



# BI-MONTHLY LEGAL NEWS

## Vol. No. 9(II) March-April 2016

*Partners for Law in Development*

### Updates from the UN

- Commission on the Status of Women convenes 60<sup>th</sup> session on the theme of women's empowerment and the link to sustainable development
- Independent Expert on the enjoyment of human rights by persons with albinism presents first report to the Human Rights Council
- UN OHCHR submits report on Human Rights Council Resolution on Protection of the Family
- UN Special Rapporteur on minority issues submits report on discrimination based on caste and analogous systems of inherited status

### International Developments

#### Asia

- Pakistan's Punjab Legislative Assembly passes Protection of Women against Violence Bill
- Bangladesh rejects petition to remove Islam as country's state religion
- Myanmar swears in its first democratically elected government
- China passes law against domestic violence
- Kyrgyzstan parliament to review law targeting NGOs
- Prof. Deepika Udagama appointed as Chairperson of the Human Rights Commission of Sri Lanka

#### Beyond Asia

- Same sex marriages legalised in Colombia, Greenland and Isle of Man
- US Supreme Court steps in to protect abortion access in Louisiana
- Chile's Senate passes new abortion law
- New legislation on Female Genital Mutilation applied in Gambian courts
- France passes law to criminalize clients of sex workers
- International Criminal Court gives first landmark conviction of rape as war crime
- New York State passes 12-Week Paid Family Leave Law
- Inter-American Court of Human Rights rules against Colombia for discrimination on the basis of sexual orientation
- Petition to decriminalise gay sex filed in Kenya's High Court
- Swedish government pays compensation to trans persons forced to undergo sterilization
- Botswana's High Court passes orders government to register LGBTI advocacy group
- UK grants asylum to Singaporean transwoman over compulsory military service as a man
- Guatemalan court convicts former paramilitary and retired army officer and for rape and murder during civil war

### National Developments

#### Judgements/Orders

- Bombay High Court rules that obscene acts in private will not amount to an offense
- Madras High Court directs Tamil Nadu to take action on the growing number of 'honour' killings
- Orissa High Court rules that the length of cruelty alleged should be taken into consideration while deciding upon the divorce cases
- Delhi High Court holds that tenanted premises comes under the category of shared household until the term of expiry
- Delhi High Court holds that National Commission for Women (NCW) is acting beyond jurisdiction by taking complaints from women directly
- Supreme Court orders enhancement of compensation in acid attack cases on the ground of severity of injury
- Supreme Court and Bombay High Court hold that banning entry of women into temples discriminates against women

#### News

- UN Special Rapporteur on the rights to freedom of peaceful assembly and of association reports on non-compliance of FCRA regulations in India with international law, standards and principles
- Maharashtra passes the Prohibition of Social Boycott Act
- Delhi Commission for Women proposes Acid Watch programme
- Delhi Government to introduce the Placement Agency Regulation Bill in Assembly
- Gujarat to provide reservations to the economically backward in the upper castes

### Resources

- UNDP releases the Human Development Report 2015
- Sexual Rights Initiative launches its National Sexual Rights Law and Policy Database
- The Observatory on the Universality of Rights launches web platform
- Women's Learning Partnership releases "When Home Is Where the Harm Is: Perspectives: Law, Culture, Conflict, and Religion"
- Toolkit on promoting human rights of women and girls in communities released
- ORAM releases glossary of terminology for LGBT individuals

## UN Updates

### Commission on the Status of Women convenes 60<sup>th</sup> session on the theme of women's empowerment and the link to sustainable development

The Commission on the Status of Women convened its 60<sup>th</sup> session on the theme of women's empowerment and the links to sustainable development. The Commission reaffirmed that the CEDAW and the CRC, as well as other treaties provide an international legal framework and a comprehensive set of measures for realizing gender equality and the empowerment of women and girls, and the full and equal enjoyment of all human rights and fundamental freedoms of all women and girls throughout their life cycle. The emphasis of this session remained on strengthening normative, legal and policy frameworks, including the Beijing Declaration and Platform for Action. As part of the agreed conclusions, the session also called for fostering enabling environments for financing gender equality, strengthening women's leadership and their full and equal participation in decision-making in all areas of sustainable development. To promote accurate monitoring and evaluation of plans, the need for gender-responsive data collection, follow-up and review processes as well as enhancing national institutional arrangements was emphasised.

The session also included side events organized by participating civil society organizations, on effective gender-responsive climate solutions, the connections between undocumented immigration and trafficking of women, as well as evolving models to recognize and value unpaid care work of women at home as a means of women's empowerment and sustainable development.

*The agreed conclusions can be found at*

<http://www2.unwomen.org/~media/headquarters/attachments/sections/csw/60/csw60%20agreed%20conclusions%2024march.pdf?v=1&d=20160415T171708>.

Source: <http://www.unwomen.org/en/csw/csw60-2016/side-events/calendar-of-side-events>;  
<http://www.unwomen.org/en/csw/csw60-2016>.

### Independent Expert on the enjoyment of human rights by persons with albinism presents first report to the Human Rights Council

Ikponwosa Ero, the independent expert on the enjoyment of human rights by persons with albinism, presented her first report to the Human Rights Council in its 31<sup>st</sup> session. The report identifies the genetic causes of albinism, as caused by a lack of melanin in the skin, hair and eyes, and is non-contagious and genetically inherited. Persons with albinism are at risk of gruesome violence for their body parts, as they are used in witchcraft rituals, potions or amulets, with reported prices ranging from \$2,000 for a limb to \$75,000 for a 'complete set' or corpse in some regions of the world. Women and children are at a disproportionate threat of being attacked on account of this genetic condition. The report also identified effective measures to end such violence, through fast track immediate investigation of allegations and prosecution of alleged perpetrators; appropriate legal, social, psychological and medical remedy and redress for victims; actions to prevent trafficking in body parts, as well as measures for the safe re-integration of displaced persons with albinism.

