

BI-MONTHLY LEGAL NEWS

Vol. 4 (III) May - June 2011



Partners for Law in Development

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Updates from UN

HRC adopts resolution on human rights violations based on sexual orientation and gender identity

The United Nations Human Rights Council has passed a resolution on human rights violations based on sexual orientation and gender identity. The resolution is groundbreaking as it is the first UN resolution ever to bring specific focus to human rights violations based on sexual orientation and gender identity, and follows a joint statement on these issues delivered at the March session of the Council. It affirms the universality of human rights, and notes concern about acts of violence and discrimination based on sexual orientation and gender identity. The resolution requests the High Commissioner for Human Rights to prepare a study on violence and discrimination on the basis of sexual orientation and gender identity, and calls for a panel discussion to be held at the HRC to discuss the findings of the study in a constructive and transparent manner, and to consider appropriate follow-up.

The resolution has been welcomed by civil society as also being a step towards recognising, protecting and supporting human rights defenders working on these issues. The resolution was presented by South Africa along with Brazil and 39 additional co-sponsors from all regions of the world, was passed by a vote of 23 in favour, 19 against, and 3 abstentions.

Source: <http://www.un.org/apps/news/story.asp?NewsID=38762&Cr=prejudice&Cr1>

<http://transaktivists.org/news/>

The text of the resolution is available at: <http://ishr.us1.list-manage.com/track/click?u=97549cf8cb507607389fe76eb&id=ab686595ce&e=02bfad686a>

ILO adopts Convention on Domestic Workers

At its 100th annual conference, the International Labour Organization (ILO) adopted a historic Convention on Domestic Workers which laid down a set of international standards aimed at improving the working conditions of domestic workers worldwide. Among other rights the new ILO standards emphasise on certain basic labour rights for domestic workers who care for families and households like reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on in-kind payment, clear information on terms and conditions of employment, as well as respect for fundamental principles and rights at work including freedom of association and the right to collective bargaining. The Convention defines domestic work as work performed in or for a household or households. While the new instruments cover all domestic workers, they provide for special measures to protect those workers who, because of their young age or nationality or live-in status, may be exposed to additional risks relative to their peers, among others. According to ILO proceedings, the new Convention will come into force after two countries have ratified it.

The adoption of the new standards is the result of a decision taken in March 2008 by the ILO Governing Body to place the elaboration of an instrument on the agenda of the Conference. In 2010, the Conference held its first discussion and decided to proceed with the drafting of a Convention supplemented by a Recommendation adopted today. India voted to back the adoption of this Convention.

Source

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_157836.pdf

http://articles.timesofindia.indiatimes.com/2011-06-17/india/29669269_1 Domestic-workers-india-votes-labour-rights

UN Human Rights Council elects its first woman President

The United Nations Human Rights Council has elected Laura Dupuy Lasserre, from Uruguay as its first ever women President. In her acceptance speech she stated that: “*My personal commitment to this cause, apart from deriving from shared national values where democracy and social justice go hand in hand, also involves having seen from very close by the injustices of the dictatorship. These directly affected my family. My father was a political prisoner and tortured, like many other victims who I wish to honour today.*”

Source:<http://www.unmultimedia.org/radio/english/2011/06/un-human-rights-council-elects-its-first-woman-president/>

International Developments

Asia

Pakistan approves Acid Control and Acid Crime Prevention Bill 2010

The National Assembly of Pakistan has unanimously approved the Acid Control and Acid Crime Prevention Bill 2010. The Bill was introduced last year by Members of National Assembly Marvi Memon, Begum Shahnaz Sheikh and Advocate Anusha Rehman to prevent growing incidents of violence against women. Offenders will now be punished with life or up to 14 years imprisonment and will have to pay rupees one million to the victim.

The crime has been defined as “whosoever with intention or knowingly causes or attempts to cause hurt by means of a corrosive substance or any substance which is deleterious to human body when it is swallowed, inhaled, come in contact or received into human body or otherwise shall be said to cause hurt by corrosive substance.”

