

Annual Newsletter Digest

2015

Partners for Law in Development



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REGIONAL HUMAN RIGHTS SYSTEMS

- ❖ Inter-American Commission of Human Rights hears first ever case of discrimination and abuse against LGBT persons in detention
- ❖ ECtHR rules that international human rights law requires governments to provide legal recognition for same-sex couples
- ❖ United Nations Mission in Liberia and OHCHR releases Report concerning Traditional Practices violating human rights in Liberia

INTERNATIONAL LEGAL DEVELOPMENTS

Asia

- ❖ Cambodia approves laws curtailing rights to speech and association
- ❖ For the first time, transgender candidates contest polls in Bangladesh and women vote in Saudi Arabia
- ❖ Government of Nepal expands definition of rape, while High Court in Bangladesh orders police stations to respond to rape victims promptly and without discrimination
- ❖ Nepal adopts new Constitution but restricts citizenship rights of women
- ❖ Mongolia abolishes death penalty, while Bangladesh Supreme Court declares mandatory death penalty unconstitutional
- ❖ Tokyo issues Japan's first same sex marriage certificates, while Nepal contemplates legalizing same sex marriages
- ❖ Malaysian courts clamp down on LGBT rights
- ❖ Vietnam approves bill to legalise sex reassignment surgeries
- ❖ Philippines and Iran strike down some gender discriminatory laws
- ❖ Bangladesh Supreme Court quashes conviction on contempt of court against Zafrullah Chowdhury
- ❖ Women's rights activist detained in China for demanding end to sexual harassment in public transport
- ❖ Indonesia drops schoolgirls 'virginity test' plan after international uproar
- ❖ Japan issues apology to South Korea over sexual slavery of 200,000 women during World War
- ❖ Myanmar passes the Population Control Health Care Bill
- ❖ Pakistan new Cybercrime Prevention Bill threatens free speech and privacy
- ❖ Russian Supreme Court upholds ban on hijabs in schools
- ❖ Sri Lanka reinstates former Chief Justice two years after unconstitutional impeachment

Beyond Asia

- ❖ New UK guidelines requires rape accused to prove consent to investigating authorities
- ❖ Reproductive rights face further setbacks in USA, Portugal, while Australian state introduces protest exclusion zones outside abortion clinics
- ❖ Turkey's Constitutional Court and the Vatican announce major changes to marriage laws
- ❖ Amnesty International endorses de-criminalization of sex work
- ❖ Kazakhstan, Mozambique decriminalize homosexuality, Egypt acquits gay men of 'inciting debauchery', while Russia goes the other way
- ❖ Chile, Ecuador, Greece, Colombia recognise civil unions, while Slovenia votes against through referendum
- ❖ Ireland and Italy dispense with medical treatment for gender recognition, while Polish President vetoes same proposal
- ❖ Nuremberg State Court grants damages for Intersex Genital Mutilation treatment
- ❖ Gambia abolishes Female Genital Mutilation
- ❖ Chad reinstates death penalty for acts of terrorism, as Connecticut holds death penalty unconstitutional for the remaining inmates on death row
- ❖ US Supreme Court upholds termination of employment of employee for seeking access to the lactation room
- ❖ El Salvador enhances penalties for Hate Crimes
- ❖ Ukrainian Parliament passed anti-discrimination law in employment for LGBT persons, while Houston rejects the anti-discrimination ordinance
- ❖ New Jersey court holds 'gay conversion' a consumer fraud

NATIONAL DEVELOPMENTS

New Law/Amendments

- ❖ Parliament passes new Juvenile Justice Act to reduce age of juvenility
- ❖ Amendment in the SC/ST Atrocities Act introduces stringent provisions

Judgments/Orders

- ❖ Supreme Court and Rajasthan High Court uphold education and property disqualifications for candidates contesting Panchayat elections
- ❖ Supreme Court holds that accused must prove innocence beyond reasonable doubt under the reversal of burden of proof in S.304B, IPC
- ❖ Judiciary emphasizes the importance of victim-centric measures for victims of violence, through compensation, free treatment, among others
- ❖ Gujarat High Court and Himachal Pradesh High Court direct attention to appalling conditions of shelter homes for women
- ❖ Supreme Court upholds dismissal from service of man for bigamy
- ❖ Supreme Court strikes down Section 66A of IT Act as 'unconstitutional'

- ❖ Supreme Court holds unwed mother to be child's guardian without father's consent
- ❖ In two cases, Delhi High Court passes orders promoting rights of children to privacy and access to justice
- ❖ Delhi High Court holds rules regarding age-determination procedure under Juvenile Justice Act constitutional
- ❖ Supreme Court and Kerala High Court strike down gender discriminatory laws affecting right to employment and livelihood of women
- ❖ Supreme Court rolls back rights of women in the Hindu Undivided Family under the Hindu Succession Act
- ❖ Bombay High court allows divorce petition before two year separation for Christians
- ❖ Delhi High Court rules against discrimination on the basis of gender and sexuality
- ❖ Bombay High Court directs Municipal Corporations to provide women public toilets
- ❖ Delhi High Court holds that foreign airlines need to comply with sexual harassment law
- ❖ Supreme Court rules that women can claim *stridhan* even after separation from husband
- ❖ Bombay High Court strikes down circular preventing pre-litigation mediation and counselling in domestic violence cases
- ❖ Delhi High Court rules that commissioning mothers of surrogate babies can avail maternity leave
- ❖ Madras High Court rules for recognition of monetary value of unpaid domestic work by women
- ❖ Setback for access to justice for rape victims, as Madras High Court and Bombay High Court order settlement of rape cases between accused and victim
- ❖ Progress in rights of women in intimate relationships, Madras HC grants second wife right to claim pension without marriage certificate and Supreme Court rules that couple living together will be presumed married

News and events

- ❖ Law Commission of India recommends abolition of death penalty
- ❖ Law Commission recommends amendments to the Hindu Adoptions and Maintenance Act, and shared child custody between parents
- ❖ Inquiry Commission confirms fake encounter of Meena Khalkho
- ❖ Socio-Economic and Caste Census 2011 released
- ❖ Rajya Sabha passes the Rights of Transgender Persons Bill, 2014
- ❖ Central government proposes changes in laws on surrogacy, human trafficking, but ignores marital rape
- ❖ Chapter on Sexual Offences in Modi's Medical Jurisprudence and Toxicology updated to reflect legal amendments
- ❖ Central Government bans 'India's Daughter', a documentary on the December 16, 2012 gang rape

- ❖ Mumbai police illegally raids hotel rooms and detains consenting adult couples for ‘public indecency’

Programmes/Policy/Institution

- ❖ Mumbai University includes third gender as a category in admission forms
- ❖ Injectable contraceptives to be used for family planning programme
- ❖ Maharashtra government to appoint protection officers in all talukas
- ❖ Delhi witness protection scheme notified by the government