Significantly, the report identifies possibilities of framing human rights violations arising from albinism under the Convention on the Elimination of All Forms of Racial Discrimination because the governing concept is racial discrimination which may be based on any of five 'grounds': race, colour, descent, national origin and ethnic origin.

Following the session, the Expert also made an official visit to Malawi, where she called attacks on persons with albinism having reached emergency proportions. Often, families brutalise such members, and victims face further marginalization through poverty, deprivation of livelihood and constant fear of violence.

The report can be accessed at <https://daccess-ods.un.org/TMP/8921688.19904327.html>.

Source: [http://www.un.org/apps/news/story.asp?NewsID=53514#.VzA\\_LtJ94\\_7](http://www.un.org/apps/news/story.asp?NewsID=53514#.VzA_LtJ94_7);

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19903&LangID=E>.

### **UN OHCHR submits report on Human Rights Council Resolution on Protection of the Family**

After the resolution on the protection of the family passed by the Human Rights Council at its 29<sup>th</sup> session [*PLD Newsletter Vol. 7(III) May-June 2015*], the UN Office of the High Commissioner on Human Rights submitted his report on the resolution, and the international framework regarding the parameters on the role of the family in sustainable development, to the Human Rights Council. The Report details other instruments that focus on the family as a unit for poverty eradication and sustainable development, including resolutions by the General Assembly. The Report further states that the international human rights law framework does not stipulate any definition of the family, but that it must be understood in its widest sense. The only two conditions imposed are respect for the principle for equality and non-discrimination, including equal rights for women, and effective guarantee of the best interest of the child. It also reiterates the obligation of states to protect specific forms of family, such as de facto unions and same-sex unions. It further draws attention to the right to marry and to found a family, prohibition of early, forced and child marriages, right to decide the number and spacing of children, and the right to not be subject to violence and abuse within the family.

The report can be accessed here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/014/95/PDF/G1601495.pdf?OpenElement>

### **UN Special Rapporteur on minority issues submits report on discrimination based on caste and analogous systems of inherited status**

The UN Special Rapporteur on minority issues submitted her report on discrimination based on caste and analogous systems of inherited status to the Human Rights Council, which acknowledges caste as a basis of discrimination in several countries around the world, including India. The report also frames caste-based discrimination, recognising its linkages with select professions and occupations, that amount to discrimination based on work and descent. Noting that *“This serious human rights violation .... differentiates between “inferior” and “superior” categories of individuals because of their inherited caste status. It also leads to extreme exclusion and dehumanization of caste-affected communities, who are often among the most disadvantaged populations, experience the worst socioeconomic conditions and are deprived of or severely restricted in the enjoyment of their civil, political, economic, social and cultural rights.”* The report further identifies that discrimination based on caste and analogous systems is deeply embedded in interpersonal and communal relationships, which will require not only legal and political responses, but also community-based approaches aimed at changing the mindsets of individuals and the collective conscience of local communities.

The report further acknowledges that women and girls are particularly vulnerable to caste discrimination as they suffer from multiple and intersecting forms of discrimination owing to

both their gender and unprivileged caste status. They are disproportionately subjected to dire human rights violations, including violence and, particularly, sexual violence, trafficking, early and/or forced marriage and harmful traditional practices. They face obstacles in accessing justice and redress and are excluded or relegated to a secondary or subordinate role in decision-making processes.

India challenged this report at the 31<sup>st</sup> session, arguing that caste was not a part of the mandate of the Special Rapporteur on minority issues.

The report can be accessed here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/013/73/PDF/G1601373.pdf?OpenElement>

Source: <http://thewire.in/2016/03/25/stung-by-un-report-on-caste-discrimination-india-hits-back-25909/>

## **International Developments**

### **Asia**

#### **Pakistan's Punjab Legislative Assembly passes Protection of Women against Violence Bill**

The legislative assembly of Punjab in Pakistan passed the historic protection of women against violence bill providing comprehensive protection to women against all forms of violence. It encompasses abatement of an offence, stalking and cyber crime and includes domestic violence, emotional, psychological and economic abuse within the ambit of violence against women. The bill also introduced implementation mechanism through the District Violence against Women Centres (VAWCs), toll free hotline number, court orders (residence, protection and monetary) and setting up of shelter homes.

Though this has been hailed as a comprehensive law in providing redress to women, many religious leaders including the Council of Islamic Ideology (CII), a constitutional body that advises the legislature on bills' compatibility with Islam have declared the law as 'un-Islamic.' An all-parties conference convened in March 2016 by Jamaat-e-Islami condemned the law as a western agenda to destroy family system in Pakistan and has asked the government to retract the law.

Source: <http://www.reuters.com/article/us-pakistan-women-idUSKCN0W5109;>  
<http://tribune.com.pk/story/1053904/in-session-protection-of-women-bill-passed-unanimously/>

#### **Bangladesh rejects petition to remove Islam as country's state religion**

Bangladesh's High Court rejected a petition challenging the constitutional provision that recognizes Islam as the state religion. The public interest litigation was filed after the passage of the Eighth Amendment Bill in 1988 which declared Islam as the state religion. Bangladesh's first constitution, framed after independence in 1971, adopted secularism as one of its main principles, along with socialism. The petition argued that having Islam as the state religion conflicts with the secular nature of the state and discriminates against non-Muslims. The court's ruling has not been against the subject matter of the petition but that the petitioning organisation, the Committee against Autocracy and Communalism, did not have the right to be heard in the court. The issue has become even more relevant in light of recent attacks against atheists and religious minorities and is a huge setback for secular forces.

