victims of sexual violence
- Amendment to The Commission for Protection of Child Rights Rules 2006 passed
- Delhi High Court to have its first women Chief Justice
- Registration of marriage compulsory in Delhi, penalty of Rs 1000 for failure to do so
- Special Rapporteur on Violence Against Women submits report on India based on her country mission in 2013

Resources

- 'Not Gonna Take it Lying Down- Experiences of violence and discrimination as told by LBT persons in Sri Lanka': Women's Support Group
- 'Women Count: Security Council Resolution 1325': Civil Society Monitoring Report 2013
- 'Using CEDAW to Secure Women's Land and Property Rights- A practical Guide': The Global Initiative for Social, Cultural and Economic Rights
- 'Due Diligence Framework- State Accountability Framework for Eliminating Violence against Women': The Due Diligence Project

Obituaries

- Noted Lawyer and Activist Sithie Tiruchelvam passes away

Updates from the UN

UN Special Rapporteur on situation of human rights reports on the Republic of Iran

The Republic of Iran has been working towards securing protection of civil, social, cultural and economic rights of citizens. The Special Rapporteur applauds the positive steps taken but flags that currently Iran does not fully address the fundamental human rights concerns raised by the General Assembly, Human Rights Council and the Special procedures. This includes the need to address laws and practices that infringe upon rights to life, freedom of expression, association, assembly, belief and religion, education and non-discrimination.

The Government had recently detained some individuals for peacefully exercising their fundamental rights to expression and interpreting article 9 of the International Covenant on Civil and Political Rights, the Human Rights Committee recognized this incident as depriving individuals of their liberties.

Source: <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/march-2014-report-of-the-special-rapporteur/>

Core group members of UN urge Human Rights Council to address the lack of access to contraceptive and family planning

A core group of member states of UN have banded together to call on the Human Rights Council to address access to contraceptives and family planning as a human rights issue. These countries are urging all United Nations member states to ensure universal access to contraceptives and family planning in order to improve women's health and advance gender equality. In most developing countries contraception is not accessible to all and this has a lifelong impact on women and girls' education, employment, health and ability to participate as equal members of society.

Source: <http://reproductiverights.org/en/press-room/united-nations-human-rights-council-urged-to-address-lack-of-access-to-contraceptives-and>

UN High Commissioner for Human Rights comments on Nigeria's draconian laws against the LGBT community

The UN High Commissioner for Human Rights, on her mission to Nigeria, discussed the illegality of the new law known as Same Sex Marriage (Prohibition) Act. She emphasized that the law violates international law, impinges on freedom of expression and freedom of assembly, and could lead to repression against human rights defenders advocating for the rights of LGBT people. This law has also been considered to impact the public health situation in Nigeria. Medical specialists are concerned that LGBT persons will be discouraged from signing up for HIV educational programmes, prevention treatment and care services. Nigeria has a high number of HIV patients and this law will only bring a negative impact on the present scenario.

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14374&LangID=E>

UN Human Rights office criticizes Brunei's introduction of death by stoning in revised penal code

The UN Human Rights Office is deeply concerned about the introduction of death penalty through stoning in the revised penal code in Brunei. After the revision, death by stoning has been made a penalty for a broad range of offences - rape, adultery, extra-marital relations, robbery and also offences like defamation of Prophet Mohammed or insulting any verses in the Koran or Hadith.

The Human Rights Office criticized the penal code and has stated that this form of impositions contravenes International Law. According to International Law, stoning is classified as torture and inhuman punishment and has been banned under the global human rights treaties. UN studies also claim that women are more vulnerable to be sentenced to death by stoning.

Source: http://www.wunrn.com/news/2014/04_14/04_14/041414_brunei.htm

International Developments

Asia

Philippine Supreme Court upholds historic Reproductive Health Law

After more than a year of deliberation, the Philippines Supreme Court upheld the constitutionality of the country's historic Reproductive Health Law passed in 2012

The Responsible Parenthood and Reproductive Health Act is a groundbreaking law that guarantees universal and free access to nearly all modern contraceptives for all citizens, including impoverished communities, at government health centers. The law also mandates reproductive health education in government schools and recognizes a woman's right to post-abortion care as part of the right to reproductive healthcare.

The Court's ruling, however, has not been a complete victory for women's rights. It has struck down a number of provisions, thereby allowing health care providers to deny reproductive health services to patients in non-emergency situations based on the providers' personal or religious beliefs. Spousal consent is required for married women seeking reproductive health care in non life threatening situations. Also, parental consent will be required for minors seeking medical attention who have been pregnant or had a miscarriage.

Source: <http://reproductiverights.org/en/press-room/Philippine-Supreme-Court-Upholds-Historic-Reproductive-Health-Law%20>

<http://www.reuters.com/article/2014/04/08/us-philippines-contraceptives/idUSBREA370HY20140408>

Nepal introduces sexuality and gender diversity in their school curriculum

In a laudable effort, Nepal's education board has included sexuality and gender diversity as part of the school curriculum on sexual and reproductive health for Classes 6, 7 and 8. The new syllabus on the subject of 'Health and Physical Education' includes components on homosexual attraction and third gender (transgenders), among other topics related to sexual health and awareness. Also, the guidelines for instructors emphasize that these topics need to be taught in a way such that students learn to be respectful and sensitive towards transgender and homosexual communities.

