



BI-MONTHLY LEGAL NEWS

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UPDATES FROM THE UN

United Nations General Assembly Declares Access to Clean Water and Sanitation Is a Human Right

The UN General Assembly has declared that safe and clean drinking water and sanitation is a human right essential to the full enjoyment of life and all other human rights. The General Assembly, voicing deep concern, said that almost 900 million people worldwide do not have access to clean water. This declaration is welcome as it seeks to recognize that women and children often walk long distances to secure water for agriculture, human and livestock consumption. They are also most vulnerable to water related diseases leading to loss of school days for children and affects women's health as it is the women who collect water, store it and control its use and sanitation.

Source:

<http://www.un.org/apps/news/story.asp?NewsID=35456&Cr=SANITATION&Cr1=>

INTERNATIONAL LEGAL DEVELOPMENTS

Asia

Malaysia Appoints Women Judges to Islamic Sharia Courts, but Limits Powers

As part of its sharia reform efforts, Malaysia, for the first time, has appointed women judges to its Islamic sharia courts. In addition, the government has also sanctioned a fund for women whose husbands fail to pay alimony. While the move has been welcomed by women's groups in Malaysia as a step to enhance justice in cases involving families and women's rights; yet it has also been criticized as it is piecemeal and bars the women judges from hearing cases involving marriages and divorce. According to Sisters In Islam (a Muslim women's rights group in Malaysia) women have long complained that they face discrimination in cases involving divorce, child custody rights, inheritance, polygamy and other disputes in Islamic courts, which handle matters involving family and morality for Malaysian Muslims. According to the group, a bigger concern for women's rights campaigners is the growing conservatism among Muslims which is being reflected in calls to increase the application of strict Islamic criminal laws including against women.

Source: <http://www.bbc.co.uk/news/10567857>

<http://in.reuters.com/assets/print?aid=INIndia-50614420100804>

Bangladesh High Court Rules That Women Cannot Be Forced To Wear Burqa

The High Court has ruled that no women can be forced to wear burqa or religious dress at work and educational institutions. The court also ordered the government to ensure that the cultural activities and sports in the educational institutions are not restricted for girls by forcing them to wear a burqa. The orders came in the wake of a public interest petition filed by a group of lawyers in the Supreme Court against a principal of a college in Northern Bangladesh, who had stopped cultural activities and sports at the college and forced female students to wear burqa in the college. The court also asked the government to explain why

imposition of restriction on cultural activities and sports in the educational institutions and offices and forcing the female students to wear veil should not be declared illegal.

Source: <http://newsfrombangladesh.net/view.php?hidRecord=332264>

Pakistan Couple Faces Death By Stoning After Conviction For Adultery By Tribal *Jirga* Court

A couple has been sentenced to be stoned to death for alleged adultery by a tribal court in north-west Pakistan. The woman was held hostage and the sentence was to be carried out as soon as the man was found. Human rights campaigners have appealed against this punishment. This is not the first instance of extra judicial punishments by local tribal councils against women on the charge of adultery.

The *jirga* in the ethnic Pashtun society of north-west Pakistan, and also Afghanistan, is a traditional form of arbitrating disputes and dispensing justice. *Jirgas* which comprise of only males cover everything from property disputes to murder charges.

Source: <http://www.guardian.co.uk/world/2010/jul/18/couple-sentenced-pakistan>
<http://www.awid.org/Issues-and-Analysis/Library/Pakistani-couple-face-death-by-stoning-threat-after-conviction-for-adultery>

High Court of Bangladesh Asks the Government To explain Discriminatory Visa Clause

The High Court Division of the Supreme Court of Bangladesh on 26th August 2010 issued a Rule on the Government asking it why a Home Ministry Circular which only allowed a 'No Visa Required' stamp to be endorsed on the passports of 'foreign national wives and children' of Bangladeshi nationals, but not on those of foreign national 'husbands' should not be declared gender discriminatory and unconstitutional. The petitioner, a Bangladeshi/Australian dual national married to a US national, had challenged the Circular dated 19 Aug 2007 as being in violation of her fundamental rights to gender equality and to life, including family life, referring to the Constitution and to the State's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women.

