



# BI-MONTHLY LEGAL NEWS

## Vol. No. 6 (VI) November-December 2013

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## Updates from the UN

### UN adopts resolution on protecting women human rights defenders

The General Assembly of the UN has adopted a historic resolution for the protection of women human rights defenders. The resolution (A/RES/68/181) recognizes that, because of who they are and the nature of their work, women human rights defenders in all regions of the world face significant violations and abuses, from smear campaigns to sexual and gender-based violence.

The resolution also calls on States to protect women human rights defenders from reprisals for cooperating with the UN and to ensure their unhindered access to and communication with international human rights bodies and mechanisms.

Though it remains an important resolution, it does not comprehensively address all the concerns of women human rights defenders. Particularly, concerns of women human rights defenders working on issues of sexual and reproductive health, reproductive rights and matters related to sexuality were not addressed in the resolution.

Source: <http://www.ishr.ch/news/un-adopts-landmark-resolution-protecting-women-human-rights-defenders>

You can access a draft of the resolution [here](#).

### Working Group on the Issue of Discrimination against Women in Law and in Practice concludes visit to China; submits preliminary observations and conclusions

The Working Group on the Issue of Discrimination against Women in Law and in Practice represented by Frances Raday and Kamala Chandrakirana, have concluded their 8 day visit to China and submitted its preliminary observations and conclusions. The expert group visited Beijing, Shanghai and the Xishuangbanna Dai Autonomous Prefecture in Yunnan province, to gather first-hand information on issues related to the situation of women, in particular in the area of economic and social life. It engaged in constructive dialogue with Government officials at national and local levels, representatives of civil society organisations, as well as experts, academics and the UN system.

The Working Group expressed its concern at persistent discriminatory practices, stereotypes and insufficient implementation of laws prohibiting discrimination against women and called upon the Chinese Government to define gender equality as including women's rights to participate on a basis of equality with men, at all levels of political and economic life and decision-making. It also emphasized the need for China's macro-economic policy integrate a holistic, effective and coherent national care economy to deal with the looming care crisis that China is facing, accentuated by its ageing society.

Source: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14129&LangID=E>

### UN experts speak out against flogging of women in 'honour' related offences in Sudan

Two independent UN experts on human rights have spoken out against the practice of flogging of women for conduct that is deemed to be immoral in Sudan. Frances Raday, the chairperson of the Working Group on the issue of discrimination against women in law and in practice, and Rashida Manjoo, the UN Special Rapporteur on violence against women decried the practice of flogging as cruel, inhuman and degrading, and asked for it to be ceased immediately.

Premarital sex, adultery, failing to prove rape, dressing ‘indecently’ or ‘immorally’, being found in the company of a man, or committing acts that are deemed incompatible with chastity are some of the grounds on which a woman can be flogged in Sudan. The statements of the UN experts comes in the context of the case of Amira Osman Hamed, a Sudanese civil engineer and a women’s rights activist charged with dressing immorally. She was found without her headscarve, and if convicted can face up to 40 lashes.

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13955&LangID=E>

## Special Rapporteur (SR) in the field of Cultural Rights submits report on the writing and teaching of history at the 68<sup>th</sup> Session of the General Assembly of the UN

The SR in the field of cultural rights, Ms Farida Shaheed submitted her report on the writing and teaching of history at the 68<sup>th</sup> session of the General Assembly. In the report, the SR seeks to identify the circumstances under which the official historical narrative promoted by the State in schools becomes problematic from the perspective of human rights and peace, in addition to proposing a set of recommendations to ensure a multi-perspective approach in history teaching.

You can access the report [here](#), and [here](#).

## International Developments

### Asia

#### Thailand government to introduce landmark civil partnership law that will extend most marriage benefits to same sex couples

The Thai government is planning to introduce landmark legislation on civil partnerships that would extend most marriage protections, rights, and benefits to same-sex couples. If approved by the Thai Parliament, it would be the first such civil partnership law to be adopted in Southeast Asia.

Until now, under Section 1448 of the Thai Civil and Commercial Code, marriage is necessarily a heterosexual union. However, under the proposed law, homosexual men and women above the age of 20 would be permitted to enter into a civil partnership. The draft legislation also provides that same-sex couples are to be accorded insurance, pension, tax reduction, and inheritance benefits, without the existing law on marriage being altered.

However, the law does not permit adoption of children as a couple. Under Thai laws, only individual filing for an adoption by one of the partners is allowed for those not in a traditional marriage.