Source:<http://www.gaylaxymag.com/articles/world/school-children-in-nepal-to-learn-about-sexuality-and-gender-diversity/>

Lebanon court delivers landmark judgment advancing transgender rights

A court in Lebanon made a historic ruling stating same-sex relations are not "contradicting the laws of nature" and cannot therefore be considered a crime. Judge Naji al-Dahdah cleared a transsexual woman of having a same-sex relationship with a man. The court noted that consensual homosexual relations were not against nature and could therefore not be prosecuted under Article 534 which states that sexual acts which "contradict the laws of nature" are punishable by up to a year in prison. The ruling is the latest in a string of recent triumphs for LGBT community in Lebanon. Last year the Lebanese Psychiatric Society had affirmed that homosexuality is not a mental disorder and does not need to be treated.

Source:<http://www.dailystar.com.lb/News/Lebanon-News/2014/Mar-05/249261-landmarkruling-rubbishes-anti-gay-law-in-lebanon.ashx#ixzz2vLENqyqK>

http://www.huffingtonpost.co.uk/dan-littauer/lebanon-gay-rights_b_4896786.html

Kyrgyzstan draft law seeks to curtail LGBT rights

While the Lebanese court delivered a judgment advancing transgender rights, Kyrgyzstan's national parliament published a draconian draft bill that imposes criminal sanctions for spreading information about homosexuality or LGBT issues. The bill would amend the Criminal Code, the Code of Administrative Responsibility, the Law on Peaceful Assembly, and the Law on Mass Media, and would introduce a range of criminal and administrative sanctions on those who speak or act in a way that creates a positive attitude toward non-traditional sexual orientation. The amendments have been justified as necessary 'to safeguard and protect the traditional family, human, moral, and historical values of Kyrgyz society'.

The Court's ruling comes amidst a recent global outburst of backlash against LGBT people in several countries, including Uganda, Nigeria, and Russia, which have recently passed discriminatory legislations.

Source:<http://www.hrw.org/news/2014/03/27/kyrgyzstan-withdraw-draconian-homophobic-bill>
http://www.ifex.org/kyrgyzstan/2014/04/02/homophobic_bill/

Malaysian politician Anwar Ibrahim jailed for 5 years on sodomy charge

A Malaysian court sentenced opposition leader Anwar Ibrahim to five years' jail, overturning his acquittal on a sodomy charge, ruling that the trial judge erred in rejecting DNA evidence adduced. "Carnal intercourse against the order of nature" as described in the criminal code, is punishable by 20 years in prison in Malaysia. The conviction has been described by the critics as an attempt to block the opposition's ascendancy at a time when the governing party's popularity is waning.

He was found guilty of the 2008 charge but after a long series of delays the High Court in January 2012 acquitted him after a judge found that crucial DNA evidence submitted by the prosecution may have been compromised. This was the fourth time Anwar had been charged under the 1938 sodomy law that the United Nations Human Rights Commissioner has ruled is an anachronistic colonial era law which violates right to privacy and non-discrimination.

Source: <http://www.smh.com.au/world/anwar-ibrahim-sodomy-acquittal-overturned-20140307-34cxi.html#ixzz30AFAMPWr>
http://www.nytimes.com/2014/03/08/world/asia/malaysia-opposition-leader-sentenced-in-sodomy-case.html?_r=0

Iraq proposes to legalize child marriage

Iraq's Council of Ministers has drafted a law that would legalize marital rape, as well as grant men the authority to marry girls as young as age nine. The draft law, called the Jaafari Personal Status Law was approved by the Council of Ministers in February, and now awaits its passage in the Iraqi parliament in the last days before the election. It would cover Iraq's Shia citizens and residents, a majority of the population of 36 million. It also includes clauses that would prohibit Muslim men from marrying non-Muslims, prevent women from leaving the house without the permission of their husbands, and grant automatic custody in divorce cases to fathers.

The draft law violates the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW), which Iraq ratified in 1986, by giving fewer rights to women and girls on the basis of their gender. It also violates the [Convention on Rights of the Child](#), which Iraq ratified in 1994, by legalizing child marriage, putting girls at risk of forced and early marriage and susceptible to sexual abuse, and not requiring decisions about children in divorce cases to be made in the best interests of the child.

Currently, Iraq has one of the most progressive policies on women's rights in the Middle East setting the legal age for marriage at 18 without parental approval, at 15 with guardian's approval and allows no special privileges for members of particular religious sects. However, passage of this draft law would prove to be a disastrous regression in the status of women in Iraq.

Source: <http://www.theguardian.com/world/2014/mar/20/iraq-child-marriage-bill-human-rights>
<http://www.hrw.org/news/2014/03/11/iraq-don-t-legalize-marriage-9-year-olds>

Brunei's revised penal code violates human rights of sexual minorities

In a shift to a harsh Islamic penal code, the new Brunei Penal code has introduced stoning to death as a specific method of execution for consensual same-sex conduct. Same sex activities between men are already criminalized under the Penal Code, and if found guilty, is punishable with imprisonment for a term which may extend to 10 years. In addition, the new law also penalizes adultery and extramarital sexual relations with death by stoning in contravention of international standards. Penalty by death sentence and particularly death by stoning constitutes a clear infringement of international humanitarian principles and universal human rights.