Source: <http://www.dw.com/en/bangladeshi-court-keeps-islam-as-state-religion/a-19148093>

<http://www.aljazeera.com/programmes/insidestory/2016/03/bangladesh-state-religion-review-160327145428561.html>

### **Myanmar swears in its first democratically elected government**

Htin Kyaw has been sworn in as Myanmar's new president after more than five decades of military rule, Myanmar has sworn in its first civilian president. Leader of the ruling party Aung San Suu Kyi was sworn in as minister of foreign affairs, education and energy, and will also hold the president's office portfolio after though she led her National League for Democracy party (NLD) to a landslide win in general elections in November 2015. Myanmar had been under military-dominated rule since a coup in 1962, and the elections in November were the first openly contested polls since 1990.

Source: <http://www.aljazeera.com/news/2016/03/myanmar-htin-kyaw-sworn-president-historic-power-shift-160330033342019.html>

### **China passes law against domestic violence**

China passed its first-ever national law against domestic violence, the result of a decade-long campaign driven by the country's civil society groups. The new law takes a significant step forward from existing legislation by defining domestic violence as physical and psychological abuse of family members and cohabitating non-family members. Under the new law, one of the biggest protective mechanisms is relaxation in the rules of obtaining a restraining order which earlier required a lawsuit to be filed and production of evidence of abuse. Though it does not cover separated/divorced couples, nor does it address sexual abuse or economic control, the law is groundbreaking for addressing what has long been deemed a private matter in China.

Source: <http://www.newsweek.com/china-makes-domestic-abuse-crime-431893>

### **Kyrgyzstan parliament to review law targeting NGOs**

Kyrgyzstan's parliament will be discussing a draft law amending several provisions of the Law on Non-Commercial Organisations which seeks to target foreign funded NGOs. The draft law was first proposed in 2013 and initially attempted to impose the label of foreign agent on all NGOs receiving funding from abroad and engaging in any deemed to be "political activities" that includes participation in "organizing and conducting political actions that have the objective of influencing decision-making of public authorities. [*PLD Newsletter Vol. 7 (V) September - October 2014*] While, the new version of the law has removed the most repressive content, it still places onerous reporting obligations on non-commercial organisations and aims at shrinking the space for civil society to peacefully carry out its work in defense of human rights and fundamental freedoms.

Source: <http://www.wunrn.com/2016/04/kyrgyzstan-demand-high-at-school-preparing-girls-to-become-muslim-wives-video-kyrgyzstan-considers-bill-which-would-limit-ngos/>

### **Prof. Deepika Udagama appointed as Chairperson of the Human Rights Commission of Sri Lanka**

Prof. Udagama, the Head of Department of Law Faculty of University of Peradeniya was appointed as the new Chairperson of the Human Rights Commission of Sri Lanka (HRCSL). She is also Sri Lanka's alternate member to the United Nations Sub-Commission on the promotion and protection of human rights and UN Commission's co special Rapporteur on

globalisation and its impact on human rights. The other members of the commission are Lionel Fernando, Saliya Peiris, Gazali Hussain and Ambika Satkunanathan.

Source: <http://www.dailynews.lk/?q=2015/10/22/local/dr-deepika-udagama-appointed-hrcsl-chair>

## ***Beyond Asia***

### **Same sex marriages legalised in Colombia, Greenland and Isle of Man**

In a historic decision, the Colombian Constitutional Court ended years of uncertainty for same-sex couples by upholding the validity of same-sex marriage. In 2011, the court had legalised same sex unions and had asked the congress to pass a law affording gay couples the same rights as heterosexual married couples. The court also said that if the congress fails to do so within two years, same-sex couples would have the right to ask judges and notaries to formalize and solemnize their contractual relationships. Since the congress failed to pass legislation that would comply with the Constitutional Court's ruling and end arbitrary discrimination in the country's marriage, it led to more than two and a half years of legal uncertainty among judges and notaries. This was finally rectified by the court's decision recognising such unions as legal. This ruling has made Columbia the fourth Latin American nation to allow same-sex marriage, after Argentina, Brazil and Uruguay.

Greenlandic Parliament and Danish Parliament has also unanimously approved same-sex marriage. Greenlandic Church worked closely with the government to amend the portion of the Danish law that covered same-sex blessings in religious weddings and allowing same sex marriages in churches and other religious buildings. The joint adoption clause included in Greenland's new Marriage Act will go into effect on July 1, 2016. Also, Isle of Man's legislative council also approved the Marriage and Civil Partnership (Amendment) Bill 2016 seeks to extend marriage rights to same-sex couples and allow heterosexual couples access to civil partnerships. Civil partnerships between same-sex couple had been able to enter since April 2011, but not marriage.

Source: <http://www.theguardian.com/world/2016/apr/07/colombia-court-gay-marriage-ruling>;  
<http://www.outtraveler.com/features/2015/05/28/greenland-unanimously-votes-same-sex-marriage>;  
<http://www.bbc.com/news/world-europe-isle-of-man-36141145>.