Though there is no specific timeline for introducing the law, the drafting committee has indicated that parliamentary deliberations would take about 2 months once the legislation is submitted.

Sources: <http://online.wsj.com/news/articles/SB10001424127887324807704579085093047702738>  
[http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403745\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403745_text)

## Hijras to be recognized as third gender in official documents in Bangladesh

The Bangladesh government has approved a proposal of the Social welfare Ministry to identify 'Hijra' as a third gender identity. Under the new policy, Hijras will be enabled to identify themselves as a third gender in official documents like passports. The decision was taken at a cabinet meeting chaired by Prime Minister Sheikh Hasina.

The human rights situation of sexual minorities remains a highly fraught one in Bangladesh, as is evidenced by the case of two lesbians in Dhaka being arrested for marrying each other in July, 2013. The Bangladesh government had in fact committed to the UN HRC at the time of its last Universal Periodic Review that it would protect the rights of the LGBTI community.

However, this new change in the government policy will be welcomed by the Hijra community, which is a sizable chunk of the LGBTI community in Bangladesh, as they are now officially recognized as a gender identity, and can receive state benefits.

Earlier in 2011, the Supreme Court of Pakistan, another country not known for its record in championing LGBTI rights, had ruled that Pakistanis who do not consider themselves to be either male or female should be allowed to choose an alternative sex when they apply for their national identity cards.

Sources: <http://www.pinknews.co.uk/2013/11/12/bangladesh-third-gender-hijra-to-be-recognised-in-official-documents/>

## OHCHR and UN Assistance Mission in Afghanistan (UNAMA) releases annual report on implementation of Elimination of Violence against Women Law in Afghanistan

The OHCHR and the UNAMA released its annual report, titled; 'A Way to Go: An Update on Implementation of the Law on the Elimination of Violence against Women in Afghanistan'. The 49 page report is based on consultations with 203 judicial, police and Government officials, and monitoring of almost 500 cases of violence against women throughout Afghanistan. The report analyses statistical data on the law's application obtained from police, prosecutors and courts in 18 of Afghanistan's 34 provinces over the one-year period October 2012 to September 2013.

UN High Commissioner for Human Rights, Navi Pillay, said in a news release, '*implementation of the law has been slow and uneven, with police still reluctant to enforce the legal prohibition against violence and harmful practices, and prosecutors and courts slow to enforce the legal protections in the law*'.

Source: [http://wunrn.com/news/2013/12\\_13/12\\_02/120213\\_afghanistan.htm](http://wunrn.com/news/2013/12_13/12_02/120213_afghanistan.htm)

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

## Unmarried mothers in China's Hubei province to be entitled to their children's birth certificate

The Health and Family Planning Commission and Public Security Department of Hubei Province, in Central China recently issued a new policy stating that applications for birth certificates will no longer require a marriage certificate, therefore enabling unmarried mothers to now apply for birth certificates for their children.

In China, birth certificates are a required document when registering permanent residence. Without household registration, children are not allowed into kindergarten, and are also deprived of subsidised health facilities.

Such policy changes will go a long way in recognizing reproductive rights of unmarried women in China, a country where family planning policies are often prioritized over women's sexual and reproductive rights.

Source: <http://www.womenofchina.com.cn/html/report/6673-1.htm>

## Afghanistan rules out restoration of public stoning as a punishment for adultery

Afghanistan's president Hamid Karzai has declared that his government will not re-introduce public stoning as a punishment for adultery, stating emphatically that the Ministry of Justice had rejected it.

The president's statement came after reports emerged that the draft revision of the country's penal code included provisions for public stoning as a punishment for sex outside marriage. The provision on stoning was apparently drawn up by a sub committee working on Sharia law, and it had to be further approved by the Working Committee under the Ministry of Justice, and then by the President before it would be passed by the Parliament.

The reports understandably raised an alarm in the international human rights community, which had to be allayed by the President himself, as the practice of public stoning is a barbaric one, reminiscent of the kind of inhuman justice handed out by the Taliban.