RESOURCES

The Beijing Declaration and Platform for Action turns 20: A Summary Report	UN WOMEN
Gender Mainstreaming in Development Programming	UN WOMEN
People's Archive of Rural India'	The CounterMedia Trust
Transforming Economies, Realizing Rights'	UN WOMEN
Report on witch hunting in Jharkhand, Bihar and Chhatisgarh	PLD
Working paper on gender equality and women's right in the post-2015 agenda	OECD
Report on the attack on women's sexual and reproductive rights in Iran	Amnesty International
Hindi resource book on sexual harassment of women at the workplace	PLD
Handbook on Sexual Orientation and Gender Identity	Council of Europe
Information Series on Sexual and Reproductive Health and Rights	UN OHCHR
Discussion Paper on Gender Equality and Human Rights	UN WOMEN
Practical Guides for Civil Societies	UN OHCHR
Gender Issue Guides	UN HABITAT
Handbook on Gender and Complaints Mechanism	Geneva Centre for Democratic Control of Armed Forces
Feminist Law Archives	PLD
Handbook on Sexual Harassment at Workplace	MWCD
Report on Triple Talaq	Bharatiya Muslim Mahila Andolan
Accessing justice: Models, strategies and best practices on Women's Empowerment	IDLO

UN Updates

UN adopts Sustainable Development Goals to replace the Millennium Development Goals, after UN bodies and experts reiterate the imperative of human rights and gender equality

The United Nations adopted 17 Sustainable Development Goals (SDGs) for the next 15 years, to replace the Millennium Development Goals (MDGs) adopted in 2000. The SDGs seek to end poverty, protect the planet and ensure inclusive development, through its 17 goals, each of which have defined targets to be met by 2030. Unlike the MDGs, the SDGs recognise poverty as a consequence of systemic marginalization. Therefore, they target sustainable development, by combating climate change, sustainable use of natural resources and protection and preservation of forests, seas and oceans. They also seek to end poverty, achieve gender equality and empowerment, inclusive development, access to justice, education and employment for all.

At a historic juncture, the adoption of the SDGs was preceded by the 59th session of the Commission on the Status of Women, to deliberate on the Beijing +20 agenda at the completion of two decades of the Beijing Declaration Platform for Action, 1995. Ministers and representatives of governments released a political declaration affirming the Beijing Declaration and Platform for Action, and the mutually reinforcing role of the CEDAW in achieving gender equality.

Also leading up to the adoption of the SDGs, UN and regional experts called upon states to renew their commitment and ensure the full enjoyment of rights to sexual and reproductive health and rights. The experts related the goals of eliminating inequality and discrimination, and ensuring universal access to healthcare, to the critical rights of women to reproductive and sexual health, and access services to ensure their enjoyment.

Twelve UN agencies, including the ILO, UN OHCHR, UNDP, UNESCO, UN Women, WHO, among others, issued an unprecedented statement calling on states to protect the rights of LGBTI individuals and end violence and discrimination against them. The statement underlined that a failure to uphold the human rights of LGBTI individuals will seriously impact the ability of states to meet the SDGs. The statement calls upon states to protect LGBTI individuals from violence, repeal discriminatory laws and affirmatively protect them from discrimination. It reiterates that the primary responsibility to protect and promote the human rights of individuals lies with the states.

The Resolution on the 2030 Agenda for Sustainable Development (SDGs) can be accessed at http://www.un.org/ga/search/view_doc.asp?symbol=A/70/L.1&Lang=E.

A list of the SDGs can be found at <http://www.radionz.co.nz/international/pacific-news/285346/un-adopts-ambitious-sustainable-development-goals>. A critique of the SDGs can be found at http://www.huffingtonpost.com/neil-hicks/the-sdgs-missed-opportunity-on-human-rights_b_8164384.html?ir=India&adsSiteOverride=in.

The Political Declaration of the Beijing +20 agenda can be found at http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.6/2015/L.1. The joint statement of the UN and regional experts on sexual and reproductive rights can be accessed at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E>. The joint statement of the twelve UN agencies can be accessed at http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

UN Human Rights Council passes three significant resolutions on the rights of children

The Human Rights Council passed a resolution towards better investment in the rights of the child, pursuant to the report of the UN OHCHR with the same title, that was placed before the Human Rights Council at its last session (A/HRC/28/33). It emphasises that it is the primary responsibility of the state to respect, protect and fulfil the human rights of the child, and this includes all branches of the state. It also recognizes that the duties and responsibilities to respect the rights of the child in practice also extend beyond state and state-institutions to private actors and business enterprises.

The Human Rights Council also passed a resolution without a vote, recognizing the right to education as an inalienable human right, and calling upon states to make education accessible to all, without discrimination. It also calls upon states to institute regulatory frameworks, guided by international human rights obligations, to delineate minimum norms and standards for education providers, and to monitor private providers of education.

The UN body also unanimously passed a resolution on ‘Strengthening efforts to prevent and eliminate child, early and forced marriages’ (A/HRC/29/L.15). The Resolution recognizes that child, early and forced marriages are a violation of the human rights of girls and women, and calls upon states to ensure that marriages are entered into with the free, full, informed consent of parties. It also acknowledges the linkages of this practice with existing gender inequalities and stereotypes, hence calling for greater investment in women and girls to advance their access to justice, enhancement of their capacities and leadership, access to information, especially relating to sexual and reproductive health.

The resolution on better investment in the rights of the child can be accessed at http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/28/L.28&utm_source=CREA+Newsletter+Issue+9&utm_campaign=Newsletter+-+Issue+5&utm_medium=email.

The resolution on the right to education can be accessed at <http://blog.unwatch.org/wp-content/uploads/Res-L14.docx>. The Resolution A/HRC/29/L.15 can be accessed at <http://daccess-dds-ny.un.org/doc/undoc/ltd/g15/139/78/pdf/g1513978.pdf?openelement>

Human Rights Council passes controversial resolution on the protection of the family, in neglect of individual rights-bearers and diversity in family forms

The Human Rights Council passed a controversial resolution on the protection of the family, with an eye on the post-2015 development agenda. The resolution recognizes ‘family’ as the fundamental unit in society, and as an institution in need of protection, for its role in the preservation of cultural identity, traditions, morals, heritage and value system of the society. It also calls upon governments to direct resources to the family to counter the impacts of social and economic crises through rising job insecurity and unemployment and reduction in social sector expenditure. The resolution has been strongly critiqued for its neglect of the individuals within families as rights-bearers, and turning a blind eye to the perpetuation of violence and discrimination, and harmful traditional practices (such as early and forced marriages, child abuse, dowry violence, ‘honour’ killings) within patriarchal family sets ups. The resolution also excludes recognition to the diversity of family forms that exist culturally and socially, despite calls by numerous member states during the negotiations.

The resolution can be accessed at <http://blog.unwatch.org/wp-content/uploads/Res-Protection-of-family.docx>.