### **US Supreme Court steps in to protect abortion access in Louisiana**

The Supreme Court temporarily blocked a Louisiana law that would have reduced the number of abortion clinics in the state from four to one. The order states that the Louisiana law will remain blocked until the court renders its decision in another case in Texas, *Whole Woman's health v. Hellerstedt*. This law creates a substantial obstacle in the path of a large fraction of women seeking an abortion by imposing numerous restrictions on access to abortion.

The state clinics petitioned the High Court for an emergency stay after the U.S. Court of Appeals for the Fifth Circuit issued a ruling in March 2016 that would have closed three of the four remaining abortion clinics in Louisiana. Prior to the ruling, two clinics were already forced to close while another faced imminent closure. This decision has been applauded by advocates of women's reproductive rights across United States for preserving women's ability to get the constitutionally-protected health care.

Source: <http://www.nytimes.com/2016/03/05/us/politics/supreme-court-blocks-louisiana-abortion-law.html>

### **Chile's Senate passes new abortion law**

Chile's House of Representatives approved an abortion bill, which might put an end to the country's complete protections for "children before birth". The bill was introduced by the government of Socialist President Michelle Bachelet which allows abortion in cases of rape, when the mother's life is at risk, and when the unborn child suffers a disability likely to be fatal. The legislators also approved the possibility of obliging the director of a hospital to make sure that an abortion be performed on any woman over 18 who asked for it following a rape, even if she did not report the rape to police. This has been termed as a historic day in Chile where women for the first time in decades will have access to safe abortion. Despite being predominantly Catholic, Chile allowed abortion until 1989. But the practice was banned by General Augusto Pinochet in one of the last acts of his military government.

Source: <http://www.bbc.com/news/world-latin-america-35838760>

### **New legislation on Female Genital Mutilation applied in Gambian courts**

In December 2015, Gambia amended the Women's Act 2015 by inserting FGM law which bans the practice of Female Genital Mutilation [*PLD Newsletter Vol. 8 (VI) November - December 2015*]. The law has been invoked for the first time by the Banjul Magistrate Court in a case involving the death of five month old girl because of alleged practice of FGM. This case will set precedence about the application of the law on FGM in Gambia. The grandmother of the child and the circumciser have been charged with conspiracy to commit felony, prohibition of female circumcision, and accomplices to female circumcision.

Source: <http://allafrica.com/stories/201603111422.html>

### **France passes law to criminalize clients of sex workers**

France National Assembly adopted a law that decriminalizes women in sex work while penalizing buyers of sex. This makes France the fifth country to adopt an abolitionist policy after Norway, Sweden, Iceland, Canada, and Northern Ireland. Based on the Nordic model which envisions an eventual eradication of prostitution, the new law directly addresses the extreme forms of violence against women and is being hailed by some as a step towards achieving gender equality. Yet, this law has been severely criticised by the French Union of Sex Workers calling the law 'repressive' that will affect the livelihoods of France's sex workers, estimated to number between 30,000 and 40,000. Supporters of the law state that it will increase safety while many advocacy groups committed to protecting rights of sex workers argue that penalizing the clients ultimately forces sex workers underground rendering them more vulnerable to dangers and violence.

Source: <http://www.bbc.com/news/world-europe-35982929>; <http://www.efi-ife.org/news/day-victory-gender-equality-and-women%E2%80%99s-human-rights>

### **International Criminal Court gives first landmark conviction of rape as war crime**

The International Criminal Court convicted the former Congolese vice-president, Jean-Pierre Bemba for war crimes and crimes against humanity in his capacity as president and commander-in-chief of the Mouvement de libération du Congo. This is the first conviction before the ICC for crimes of sexual violence as well as the first conviction of an individual charged with command responsibility, under Article 28 of the Rome Statute. It is also the first case in which testimony from male victims of sexual violence was heard in support of the

charge of rape. This has been a significant development signalling a new era of accountability for sexual violence crimes.

Source: <http://www.theguardian.com/world/2016/mar/21/icc-finds-ex-congolese-vice-president-jean-pierre-bemba-guilty-of-war-crimes>

### **New York State passes 12-Week Paid Family Leave Law**

New York State passed a legislation adopting a 12-week paid family leave policy for New York employees. The law will provide employees with up to 12 weeks of paid family leave for the purpose of caring for a new child which will also include leave to care for an adoptive or foster child, caring for a family member with a serious health condition, or relieving family pressures when a family member is called to active military service. US at present has no national law for paid family leave, though a bill is pending in Congress. Meanwhile, states are enacting laws with New York being the fourth after California, New Jersey and Rhode Island.

Source: <https://www.hrw.org/news/2016/04/04/dispatches-new-york-passes-paid-family-leave>

### **Inter-American Court of Human Rights rules against Colombia for prohibited discrimination on the basis of sexual orientation**

Inter-American Court of Human Rights in a landmark decision ruled that the Colombian State for failure to provide a gay man with equal access to public benefits following the death of his partner. The Court held that Colombia had violated the petitioner's right to equality and non-discrimination as provided for in the American Convention on Human Rights and ordered the Colombian State to start paying the pension within three months and retroactively for 13 years plus a US\$10,000 dollar for immaterial injuries. This is the first time that the Court has ruled on the issues of discrimination and access to social rights as they pertain to same-sex couples and will have an enormous impact on international human rights jurisprudence.