Sources: <http://www.rferl.org/content/afghanistan-stoning/25183779.html>

<http://www.theguardian.com/world/2013/nov/25/afghanistan-reintroduction-public-stoning-adulterers>

## **Beyond Asia**

### European Court of Human Rights rules in favour of rights of sexual minorities in two separate judgements

The European Court of Human Rights has, in two progressive judgements, reinforced the centrality and importance of the rights of sexual minorities in European human rights jurisprudence. In the first case, the Grand Chamber of the European Court of Human Rights has in the joint cases of *Vallianatos and Mylonas v. Greece* and *C.S. and others v. Greece* ruled that Greece had violated the European Convention on Human Rights by excluding same-sex couples from a 'civil union'. In 2008, Greece had introduced the law on civil union as an alternative to marriage. However, the law restricted such unions to 'two physical individuals of different sex who have reached the age of majority'.

In its judgement, the Court ruled that the Greek government's justification for excluding same couples was not convincing enough. The Greek government had argued that the law's main

purpose was to protect children of unmarried parents. The Court held that the law had to recognize new forms of family life.

In February, 2013, the Court had in the case of *X and Others vs Austria* had condemned Austria's decision to ban a homosexual person from adopting the biological child of their partner.

In the second judgement, *X, Y, Z vs Minister voor Immigratie en Asiel*, the Court upheld the rights of sexual minority asylum seekers to express their sexuality. The Court declared that asylum seekers who are escaping their home countries because of persecution based on their sexual orientation cannot be expected to "conceal [their] homosexuality in [their] country of origin or exercise restraint in expressing it". The Court emphasized that a person cannot be expected to renounce their sexual orientation as it is a fundamental part of their identity.

The judgement was made as a result of a request from Netherlands to clarify existing laws dealing with asylum issues.

The judgements can be accessed [here](#) and [here](#).

You can read the press release of the European Court of Human Rights in both the judgements [here](#) and [here](#).

## The Inter American Commission on Human Rights (IACHR) decides to create Rapporteurship on the Rights of LGBTI persons

The IACHR has decided to create a Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI). It will be focussing the work of the Commission on the promotion and protection of the rights of LGBTI persons in the Americas. The Rapporteurship will officially commence functioning on the 1<sup>st</sup> of February, 2014. It will continue the work of the LGBTI unit of the IACHR which was established in November 2011 to address various human rights violations and discriminations faced by LGBTI persons in the Americas.

The IACHR is an autonomous body of the Organization of American States (OAS), and receives its mandate from the OAS charter, and the American Convention on Human Rights.

Source: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/094.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/094.asp)

## Netherlands passes new law allowing transgendered persons to change their gender registration in official documents

The Dutch senate has voted in favour of a new law that will offer transgendered persons above the age of 16 a simplified way to change their gender registration in official documents like passports. As of now, transgender persons in Netherlands live with official documents that do not correspond with their gender identity, mainly because the process of changing their gender in official documents is an arduous one, requiring the person to undergo obligatory sterilization and gender modification operations, followed by judicial permission. As a result, transgender people face problems on a daily basis while applying for a new job, showing ID, using health care, and using public transport.

Under the new law, an official statement of an expert affirming that a person wishes to have the gender marker changed in accordance with their gender identity will be sufficient in order to change one's gender in official documents.

The law was adopted by a vote of 51 to 24. As it had already been approved by the other parliamentary chamber, the law now only needs to be countersigned by the king to be official. It should come into force on July 1, 2014.

Source: <http://www.hrw.org/news/2013/12/19/netherlands-victory-transgender-rights>

OpEd: <http://www.vreerwerk.org/trans-law-in-the-netherlands-passed-now-what/>

## Uganda passes draconian anti homosexuality and anti pornography legislations

The Ugandan government has passed two regressive and draconian laws, banning homosexuality and pornography respectively within a day of each other.

The controversial anti pornography bill outlaws anything that shows sexual parts of a person such as breasts, thighs, buttocks or any erotic behaviour intended to cause sexual excitement or any indecent act or behaviour tending to corrupt morals. The law is, to say the least, worrying as it seeks to regulate and control women's autonomy and free expression by making 'provocative' clothes like mini-skirts illegal. It will also cause widespread censorship of movies, music videos and TV shows.

The second law that was passed was the anti homosexuality law, a flagrantly regressive piece of legislation imposing a harsher punishment on people engaging in same sex relationships. This law, like the Russian gay propaganda law, criminalizes the 'promotion or recognition of homosexual relations through or with the support of any government entity in Uganda or any other nongovernmental 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.

In Uganda, homosexuality is already illegal but the new law responds to an increasingly intolerant and homophobic section of society which demands greater punishment for what they see as 'deviant' behaviour. The new law has already started affecting the lives of sexual minorities, with the arrest of transgender activist Beyonce Amooti Karungi as she was taking a walk in Kampala. She was reportedly arrested on grounds of 'impersonation', being someone she is not.