Beyond Asia

Argentina Approves Gay Marriage

Argentina has become the first country in Latin America to legalise same sex marriages. The new law will give gay couples the same marital, adoption and inheritance rights as heterosexual couples. While the law in general has been criticised by some sections as being motivated by political gains, yet it is a positive step in confronting the conservative voice in a country where the Church has a strong and visible presence.

Source: <http://www.bbc.co.uk/news/10630683>
<http://www.reuters.com/article/idUSTRE66E1IH20100715>
http://www.nytimes.com/2010/07/16/world/americas/16argentina.html?_r=1&pagewanted=print

Supreme Court of Mexico Upholds Adoption by Same Sex Couples

The Supreme Court in Mexico upheld an order by a city court allowing same sex couples to adopt children. While overruling the argument that adoption of children by same sex couples would fail to protect adoptive children against possible ill effects or discrimination, or to guarantee their rights to a traditional family, the court said it would be discriminatory to consider gay couples less capable of parental duties than heterosexual couples. The Supreme Court magistrate, who wrote up the ruling, said that refusing homosexuals the possibility to marry and adopt children “would be to constitutionalise discrimination, whatever the kind or origin, ignoring the existence of families with same-sex parents, or pretending they don't exist.” This is the second progressive judgement in a month by the judiciary. In an earlier judgement the court approved the law on same sex marriages passed by the Mexico City legislative assembly as constitutional and ordered its enforcement in all of Mexico's thirty one states. This law has been criticised by the Roman Catholic Church.

Source: <http://gbmnews.com/wp/?p=1230>

<http://www.ipsnews.net/news.asp?idnews=52509>

<http://www.awid.org/eng/Issues-and-Analysis/Mexico-supreme-court-upholds-gay-adoptions>

Kenya's New Constitution Promotes Gender Equality

Kenya has adopted a new constitution that provides for elimination of gender discrimination in law, customs and practices related to land and property rights, marital rights, right to political participation and gender budgeting and bans female genital mutilation. The new constitution guarantees and protects women's rights to matrimonial property both during the marriage and upon divorce. Under Kenya's previous law, inheritance was governed by customary law, often preventing women from inheriting property from their parents or laying claim to joint assets when their husbands' died. The constitution also provides that all marriages shall be registered meaning thereby that even customary law marriages will be certified, protecting women's interests in disputes between a widow and her in-laws over property and other matters. Further, besides reserving one third of elected and appointed posts in public office for women; the constitution has made it mandatory to allocate 15 per cent of the national budget at the local level which would benefit women who form a majority of the informal sector. Finally, the new constitution provides for protection and enforcement of all rights in courts, the National Human Rights and Equality Commission and guarantees full legal aid for the same.

Source: <http://www.ipsnews.net/news.asp?idnews=52411>

<http://www.nytimes.com/2010/08/06/world/africa/06kenya.html>

NATIONAL

Judgements/Orders

Supreme Court asks Parliament to Value the Services of Homemakers

Holding that the valuation of the income of homemaker as one-third of the income of the earning spouse is not rational while computing compensation in cases of motor accident claims, the Supreme Court has asked Parliament to revisit the provisions to value the services of homemakers. The judgment pointed out that despite India being a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), no law had been made for proper evaluation of the household work by women as homemakers. The judges said that the services of a woman in a household are very important and monetary value could be fixed by quantifying various jobs such as cooking and taking care of children.

Source: <http://www.hindu.com/2010/07/24/stories/2010072462571500.htm>

Supreme Court holds that Living-In is Akin to Marriage

Days after the Delhi High Court held that a partner could 'walk in and walk out' of a live-in relationship, the Supreme Court has ruled to the contrary. The Supreme Court held that live-in-relationship if continued for a long time, cannot be termed in as 'walk in and walk out' relationship; instead, there is a presumption of marriage. The court dismissed an appeal which had sought to reverse the Allahabad High Court judgment permitting the authorities to include the names of four children, born out of the live-in relationship, as legal heirs to the legacy of the petitioners' father. After perusing the records and concurrent findings by the district authorities, the bench held the petitioners' father lived with his live-in partner till his death. Their relationship had been accepted by the society and also by their family members.