Source: <https://www.outrightinternational.org/content/historical-decision-inter-american-court-human-rights-against-colombia>

### **Petition to decriminalise gay sex filed in Kenya's High Court**

The Kenyan National Gay and Lesbian Human Rights Commission filed a petition in Kenya's High Court calling for the decriminalization of gay sex, which is punishable by 14 years in jail. Present penal code in Kenya makes "carnal knowledge... against the order of nature" a crime attracting a 14 year sentence while "gross indecency with another male" is punishable by five years in jail. The petition states that the law violates constitutional rights to equality, dignity and privacy and also degrades the inherent dignity of affected individuals by outlawing their most private and intimate means of self-expression. Between 2010 to 2014, Kenya has prosecuted 595 people under the Penal Code while making it socially acceptable to persecute, intimidate and blackmail and use violence on sexual minorities.

Source: <http://www.bbc.com/news/world-africa-36059426>

### **Swedish government pays compensation to trans persons forced to undergo sterilization**

The Swedish Government announced an initiative to enact a law to pay compensation to trans victims of forced sterilisation. Forced sterilisation was a requirement for legal gender recognition until 2013 in Sweden under the previous Gender Recognition Act. This was ruled



as discriminatory and in breach of the Swedish Constitution and the European Convention on Human Rights by the Sweden Court of Appeals in December 2012. The move is significant in recognizing the wrong of tying gender affirmation to forced sterilization and taking responsibility for the violation of human rights caused by this practice. However, currently 24 states in Europe still require forced sterilisation from trans people, which keeps many from accessing legal gender recognition.

Source: <http://www.care2.com/causes/sweden-will-compensate-forcibly-sterilized-trans-people.html>;  
<http://tgeu.org/24-countries-in-europe-still-require-sterilization-from-trans-people/>

### **Botswana's High Court passes orders government to register LGBTI advocacy group**

In a significant victory for equal rights in Africa, the Gaborone High Court of Appeal ruled that Botswana's first LGBTI advocacy group, Legabibo (Lesbians, Gays and Bisexuals of Botswana) lesbian and gay group be registered by the government. Citing reasons for refusal to register the group, the Government argued that LGBT people's rights were not recognized by the Constitution and group's goals were incompatible with peace, welfare and good order in Botswana. But the Court of Appeal ruled that such denial violates constitutional rights to equal protection of the law, freedom of association and freedom of expression of the group. The Court emphasised that there is no legislation in Botswana which prohibits anyone from being homosexual. The Court went further to hold that the objectives of the group, which include promoting the human rights of LGBTI persons and advocating for law reform, were not unlawful.

While homosexuality is not specifically outlawed in Botswana, people can be prosecuted under Section 164 of the Penal Code that bars "carnal knowledge of any person against the order of nature," with penalties including seven years in prison.

Source: [http://www.fhr.org.za/latest\\_news/botswana-ordered-register-countrys-fur-gay-group/](http://www.fhr.org.za/latest_news/botswana-ordered-register-countrys-fur-gay-group/)

### **UK grants asylum to Singaporean transwoman over compulsory military service as a man**

A United Kingdom court has granted refugee status to a Singaporean transwoman, who claimed that because she has not had (and does not wish to have) "complete sex/gender reassignment surgery", she will have return to Singapore and continue serving in the compulsory military National Service for two weeks per year for the next 8 years. The law in Singapore only exempts women and transwomen who have undergone complete reassignment surgery from this rule. Without a complete gender reassignment surgery, she is considered male as per law in Singapore. The UK court found that having to "essentially hide her gender and live as a man, even for two weeks a year, to be wholly unreasonable".

Source: <https://asiancorrespondent.com/2016/04/uk-asylum-singaporean-trans-woman-military-service/>

### **Guatemalan court convicts former paramilitary and retired army officer and for rape and murder during civil war**

Guatemalan courts convicted a former paramilitary and a retired army officer of committing rape and murder and holding sexual slaves during the country's 1960–1996 civil war. In a landmark ruling, the two former military personnel were found guilty of holding indigenous Mayan women as domestic and sexual slaves in a military base. The defendants were sentenced to a total of 360 years in prison, while prisoners in Guatemala may serve 50 years at most; the women are now seeking \$3 million in damages.

Source: <http://www.brownpoliticalreview.org/2016/03/long-awaited-revolution-combatting-sexual-violence-latin-america/>

## National Developments

### National News

#### **UN Special Rapporteur on the rights to freedom of peaceful assembly and of association reports on non-compliance of FCRA regulations in India with international law, standards and principles**

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association released a note analysing the compliance of the Indian Foreign Contributions Regulation Act, 2010 and the Foreign Contributions Regulation Rules 2011 with international law, standards and principles. Specifically, the Special Rapporteur found that Ss.9 and 12(4) of the Act, which together have the effect of limiting or prohibiting access to foreign funds for civil society organizations, on concerns of “security, strategic, scientific or economic interest of the State” and “public interest”, are in breach of the International Covenant on Civil and Political Rights.

The Note states that access to resources, including foreign funding, is a fundamental part of the right to freedom of association under international law, standards, and principles. Restrictions on access to foreign funding must comply with stringent tests for allowable restrictions for the right to association developed by the international human rights bodies. Grounds of “political nature”, “economic interest of the State” or “public interest” violate the right because *“these terms or definitions are overly broad, do not conform to a prescribed aim, and are not a proportionate response to the purported goal of the restriction. Such stipulations create an unacceptable risk that the law could be used to silence any association involved in advocating political, economic, social, environmental or cultural priorities which differ from those espoused by the government of the day.”*

The Note can be accessed at <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>.