Sources: [http://www.nytimes.com/2013/12/21/world/africa/ugandan-parliament-approves-antigay-law.html?\\_r=1&](http://www.nytimes.com/2013/12/21/world/africa/ugandan-parliament-approves-antigay-law.html?_r=1&)

<http://www.independent.co.uk/news/world/africa/no-thighs-please-uganda-bans-miniskirts-as-mps-pass-antipornography-bill-9016686.html>

Op-ed: <http://akopsa.wordpress.com/2012/09/05/a-day-in-kampala/>

## Canadian Supreme Court declares certain prostitution laws as unconstitutional

The Supreme Court of Canada delivered a landmark decision in the case Attorney General of Canada v. Terri Jean Bedford, Amy Lebovitch and Valerie Scott, wherein it struck down three provisions of the Criminal Code of Canada relating to prostitution for violating the Charter of Rights and Freedoms, the bill of rights in the Canadian Constitution.

In Canada, prostitution is not illegal, but most activities related to prostitution are . The three provisions that were struck down put inexplicable and indeed dangerous sanctions on an occupation that, though legal, is a high risk one for the woman involved in it. Section 210 of the Canadian Criminal Code prohibited a prostitute from 'keeping or being found in a bawdy house'. Section 212(1)(j) criminalized anyone 'living on the avails of prostitution', and Section 213(1)(c) criminalized the act of communicating in public for the purpose of prostitution. The Supreme

Court struck down all three provisions, and declared that *‘The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risk’*.

The case originated in 2007 in Ontario where the three petitioners, who are sex workers by profession, had challenged the constitutionality of the criminal provisions relating to prostitution. The Court of Appeal for Ontario had ruled that some, not all the provisions were unconstitutional and violative of Canada’s Charter of Rights and Freedoms.

Source:[http://www.pivotlegal.org/canada\\_v\\_bedford\\_a\\_synopsis\\_of\\_the\\_supreme\\_court\\_of\\_canada\\_ruling](http://www.pivotlegal.org/canada_v_bedford_a_synopsis_of_the_supreme_court_of_canada_ruling)

Op-ed:<http://feministcurrent.com/8441/supreme-court-of-canada-removes-laws-criminalizing-prostitution-bedford-elizabeth-pickett/>

## Cuba bans discrimination at the workplace on the basis of sexual orientation

The Cuban government has approved a proposal to amend the country’s labour law to ban discrimination at the workplace based on sexual orientation. Cuba’s employment laws broadly reference ‘the equality of the worker’, but heretofore did not specifically ban discrimination based on sexual orientation and other factors in the workplace. The new amendment, introduced by President Raul Castro’s daughter Mariela Castro, will be the first of its kind in Cuba, where homosexuality is not illegal in law but in reality persecution and discrimination is rife. Cuba also doesn’t recognize marriages or civil unions between two persons of the same sex.

Source: <http://www.gaystarnews.com/article/cuba-passes-%E2%80%98historic%E2%80%99-ban-anti-gay-workplace-discrimination231213>

## National

### Judgements/Orders

## Supreme Court overrules Delhi High Court’s verdict on Sec 377 of the IPC, recriminalizes homosexuality

In a major blow to the aspirations and the fundamental rights of countless persons of the LGBTI community throughout the country, the Supreme Courts has declared that Sec 377 of the IPC, which criminalizes adult consensual sexual intercourse ‘against the order of nature’, as not suffering from any ‘constitutional infirmity’. The decision delivered by a two judge bench of Justice Singhvi and Justice Mukhopadhyay in the case of *Suresh Kumar Koushal & Anr vs Naz Foundation & Anr* has rendered the landmark judgement of the Delhi High Court in the Naz Foundation petition as overruled. The Delhi High Court had in its decision declared that Sec 377 violated Articles 14, 15 and 21, dealing with non discrimination and right to life, in so much as it criminalized adult consensual sex.

The Supreme Court, which has created a jurisprudence of protection of fundamental rights through several landmark judgements down the years, on this occasion chose to abdicate its duty of safeguarding the basic rights of sexual minorities, and left it to the ‘competent legislature’ to amend or delete the impugned section. The Supreme Court based its decision on the grounds that



the LGBT community constitute ‘a miniscule fraction of the country’s population’, and the fact that historically very rarely have they been prosecuted under Sec 377.