Source: <http://www.hindustantimes.com/SC-snubs-HC-says-living-in-akin-to-marriage/Article1-587751.aspx>

Supreme Court Directs Government to Make Section 498A Cases Compoundable

To reduce pendency and delays of cases in courts, the Supreme Court has asked the Centre and the Law Commission to examine the question of making certain offences in the Indian Penal Code, including 498A (cruelty to a wife) and section 326 (causing grievous hurt), subject to settlement through payment of fine by accused.

Source: http://www.expressindia.com/story_print.php?storyId=656529

Delhi High Court Rules that Marriages between Minors is Valid

The Delhi High Court held in *Jitender Kumar Sharma vs. State* that marriages between minors are valid but can be annulled on a plea made by either one of the partners. The judgment held that under the Prohibition of Child Marriage Act a marriage involving minors is not invalid, but void if a plea is made by the minor partner.

Source:

<http://timesofindia.indiatimes.com/articleshow/6294214.cms?prtpage=1#ixzz0wk5vWS6Y>
<http://timesofindia.indiatimes.com/articleshow/6294214.cms?prtpage=1>

Delhi High Court Makes it Tough to go back on Mediation

Noting a spurt in cases where parties approach courts asking for compromise deeds to be quashed, claiming they were made 'under duress', the Delhi HC observed that a complaint of coercion must be stringently tested before a compromise deed is set aside. According to the court, approaching the court after drawing the benefits of an agreement meant pushing the other party, who chose to comply with the terms, to a state of utmost disadvantage. Hence, equity must prevail in such cases so that no injustice is done. The retraction often comes after one of the parties has already availed the benefits of the compromise deed.

Source: http://www.expressindia.com/story_print.php?storyId=656184

Delhi HC Relaxes Rules of Attendance for Pregnant Students

The Delhi High Court admitted the petitions of two students from Delhi Law Faculty seeking relaxation of attendance requirements as they were both pregnant. The court suggested that Delhi University and Bar Council of India frame rules allowing relaxation of attendance norms for students missing classes due to pregnancy. Further, the court observed that pregnancies of single women should also be treated sympathetically by educational institutions as far as attendance is concerned.

Source:

<http://timesofindia.indiatimes.com/articleshow/6165065.cms?prtpage=1#ixzz0wIDzGEv9>

Chennai High Court holds that a Wife can initiate proceedings under the HMA in the District Court within whose Jurisdiction she is Residing Irrespective of Citizenship or Domicile of the Opposite Party

The Chennai High Court held the family court in India had jurisdiction to try matrimonial litigation even if the husband is a citizen of a foreign country or not an ordinary resident of India in *R. Sridharan vs. The Presiding Officer, Principal Family Court and Another*. The court pointed out that the Hindu Marriage Act applies to all Hindus domiciled in the territory to which the Act extends. Section 19 was amended in 2003 to give a right to the wife to present the petition to the District Court within whose jurisdiction she is residing, and the domicile or citizenship of the opposite party is immaterial in such cases.

Source:

<http://timesofindia.indiatimes.com/articleshow/6161034.cms?prtpage=1#ixzz0wIEC9NLU>

Guardianship and Adoption become Gender Neutral

Parliament unanimously passed The Personal Laws (Amendment) Bill, 2010 which paves the way for making guardianship and adoption gender neutral in all major religions practiced in the country. It will become a law after the President signs the Bill. Under the changes made in the Guardians and Wards Act, the mother will now be appointed as a guardian along with father. Till now, only the father was considered a guardian.