Though the government of Brunei Darussalam has delayed the law coming into effect, it is incompatible with international human rights law and standards and may encourage further violence and discrimination against women and also against people on the basis of sexual orientation and gender identity.

Source: <http://aseansogie.wordpress.com/2014/04/25/syariah-law-in-the-penal-code-of-brunei-stoning-is-inhuman-uncompassionate-and-a-gross-violation-of-human-rights/>
<http://www.soginews.com/sultans-new-penal-code/>

Beyond Asia

Civil Society files petition challenging Ugandan Anti Homosexual Act

A Constitutional court challenge of the Ugandan Anti Homosexual Act, which was introduced early this year, has been filed by an unprecedented coalition of petitioners. The coalition consists of 50 indigenous civil society organisations and individuals.

The petition argues that the Anti Homosexuality Act violates the constitutionally guaranteed right to privacy, to be free from discrimination, dignity, to be free from cruel, inhuman and degrading treatment, to the freedoms of expression, thought, assembly and association; to the presumption of innocence, and to the right to civic participation.

The new law, which was passed by both the Houses in [December last year](#), imposes harsh penalties on same-sex sexual relationships. It further criminalises '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.

The petition can be accessed [here](#)

Source: <http://www.bbc.com/news/world-africa-26532705>

<http://www.independent.co.uk/news/world/africa/uganda-antihomosexual-bill-challenged-by-activists-in-court-9185063.html>

Egypt and UK prosecute doctors for FGM

Egypt: In a historical case, a doctor in Egypt will stand trial on charges of female genital mutilation, after a 13-year-old girl died following an alleged operation in his clinic last year. Though Egypt had banned the practice of female genital mutilation in 2008, it is still widely accepted and carried out by many doctors in private.

This case was filed after a 13 year old girl died in June 2013 after an operation was carried out on her at the request of her family. Though UNICEF research suggests that in the last 10 years, support for female genital mutilation has fallen gradually, there is still a high level of support for it in areas with a lower standard of education, where proponents claim mutilation makes women less likely to commit adultery.

United Kingdom: In another landmark case, two men will face trial for the first ever female genital mutilation prosecution in the UK under the Female Genital Mutilation Act, 2003. The practice of female genital mutilation has been a criminal offence in the UK since 1985. However, because of the sensitive nature of the practice, gathering required proof to prosecute becomes a challenge. Like in most other cases of violence on children, in cases of female genital mutilation, the child victim has a close relationship with the perpetrator of the crime who usually holds significant physical and emotional power over them. With the introduction of the Act in 2003 though, the penalty for female genital mutilation has been raised to 14 years imprisonment.

Source: <http://www.theguardian.com/society/2014/mar/14/egyptian-doctor-first-prosecution-fgm-female-genital-mutilation>

<http://www.dw.de/landmark-uk-trial-against-fgm/a-17565296>

UK Law Society issues disturbing ‘sharia-compliant’ wills guidance

In a deeply disturbing development in Britain, The Law Society has issued guidance for ‘sharia-compliant’ wills, allowing solicitors to be able to write Islamic wills. Such wills may effectively deny Muslim women an equal share to inheritances and exclude divorced Muslim women altogether. This compliance could also prevent children born out of wedlock – and even those who have been adopted – from being counted as legitimate heirs.

If this guidance is allowed then Sharia principles could potentially overrule British practices in some disputes. Currently, Sharia principles are not formally addressed by or included in Britain’s laws. Though the guidance is not binding, it legitimises rules which are highly contested by many Muslims themselves and which discriminates against Muslim women, non-Muslims, and ‘illegitimate’ and adopted children. Further the guidance undermines the Equality Act, citizenship rights and the secularity of laws.

Muslims are not a monolithic bloc living under one law. The Law Society is a body that is supposed to promote and uphold best practices. It is necessary to note that in fact there is no ‘Sharia law’ since the law in itself is not codified. Sharia law is based on an interpretation of the Qur’an, Hadith and centuries of debate and thus is different in different countries. This guidance threatens the right of a Muslim person to access law in the UK. Further, what is also worrying is that such guidance may pave a way for other religious groups to demand for similar guidance as a way of disciplining believers to live within religious law.

Sign the petition asking The Law Society to withdraw the guidance by clicking [here](#).

Source: <http://www.telegraph.co.uk/news/religion/10716844/Islamic-law-is-adopted-by-British-legal-chiefs.html>

Kenyan Parliament passes law allowing polygamy without prior consent from existing wife

A new marriage bill approved by the Kenyan Parliament allows a man, married under customary law, to have as many wives as he desires without consulting the existing spouse(s). Kenyan customary law allows men to have multiple wives. In accordance with traditional practices though, the bill had initially given a wife the right to veto the husband's choice, but male members of parliament pushed through a text that dropped this clause.

By allowing men to take more wives without the consent of their current wife or wives the bill violates the country's constitution that speaks of equality in marriage. Polygamy, being customary practice in Kenya, the opposition is not to the same being codified, but the power of the present wife consenting to the next marriage, being taken away. The introduction of this law raises financial concerns in families. Multiple wives, without consent of the current wife, would lead to larger families which may economically affect the family's access to food, education, housing etc.

The Bill is now awaiting the President's approval.