#### **Maharashtra passes the Prohibition of Social Boycott Act**

The Maharashtra Legislature passed the Prohibition of Social Boycott Act, intending to address social ostracism inflicted in the name of caste, creed and community. The law defines social boycott as an individual or group denying to any person access to places of worship, visiting burial grounds or other places used by the community; or when there is an interference or obstruction in the inter-caste marriages, or upon imposition of a dress code. It also prohibits obstructing, barring or discriminating against children from going to school, temples or medical institutions. The law makes social boycott a criminal offence, with a sentence of up to seven years imprisonment and a fine up to Rs. five lakhs. It also stipulates a time limit of 6 months for disposal of complaints, in addition to mandating appointment of district level officers to tackle and pursue social boycott cases.

The Central Government is planning to ask other states to replicate the Maharashtra law on social boycott. It also acknowledges that the implementation of such a law will be difficult in states such as Haryana, Rajasthan, Telangana and Andhra Pradesh, where caste-based panchayats exercise enormous influence over communities.

*The Act can be accessed at*

[https://www.maharashtra.gov.in/site/upload/WhatsNew/SuggestionObjection\\_MaharashtraProhibitionOfSocialBoycottAct\\_2015.pdf](https://www.maharashtra.gov.in/site/upload/WhatsNew/SuggestionObjection_MaharashtraProhibitionOfSocialBoycottAct_2015.pdf).

*Source:* <http://indianexpress.com/article/india/india-news-india/maharashtra-passes-law-against-social-boycott/>; <http://indianexpress.com/article/cities/mumbai/right-to-dignity-supreme-says-cm-fadnavis-cabinet-nod-to-social-boycott-bill/#sthash.fyOsAW22.dpuf>;  
<http://indianexpress.com/article/cities/mumbai/centre-planning-to-ask-other-states-to-adopt-maharashtras-social-boycott-bill/>

### **Delhi Commission for Women proposes Acid Watch programme**

The ‘Acid Watch’ programme to monitor and prevent instances of acid attacks and sale of acid will be launched by Delhi Commission for Women (DCW) in the near future. The Commission will also give suggestions to recommend solutions to make Delhi acid attack free. The Delhi Government will fund the programme.

*Source:* <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/dcw-to-launch-acid-watch/article8329289.ece>

### **Delhi Government to introduce the Placement Agency Regulation Bill in Assembly**

The Delhi government’s Labour Department proposes to introduce the Placement Agency Regulation Bill in the upcoming budget session which will regulate the functioning of private placement agencies in Delhi for domestic workers and to improve the working conditions of domestic workers. The Bill was prepared after receiving suggestion from the Delhi Commission for Women (DCW). Earlier, the DCW had pointed out flaws in the registration process of placement agencies, where the Labour Department would issue certificates to the placement agency owner without proper verification processes. The placement agencies inappropriately use the certificate as an approval letter, and do not procure a license of operation after registration. As a result, none of the 1250 registered private placement agencies hold a license. DCW also highlighted the role of unregulated placement agencies in human trafficking.

The Bill makes licensing of placement agencies compulsory, provides terms and conditions under which the domestic helps will work and makes provisions for the minimum wages on hourly and monthly basis (according to the Minimum Wages Act), welfare schemes such as insurance and health care. It also lays down provisions for stringent action punishment and penalty such as; blacklisting the agency, seizure of their license and other action as per law against agencies that violate rules, non-registration and not getting proper license.

*Source:* <http://www.deccanherald.com/content/534209/delhi-govt-unveil-legislation-domestic.html>;  
<http://indianexpress.com/article/india/india-news-india/gujarat-10-per-cent-economic-reservation-2775857/>

### **Gujarat to provide reservations to the economically backward in the upper castes**

The Gujarat Government is planning to introduce an ordinance to give 10 percent reservation for economically backward classes (EBC) among upper-castes for families that earn less than 6 lakh annually. This proposal was introduced against the backdrop of the Patidar agitation in Gujarat since last year, where the community was seeking to be included in the OBC category in light of their economic backwardness. The state government already provides 49 percent reservations to SC/STs and OBCs. An additional 10 percent reservation is likely to

lead to a legal challenge for breaching the upper limit of 50 percent laid down by the Supreme Court.

Source: <http://indianexpress.com/article/india/india-news-india/gujarat-10-per-cent-economic-reservation-2775857/#sthash.SMV2XwHF.dpuf>

### **National Judgments**

#### **Bombay High Court rules that obscene acts in private will not amount to an offense**

The Bombay High Court in *Amardeep Singh Chudha vs. State of Maharashtra* held that obscene acts in private will not amount to an offence. The case related to the quashing of an FIR filed under S.294 of the IPC, obscenity in public, against men who were arrested from a house party. The petitioners contended that the acts alleged in the FIR took place in a private place so it is out of the purview of Section 294 of IPC. The court agreed with the contention of petitioners saying that a flat or apartment which is owned by a private individual for the private use cannot be called a public space. The court added that in a private space, the public does not have any right except entering it therefore the provision of obscenity cannot apply. It also observed that the FIR did not mention any other offense other than obscenity therefore quashed the FIR.

Citation: *Amardeep Singh Chudha vs. State of Maharashtra*, 2016 SCC OnLine Bom 2286

#### **Madras High Court directs Tamil Nadu to take action on the growing number of 'honour' killings**

The Madras High Court issued directions to the Tamil Nadu government in *B. Dilipkumar v. The Secretary to the Government to create Special Cell* for tackling growing number of honour killings in the state. After the brutal honour killing of a woman named C. Vimaladevi, her husband approached the Madras High Court under Article 226 of the Constitution for the issuance of writ of mandamus to the concerned government authorities (Director General of Police, Te Secretary to Government and CBI) to take appropriate action. The petitioner provided a list of officials who failed to protect the couple as well as the number of honour killings that has taken place in the state in the recent years.