Source:<http://tribune.com.pk/story/165678/national-assembly-unanimously-approves-bill-to-control-acid-crimes/>

Supreme Court rejects appeal of Muhammad Yunus over removal from Bank

The Bangladesh Supreme Court rejected an appeal by Muhammad Yunus against an order of the Central Bank of Bangladesh dismissing him as Managing Director of the Grameen Bank. The Bangladesh Central Bank had removed Prof Yunus from his post last March, saying his continuing role at Grameen Bank violated laws that state public servants must retire at the age of 60. The decision has been criticised on the ground that the independence and integrity of one of the world’s premier poverty-fighting institutions is now at grave risk. Grameen Bank, an institution that took 35 years to build, and has more than 8 million micro credit borrowers, could

be destroyed in a matter of months by incompetent government action. The sacking of Mr Yunus has sparked criticism from some of the country's foreign donors, particularly the US.

Source: <http://www.bbc.co.uk/news/world-south-asia-13384338>
<http://www.sunday-guardian.com/analysis/a-nasty-piece-of-work>

First Female Chief Justice of Sri Lanka Sworn In

Sri Lanka's first female Chief Justice, Dr. Shirani Bandaranayake took her oath in May 2011. Dr. Bandaranayake, who had served as the Acting Chief Justice on several occasions, was appointed as a Supreme Court Judge in 1996 when she was an Associate Professor of Law and the Dean of the Faculty of Law at the University of Colombo.

Source: http://www.colombopage.com/archive_11/May18_1305699545CH.php

Civil Society appeals to the Chief Justice of Pakistan in the Mukhtaran Mai case

Concerned citizens of Pakistan have appealed to the Chief Justice of Pakistan to constitute a larger Bench of the Supreme Court to hear the Review Petition in the case of Mukhtaran Mai. In this case, the Supreme Court of Pakistan convicted only one out of the four accused in the gang rape of Mukhtaran Mai. The appeal states that the judgement will set a negative precedent at law and will have a highly detrimental influence on the way crimes of sexual violence against women are perceived by the police, judiciary and the legal profession. Apprehension was expressed that, in future this judgment will serve as a powerful deterrent to women victims and survivors of such violent crimes, preventing them from reporting such crimes to the police and from recourse to legal action.

A copy of the appeal is available with PLD.

The first ASEAN Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People's Caucus calls on States to guarantee protection and rights to LGBTIQ

From May 2 to May 5, 2011 lesbian, gay, bisexual, transgenders, intersex and queer (LGBTIQ) activists and groups representing 8 out of ten Southeast Asian countries came together in a historic assembly for the ASEAN People's Forum to call on the States to take active steps towards the recognition, promotion, and protection of LGBTIQ rights.

The forum demanded that laws which criminalise a community based on sexual orientation and gender identity (SOGI) be repealed; recognize LGBTIQ rights as human rights; harmonize national laws and create national level mechanisms policies and practices with the Yogyakarta Principles. Secondly, the forum demanded depathologization of SOGI and promotion of psychosocial well being of people of diverse SOGI in accordance with the World Health Organization (WHO) standards, and ensure equal access to health and social services.

Source: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/1381.html>

Beyond Asia

Egypt guarantees citizenship rights to children of Egyptian women married to Palestinians

In what can be considered a milestone for women's rights in Egypt, the Ministries of Interior and Foreign Affairs through decree 1231 have allowed Egyptian women married to Palestinian men to transmit their nationality to their children. This development comes in the background of the reform of the nationality law in 2004, which excluded Egyptian women married to Palestinian men who thus had to resort to the courts.

The new decree came in response to the protests of Egyptian women married to Palestinian men after the recent revolution in Egypt. They highlighted the plight of their families, including the fact that they are denied access to basic rights such as education, work, and travel just because the children had Palestinian fathers. Additionally, women brought to light the often prohibitive cost of undertaking legal action.

Source: Statement courtesy of WLP Lebanon/Collective for Research
www.learningpartnership.org

U.S Immigration Judge acknowledges connection between FGM and other threats to women's life and freedom

In a significant decision issued, an immigration judge reversed himself in an asylum case and granted protection to a young woman who had suffered female genital mutilation (FGM) and feared further persecution if she were returned to Mali. The decision reflects a critical course-correction from earlier decisions by both the judge and the Board of Immigration Appeals (BIA) (the nation's highest immigration court) that held asylum claims by women who have suffered FGM to a higher legal standard than claims by other asylum applicants. The woman a citizen of Mali was a victim of FGM in childhood and sought asylum and protection in United States fearing forced marriage by her father with her cousin and subsequent abuse at the hands of both if she would resisted.