Section 377 India's penal code bans "sex against the order of nature", which in effect includes all non procreative sex is of colonial vintage, remained in force until the Delhi High Court read down the law to decriminalise all private adult consensual sex in 2009.

The judgment evoked protests across the country, including by the Government of India, which immediately filed a review petition. Many civil society organisations too, have sought a review of the judgment.

The UN OHCHR too has responded, with the High Commissioner Navi Pillai reminding India that ‘*criminalising private, consensual same-sex sexual conduct violates the rights to privacy and to non-discrimination enshrined in the International Covenant on Civil and Political Rights, which India has ratified*’.

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

Sources: <http://www.thehindu.com/news/national/supreme-court-sets-aside-verdict-decriminalising-gay-sex/article5446939.ece>

<http://www.reuters.com/article/2013/12/12/us-india-rights-gay-un-idUSBRE9BB09V20131212>

## Delhi High Court quashes appointment of National Commission for Protection of Child Rights member

The Delhi High Court has quashed the appointment of NCPCR member Yogesh Dube in a petition filed by two civil society organizations in 2011. The petition, filed by HAQ Centre for Child Rights and Association for Development challenged the appointment of Yogesh Dube and Vinod Tikoo as members of the NCPCR , claiming that the appointment was made for ‘collateral reasons’ and ignored ‘several meritorious candidates.’

In a 2010 judgement, the Delhi High Court had directed the Ministry of Women and Child Development to display the names and credentials of candidates online to ensure transparency. In the current petition, it was brought to the Court’s notice that the procedure for calling for applications through advertisements in newspapers had not been followed, raising suspicion of arbitrariness and nepotism.

The Delhi High Court’s judgement has brought to light a malaise that is not endemic to the NCPCR by any means. There is no transparency in the appointment procedures in other commissions like the NCW and State Women’s Commissions, and often members are nothing but political appointees, and their appointment is against the letter and spirit of the Paris Principles of 1993 which provides the framework for the composition of such national institutions meant for protecting and promoting human rights, like the NCPCR and the NCW.

Sources: <http://www.indianexpress.com/news/hc-quashes-appointment-of-child-rights-panel-member/1193023/>

You can access a copy of the judgement of the High Court [here](#).

## Delhi High Court takes notice of remarks made by Dwarka fast track court judge on pre-marital sex, calls them insensitive and generalized

The Delhi High Court took suo moto cognizance of remarks made by the presiding judge of the Dwarka fast track court on pre marital sex, and advised him to be counselled for gender sensitivity. The High Court observed that the remarks were generalized and sweeping in nature, and not based on any empirical research. The Court also observed that the remarks ‘are prima-facie insensitive observations and are capable of influencing the police to take up women harassment cases lightly, resulting in an insensitive investigation and complete evidence not being brought before the Court.’

Earlier, in October 2013, the judge, Virender Bhat, presiding over the Dwarka fast track court, while deciding in a case punishable under Sections 376, 493 and 506 of the IPC had remarked that ‘women are morally and socially bound not to have pre-marital sex, and ought not cry rape in case they do’. His remarks created a furore and were decried by many for being not only insensitive but also irrelevant to the case.

The High Courts intervention, though well intentioned, comes across as a bit otiose and jumbled in its formulation. The main issue at hand, which is of women’s (and men’s) sexual autonomy in pre marital consensual sexual relationships is not addressed by the High Court, and the order of the court only talks about the suffering of women in general in India, and how such judicial stereotyping affects women, whom it sees as largely a ‘victimized’ group.

You can access the High Court order [here](#).

You can read about the earlier remarks made by the judge in our [September-October newsletter](#).

Op-ed: <http://www.jhatkaa.org/en/actions/suspend-sexist-judge>

## Supreme Court frames guidelines for determining ‘live-in’ relationships for the purpose of PWDV act

The Supreme Court has formulated guidelines on determining whether ‘live in’ relationships would fall within the expression ‘relationship in the nature of marriage’ in the Protection of Women from Domestic Violence Act of 2005. The guidelines constitute of 8 indicators, which in the words of the Court are ‘not exhaustive but will give some insight to such relationships’.