Open Ended Intergovernmental working group (OEIWG) on transnational corporations and other business enterprises with respect to human rights holds its first meeting

The OEIWG on TNCs and other business enterprises was established by the Human Rights Council in its 26th session in 2014 to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. It initiated the first round of discussions on an international legally binding instrument to regulate the conduct of TNCs and other business enterprises with respect to human rights. The session witnessed attendance by 60 member states, 2 observers, along with UN Women, OECD, EU and Council of Europe, UNICEF, ILO, UNCTAD and civil society organizations. All member states expressed their commitment to holding TNCs and business enterprises accountable for human rights violations, even as the primary responsibility of upholding human rights is that of the State. The European Union came under criticism by civil society organizations for attempting to stall the progress of work.

The draft report of the OEIWG can be accessed at

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session1/Draftreport.pdf>.

Independent Mechanisms and Reports

Global Study on the implementation of UN Security Council Resolution 1325 on Women, Peace and Security released, deliberations by the CEDAW Committee follow

The Global Study on Resolution 1325, commissioned by the Secretary-General of the United Nations and led by independent expert Radhika Coomaraswamy, was released, to inform the upcoming High Level Review of the resolution by the Security Council. Resolution 1325 was passed by the Security Council in 2000, on Women, Peace and Security, which linked women's experience of conflict to the global security agenda for the first time. The Global Study reviews developments relating the implementation of the resolution over the past fifteen years, and makes recommendations on the way forward. The Study notes that the nature of conflict in certain regions is quantitatively different, thus the meaning of peace, security and justice must dynamically reflect these experiences.

The CEDAW Committee, at its sixty-second session, held a panel discussion on Connecting CEDAW and the Women, Peace and Security Agenda. The panel deliberated on integrating human rights in the Women, Peace and Security agenda, and on the role of the CEDAW Committee in monitoring the implementation of the Agenda.

The Global Study can be accessed at

<http://wps.unwomen.org/~media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf>.

The report of the sixty-second session (informal document) can be accessed at

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_SED_62_24221_E.pdf

UN Special Rapporteur on the situation of human rights defenders reports on high vulnerabilities of defenders of women's rights, among others

The UN Special Rapporteur on situation of human rights defenders, Michel Forst, submitted his report at the 28th session of the Human Rights Council. The report summarised the activities of

the SR in the reporting period, and also delineated his strategic workplan. The report stated that those working on economic, social and cultural rights, minority rights, environmental defenders, LGBT rights defenders, women's rights defenders among others were most exposed to threats.

Previously, on the occasion of International Women Human Rights Defenders Day, 29 November 2015, he had also brought attention to the multiple threats, stigma and violence that women defenders of sexual and reproductive rights in Americas face from state as well as non-state actors, including religious and community leaders.

The Report can be accessed at

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>.

The statement of 29 November 2015 can be accessed at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16810&LangID=E>

UN appoints new Special Rapporteurs, in the field of cultural rights and on violence against women, its causes and consequences

The Human Rights Council appointed Karima Bennouna as the Special Rapporteur in the field of cultural rights. Bennouna is a professor of international law at the University of California–Davis School of Law. She is a leading authority on women's rights to culture and freedom of religion, and on countering extremism and fundamentalism. She is the author of the ground-breaking book *Your Fatwa Does Not Apply Here: Untold Stories from the Fight Against Muslim Fundamentalism*, which canvases the diversity of cultural practices in Islam, and mobilisation within cultures that resist fundamentalism.

Dubravka Simonovic has been appointed as United Nations Special Rapporteur on Violence against Women, its causes and consequences, replacing Rashida Manjoo. Simonovic has previously served as an expert on the UN CEDAW Committee, and was later its chairperson in 2007-08. She has contributed to the drafting of the Council of Europe Convention on preventing and combating violence against women and domestic violence as chair of the Council of Europe Task Force and as co-chairperson of the Committee which drafted the Convention. Soon after assuming office, Dubravka called upon states to institute a 'Femicide Watch' to account for the number of gender-related killings of women, the age and sex of the perpetrator, as well as the relationship between them. The lack of adequate and reliable data on femicide weakens the ability of states to evolve strategies for prevention of violence against women by disabling proper risk assessment. This information should then be made publically available. In collecting, analysing and publishing such data, Dubravka emphasised the need for participation by civil society actors and human rights institutions, as well as representatives of the victims.

Source: <http://www.ohchr.org/EN/HRBodies/SP/Pages/HRC29.aspx>;

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16562&LangID=E>;

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16796&LangID=E>

UN Special Rapporteur on Right to Education recommends protection of Right to Education against commercialization

In February 2015, the UN Special Rapporteur on the Right to Education, Kishore Singh, presented a report on protecting the right to education against commercialization before the Human Rights Council. Identifying the right to education as the obligation of the state, the report

expresses concern over the rapid increase in the commercialization of education, through the rapid increase in the number of private education providers. The report views this as an abrogation of the norms and principles underlying the legal framework of the right to education as established by international human rights treaties.

The report of the Special Rapporteur can be accessed at http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_Report_HRC_Commercialisation_Education_2015.pdf.

Human Rights Council deliberates on women's rights and cultural practices with 3rd Thematic Report of the Working Group on discrimination against women

At the 29th session of the UN Human Rights Council, The 3rd thematic report of the Working Group on the issue of discrimination against women in law and practice was discussed. This Report focuses on the discrimination faced by women and girls in cultural and family life. It studies the manner in which the cultural constructions of gender shape the role of women in families, especially in marriages, and the influence cultural and religious norms have on the ability of women and girls to enjoy equal rights within the family. It finds that gender-based violence and discrimination is inherent to the patriarchal construction of the family, which also restricts the human potential of women and children. Most notably, however, the report emphasises recognition of diverse forms of family that exist in distinct social, cultural and political contexts. It also asserts the need to apply the women's right to equality within the family, whether they are governed by secular family law systems, State-enforced religious family law systems, and plural systems.

The Report of the Working Group can be accessed at http://www.ohchr.org/Documents/Issues/Women/WG/Family/A.HRC.29.40_E.pdf.

OHCHR presents report on female genital mutilation before the Human Rights Council

The United Nations Office of the High Commissioner for Human Rights presented its report on good practices and major challenges in preventing and eliminating female genital mutilation before the 29th session of the Human Rights Council. This was in pursuance of Human Rights Council resolution 27/22, which called upon the OHCHR to share good practices to intensify global and domestic efforts to eliminate female genital mutilation, as a form of violence against women and a violation of human rights.

The report of the UNOHCHR can be accessed at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=558407fc4&skip=0&query=A/HRC/29/20>.