The High Court giving special attention to the facts presented before it and issued directives taking into consideration the decision of Punjab and Haryana High Court in the case of *Manmeet Singh vs. State of Haryana*. It directed the state police to ensure that the complaints of honour killings are dealt with sensitivity and actions should be taken promptly. It also directed the state government to create a Special Cell in every district comprising of Superintendent of Police, District Social Welfare Officer and District Adi-Dravida Welfare Officer to receive the complaint of harassment and threats to the couples of inter-caste marriages. Apart from that other directions include creation of 24 hours helpline by special cell, providing necessary assistance/advice and protection to the couples, providing counseling services to the aggrieved party and the parents etc.

Citation: *B. Dilipkumar v. The Secretary to the Government*, 2016 SCC OnLine Mad 2122

#### **Orrisa High Court rules that the length of cruelty alleged should be taken into consideration while deciding upon the divorce cases**

The Orrisa High Court in the case of *Sonali Samal v. Vikrant Parida* set aside the judgment of the Family Court which allowed the application for divorce in favour of the husband.

In this case the respondent had filed an application under section 13 (i) (a) of the Hindu Marriage Act, 1955 for grant of divorce against the appellant alleging that she had deserted him by voluntarily leaving the house with the minor child causing cruelty. The Family Court gave the decision in favour of the husband. Thereafter the appellant approached the High Court. According to appellant she was thrown out of the house immediately after the birth of child. The question before the court was that whether the allegations made by the respondent fall under the category of cruelty which is a ground for divorce.

The court observed that the allegations made do not fall under the category of cruelty because marriage is reviewed as a whole and few isolated instances will not amount to cruelty especially if the marriage is new and couple has a new born child. Therefore, the Court in this case held that the marriage in this case is not ruined beyond any hope of reconciliation and directed the respondent to restore the conjugal relationship and maintain both child and the wife.

*Citation: Sonali Samal v. Vikrant Parida, 2016 SCC OnLine Ori 198*

### **Delhi High Court holds that tenanted premises comes under the category of shared household until the tenancy expires**

The Delhi High Court held in *Anukriti Dubey v. Partha Kansabanik* that tenanted premises fall under the category of 'shared household' for the purposes of the Protection of Women from Domestic Violence Act, till the term of the tenancy expires.

In this case the tenant and his wife were involved in a matrimonial dispute while they were living on rent. In the meanwhile the lease expired but the tenant did not vacate the premises which led to the filing of suit of eviction by the landlord. The Trial Court gave the judgment in the favour of landlord for eviction. The appellant challenged the judgment of Trial Court saying that the premises were her matrimonial home and her constitutional and statutory right to residence and shelter was compromised by this judgment.

The Court observed that her right cannot be enforced against the landlord who does not come under the purview of respondent in a domestic relationship. Moreover, the eviction was proposed in accordance with the provisions of law after the term of expiry of the tenancy. The Court rejected the claim of appellant and held that landlord is an outsider in the matrimonial dispute between the parties and it is not lawful to compel an unwilling landlord to extend the tenancy. .

*Citation: Anukriti Dubey v. Partha Kansabanik, 2016 SCC OnLine Del 1930*

### **Delhi High Court holds that National Commission for Women (NCW) is acting beyond jurisdiction by taking complaints from women directly**

In the case of *Kunal Chauhan v. National Commission for Women* the Delhi High Court held that the NCW has in many cases has acted beyond its jurisdiction.

In this case the petitioner is a Marine Engineer against whom his wife had filed a complaint with the Special Unit of Women and Child of Crime Against Women Cell of Delhi Police and also filed a petition in the District Court at Saket, New Delhi. She had also filed a complaint with the NCW which issued an advisory order to the High Commissioner of India in Singapore. After receiving the advisory order the employer of petitioner sacked him from his employment. Therefore, the petitioner has filed a writ of mandamus under section 226 of the Constitution for recalling the advisory order of NCW. The respondent contended that the

NCW derives its authority from a letter issued by the Ministry of Overseas affairs, Government of India to receive and process complaint of Indian women deserted by their husbands who live overseas.

The Court in the meanwhile stayed the operation of the impugned advisory till the disposal of the case observing that it to be a violation of the principles of natural justice. It also held that NCW has misconstrued the role assigned to it by the Ministry's letter, which appoints NCW as a coordinating authority to guide the women in distress towards the appropriate agencies with jurisdiction to act upon the complaint, rather than assuming jurisdiction over complaints themselves.

*Citation: Kunal Chauhan v. National Commission for Women, 2016 SCC OnLine Del 2009*

### **Supreme Court orders enhancement of compensation in acid attack cases on the ground of severity of injury**

The Supreme Court in *Parivartan Kendra v. Union of India* held that no bar exists on the amount of compensation to be paid by the state government to victims of acid attacks, and that the amount should be determined depending on the severity of injury and taking into account loss to the victim in a long run.

The NGO Parivartan Kendra filed a PIL in the Supreme Court under Article 32 of the Constitution for highlighting the plight of the acid attack victims and the inadequate amount of compensation given to them. The Court in this case observed that compensation can be enhanced by the state government on the basis of severity of victim's injury, expenditure with regard to grafting and reconstruction surgery, physical and mental pain, etc. It directed that compensation should be awarded keeping in mind physical injury as well as victim's inability to lead a full life. It held that the state has a duty to prevent such crimes and in case of failure it will be duty bound to pay the compensation.