The judge originally while dismissing her appeal denied her protection in 2005, and in a 2007 opinion, the BIA had initially agreed with that decision, reasoning that the women was unable to prove that she would face future persecution upon return to Mali because FGM is a "one-time" occurrence that cannot be repeated.

Source: <http://www.tahirih.org/2011/04/matter-of-a-t/>

New York legalises gay marriages

The State of New York has adopted a Bill legalizing same sex marriages in the State. This entitles the same sex couples to the right of inheritance, employer health benefits and state tax benefits etc. New York has become the sixth state to allow same-sex marriages. Currently, Massachusetts, Connecticut, Iowa, Vermont and New Hampshire and the District of Columbia grant same-sex marriage licenses.

The move has been criticized by Catholic groups as undermining both the institutions of marriage and family. New York gave birth to the gay rights movement in the 1960s, and thus its legalisation is a historic development and has been welcomed by civil rights groups. At the same time this step necessitates that the benefits and rights could only accrue to a couple only if they were married. A section of the civil society groups have demanded that New York City has a domestic partnership law that allows both same-sex and different-sex couples to register as ‘domestic partners’ (as many couples do not marry by choice) and all those who are in such partnerships be entitled to the same rights as ‘married couples’.

Source: <http://edition.cnn.com/2011/POLITICS/06/25/new.york.gay.marriage/>
http://www.nytimes.com/2011/06/24/opinion/24franke.html?_r=2

Canadian Supreme Court rules there is no Consent in Unconscious Sex

The Supreme Court of Canada in the case of R vs. J.A ruled that consent to sexual intercourse ends when someone is unconscious or asleep. The case involved an episode of consensual erotic asphyxiation; however the woman filed a complaint two months later following a dispute with her partner over child custody. The majority held that ‘when the complainant loses consciousness, she loses the ability to either oppose or consent to the sexual activity that occurs. Finding that such a person is consenting would effectively negate the right of the complainant to change her mind at any point in the sexual encounter.’ This decision has been criticised for depriving the right to exercise choice in sexual adventures – and also for criminalising sexual acts such as caressing a sleeping partner.

Source:

<http://www.vancouversun.com/news/Opinion+Ruling+sexual+consent+troubling+implications/4898763/story.html>, <http://www.cbc.ca/news/canada/story/2011/05/27/pol-scoc-sex-consent.html?ref=rss>

Full text of the judgement is available at

<http://scc.lexum.org/en/2011/2011scc28/2011scc28.html>

National

Legal Developments

Supreme Court seeks clarification of government stand on AFSPA

The Supreme Court has asked the government to spell out its position on the Armed Forces Special Powers Act. The apex court made the remarks after the senior counsel appearing for the Centre, voiced divergent views on two separate encounter killings involving military personnel in Jammu and Kashmir and Assam. In the 2004 Chattisingpora killing in Jammu and Kashmir, where seven youth were killed in an alleged fake encounter by Rashtriya Rifles personnel, the counsel sought prosecution of the army men whereas in a similar alleged fake encounter by CRPF men in Assam, the counsel said they enjoyed immunity. The court asked the government to clearly spell out its stand on two issues: (a) whether army and paramilitary personnel enjoy immunity from criminal prosecution for any penal offence committed in discharge of their

official duties including fake encounters and rapes vis-a-vis AFSPA, Section 197 Cr.P.C and Section 17 of the CRPF Act; and (b) should the investigating agency like CBI conduct a preliminary inquiry into such killings before registering an FIR against accused army and paramilitary personnel.

Source: <http://www.thehindu.com/news/national/article2110019.ece>

Delhi Additional District Judge allows triple talaq through an agent

A Delhi ADJ dismissed an appeal against a family court order moved by a Muslim woman demanding that the talaqnama issued by her husband, who engaged the services of an Arabic-conversant agent to pronounce talaq on his behalf, be declared ‘null and void.’ The man appointed an agent to pronounce divorce on his behalf as he could not utter the words in Arabic. The court said that Shia Muslim personal law allows a man to obtain talaq under these circumstances. The woman is seeking assistance of women’s groups for appealing against this judgment.