Source: <http://www.bbc.com/news/world-africa-26681580>
<http://www.aljazeera.com/news/africa/2014/03/kenyan-parliament-passes-polygamy-law-201432116656522465.html>

Op-ed: <http://www.aljazeera.com/indepth/features/2014/04/polygamy-bill-allows-kenyan-men-many-wives-201443132059130919.html>

US SC upholds federal law prohibiting DV offenders from keeping guns

The Supreme Court of United States has ruled in [United States v. Castleman](#) that a federal law intended to keep guns away from domestic violence offenders can apply even if their crime was nothing more than 'offensive touching'.

The US federal law forbids anyone convicted of a 'misdemeanour crime of domestic violence', (which is defined as involving 'physical force'), from possessing a firearm. Though the definition of misdemeanour defers from State to State, the Court emphasized that domestic violence is often prosecuted under battery laws and that it takes many forms, not all of which connote 'a substantial degree of force'.

This ruling recognises the various forms of domestic violence, which is not merely limited to physical or sexual violence.

Source: <http://www.usatoday.com/story/news/nation/2014/03/26/supreme-court-guns-domestic-violence/6918457/>
<http://america.aljazeera.com/articles/2014/3/27/supreme-court-limitsgunownershipfordomesticviolenceoffenders.html>

Zimbabwean Supreme Court holds State liable for not providing rape survivor with emergency contraceptive

In a landmark ruling, the Supreme Court of Zimbabwe held that the State was liable to pay damages for failing to provide a rape survivor with emergency contraception. The judgment, being a significant victory for women's sexual and reproductive right, comes after the police failed to provide the survivor emergency contraceptive, which she sought within 72 hours of the rape, to ensure that she did not become pregnant.

The survivor, not being able to prevent the pregnancy, sought lawful termination; however, due to judicial delays she was unable to obtain necessary orders in time and eventually gave birth.

Though the Termination of Pregnancy Act provides for termination of pregnancy in cases of survivors of sexual assault, the same is not clear. This case is a stepping stone for supporters of women's sexual and reproductive right to advocate for necessary amendments.

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

Source: <http://www.southernafrialitigationcentre.org/2014/03/25/news-release-zimbabwe-supreme-court-holds-government-liable-for-failure-to-provide-woman-with-emergency-contraception-2/>

<http://allafrica.com/stories/201404100165.html?viewall=1>

Australian High Court recognises non-specific sex in landmark ruling

In a case expected to redefine the binary definitions of gender, the High Court of Australia recognised non-specific sex, i.e. individuals who identify neither as females nor males. The High Court went on to hold that individuals could register under Births, Deaths and Marriages Registration Act 1995, as non-specific sex.

This decision comes after the male to female (MTF) respondent applied for a name change and to registered as being of non-specific sex. The Registrar, though agreed as first, however later argued that it was beyond the power of the law to recognise options other than male or female. The decision was challenged in the New South Wales Court of Appeal, which overturned the finding of the Registrar. The Registrar went on to file the appeal in the High Court.

Though progressive, apprehension has been expressed about the judgment being limited only to individuals who have undergone sex reassignment surgery and are single. It could still be difficult for individuals who have not undergone surgery to formally identify as a non-specific sex.

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

Source: <http://www.abc.net.au/news/2014-04-02/high-court-recognises-gender-neutral/5361362>

<http://www.theaustralian.com.au/business/legal-affairs/neither-male-nor-female-high-court-rules-in-favour-of-norrie/story-e6frg97x-1226872155992#>

Malta becomes first country in Europe to recognise gender identity in Constitution

Malta has become the first country in Europe to include protection of gender identity in its constitution by unanimously in favour of the amendment. The parliament also introduced civil unions giving same-sex and different-sex couples nearly the same rights as married couples. Transgender persons who have changed their legal gender, through this amendment, will now be able to enter into a marriage.

Currently, a proposal for gender recognition proposal for gender recognition procedure is currently under preparation with will be modelled after the Argentinean Gender Identity Act.

Source:

http://www.maltatoday.com.mt/news/national/38027/transgender_europe_applauds_malta_for_naming_gender_identity#.U19BQIWSzcg

http://tgeu.org/Malta_Douze_Points_First_Constituion_to_include_gender_identity

National

Judgments/ Orders

Supreme Court recognizes ‘self identified gender’, declares discrimination against transgenders unconstitutional

In a landmark judgement (*NALSA vs UoI*), the Supreme Court has declared that Article 14, 15, 16, 19 and 21 of the Constitution do not exclude hijras and transgenders from its ambit, and therefore any discrimination against trans genders would be unconstitutional. The Supreme Court acknowledged the discrimination resulting from the legal regime based on the binary of male and female, determined biologically. The Court declared that a person’s gender identity ‘forms the core of one’s personal self’, and is based on self identification, and not on surgical or medical procedures.

The Court observed that the non-recognition of hijras as third gender resulted in discrimination, including in education and employment. The Court declared that transgendered persons must have the option of identifying as a ‘third gender,’ declaring also that transgender persons be considered as Other Backward Classes for the purpose of reservations in education and employment, directing the States and the Centre to devise social welfare schemes and public awareness to erase discrimination and stigma against the transgender community.