OHCHR submits report on discrimination and violence against individuals based on their sexual orientation and gender identity

The OHCHR submitted its second report on the discrimination and violence against individuals based on their sexual orientation and gender identity, pursuant to the resolution of the Human Rights Council at its 27th session to update its report on the issue. The Report found that there has been only marginal improvement in the status of LGBT and intersex persons, while the overall environment is one of continuing, pervasive, violent abuse, harassment and discrimination, which constitute serious human rights violations. It identifies the absence of dedicated human rights mechanism at the international level to address this. The report also lists

good practices that can be adopted by states and national human rights institutions to address violence and discrimination against people based on their sexual orientation and gender identity. States should enact hate crime laws that consider homophobia and transphobia as aggravating factors for sentencing, conducting prompt and thorough investigation of incidents, training judges and police personnel on gender-sensitive treatment of LGBTI persons and crimes against them

The report of the OHCHR can be accessed at

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E.

UN Special Rapporteur on the rights of persons with disabilities presents first report to the UN General Assembly

The UN Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, presented her first report at the seventieth session of the UN General Assembly, on the right to social protection. The report emphasised the need for states to build a more inclusive social protection system for persons with disabilities. This requires a move away from medical approaches to disability, which views persons with disabilities as incapable of studying, working or living independently, thereby locking them into a cycle of dependence and poverty. The report calls for a shift to models that uphold their autonomy and independence. States must therefore extend their access to social protection without discrimination, and offer benefits that promote autonomy and independence.

The Report can be accessed at http://www.un.org/ga/search/view_doc.asp?symbol=A/70/297.

UN OCHCR submits report on promoting reconciliation, accountability and human rights in Sri Lanka

Pursuant to Human Rights Council resolution 25/1, Office of the United Nations High Commissioner for Human Rights submitted its report on the findings of the comprehensive investigation on alleged serious violations and abuses of human rights and related crimes in Sri Lanka. The report identifies systemic patterns of violations of international human rights and humanitarian law that occurred during the period of armed conflict in Sri Lanka. It also reviews human rights related developments in the country since March 2014, in particular the reforms and steps towards accountability and reconciliation by the new President elected in January 2015 and Government in August 2015. The findings suggest that torture and sexual violence was inflicted on both male and female detainees, by Sri Lankan security forces and paramilitary groups associated with them, particularly in the immediate aftermath of the armed conflict. The report finds total failure of domestic mechanisms to credibly investigate, establish the truth, ensure accountability and provide redress to victims of these violations and abuses. It also lists recommendations to the government of Sri Lanka and to the United Nations system and the member states. It recommends establishment of a hybrid special court to try war crimes and crimes against humanity allegedly committed by all parties to the armed conflict and emphasises on the obligation of United Nations to continue to monitor human rights developments and progress towards accountability and reconciliation through the Human Rights Council.

The report can be accessed at www.ohchr.org/EN/HRBodies/HRC/.../A_HRC_30_61_ENG.docx.

Working Group on discrimination against women in law and in practice visits US to assess progress made towards achieving gender equality

The United Nations Working Group on discrimination against women in law and in practice undertook a country visit to the USA to assess the progress made towards achieving gender equality and the protection of women's human rights in the country. The independent experts assessed the legislative reforms and policies that had been implemented to promote women's rights and gender equality with regard to US women in global context, public and political life, economic and social life, access to health care, reproductive health and rights, and women's safety. The findings of the country report include that the legislative and political representation of women which on an average is 24.9%, is the highest that the country has ever achieved; and further that the country ranks at 72 in terms of global ranking of women in higher levels of legislative representation. The Report noted that negative stereotyping, mis-representation of women in media and removal of limits on campaign funding by the Supreme Court adds to this low representation. With respect to reproductive health and rights, the report notes that the ratio of maternal mortality rates in the country has increased by 136% between 1990 and 2013. The Working Group encouraged effective implementation of the Woman's Health Protection Act which prohibits interference by health care providers with women's personal decision making, blocking access to safe and legal abortion services; and also emphasised the importance of establishing an independent human rights institution in compliance with the Paris Principles, including a woman's rights commission.

The Report noted that US has not ratified CEDAW. Even though many of its standards are entrenched in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and binding on USA., highlighting the need for ratification of CEDAW as several rights and protections seem to be missing such as universal paid maternity leave, accessible reproductive health care and equal opportunity in standing for political election.

Source: <http://www.un.org/apps/news/story.asp?NewsID=52797#.Voz6ILZ97cc>;
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16872&LangID=E>;
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16820&LangID=E>

CEDAW related News

Committee on the Elimination of Discrimination against Women adopts 33rd General Recommendation on women's access to justice

The CEDAW Committee, in its 61st session, adopted the 33rd General Recommendation (GR) on Women's Access to Justice, extending to the procedures and quality of justice for women at all levels of justice systems, and also non-state and mixed justice systems (such as customary, religious, indigenous laws). It terms access to justice as the bedrock for all other rights contained in the CEDAW, and clarifies that justiciability of rights, provision, availability, accessibility, and quality of remedies, and accountability of justice systems is crucial to ensure this objective. As part of this, the GR underlines the need to protect women complainants, witnesses, defendants and prisoners from threats, harassment and harm before, during and after proceedings.

The 33rd General Recommendation can be accessed at
http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767

[E.pdf](#).

CEDAW committee finds Philippines responsible for grave and systematic violations of women's rights

Following an inquiry under Article 8 of the Optional Protocol to the CEDAW, the CEDAW Committee has found the Philippines accountable for grave and systematic violations of women's rights. The request for inquiry was submitted to the CEDAW Committee following concerns about the impact on the health and lives of women resulting from Manila City Executive Order 003 Series of 2000 which discouraged the use of modern contraceptives and Executive Order 030 that prohibits Manila from using Local Government Unit funds in purchasing artificial contraceptives. The Committee found that the national government has taken insufficient and inadequate measures to address the flaws of the Manila health system. The denial of access to full range of methods of contraception had severe consequences not only for the lives and health of many women, but also impacted their other rights of employment and education by limiting women's rights to freely choose the number and spacing of their children. Women and girls were effectively undermined in accessing and pursuing the same education and employment opportunities as men, and thereby driven further into poverty.

Source: <http://www.rappler.com/move-ph/issues/gender-issues/91595-manila-cedaw-rh-violation>

Report of inquiry by the Committee on the Elimination of Discrimination against Women condemns Canada's failure to address violence against aboriginal women

The report of the inquiry concerning Canada by the Committee of the Elimination of Discrimination against Women condemns the state for failing to effectively address the murder and disappearance of aboriginal women. The report calls Canada's inaction as a 'grave rights violation' under the CEDAW. The Committee inquired about the conditions of aboriginal women and girls in Canada after receiving letters from NGOs. It was found during the inquiry that aboriginal women and girls experience extremely high levels of violence in Canada. The numbers of murders and disappearances of aboriginal women are very high. The reported rates of violence, including domestic violence and sexual assault, is 3.5 times higher than non-aboriginal women. They are also five times more likely than other Canadian women of the same age to die of violence. Thus, their right to life, personal security, right to physical and mental integrity and health are badly affected.