Source: http://articles.timesofindia.indiatimes.com/2011-05-09/delhi/29524688_1_talaq-divorce-sessions-court

Award death penalty for honour killings: SC

In the case of *Bhagwan Das vs. State of Delhi*, involving the murder by a father of his daughter who left her husband in order to have an incestuous relationship with her uncle - the Supreme Court observed that honour killings have become commonplace in many parts of the country, particularly Haryana, Western U.P and Rajasthan. According to the court, ‘In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation.’

Citing its decision in *Lata Singh*, the Supreme Court affirmed that there is nothing honourable in honour killings, but that they are brutal murders and the death penalty is necessary as a deterrent for such uncivilised behaviour.

Source: www.indianexpress.com/news/...death-penalty-for-honour.../787987

Karnataka High Court Dismisses Habeas Corpus Petition filed by a Bangalore resident seeking reunion with his wife

In the case of *Avinash and Ors vs. Shanmugam*, the Karnataka High Court dismissed a habeas corpus petition filed by a Bangalore resident seeking reunion with his newly married wife, who he claimed was illegally detained by her parents. The woman submitted in front of the court that she had been kidnapped and was living happily with her parents.

In the course of making its order, the High Court recommended that ‘in the case of a love marriage of a girl who is below the age of 21 years, there shall be a condition that the parents of the girl should approve the marriage, otherwise such marriages shall be declared void or voidable.’ The court as obiter dicta made the following statement adverse to the right to enter a relationship - ‘In our opinion, the girls below the age of 21 years are not capable of forming a rational judgement as to sustainability of the boy, who is in love. It is relevant to mention that

those girls, who are suffering from hormonal imbalance easily fall prey to the boys and fall in love, marry and repent at leisure.'

Source: <http://www.deccanherald.com/content/160931/girl-21-must-get-parents.html>

News

NHRC Retains 'A' Status in its Accreditation with the ICC of the NHRI's, Geneva

The National Human Rights Commission of India has retained it's 'A' status in its accreditation with the International Coordinating Committee (ICC) of the National Human Rights Institutions (NHRIs), Geneva. The NHRC continues to hold 'A' status with the ICC since 1999. This status is given to the NHRIs, which are fully compliant with the Paris Principles, 1993, towards the promotion and protection of human rights. It was apprehended that the ICC may review and withdraw the 'A' status given to the NHRC headed by former CJI, K.G Balakrishnan. Human rights groups have expressed disappointment with this development in the backdrop of ineffective dispersal by the NHRC of its mandate.

Source: <http://www.thehindu.com/news/national/article2094206.ece>

Live-in Couples not entitled to adopt under new guidelines

The Ministry of Women and Child Development has been reported as having decided on new guidelines pertaining to adoption, which include that unmarried couples living together will not be considered eligible for adoption of children. The government is expected to issue the notification soon. This move is detrimental for the rights of many couples who are in relationships in the nature of marriage, but choose or are unable to be legally married.

Source:<http://www.hindustantimes.com/New-rules-Live-in-couples-ineligible-for-adoption/Article1-711395.aspx>

Feminists endorse public statement against sex change surgery on infants

Feminists, activists and organisations (including PLD) have endorsed a statement expressing shock at the practice of sex change surgery on infants. The statement questions the claims of doctors that surgery is only performed on intersex infants with ambiguous genitalia - by observing that there is no mention of surgeries to turn some of the children into girls. The statement further points out that there are several intersex persons in India who are leading happy lives as adults and that surgeries done at a very young age are irreversible and have led to great personal trauma for the victims in their later life.

(Please contact PLD for a copy of the statement).

Resources

“Poverty and Sexuality: What are the connections? Overview and Literature Review, September 2010, SIDA

SIDA has released a study on “Poverty and Sexuality: What are the connections? Overview and Literature Review”, the study highlights the interconnection between poverty and denial of sexual rights and stresses that denial of sexual right can contribute to poverty and like wise poverty can make people more vulnerable to abuse of sexual rights.