The Court acknowledged the historical and cultural presence of the ‘third gender’ in the South Asian region, and considered the decisions of Pakistan’s and Nepal’s Supreme Courts, in 2011 and 2007 respectively, affirming the constitutional rights of transgendered person.

Coming right after the judgement in *Koushal vs Naz Foundation* which re-criminalized sec 377 of the IPC (on carnal acts ‘against the order of nature’), this judgement is a welcome one, as it expands the ambit of human rights. Although a significant step forward, the judgement is perceived as not having recognised caste and class differences that stratify the ‘third gender’, and for neglecting concerns of trans men, even as it focussed on MTF/ or trans women.

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

Source: <http://in.reuters.com/article/2014/04/15/india-transgenders-idINKBN0D10A320140415>

Op:Ed:

http://roundtableindia.co.in/index.php?option=com_content&view=article&id=7377%3Abecause-we-have-a-voice-too-the-supreme-court-judgment-on-third-gender-and-its-implications&catid=120&Itemid=133

Supreme Court rules that a Central Government woman employee can get 2 years uninterrupted leave for child care

While hearing a civil appeal in *Kakali Ghosh vs Chief Secretary, Andaman and Nicobar*, the Supreme Court held that a woman employee of the central government can get uninterrupted leave for two years for childcare, which includes needs like examination and sickness.

The Supreme Court, after looking through several relevant administrative orders of the Government, held that Child Care Leave (CCL) could be availed by a woman government employee having minor children below 18 years for maximum period of 730 days i.e. during the entire service period for taking care of up to two children. The Court was of the view that care of children was not only for nurturing the smaller child but also to look after their needs like medical examination, sickness, etc.

Setting aside the impugned order of the Kolkata High Court, dated 18th September 2012, the Supreme Court stated that ‘it was not in dispute that son was minor below 18 years of age when she applied for CCL, as it was obvious from the fact that the competent authority allowed 45 days of CCL in favour of the Appellant. However, the competent authority did not show any reason for cancelling rest of the period of leave. Stating that no reason was shown by the Respondents to refuse 730 days continuous leave.’

The judgement comes as a big relief for women employees, who despite government orders and notifications, have to get embroiled in administrative battles to get their rightful share of leave to take care of their children. Even as this is a step forward in recognition of child care roles within the family, the challenge remains in expanding the ambit of care giving to include care for the sick, disabled and the elderly; and further, to go beyond a gendered framing of responsibilities, so as to accommodate care giving by men and women alike.

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

Source: <http://www.livewlaw.in/central-government-woman-employee-can-get-uninterrupted-2-years-leave-childcare-says-supreme-court/>

Delhi Trial Court holds that the law cannot discriminate against a victim of marital sexual abuse

Hearing a case of sexual abuse of a woman by her husband, a Delhi trial court has held that a victim of sexual abuse within a marriage cannot be discriminated against just because the perpetrator is her husband. The court decried the lack of any legislation that takes serious note of the rampant marital sexual abuse that women have to suffer silently, but also emphasized that

such a woman cannot be denied such state assistance as is entitled to any other victim of sexual abuse.

Under the Indian Penal Code, marital rape with a woman over the age of 15 is not recognized as an offence, despite efforts of women's rights activists for such law reform. However, the Domestic Violence Act as well as section 498A of the IPC can be invoked to prevent and punish marital abuse, including sexual abuse and rape. The judge also rebuked the police for its incompetent investigation, and not invoking Section 498A of the IPC despite there being clear allegations of harassment and mistreating by the husband, apart from the sexual abuse.

Interestingly, the husband is charged under Section 377 of the IPC, which deals with unnatural offences, and is punishable with upto 10 years in prison. Section 377, which was recently re-criminalized by the Supreme Court, although technically applicable remains highly problematic because it seeks to punish (post re-criminalisation) sex that is deemed to be 'against the order of nature', even where this is consensual, rather than sex that non-consensual.

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

Source: <http://timesofindia.indiatimes.com/india/Treat-marital-sexual-abuse-as-rape-Court/articleshow/31434943.cms>

Supreme Court upholds Juvenile Justice Act in response to petition challenging its validity

Dismissing a writ filed by Subramaniam Swamy and others asking for a reading down of the Juvenile Justice Act to allow juveniles to be prosecuted under the Indian Penal Code for 'grave and heinous offences', the Supreme Court upheld the validity of the impugned legislation. Holding that 'there is no ambiguity, much less any uncertainty, in the language used to convey what the legislature had intended. All persons below the age of 18 are put in one class/group by the Act to provide a separate scheme of investigation, trial and punishment for offences committed by them', the Court declared that if at all there had to be any reading down of the Act, it was the task of the legislature to do so.

The petition was filed pursuant to the Delhi gang rape of December 16th, 2012, wherein the worst and most heinous parts of the offence were allegedly committed by a juvenile. The Apex Court, for once, strictly interpreted a statute to serve the purpose of social welfare in general, and rights of juveniles in particular, in accordance with international child rights treaties like the Convention on the Rights of Child, which India has ratified.