The Report can be accessed at:

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-

CEDAW Committee rules Tanzania's inheritance laws violate CEDAW

The CEDAW Committee found that Tanzania's inheritance laws, which do not recognize women's right to inheritance, discriminatory and violative of the CEDAW. The Committee was approached by two widows, who were prohibited from inheriting their husbands' property, passed on instead to the brothers-in-law, rendering them homeless. The Committee ruled in favour of the petitioner and recommended repeal or amendment of such discriminatory customary law provisions. The Committee also recommended dialogues between women's organizations and local authorities, prohibition against courts resorting to undue delays and coordinating mechanisms to implement these recommendations.

Source: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-

Regional Human Rights Systems

Inter-American Commission of Human Rights hears first ever case of discrimination and abuse against LGBT persons in detention

The Inter-American Commission of Human Rights, the human rights arm of the Organization of American States, hosted its first ever thematic hearing on discrimination and abuse of LGBT persons in detention in Latin America. The thematic hearing was brought forth by the Association for the Prevention of Torture (ATP) and a coalition of three other human rights organizations. The petitioners cited several instances of excessive use of force by prison officers, physical, emotional and sexual violence, denial of conjugal visitations etc.

The petition also brought attention to the practice of segregation followed by some countries, wherein LGBT persons are housed in different detention centres, often in worse conditions, than the general population. It argued that states are ill-equipped to address the needs of LGBT detainees, and to provide protections from violence

Source: <http://www.hrc.org/blog/entry/inter-american-commission-of-human-rights-hosts-first-hearing-on-rights-of->; http://www.apt.ch/content/files_res/iachr-hearing-lgbt_press-release.pdf

ECtHR rules that international human rights law requires governments to provide legal recognition for same-sex couples

In the case of *Oliari and Others v. Italy*, the European Court of Human Rights ruled that international human rights law requires governments to provide legal recognition for same-sex couples. The Italian High Court had previously ruled that same-sex couples would not be entitled to marriage rights under the country's constitution. The lawsuit was filed by three same sex couples in Italy which is the only country in Western Europe which does not legally recognize same sex couples (either civil partnership or marriage). The court ruled that Italy violated Article 8 (Right to respect for private and family life) of the European Convention on Human Rights.

The decision of the ECtHR can be accessed at <http://hudoc.echr.coe.int/eng?i=001-156265>.

United Nations Mission in Liberia and OHCHR releases Report concerning Traditional Practices violating human rights in Liberia

The United Nations Mission in Liberia and the Office of the High Commissioner for Human Rights (OHCHR) released a Report 'An Assessment of Human Rights Issues Emanating Traditional Practices in Liberia' highlighting the negative and harmful impact on human rights because of some traditional and cultural practices in Liberia. Some of these practices include female genital mutilation (FGM), forced initiation into secret societies, accusations of witchcraft, trials by ordeal and ritualistic killing. The report shows that such practices disproportionately affect women, children, elderly people and persons with disabilities drawing from in-depth interviews with victims, family members, community leaders, Government officials and civil society members between January 2012 and September 2015. The Report also documents cases of abduction, rape, ritualistic killings in the region and other violations which are occurring due to political tensions. Among other interventions, the Report recommended to the Liberia to adopt

a human rights-based approach to changing social and cultural norms that nurture harmful traditional practices; empower women and girls; build the capacity of all relevant professionals who are in regular contact with victims, potential victims, and perpetrators of harmful traditional practices, at all levels.

The report can be accessed at

<http://www.ohchr.org/Documents/Countries/LR/HarmfulTraditionalPracticesLiberia.pdf>.

International Legal Development

Asia

Mongolia abolishes death penalty, while Bangladesh Supreme Court declares mandatory death penalty unconstitutional

Following the ratification in 2012 of the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty, Mongolia became the 105th country to abolish death penalty by adopting a new Criminal Code that abolishes capital punishment for all crimes. The new criminal code will take effect from September 2016.

The Appellate Division of the Supreme Court of Bangladesh declared mandatory death penalty for the offence of causing death after rape unconstitutional. The provisions were challenged on various grounds, including the violation of the right to equality before law and to be treated in accordance with law, the right to life, and the right against cruel and degrading treatment or punishment. It was also challenged on the ground that the provision takes away judicial discretion in awarding the death sentence. Reference was also made to Universal Declaration of Human Rights (UDHR), 1948 and the International Covenant on Civil and Political Rights (ICCPR), 1966 which Bangladesh ratified in 2000.

Source: <https://www.amnesty.org/en/latest/news/2015/12/mongolia-historic-vote-abolishes-death-penalty/>

The judgment of the Bangladesh Supreme Court can be accessed at

http://www.supremecourt.gov.bd/web/documents/808470_CivilAppealNo.116of2010.pdf.

Nepal adopts new Constitution but restricts citizenship rights of women

After seven years of setbacks and drafts, Nepal formally adopted the final version of its first democratic Constitution. The Constitution envisages Nepal as a secular republic and guarantees equal property rights to men and women. However, the Constitution severely limits the citizenship rights of Nepali women. It does not allow single women to confer citizenship rights to their children, even though a Nepali man may confer citizenship to his child if his wife is a foreign national. Despite having ratified the UN's Convention for the Elimination of All Forms of Discrimination against Women, the new Constitution has highlighted the lack of gender equality in Nepal for many women.

Source: <http://recordnepal.com/perspective/women-have-no-nationality#sthash.oPquHzjZ.dpufNepal>

Government of Nepal expands definition of rape, while High Court in Bangladesh orders police stations to respond to rape victims promptly and without discrimination

The Government of Nepal has amended the existing law under the General Code in order to

broaden the definition of rape, from ‘non-penile penetration of vaginas’ to ‘penile penetration of orifices’, thereby including rape of men, as well as same-sex rape. The new Act also increased term of imprisonment for marital rape and for acid attack. In addition, the statute of limitations on reporting of rape cases has also been extended from existing 35 to 180 days in the new law. However, the new law continues to exclude non-penile penetration of non-vaginal orifices, and does not address the issues related to minors, mute persons, and persons in coma.

Redress for rape in Bangladesh also saw progress, with a High Court ordering concerned authorities to explain the delay in recording cases and medical evidence and to explain why the victim should not be compensated for the delay in recording the case. In addition, the bench also directed the authorities to issue a circular to all police stations to ensure that they respond to victims promptly and without any discrimination based on race, religion or gender. The case related to the gang rape of a tribal woman in a microbus.