The indicators include duration of period of relationship, pooling of financial resources and arrangements supporting each other, whether the household was shared or not, domestic arrangements, sexual relationships, presence of children, socialization in public, and intention and conduct of the parties. Each of these indicators are further explained in the judgement. What is worrying however, is that the recent jurisprudence by the Supreme Court has tended towards collapsing diverse intimacies and conjugalities in India, under a catch all ahistoric phrase ‘live in relationships’, and by setting out conditionalities, has reduced the scope of legal protection against domestic violence. Public policy goals are better served by expanding legal protection to all women, in all domestic and intimate situations, rather than in limiting protection to conjugalities that reflect select attributes. The Supreme Court in its judgement also decried the lack of any express statutory provision to regulate live-in relationships upon termination

Sources: <http://news.outlookindia.com/items.aspx?artid=818941>

<http://www.ndtv.com/article/india/supreme-court-frames-guidelines-for-determining-live-in-relationship-453024>

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

## Supreme Court intervenes in house arrest of daughter by Rajasthan High Court judge

The Supreme Court, in a Habeas Corpus petition filed before it, has ordered the Rajasthan police to release the daughter of a judge of the Rajasthan High Court to her lover. The petition, filed by Siddharth Mukherjee, brought to light the abuse of power by the judge of the Rajasthan High Court, who had ordered the incarceration of his own daughter, who had already attained the age of majority, in her home because he was against her relationship with the petitioner, who belongs to a different caste.

The daughter was produced before the Supreme Court on its instructions by the State police, where she declared her desire to marry the petitioner. Thereupon, the Supreme Court ordered her to be released to her lover. While the Supreme Court upheld the right of the daughter to choose her own partner and make her own decisions, it is important to note that no action whatsoever, not even a condemnation, was taken against the High Court judge who used his power to place his own daughter under house arrest, thus displaying both his patriarchal and feudal propensities, and also his lack of respect for the rights of citizens enshrined in the law that he is supposed to uphold.

Sources: <http://barandbench.com/content/house-arrest-daughter-rajasthan-hc-judge-sc-intervenes-directs-police-hand-over-girl-her#.UshuL9IW2E1>

## Supreme Court declares that registration of FIR cannot be avoided in cognizable offences

A 5 judge constitutional bench of the Supreme Court has held that if a cognizable offence is disclosed to the police, then it cannot avoid registering an FIR and setting the criminal law process in motion. The Court, hearing the case of *Lalita Kumari vs State of UP*, was deciding upon the issue of whether the police officer has the power to first conduct a preliminary inquiry before the FIR to test the veracity of the information disclosing the cognizable offence. The Court has also issued several directions where it unequivocally makes clear that under Section 154 of the CrPC, upon disclosing of cognizable offence, no preliminary enquiry is permissible and the police must register the FIR. The Court also made clear that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The Court emphasized that action must be taken against erring officers who do not register the FIR if information received by them discloses a cognizable offence.

The Court has reiterated as a general principle what has been mentioned clearly in Sec 166 A (c) of the Indian Penal Code, introduced by the Criminal Law Amendment Act of 2013, in the context of offences relating to sexual violence. The above mentioned section penalizes public servants for not filing an FIR on information given to him in relation to cognizable offences punishable under several sections of the IPC relating to sexual and gender based violence like rape, acid attack, sexual harassment etc. Both the Section 166 (c) of the IPC and the Supreme Court's judgement are of cardinal importance from the point of view of fighting sexual violence through the law, as one of the biggest hurdles that victims of sexual violence often face, especially in rural and marginalized contexts, is the refusal to file an FIR by the police.

Source:<http://www.indianexpress.com/news/police-cannot-avoid-an-fir-in-cognisable-offences-supreme-court/1193935/>

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

## Supreme Court panel indicts Justice Ganguly of sexually harassing a law intern

A 3 member panel of Supreme Court judges constituted by the Chief Justice has concluded its investigation of the accusation of sexual harassment made against retired judge of the Supreme Court, Justice Ganguly by a law intern, and indicted him of committing an ‘act of unwelcome behaviour’ and ‘conduct of sexual nature’. However, in view of the fact that Justice Ganguly had already demitted office on the day of the incident, the Chief Justice of India stated that ‘no further follow up action is required by this Court’.

Justice Ganguly is presently the Chairperson of the West Bengal Human Rights Commission, and the Cabinet has approved a Presidential Reference to be made to the Supreme Court under Article 143 of the Constitution for removal of Justice Ganguly as chairperson of the West Bengal Human Rights Commission.