*Citation: Parivartan Kendra v. Union of India, (2016) 3 SCC 571*

### **Supreme Court and Bombay High Court hold that banning entry of women into temples discriminates against women**

While hearing the PIL which is challenging the prohibition of entry of women into the Shani Shignapur temple, the Bombay High Court directed the state government to fulfil its duty to protect the fundamental rights of women, in terms of preventing the gender discrimination in respect of temple entry. The court said that any person who imposes restriction on entry in temple will face six-month jail term under the law. It asked the state government to implement the provisions of Maharashtra Hindu Places of Public Worship (Entry Authorization) Act, 1956 by directing the Superintendent of Police and the Collectors by ensuring its compliance. It called upon the state government to publicize the law among the general public, noting that the High Court will take action should the state government fail to do so. Meanwhile the Supreme Court in the Sabarimala temple case said that religious practices banning the entry of women in the temple pose a danger to gender justice and must pass the constitutionality test in the court of law. The court also sought to look into the previous judgments which upheld the ban on the entry of women in temples.

*Source: <http://www.thehindu.com/news/cities/mumbai/end-gender-discrimination-at-temples-hc-tells-maharashtra/article8423892.ece>; <http://indianexpress.com/article/india/india-news-india/sabarimala-temple-ban-is-tradition-above-constitution-asks-sc-ban-women/#sthash.UgVWqstl.dpuf>*

## Resources

### UNDP releases the Human Development Report 2015

The 25<sup>th</sup> Human Development Report was released by the UNDP, foregrounding the richness of human lives rather than that of economics, as indicators of development. The Report concerns itself fundamentally with work, and its relationship with development. In doing so, the Report takes an expansive view of ‘work’ to include not only paid employment, but also unpaid care work, volunteer work and creative work. It finds that work on its own is insufficient for development, but that the quality of work is an important dimension of ensuring that work enhances human development. Issues such as discrimination and violence, however, prevent positive links between work and human development. Some work is very damaging to human development, such as child labour, forced labour and the labour of trafficked workers, all of which constitute serious violations of human rights. The Report argues that enhancing human development through work requires policies and strategies in three broad areas—creating work opportunities, ensuring workers’ well-being and developing targeted actions.

*The Report can be accessed here: <http://report.hdr.undp.org/>.*

### Sexual Rights Initiative launches its National Sexual Rights Law and Policy Database

The Sexual Rights Initiative recently launched its National Sexual Rights Law and Policy Database at [sexualrightsdatabase.org](http://sexualrightsdatabase.org). The database collates national Constitutions, laws and policies related to sexual rights, including reproductive rights and sexual and reproductive health, enabling users to search by country, issue or undertake a comparative study.

*Source: <http://us3.campaign-archive1.com/?u=67191046cd42cbb7c7d4196b0&id=5444f23915&e=24f6e67b4f>*

### The Observatory on the Universality of Rights launches web platform

The Observatory on the Universality of Rights is a collaborative project between 15 organizations around the globe, that aims to monitor, analyze, and share information on anti-rights initiatives threatening international and regional human rights systems. They have recently launched a web platform at [oursplatform.org](http://oursplatform.org) to share important resources and information on safeguarding the universality of rights in international and regional human rights spaces.

### Women’s Learning Partnership releases “When Home Is Where the Harm Is: Perspectives: Law, Culture, Conflict, and Religion”

The Women’s Learning Partnership launched its research and global advocacy campaign on the reform of discriminatory laws against women in the family at The New School in New York during the 60th Session of the United Nations Commission on the Status of Women. This two-part video series focuses on the relationship between articles of the law and perpetration of violence against women and girls. The first part addresses perspectives on law, religion, culture and conflict, while the other presents reports from the field.

*Part 1 can be accessed here: <https://www.youtube.com/watch?v=1w-rpYOa34I&feature=youtu.be>.*

*Part 2 can be accessed here: <https://www.youtube.com/watch?v=XIJ6pEHxnm8&feature=youtu.be>.*

### **Toolkit on promoting human rights of women and girls in communities released**

The Women's Intercultural Network released a toolkit to promote the human rights of women and girls within communities, called 'Cities for CEDAW: A Campaign to make the Global Local'. The toolkit attempts to draw global norms under the women's rights treaty to impact at the local level in the United States. The toolkit highlights that the local implementation of CEDAW will imply: a gender analysis of city departments and operations, an oversight body to monitor the implementation of a local CEDAW ordinance, and funding to support the implementation of the principles of CEDAW.

*The toolkit can be accessed here: [http://citiesforcedaw.org/wp-content/uploads/2015/12/CEDAW-toolkit\\_December-2015.pdf](http://citiesforcedaw.org/wp-content/uploads/2015/12/CEDAW-toolkit_December-2015.pdf).*

### **ORAM releases glossary of terminology for LGBT individuals**

Organization for Refuge, Asylum & Migration (ORAM), an organization to advocating on behalf of the world's most vulnerable refugees and asylum seekers, has released a first-of-its-kind glossary of terminology to assist humanitarian professionals to communicate with people of diverse sexual orientations and gender identities. Titled, "Sexual Orientation, Gender Identity and Gender Expression: Essential Terminology for the Humanitarian Sector", the glossary contains appropriate and culturally sensitive terms for communicating with lesbian, gay, bisexual and transgender individuals. The glossary is written in five languages, including English, French, Turkish, Farsi and Arabic.

*The glossary can be accessed at <http://oramrefugee.org/wp-content/uploads/2016/04/Glossary-PDF.pdf>.*