Source: <http://kathmandupost.ekantipur.com/news/2015-11-28/govt-broadens-definition-of-rape.html>; <http://kathmandupost.ekantipur.com/news/2015-11-30/statute-of-limitations-on-rape-extended-to-180-days.html>; <http://www.dhakatribune.com/bangladesh/2015/may/26/court-seeks-explanation-over-bhatara-gang-rape#sthash.NPDs0Cx2.dpuf>

For the first time, transgender candidates contest polls in Bangladesh and women vote in Saudi Arabia

For the first time, a trans* person stood for elections in Bangladesh, in the Kalaroa municipal election in the Satkhira district. Transgenders were given voting rights in Bangladesh in December 2009. There have been similar instances in India and Pakistan in recent years, where transgenders have contested elections. Madhu Bai Kinnar, a *dalit* trans* person was elected mayor of Raigarh, Chhattisgarh. In 2013, Bindiya Rana, a trans* person contested in a provincial assembly seat in Pakistan.

2015 also witnessed women in Saudi Arabia exercising their franchise for the first time in history. About 13,000 women registered to vote in local council elections, and 20 women also won seats in Mecca, Jawf, Tabuk, Jeddeh and Qatif, though the local councils have little influence on national policies. This is only the third time Saudi Arabia has gone to the polls in its history, with no elections taking place between 1965 and 2005. The first local election was in 2005, and the second in 2011 and women were excluded from both.

Source: <http://www.firstpost.com/world/in-a-first-third-gender-candidates-to-contest-polls-in-bangladesh-2546154.html>; https://www.washingtonpost.com/world/saudi-women-vote-for-the-first-time/2015/12/12/9ad0b898-9ad0-11e5-aca6-1ae3be6f06d2_story.html

Cambodia approves three laws curtailing rights to speech and association

Cambodia's Parliament unanimously approved two new election laws, the Law on the Election of Members of the National Assembly and the Law on the National Election Committee. The draft laws establish fines and bans on non-governmental organizations (NGOs) that criticize political parties in the 21-day period set for campaigning. In addition, there are provisions that permit security forces to take part in campaigns and also those that punish any opposition party that boycotts Parliament or breaks other rules by taking away their parliamentary seats. The draft laws limit the number of public processions during the campaign period to four per political

party. This requirement constitutes an unreasonable limitation on the right to freedom of peaceful assembly. They also fail to establish a genuinely independent NEC capable of preventing election fraud and otherwise ensuring free and fair elections.

In addition, the Constitutional Council of Cambodia after reviewing the draft law on Association and NGO, declared it constitutional in both its content and the process of its drafting and approval. Provisions regarding the definitions of NGOs and associations, provisions on the mandatory registration process, and vast powers to national and local authorities over the registration and de-registration of associations places undue restrictions on the rights to freedom of association and of expression. It also legalizes the control and censorship of activities undertaken by domestic and international associations and NGOs.

Source: <http://america.aljazeera.com/articles/2015/3/19/cambodia-approves-controversialelection-laws.html>; <http://www.licadho-cambodia.org/flashnews.php?perm=138>

Tokyo issues Japan's first same sex marriage certificates, while Nepal contemplates legalizing same sex marriages

Two Tokyo districts, Shibuya and Setagaya, issued Japan's first certificates officially recognising same-sex partnerships. The local ordinances recommend that same-sex couples be granted equal rights, including hospital visitations and apartment rentals, as heterosexual couples. The Japanese Constitution continues to identify marriage as the joining of two heterosexual individuals based on mutual consent. Thus, these certificates do not provide any legal recognition of same sex unions and bear only symbolic significance.

A Governmental Committee, led by former secretary of the ministry of health and population Laxmi Raj Pathak, and formed to investigate the feasibility of same-sex marriage in Nepal, has recommended its legalization. The report recommends that Nepal follow 'positive international trends towards homosexuality' and extend marriage rights to gay couples and equal protections for the partners and their children. It also advises changes to the criminal and civil code bills tabled in Parliament, which include discriminatory provisions against LGBT people.

Source: <http://www.japantimes.co.jp/news/2015/11/05/national/social-issues/shibuya-set-issue-first-certificates-recognizing-sex-couples/#.VpHn79J95Bx>; <http://www.gaystarnews.com/article/nepal-committee-recommends-legalizing-same-sex-marriage100215#sthash.W5KCHMUT.dpuf>

Malaysian courts clamp down on LGBT rights

2015 witnessed a severe undermining of LGBT rights in Myanmar through various judicial rulings. Early on in the year, a Malaysian court unanimously upheld a sodomy conviction and a five-year prison sentence for Anwar Ibrahim, the leader of the country's opposition. Sodomy, even consensual, is illegal in Malaysia punishable with imprisonment to 20 years. Anwar had been imprisoned for six years in 1998 after being overthrown as deputy prime minister on earlier charges of 'sodomizing' his former family driver and abusing his power. He was acquitted in 2004 after the top court quashed that sodomy conviction. In 2008, he was again accused of sodomizing a male aide but was acquitted by the High Court in 2012. However, the Appeals Court overturned the acquittal and sentenced him to five years in jail.

Subsequently, Malaysia's highest court also overturned a prior ruling that declared a

discriminatory transgender law unconstitutional, thereby re-instating it as law. The November 2014 ruling by the Putrajaya Court of Appeal reviewed Section 66 of the Sharia law, which prohibited men from ‘posing’ as women and declared that the law violated the Malaysia Federal Constitution. The Federal Court overturned the decision and denied review. Soon thereafter, a *sharia* court convicted nine transwomen to fines and jail term under the same law.

Meanwhile, trans* citizens in Malaysia remain largely unable to update their legal gender markers or access transition-related medical care. This was also highlighted when Malaysian High Court dismissed a male transgender’s application to get her legal status changed to female due to lack of sufficient evidence to prove that she had changed gender, based on UK judicial precedent, holding that ‘individuals cannot choose for themselves whether they wish to be known or treated as male or female. Self-definition is not acceptable’. The judge also noted gender was a multi-faceted question not dependant on the applicant's desire alone, but also had chromosomal, gonadal, genital, and psychological factors.

Source: http://www.nytimes.com/2015/02/10/world/asia/malaysian-court-upholds-anwar-ibrahim-sodomy-conviction.html?_r=1; <http://www.washingtonblade.com/2015/10/08/malaysia-high-court-overturns-landmark-trans-rights-ruling/#sthash.p8ucidRy.dpuf>; <https://www.hrw.org/news/2015/06/22/malaysia-court-convicts-9-transgender-women>;

Vietnam approves bill to legalise sex reassignment surgeries

The Vietnamese National Assembly approved a bill to legalize sex reassignment surgery and introduced the right to legal gender recognition for transgender people who have undergone such surgery. However, the requirement for surgical procedures as a precondition for legal gender recognition imposes a burden on transgender people that is at odds with their fundamental rights to be recognized in the gender with which they identify. Under the current civil code, Sex Reassignment Surgery, was prohibited for transgender people, and permitted only intersex people to undergo such a surgery. In the past, transgender people had to undergo such surgeries in neighbouring countries. The new law will come into effect early in 2017 and constitutes a significant step towards recognition of transgender rights.