Source:<http://www.deccanchronicle.com/131205/news-current-affairs/article/complaint-law-intern-sc-panel-indicts-justice-ganguly-lets-him>

### News

## Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act comes into force

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act has finally come into force after being notified in the Official Gazette of India on 9th December, 2013. The Act had received the assent of the President on 23rd April 2013, after being passed by both houses of the Parliament, but the rules of the Act were drafted and notified in December, after a long wait of 7 months, making the legislation the law of the land. Hereafter, this Act will provide the normative and legal framework for dealing with sexual harassment at the workplace.

With this law, the Vishakha guidelines provided by the Supreme Court in the case of Vishakha vs State of Rajasthan have finally been given legislative backing. The new law builds upon the Vishakha guidelines, and moves beyond the traditional definition of the workplace to include client-principal relationships, unorganized sectors and domestic workers within its ambit. Places that are visited in connection with employment also are included. The statute defines what sexual harassment means, and sets out the employer’s responsibility to prevent, protect and redress sexual harassment at the workplace, and even provides for mechanisms that provide civil redress within the workplace, like an Internal Complaints Committee. The Complaints Committee is in fact mandatory under the law, and failing to constitute it would lead to a heavy fine.

However, it should be borne in mind that the act is still very complicated and requires a great deal of demystification, particularly in relation to the powers of the Complaints Committees, both at the internal level and the local/district level.

You can access a copy of the act [here](#), and its rules [here](#).

## Department of Health Research issues guidelines on treatment of sexual violence victims

The Department of Health Research of the Government has issued a list of guidelines on treatment of victims of sexual violence for health practitioners. The guidelines advise health care facilities to not refuse treatment to victims of sexual violence, and also to obtain her informed consent after giving her a structured explanation of the what the examination would comprise. The guidelines advises doctors to treat victims even if FIR is not lodged, a benefit provided by Sec 357 C of the CrPC, post the Criminal Law Amendment Act of 2013.

The guidelines also explain that ‘absence of injuries over body and/or genitals of the victim of sexual assault does not rule out commission of said offence’, and warns against performing the ‘two finger test’ on the victim and mentioning that the victim was habituated to sexual intercourse. It also advises doctors to not use the term ‘rape’ in their medical reports as it is a legal definition and does not constitute medical diagnosis.

Earlier in 2013 the Supreme Court had held that the two finger tests violated the fundamental rights and dignity of the victim.

Sources:<http://www.thehindu.com/todays-paper/avoid-word-rape-in-reports-doctors-told/article5495839.ece>

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

### Statistics released by Delhi government show alarming growth in cases of rape, molestation in the city

The Delhi Government, appearing before the Supreme Court through Additional Solicitor General Siddharth Luthra, has furnished data revealing the exponential rate at which reporting of crimes against women has grown in the capital over the last few years. The statistics, taken from the Delhi police reveals that there were 1330 reported rapes till 15<sup>th</sup> of October, 2013, as against 706 in 2012. Reported molestation cases have grown four fold from 727 in 2012 to 2,844 in 2013. Other crimes against women have also increased over the past four years, with crimes of cruelty against wives by husbands and in laws have increased from 1297 cases in 2009, to 2487 in 2013, while kidnapping/abduction of women has risen from 1,655 in 2009 to 2,906 in 2013.

The significance of this data released by the Delhi government is that while it shows that Delhi remains to be an unsafe city for women, both on the streets and in the homes, more and more women are getting cases registered and seeking legal redressal, leading to the spurt in numbers of cases of crimes against women.

The 3 judge bench of the Supreme Court was hearing a writ petition filed by Beenu Rawat and 18 others seeking a probe by a special investigation team into the lathi-charge on Aam Admi Party workers who went to the police station seeking a copy of an FIR relating to registration of a rape case.

Source:<http://www.thehindu.com/news/cities/Delhi/rape-cases-double-molestation-up-4-times-in-delhi/article5298622.ece?homepage=true>

## Resources

## ‘Regional Report: The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV’: UNDP, IDLO and APF

A new report released by the United Nations Development Programme (UNDP), the International Development Law Organization (IDLO) and the Asia Pacific Forum of National Human Rights Institutions (APF), *‘The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV’* documents progressive initiatives and good practices of National Human Rights Institutions (NHRIs) in Bangladesh, India, Indonesia, Nepal, the Philippines, Sri Lanka and Timor-Leste to protect and promote the rights of these highly marginalized individuals. The report includes a comparative analysis of rights reporting mechanisms available to LGBTI individuals in Pakistan, where legislation establishing a NHRI was not passed until 2012. The report builds upon the recommendations of the Global Commission on HIV and the Law, and the Yogyakarta principles, and is the culmination of national processes which brought together NHRIs and lesbian, gay, bisexual, transgender and intersex (LGBTI) communities in a series of national dialogues to boost cooperation and understanding.