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

Source: <http://barandbench.com/content/212/supreme-court-refuses-subramanian-swamy-pil-ji-act-sees-no-need-interfere-age-juvility#.U1o8pVWSyjs>

Bombay Trial Court sentences gang rape accused to death under the new anti rape law

In yet another 'high profile' case, the Shakti Mills case, where two successive cases of gang rape by the same offenders were tried simultaneously, the Bombay trial court sentenced three of the five adult accused charged of being repeat offenders, to death. After the amendments to the Indian Penal Code in 2013, Section 376 E of the newly amended Indian Penal Code provides a maximum punishment of death in cases where the accused is a repeat offender. As with other high profile cases of sexual offences in the period following the 2013 amendments, the public pressure has been for retributive justice. In the Delhi gang rape, all adult accused were sentenced to death by the trial as well as the High Court.

Even as the 2013 amendments fill a longstanding vacuum on the recognition of a range of sexual offences and of victim's rights, its emphasis on deterrence and retribution remains a human rights concern. The thrust for high sentencing structure that does away with judicial discretion in rape has the makings of a law that will serve the ends of symbolic justice rather than ensure certainty of prosecutions and higher convictions in all cases. Reports show that rapes of girls and women from Dalit and marginalised groups continue to be disregarded by the system, even as high profile cases become the focus of national attention. The shift in burden of proof on the accused for custodial as well as aggravated rape, high minimum sentences that are not subject to judicial discretion, the provision for life term for all of one's natural life, are aspects of the same retributive design, as is the death penalty. Even as we celebrate aspects of the criminal law amendments that the women's movement has fought long and hard for, it is necessary to ensure that sexual violence does not become a pretext for compromising the equally valued principles of fair trial and reformative justice that are as intrinsic to human rights as gender justice is.

Source:<http://www.ndtv.com/article/india/judge-in-mumbai-gang-rape-calls-test-on-women-archaic-500246?from=home-otherstories>

<http://timesofindia.indiatimes.com/city/mumbai/Mumbai-Shakti-Mills-rape-cases-Death-penalty-for-3-repeat-offenders/articleshow/33238680.cms>

Chhattisgarh High Court upholds draconian Special Public Security Act

The Chhattisgarh High Court dismissed a PIL filed by the PUCL challenging the validity of the Chhattisgarh Special Public Security Act (CSPSA) of 2005. The Court justified the legislation, stating that the state had the right to enact it as it fell within the ambit of 'public security'.

The PUCL, in its petition had argued that the Unlawful Activities Prevention Act of 1967 was enough to deal with insurgency in the state, and the Special Public Security Act was being misused by the state to violate human rights.

The CSPSA has already been used to persecute scores of activists and tribals who have protested against the policies of the state. Activist Binayak Sen was one of the prominent persons to be persecuted under this Act. The Act denies legal recourse to relief to the victimized persons, and provides for two to seven years of imprisonment without proof of intent or definite act to commit certain acts. There have been calls by several organizations to repeal this 'Black Act', to no avail.

Source:http://zeenews.india.com/news/chhattisgarh/chhattisgarh-hc-upholds-special-public-security-act_927571.html

Op:Ed : <http://www.pucl.org/Topics/Human-rights/2006/black-laws.html>

Supreme Court rules in favour of presumption of marriage in cases of long term live-in cohabitation

The Supreme Court has held that ‘if a man and woman are living together for a long time as husband and wife, though never married, there would be a presumption of marriage and their children could not be called to be illegitimate’. The Court was deciding on a plea against observations made by the Madras High Court on the live in relationships. The High Court had earlier observed that ‘a valid marriage does not necessarily mean that all the customary rights pertaining to the married couple are to be followed and subsequently solemnized’, while deciding a case in which the alleged marriage took place in 1994, and two children were born in 1996 and 1999 respectively.

The Supreme Court, while dismissing the plea, held that the observation of the High Court were pertinent to the case, and did not lay down an universal rule of application. The judgement of the Supreme Court adds to the body of recent jurisprudence expanding the ambit of rights and protections in de-facto relationships, termed rather narrowly ‘live-in’ relationships. Last year, the Supreme Court had framed [guidelines](#) for defining ‘live in’ relationships for the purpose of the Domestic Violence Act.

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

Source: <http://economictimes.indiatimes.com/news/politics-and-nation/children-born-out-of-a-live-in-relationship-are-not-illegitimate-says-supreme-court/articleshow/34166829.cms>

News

SC/ST Prevention of Atrocities Amendment Ordinance cleared by Cabinet

The Union Cabinet has cleared the SC/ST Prevention of Atrocities Amendment Ordinance, introduced before the Lok Sabha on December 2013. The ordinance amends certain existing categories of offences under the Act, and adds new categories of actions to be treated as offences.

Assaulting or sexual exploiting an SC or ST woman is an offence under the Act. The ordinance adds that: (a) intentionally touching an SC or ST woman in a sexual manner without her consent, or (b) using words, acts or gestures of a sexual nature, or (c) dedicating an SC or ST women as a devadasi to a temple, or any similar practice will also be considered an offence. Consent is defined as a voluntary agreement through verbal or non-verbal communication.

The ordinance also adds new offences, like garlanding with footwear, abusing by caste name in public, compelling to dispose of carcasses or performing manual scavenging, causing physical harm on allegations of witchcraft, and imposing a social or economic boycott, among others. The ordinance also provides for the setting up of ‘Exclusive Special Courts’ at the district level to try offences under the Act. The court shall be obliged to conceal the names of witnesses and take immediate action in respect of any complaint relating to harassment of a victim, informant or witness, etc.