Source: <https://www.hrw.org/news/2015/11/30/vietnam-positive-step-transgender-rights>

Philippines and Iran strike down some gender discriminatory laws

A Makati Regional Trial Court in Phillipines has ordered the Philippine Airlines (PAL) to pay its 1000 retired female flight attendants P1,00,000 each over gender-based discrimination. A provision in the Collective Bargaining Agreement of the PAL-Flight Attendants and Stewards Association of the Philippines which forced them to retire at the age of 55 while their male counterparts were given an additional 5 years in service was held discriminatory.

Meanwhile, Iran has permitted women to attend big sporting events, reversing a rule that was passed in the Iran Islamic Revolution in 1979, which barred women from entering stadiums to watch matches attended by men. Under the new rule, women and families will be permitted to enter stadiums whilst restrictions will be lifted for indoor sporting events. However, "masculine" sports where athletes wear little gear, such as swimming and wrestling, will continue to be off-limits for females.

Source: <http://www.gmanetwork.com/news/story/502410/news/nation/pal-loses-ordered-to-pay-p100m-to-fas-in-gender-discrimination-suit>; http://www.nytimes.com/2015/04/05/world/middleeast/iran-will-allow-women-insports-stadiums-reversing-a-much-criticized-rule.html?_r=0

Bangladesh Supreme Court quashes conviction on contempt of court against Zafrullah Chowdhury

The Appellate Division quashed the conviction and fine handed down by the International Crimes Tribunal-2 to veteran freedom fighter and founder of Gonoshasthya Kendra, Zafrullah Chowdhury for contempt of the tribunal. Zafrullah was reprimanded by the Tribunal for his criticism of the Tribunal's sentence to David Bergman, for questioning the official death toll of the 1971 war.

Subsequently, Zafrullah signed a statement stating that '*[b]y the sentence of David Bergman, the very freedom of expression and the scope of discussing and analyzing the history of our war of liberation will be squeezed.*' While the tribunal had exonerated 22 other signatories to the statement with 'serious caution' as they had done it for the first time, they held Zafrullah guilty of contempt again, sentencing him to imprisonment for an hour in the courtroom and fined Tk 5,000. On an appeal against the fine, the Supreme Court quashed the conviction and set aside the fine, warning Zafrullah against undermining the judiciary again.

Source: <http://newagebd.net/141534/sc-quashes-contempt-sentence-against-zafrullah-chowdhury/#sthash.6C6xXDwL.wQ9STvLu.dpbs>; <http://newagebd.net/146343/contempt-of-court-decision-on-zafrullah-on-august-30/#sthash.XuxcXYqx.dpbs>

Women's rights activist detained in China for demanding end to sexual harassment in public transport

Five feminist activists were detained in March for trying to start a campaign against sexual harassment on public transportation on International Women's Day. They were under formal detention on suspicion of 'picking quarrels and provoking trouble', a charge used increasingly in recent years by the authorities to detain and imprison protesters for holding small-scale demonstrations. Their detention attracted worldwide condemnation and sparked an international campaign for their release. The activists were held for five weeks before being released in April. However, the investigation of their case has not been withdrawn yet. A number of restrictions have been imposed on them, which includes procuring prior permission of the police to travel abroad, while also having been placed under surveillance.

Source: http://www.nytimes.com/2015/04/15/world/asia/out-of-beijing-jail-chinese-womenactivists-still-under-eye-of-the-police.html?_r=0

Indonesia drops schoolgirls 'virginity test' plan after international uproar

Indonesian officials have withdrawn the 'good conduct' regulation that required female students to pass virginity tests in order to graduate from high school. The mandatory virginity tests were intended by lawmakers to tackle perceived problems of premarital sex and prostitution. Last year Indonesia also admitted to conducting virginity tests on women seeking to join police or military forces. These tests are a breach of Article 7 of International Covenant on Civil and Political Rights that prohibits 'cruel, inhuman or degrading treatment' and Article 16 of the Convention against Torture. The World Health Organization, in a handbook released last year, made it clear

that virginity tests have no scientific basis.

Source: <http://www.trust.org/item/20150211131717-ga2cc/?source=hpMostPopular>

Japan issues apology to South Korea over sexual slavery of 200,000 women during World War

More than 70 years after the end of World War II, South Korea and Japan reached a landmark agreement where Japan issued a formal apology and offered an \$8.3 million settlement to the South Korean victims of Japan's "comfort women" policy during World War. The settlement comes after years of talks between the two countries about the forced sexual slavery of around 200,000 Korean women used by Japanese troops during the war. Only 46 "comfort women" are still living, and will benefit from the settlement. The women were however missing from the negotiation table and said that the apology is more of a political expediency than justice.

Source: <http://www.bbc.com/news/world-asia-35188135>

Myanmar passes the Population Control Health Care Bill

The President of Myanmar signed the Population Control Health Care Bill, which curbs women's reproductive rights by introducing the practice of birth spacing, requiring women to wait three years between pregnancies. Local authorities now have the power to implement these provisions but the statute does not penalize the couples who do not comply. Under the newly formed law, divisional and state governments are granted the ability to request a presidential order limiting reproductive rates if it is determined that population growth, accelerating birth rates, or rising infant or maternal mortality rates are negatively impacting regional development. An "imbalance between population and resources, low socio-economic indicators and regional food insufficiency because of internal migration" can also be cited in invoking the law. The law is particularly discriminatory against women and minorities, since human rights advocates point out that the law was passed with the motive to control the increase in population of Muslim minorities. Three similar bills relevant to monogamy, religious conversion and interfaith marriage are presently being debated by Parliament which can worsen the ethnic and religious tensions.

Source: <http://www.dw.com/en/controversial-population-control-bill-becomes-law-in-myanmar/a-18472590>

Pakistan new Cybercrime Prevention Bill threatens free speech and privacy

National Assembly's Standing Committee on Information Technology in Pakistan has passed The Prevention of Electronic Crimes Act, 2015, which permits government authorities to access data and information of internet users without any form of judicial review process. The Bill's other key elements include provisions that allow the government to censor online content and to criminalize Internet user activity under extremely broad criteria, which are susceptible to abuse and harassment. Concerns have also been raised over a provision that allows the government to share intelligence with foreign spy agencies, such as the United States' National Security Agency, and the mandating of service providers to retain telephone and email records for up to a year.

Source: <http://tribune.com.pk/story/872609/cybercrime-bill-give-it-a-read-before-sharing-pictures-even/>

Russian Supreme Court upholds ban on hijabs in schools

Russia's Supreme Court upheld a controversial ban against wearing religious symbols, including hijabs, in school in the republic of Mordovia. The ruling comes in response to a 2014 decree enacted by the government of Mordovia that also forbid schoolgirls from wearing miniskirts, jeans or low-cut tops, or from having visible piercings, dying their hair unnatural colours, or wearing religious attire. The appeal stated that the ban is unfair to certain faiths and infringes their constitutional rights. Mordovia is the second region in Russia to institute a ban on hijabs after Stavropol Krai, which banned the wearing of the head scarf in schools in October, 2012.