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

More information on the book can be found [here](#).

## ‘Women, Sexuality and the Political Power of Pleasure’ : Edited by Susie Jolly, Andrea Cornwall and Kate Hawkins

Women, Sexuality and the Political Power of Pleasure, edited by three members of the faculty of Institute of Development Studies, Sussex Susie Jolly, Andrea Cornwall, and Kate Hawkins is a part of a series on feminism and development from Zed Books. The book seeks to challenge the view that women and sex equate to disease and violence in a development context. The chapters of the book deal with homosexuality, sex work, disability, HIV, porn and sex education in the context of developing countries, with women’s sexualities as the point of departure.

The book can be purchased [here](#).

## ‘Masculinity, Son Preference & Intimate Partner Violence’: UNFPA and ICRW

This study, conducted by ICRW (International Center for Research on Women) in partnership with UNFPA, tries to understand the role of men, their own internalized norms of masculinity as well as women’s response to male dominance and patriarchy in the Indian context. The study explores how masculinity acts as a determinant of son preference and intimate partner violence. The study confirms that masculinity is a critical determinant of son preference and it needs to be understood in its complexities of men’s experiences of childhood discrimination, their perpetration of violence and gender expectations that are triggered by their economic role as providers.

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

## ‘Database mapping gender provisions in constitution around the world’: UN Women

The UN Women has launched a Constitutional Database which maps those provisions in constitutions worldwide which guarantee, deny, or protect the rights of women. The database, a highly innovative and searchable one, will be updated annually and will provide a comprehensive overview of the current status of provisions relevant to women's rights and gender equality across the world, including comparison of the data across various countries. It covers a total of 195 countries, including all UN Member States and Observers, and is organized regionally into Africa, Americas, Asia, Europe and Oceania.

Source: [http://www.wunrn.com/news/2013/12\\_13/12\\_09/120913\\_un2.htm](http://www.wunrn.com/news/2013/12_13/12_09/120913_un2.htm)

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

## OBITUARY

### Nelson Mandela, champion of the anti apartheid struggle, and South Africa's first democratically elected President passes away

The entire world mourned in collective bereavement as Nelson Mandela, a global icon in the struggle for democracy and against apartheid passed away at the age of 98 after a prolonged respiratory infection. An African nationalist and a democratic socialist, he was the president of the African National Congress and the Secretary General of the Non Aligned Movement. He was also South Africa's first democratically elected black President, from 1994 to 1999.

Revered as an icon of democracy, peace and emancipatory politics worldwide, he started with a militant campaign against the undemocratic and highly discriminatory apartheid based regime in South Africa. He was arrested on charges of conspiracy to overthrow the state and sentenced to 27 stoic years in prison. He was released in 1990, following which he proceeded to gather worldwide support for the cause of ending apartheid in South Africa. In 1994, the African National Congress won the national elections, winning 62% of the seats, and Mandela became the President of South Africa, marking a historic moment in the post colonial struggle against racial discrimination throughout the world.

He will be respected and remembered by history as a great statesman, a stoic revolutionary and as a beacon of racial equality and democracy throughout the world.

### Pushpa Kapila Hingorani, pioneer of the PIL movement passes away

Pushpa Kapila Hingorani, the first to file a Public Interest Litigation in the Supreme Court of India passes away. She will always be remembered for petitioning the Court in the famous case of *Hussainara Khatoon vs State of Bihar* on behalf of prisoners awaiting trial in the jails of Bihar for a period longer than the sentence supposed to be imposed. Forty thousand prisoners in jails all over India were set free as a result of this case. This case radically expanded the concept of *locus standii*, that is the interest of the petitioner in a case, to include 'public interest' as a legitimate standing to file a petition. This revolutionized the jurisprudence of the Indian Supreme Court, introducing the concept of judicial activism and enabling the Supreme Court to actively take up cases of human rights violations and other injustices upon being petitioned.

Through her legal career, Kapila continued fighting cases dealing with police torture, dowry crimes, gender discrimination and child labour, paving the path for many to follow.