The ordinance, however, is yet to be sent to the President for his assent.

Source:<http://www.indiatvnews.com/news/india/cabinet-clears-sc-st-prevention-of-atrocities-amendment-ordinanc-34124.html>

Op-Ed:<http://www.prsindia.org/billtrack/the-scheduled-castes-and-the-scheduled-tribes-prevention-of-atrocities-amendment-bill-2013-3045/>

Ministry of Health and Family Welfare releases guidelines and protocols on medico legal care for survivors of sexual violence

The Union Health Ministry has released a set of guidelines and protocols for more effective and sensitive medico legal care for survivors of sexual violence and better documentation of medical evidence to improve conviction in rape cases. The guidelines emphasize the role of health professionals in the medico legal process, and aims to sensitize them in dealing with persons from marginalised groups such as persons with disabilities, sex workers, LGBT persons, children, persons facing caste, class or religion based discrimination. The guidelines also bar any mention of past sexual practices through comments on size of vaginal introitus, elasticity of vagina or anus. Further, it bars comments on built/height-weight/nutrition or gait that perpetuate stereotypes about 'victims'.

The guidelines also provide for responding to cases of sexual violence against children, and psycho-social care of the victim. The guidelines also include a comprehensive proforma for the medico legal examination of victims, which incorporates informed consent, examination, treatment, documentation and follow up.

The guidelines and proforma are crucial to increase sensitivity amongst health professionals in matters of sexual violence. In most cases of rape, including high profile ones like the recent Shakti Mills gangrape, the medical professionals are cavalier in their attitude towards the victims, conducting the two finger test to determine vaginal elasticity. Dissemination of the guidelines and proforma to all health professionals in the country would be crucial to ensure any improvement in victim sensitivity amongst health professionals.

The guidelines come in the wake of several declarations by the courts, including a [judgement](#) of the Supreme Court, against the validity and the relevance of the two finger test. The trial court in the Shakti Mills case, called the two finger test 'degrading, unscientific and archaic', castigating the doctor who used this to measure vaginal laxity of the victim of gang rape.

Earlier last year, the Maharashtra government had issued a Government Resolution (GR) doing away with archaic and irrelevant practices, including the '2 finger test'.

Source: <http://epaper.indianexpress.com/c/2565695>

You can access the guidelines and the proforma [here](#).

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>

Amendment to The Commission for Protection of Child Rights Rules 2006 passed

Pursuant to the [orders](#) of the Supreme Court regarding the procedure of selection of members of the National Commission for Protection of Child Rights (NCPCR), the Ministry of Women and Child Development has carried out certain amendments in the Commission for Protection of Child Rights Rules 2006. The amendments make it clear, as per the orders of the Supreme Court, that vacancies for the post of chairperson and member of the NCPCR shall be given wide publicity through open advertisements in at least four national newspapers. It also provides for a selection committee for the final appointment of the members and the chairperson.

The amendments also include a provision by which the status of the chairperson of the Commission has been reduced to Secretary, and the remaining members reduced to Additional Secretary. The amendments are a very important step towards reducing the opacity of the selection and appointment procedure in the NCPCR, bringing it more in conformity with the Paris Principles of 1992.

You can access the notification for the amendments [here](#).

Delhi High Court to have its first woman Chief Justice

The Delhi High Court will have its first woman Chief Justice in Justice G Rohini, the senior most judge of the Andhra Pradesh High Court. She succeeds Justice NV Ramana, who has been elevated to the Supreme Court. Justice Rohini will be the tenth judge in the Delhi High Court, which has a total of 40 judges.

Her elevation to the post of Chief Justice is a welcome one, keeping in mind the under representation of women in the judiciary. In the Supreme Court, only 2 of the 29 judges are women, and in all the High Courts in India, only 52 of the 650 judges are women. Apart from her, only two of the High Courts- Jharkhand and Bombay have women Chief Justices in India.

Source: <http://www.livelaw.in/president-approves-appointment-justice-g-rohini-as-the-first-woman-chief-justice-delhi-high-court/>

Registration of marriage compulsory in Delhi, penalty of Rs 1000 for failure to do so

The Delhi (Compulsory Registration of Marriage) Order of 2014 has been stamped by the Lt. Governor of Delhi, making it mandatory for all marriages solemnized in Delhi to be registered irrespective of caste, creed and religion. The order provides for a penalty of Rs 1000 in case of non compliance. However, it will not be applicable retroactively.

Several states including Bihar, Karnataka, Andhra Pradesh, Tamil Nadu and Mizoram have legislations providing for compulsory registration of marriages. Failure to register would not render the marriage void, but it will lead to incurring a fine of up to Rs 1,000. In a context of widespread poverty and illiteracy, placing the onus of registering the marriage on pain of financial sanction does not serve the ends of justice.