Source: <http://www.hindustantimes.com/Gender-no-bar-for-adoption/H1-Article1-590044.aspx>

Human rights defenders arrested on false charges in Tamil Nadu after enquiring about a torture case

A group of five human rights defenders, including three women, were arrested on false charges in the on 15th August in Veeravanallur Police Station, Tirunelveli district, Tamil Nadu. The group had gone to the police station as part of a fact-finding mission enquiring about the torture case of Dalit youth involving the serving Sub-Inspector of the same police station. The group was arrested illegally without any information. The arrest was in violation of many of the procedural safeguards provided by the Constitution, the code of criminal procedure and the Supreme Court's DK Basu guidelines. One of the most glaring procedural irregularities is the violation of section 46 (4) of the criminal procedure code, which prohibits the arrest of any woman after sunset and before sunrise except in 'exceptional circumstances'. The group was taking part in a training programme on Dalit human rights monitoring. The programme was organized by the Institute of Human Rights Education of People's Watch for the Dalit Foundation, an organization working towards the eradication of caste-based discrimination and atrocities. The arrests are a clear form of harassment against the legitimate work of human rights defenders in seeking to improve their capacity to conduct their work of documenting alleged violations and trying to protect the rights of victims.

For details of the case and other documents

see http://www.pwtn.org/dailt_trainees_arrested.html

http://www.wghr.org/pdf/PR%2017.08.10_final.pdf

http://www.forum-asia.org/index.php?option=com_content&task=view&id=2618&Itemid=32

RESOURCES

Rights in Intimate Relationships: PLD

The resource book 'Rights in Intimate Relationships' seeks to understand rights in intimate relationships within a framework that recognizes rights for all women regardless of their sexuality, marital status, or legality of relationship. In proposing a framework based on 'intimate relationships' it moves beyond the boundaries of the exclusivist, marriage centric framework of conjugality in the law.

Negotiating Gender Justice, Contesting Discrimination: Mapping Strategies that Intersect Culture, Women and Human Rights: PLD

This report is an outcome of field work by PLD to understand and map the diverse strategies adopted by community groups in Bangladesh, India, Indonesia and Nepal to negotiate women's rights in the context of culture. It looks at secular strategies along with the more recent use of cultural identity and religious/ cultural resources to contest not just sex discrimination, but also the orthodox, elite, male monopoly of cultural leadership. The report provides a rich account of community and advocacy initiatives that engage with culture and their relationship with human rights to give content to the term cultural diversity, and feed into the newly developed special procedure within the UN system on Cultural Rights.

KANDHAMAL: The Law Must Change its Course: MARG

The report draws on MARG's survey and focuses on the implications of ground level realities for state responsibility and accountability in the context of the communal violence in Kandhamal in 2007.

Addressing Domestic Violence through the Law- A Guide to the Protection of Women from Domestic Violence Act, 2005: MARG

The resource book draws upon the existing literature and experience of survivors and lawyers with PWDVA. It draws upon the annual Monitoring and Evaluation reports prepared by Lawyers Collective Women's Rights Initiative.

Makeshift Migrants and Law: Gender, Belonging and Postcolonial Anxieties: Ratna Kapur

Makeshift Migrants and Law (Routledge) exposes how the migrant subject is assembled or dismantled in law in a postcolonial context. It exposes the deeper issues implicated in debates over migration and the rights claims of migrants.

The Advocate, a film on KG Kannabiran by Deepa Dhanraj

The film 'The Advocate' by Deepa Dhanraj on the life and work of KG Kannabiran is now available on the website of the Magic Lantern Foundation <http://www.ucfilms.in>

EVENTS

Consultation on Irretrievable Breakdown of Marriage: Majlis and the National Commission for Women

Majlis and the National Commission for Women organised a meeting, to discuss the impact of the proposed Bill on irretrievable breakdown of marriages that has been cleared by the Cabinet. The Bill introduces one sided divorce in the Hindu Marriage Act and the Special Marriage Act, and thereby relieves the spouse seeking divorce from having to prove any matrimonial fault against the other in order to get a divorce. At the national meeting, women's rights activists from diverse sectors agreed that irretrievable breakdown of marriage should not be introduced in marriage statutes unless economic security for women is built into the provisions.