The full text of the study is available at:

Source:<http://www.globalequality.org/storage/documents/pdf/sida%20study%20of%20poverty%20and%20sexuality.pdf>

OHCHR releases video and pamphlet on homophobic violence and discrimination

The OHCHR released a video and a pamphlet on violence and discrimination targeting lesbian, gay, bisexual and transgender (LGBT) persons. In this video, the High Commissioner talks about recent violent attacks against LGBT people in the United States, Brazil, Honduras and South Africa, stressing that such incidents are not isolated but part of a global problem. The pamphlet is a collaborative effort to convey the impression that United Nations partners speaks together on the issue of tackling discrimination on ground of sexual orientation and gender identity.

The video and the pamphlet can be downloaded from the OHCHR website at:
<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>)

“Marriage, Divorce and Matrimonial Litigation” by Flavia Agnes

Family Law II: Marriage, Divorce and Matrimonial Litigation by Flavia Agnes was launched at the National Law University, New Delhi on May 7, 2011. The second of three volumes on the subject, this book provides an in depth analysis of family laws and discusses ground level litigation practices.

Events

‘Affirming Women’s Sexual and Reproductive Rights’: APWLD and IWRAW Asia Pacific

APWLD and IWRAW Asia Pacific organised a discussion on ‘Affirming Women’s Sexual and Reproductive Rights’ during the 17th session of the Human Rights Council on 1 June 2011 at Palais des Nations, Geneva. The speakers were Heisoo Shin, (Member, The Committee on Economic, Social and Cultural Rights), Anand Grover (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), Shireen Huq (Women’s Health & Rights Advocacy Partnership (WHRAP) South Asia), Jenta Tau (YWCA Solomon Islands).

Oral Submissions by Women's Groups on section 498 A IPC at the Rajya Sabha

The Rajya Sabha invited select women's organisations (including PLD) and lawyers to present their oral submission on section 498 A of the Indian Penal Code on 3rd June 2011. A petition was filed in the Rajya Sabha by Dr. Anupama Singh claiming that 'the law is fearlessly abused and misused' by 'unscrupulous people and women to enable a get rich quick soon scheme' and to 'extort money from innocent families.'

Many organisations and individuals sent written submissions in response to this petition towards the end of 2010, pointing out the value of section 498 A in a context where women are not at par with men, and do not have access to the same resources men have.

2nd July Anniversary of Delhi High Court judgement reading down section 377 IPC: Jantar Mantar, New Delhi: Jantar Mantar, New Delhi

On July 2nd, 2009, after nine long years of legal battle, the Delhi High Court took a first step in restoring the dignity and rights of LGBTQI (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex) people decriminalizing adult consensual same-sex activity in private.

This symbolic victory of the LGBTQI movement was celebrated along with voice raised demanding an anti-discrimination law that addresses sexual orientation and gender identity issues, that the Supreme Court uphold the judgment of Delhi High Court on section 377 of IPC

Forthcoming

South Asia Training of Trainers (ToT) on CEDAW "Strengthening Application of CEDAW in South Asia": 14-21 July 2011, New Delhi

PLD supported by UN Women is organising two residential South Asia Training of Trainers (ToT) on CEDAW "Strengthening Application of CEDAW in South Asia" from 14-21 July 2011, in New Delhi. The ToT aims to strengthen the capacities of stakeholders in advancing application of CEDAW in local and national contexts. It seeks to refresh and deepen understanding of concepts, facilitate implementation in key contexts of gender inequality in South Asia, and familiarise with diverse applications of CEDAW, including the review processes.

Information about the ToT is available at www.cedawsouthasia.org

General Discussion on 'women in conflict and post-conflict situations': CEDAW Committee

The Committee on the Elimination of Discrimination against Women will hold a general discussion on the protection of women in conflict and post-conflict situations from 11 July to 29 July 2011 in its forty ninth session.

The purpose of the general discussion is to commence the Committee's process of elaborating a "*General Recommendation on Women in Conflict and Post-conflict Situations*". The purpose of the general recommendation is to provide appropriate and authoritative guidance to States Parties on the measures to be adopted to ensure full compliance with their obligations to protect, respect

and fulfil women's human rights during times of armed conflict and in all peace-building processes, which includes the immediate aftermath of conflict and long-term post-conflict reconstruction.

Source: <http://www2.ohchr.org/english/bodies/cedaw/discussion2011.htm>