Source: <http://indianexpress.com/article/cities/delhi/every-marriage-in-the-capital-must-be-registered-says-govt/>

Special Rapporteur on Violence Against Women submits report on India based on her country mission in 2013

The SR on Violence against Women, Rashida Manjoo has submitted her report on her country mission to India, from 22nd April to 1st May on 2013. In the report, the Special Rapporteur examines violence against women in the country, including root causes and consequences, and the implications of such violence on the effective exercise of human rights by women. She also discusses the State's responses and provides recommendations. The report, while acknowledging the legislative measures taken to address sexual violence against women, also highlighted the fact that 'significant gaps remain in the legislative framework as regards the failure to recognize all forms of violence against women and to adopt a holistic approach which addresses the root and structural causes of violence against women'. The report expressed concern at the deeply entrenched patriarchal social and cultural norms, and the pervasive gender stereotypes.

The report also makes several policy recommendations. It suggests that the government ratify all outstanding international human rights instruments, review the provision for death penalty in the newly amended rape laws (Sec 376 A of the IPC), and include a provision for marital rape as an offence. The report recommends that the government repeal Sec 377 of the IPC, criminalizing homosexuality. The report also recommends the repealing of the controversial Armed Forces Special Powers Act.

The report also asked the government to design and launch targeted awareness-raising campaigns at the community level on harmful customary practices, including dowry-related practices, acid attacks, so-called honour crimes and witch-hunting.

You can find the entire report [here](#).

RESOURCES

‘Not Gonna Take it Lying Down- Experiences of violence and discrimination as told by LBT persons in Sri Lanka’: Women’s Support Group

The Women’s Support Group, a women’s rights organization in Colombo, launched its qualitative study report on the violence on LBT communities in Sri Lanka on 27th of March, 2014 at the International Centre for Ethnic Studies in Colombo. The study provides a detailed narration of cases of physical violence, sexual violence, emotional violence, intimate partner violence and discrimination at work place with people from the LGBT communities. The report also provides a critique of the framework of laws that criminalises and violates the LGBT community.

Source: <http://womenandmedia.org/not-gonna-take-it-lying-down/>

‘Women Count: Security Council Resolution 1325’: Civil Society Monitoring Report 2013

Implementation of UN Security Council Resolution (UNSCR) 1325 on women, peace and security has been monitored by its member states and published in the form of a monitoring report. Extensive data and analysis has been collected throughout the monitoring process and challenges faced during the process has also been recorded. The report draws attention to the need for more resources and technical capacity in collecting information on women and security issues at the national and global levels.

The monitoring report is not only a rich source of information but is also a valuable advocacy tool that forms a critical part of ensuring accountability at the national level for the full implementation of the resolutions.

Source: <http://www.gnwp.org/>

‘Using CEDAW to Secure Women’s Land and Property Rights’: The Global Initiative for Economic, Social and Cultural Rights

This guide, released by the Global Initiative for Economic, Social and Cultural Rights is a tool to provide information for those who wish to use the Convention on the Elimination of All Forms of Discrimination against Women to secure land and property rights of women. It emphasizes that through engagement with international human rights mechanisms on these crucial issues, there are opportunities to transform lives of women, their families and communities for the better. This guide is directed at NGOs and advocates working on these specific issues. A brief overview of CEDAW has been provided and the rights contained in it (particularly those relevant to women’s secure rights to land and property), the CEDAW Committee and its functions, the role of States, and the role of NGOs and advocates has been charted out.

Source: <http://globalinitiative-escr.org/wp-content/uploads/2014/03/CEDAW-Guide.pdf>

‘Due Diligence Framework- State Accountability Framework for Eliminating Violence against Women’: The Due Diligence Project

The Due Diligence Framework offers tools for translating existing norms and standards on ending violence against women into measurable, comparable and implementable components in order to finally achieve women’s empowerment. The project brings out observations from diverse civil society organizations working in various regions and attempts to unpack the concept of due diligence to churn out the kind of information that is essential to ensure policy changes from the side of the government for elimination of violence against women.

The framework provides guiding principles in each of the “5P” areas of the due diligence principle, namely, Prevention, Protection, Prosecution, Punishment and Provision for redress. Illustrations and promising practices from around the world has also been shared.

Source:

http://www.duediligenceproject.org/Resources_files/Due%20Diligence%20Framework%20Report%20Ooi_1.pdf

OBITUARY

Noted Lawyer and Activist Sithie Tiruchelvam passes away

Sithie Subhanaya Tiruchelvam, Sri Lankan lawyer and activist, passed away on 22nd March, 2014 after a brief illness at the age of 69. She was a qualified lawyer from University of Ceylon and specialized in corporate, employment, labour, tax and regulatory law and laws governing non-profit institutions.

Beside her legal career, she served as a non-executive director of John Keells holdings and was engaged with non-profit organizations like Nadeshana Centre for Human Rights and South Asians for Human Rights. She co-founded the law firm Tiruchelvam Associates with her husband, acclaimed academician, late Neelan Tiruchelvam. Sithie Tiruchelvam was well known for being a mentor to young lawyers and activists and trained young minds in social and political issues.

The Tiruchelvams were deeply engaged with issues around the political rights of the Tamils in Sri Lanka and worked for causes of social justice and peace. After the death of her husband, Ms. Tiruchelvan had founded the Neelan Tiruchelvan Trust, a philanthropic organization to advocate human rights and social justice issues.

Ms. Tiruchelvam’s death is a loss to the legal fraternity and human Rights activism circle in Sri Lanka and the world beyond.

Source : <http://www.thehindu.com/news/international/south-asia/sri-lankan-rights-activist-sithie-tiruchelvam-passes-away/article5820092.ece>