National Commission for Women Consultation on Child Marriage Laws

Following the Delhi High Court decision in *Jitender Kumar Sharma vs. State* where the marriage of a minor girl was upheld, the National Commission for Women convened a consultation on whether a marriage contracted by a boy with a girl of less than 18 years can be said to be valid. NCW organized this consultation on 27 August 2010.

National Consultation on Empowering Women Migrant Workers in the India: UNIFEM SARO

UNIFEM, SARO held a National Consultation on 'Empowering Women Migrant Workers in the India' on 20th August 2010. The UNIFEM programme on "Empowering Women Migrant Workers in Asia & Arab States" is focused on women migrant workers especially, in the vulnerable sectors like domestic and other informal sector work, in a framework of protecting

and empowering women migrant workers from a gender sensitive rights based development perspective.

Saheli celebrates 29 years

Saheli celebrated 29 years on August 7, 2010. The programme (Bytes on paper, Bytes on Web) was inaugurated by Uma Chakravarti and Urvashi Bhutalia and was followed by a discussion on the challenges of archiving women's histories.

Protesters Against Khairlanji judgment detained on 9th August 2010

Nine women protesters, protesting against the decision of the Nagpur Bench of the Bombay High Court, failing to recognise the Khairlanji violence as a caste based atrocity, were detained by the police at Churchgate station. The police displayed highhanded behaviour and refused to explain the reason for their detention. The women were released in the evening. The High Court Bench's summary rejection of the applicable provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the case of *Central Bureau of Investigation v Sakru Mahagu Binjewar & Ors* where mobs of upper caste men lynched a lower caste family has prompted protests from Dalit groups.

Launch of the ANNI (Asian Network of NGOs working with NHRIs) Report 2010: Working Group on Human Rights (WGHR) and All India Network of Individuals and Organisations

Working Group on Human Rights (WGHR) and All India Network of Individuals and Organisations launched the (Asian Network of NGOs working with NHRIs) Report 2010 on Thursday 26th August at 3 pm at IIC. The ANNI Report 2010 examines the performance of national human rights institutions in fifteen Asian countries, including India.

The report is available at: http://forum-asia.org/2010/ANNI2010_TEXTONLY.pdf

ANNOUNCEMENTS/FORTHCOMING EVENTS

World's First Community Radio on Mobile Phones: CGnet Swara becomes toll free

CGNet Swara is a new audio-based citizen journalism service in Chhattisgarh, India. Citizen journalists can call a phone number to record news, and listeners can call in to hear news recorded by citizens around them. CGnet Swara is a discussion forum for people who do not have a computer and internet access, but have mobile phone. Recently CGnet Swara became toll free and if one leaves a missed call at 080 4113 7280, the call will be returned and the person can listen to messages left by others and also record his or her own messages.

Demand by Women's Groups for Appeal in Rape Judgment delivered by the Bombay High Court

In the case of *Hanuman vs. State of Mahartashtra* (C.A 368/2007), the victim is a married woman and works in the factory of Ultratech Cement. On 26th of July 2006 a woman worker was assaulted and raped near the urinal in her factory. The accused assaulted her and broke her teeth, and then put a cloth in her mouth and raped her. While the trial court convicted the accused and sentenced him to rigorous imprisonment for 7 years, the Nagpur Bench on 25th February 2009 in Criminal Appeal No. 368 of 2007 reversed this decision on the ground that

complete ejaculation had not taken place, and therefore the assault did not amount to 'complete intercourse'.

South Asia Plus Consultation on Culture, Women and Human Rights (2-3 September 2010): PLD

PLD with local support from WOREC is organising a South Asia Plus Consultation on Culture, Women and Human Rights in Dhulikhel, Nepal. The consultation aims to consolidate the concerns that have emerged through PLD's field work, and help develop a bottom up understanding of cultural rights (to shape the newly created mandate of the Independent Expert in the field of Cultural Rights). It seeks to provide a forum to the SRVAW to continue the mandate's engagement with the theme of women and culture.