Source: <http://www.themoscowtimes.com/news/article/russian-supreme-court-upholds-ban-on-hijabs-in-schools/515789.html>

Sri Lanka reinstates former Chief Justice two years after unconstitutional impeachment

The Sri Lankan government has reinstated Shirani Bandaranayake, Sri Lanka's first ever woman judge in the Supreme Court, as the Chief Justice, two years after she was unconstitutionally impeached from her post by the erstwhile dispensation under former president Mahinda Rajapakse.

Shirani Bandaranayake's impeachment was criticized by the international community in 2013, including the UN Human Rights Council which issued a press statement against the impeachment. Her successor, Mohan Peiris, had previously been, among other things, legal advisor to the cabinet, Chairman of the Seylan Bank, Legal Advisor to the Ministry of Defence, and the government spokesperson before the UNHRC to refute allegations of war crimes by the Sri Lankan government.

Shirani Bandaranayake's re-appointment, however, was more in the nature of a formality, as she immediately stepped down to make way for the country's first Tamil Chief Justice, Kanagasabapathy Sripavan.

Source: <https://www.colombotelegraph.com/index.php/on-the-removal-of-mohan-pieris-from-the-office-of-chief-justice/>

Beyond Asia

New UK guidelines requires rape accused to prove consent to investigating authorities

Under the new guidelines on investigating and prosecuting crime in the United Kingdom, men accused of rape will have to convince authorities that the complainant consented to sex. The accused will have to demonstrate how the complainant consented with 'full capacity and freedom to do so'.

The guidelines were introduced in the wake to a footballer serving a two-and-a-half year jail time of a five-year sentence for raping a teenage woman who was 'too drunk to consent'.

The new guidance also covers domestic violence situations and those where 'the complainant may be financially or otherwise dependent on their alleged rapist'. In a society where women are blamed for being raped when they are in a position of not being able to express explicit consent, the guideline comes as a welcome move.

Source: <http://www.independent.ie/world-news/europe/men-must-now-prove-women-said-yes-in-tough-new-uk-rape-rules-30947951.html>; <http://www.telegraph.co.uk/news/uknews/law-and-order/11375667/Men-must-prove-a-woman-said-Yes-under-tough-new-rape-rules.html>

Reproductive rights face further setbacks in USA, Portugal, while Australian state introduces protest exclusion zones outside abortion clinics

In a distressing judgment, an Indiana court, for the first time in U.S., sentenced a woman to 41 years on the contradictory charges of ‘foeticide’ and neglect of a child, on suffering a miscarriage. The woman was arrested after she went to the emergency room, bleeding heavily because of a miscarriage. She was convicted of using abortion drugs that she bought online to terminate her pregnancy and of child neglect once the child was born. The verdict, in itself, could be said to be mutually contradictory. Child neglect would require the baby to have been alive and viable, while the ‘foeticide’ charge would require the ‘foetus’ to have died *in utero*. The law under which the woman was sentenced was in fact enacted to prosecute acts by violent third parties such as abusive boyfriends, and was not intended to criminalise and stigmatise abortion or pregnancy.

Portugal imposed stringent requirements for women seeking to terminate their pregnancies. The amendments made to the law require women to get psychological and social counseling and advice on family planning before getting an abortion. Prior to the 2007 referendum (which reformed the erstwhile abortion laws and permitted abortion paid for by the state during the first 10 weeks of pregnancy), women who exercised abortion could be jailed upto 3 years except in the cases of rape and grave health conditions of the mother. The legislation still needs President’s approval and publication in the government gazette.

The Upper House of the Parliament in Victoria, Australia amended the Health and Wellbeing Act, introducing 150-metre buffer zones around fertility clinics. This provides police protection outside the clinics to prevent harassment of women entering the clinics whereby protestors breaching the buffer zone might face penalty or jail time for repeat offences. The law has come out after years of complaints from clinics wherein pro-life campaigners would stand outside clinics and urge women not to terminate their pregnancies.

Source: <http://www.thehindu.com/news/international/foeticide-sentencing-sparks-debate-overlaws/article7061556.ece>; <http://www.wncn.com/story/28664509/first-woman-in-us-sentenced-for-killing-a-fetus>; <http://www.theguardian.com/world/2015/jul/23/portugal-tightens-abortion-laws-women-pay-end-pregnancies>; <http://www.dailymail.co.uk/wires/ap/article-3172001/Portugal-changes-abortion-law-demands-payment-counselling.html>; <http://www.abc.net.au/news/2015-11-27/abortion-clinic-buffer-zone-law-passes-victorian-upper-house/6971220>

Turkey’s Constitutional Court and the Vatican announce major changes to marriage laws

The Constitutional Court in Turkey announced that civil marriage is no longer a requirement for religiously married citizens. Prior to this decision, Paragraph 5 of Article 230 of the Turkish Criminal Code prohibited cohabitation between religious couples without a civil marriage, and carried a sentence of 2 to 6 months imprisonment. Paragraph 6 also carried a sentence of 2 to 6 months’ imprisonment to any person (typically an imam) who carried out a religious wedding ceremony without verifying a civil marriage with official documents. Although the judgment is seen as progressive in upholding individual freedom, several academicians, NGOs and female

political leaders opposed the judgment, claiming that this would increase the risks of polygamy and child marriage, and create issues in inheritance for children and alimony for spouses upon divorce.

Pope Francis has announced significant revisions to the marriage annulment process, which was previously cumbersome and lengthy. Earlier, the procedure for annulment of marriages required a couple seeking an annulment to be confirmed by a church tribunal and further, a second confirming decision. The revision now allows local bishops to expedite the annulment process for Catholic Churches in straightforward cases such as discovery of extramarital relationship in a marriage, where a spouse has procured an abortion, or where one of the party lacks religious faith. The revision also makes the annulment process free of charge. Although these revisions are the most radical to the annulment process in centuries, the Catholic Church maintains its stance in its teachings that marriages are permanent.

Source: http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html?utm_source=Al-Monitor+Newsletter+%5BEnglish%5D&utm_campaign=e2509b0a11-June_02_2015&utm_medium=email&utm_term=0_28264b27a0-e2509b0a11-102417357#; <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/09/08/pope-francis-is-reforming-the-catholic-churchs-marriage-annulment-process/>; <http://www.theguardian.com/world/2015/sep/08/pope-radically-reforms-catholic-churchs-marriage-annulment-process>

Amnesty International endorses de-criminalization of sex work

In its international council meeting in Dublin, Amnesty International voted to adopt a policy advocating the decriminalization of sex work to uphold the human rights of persons engaged in the activity. Amnesty maintained that they stand against criminalization of all aspects of consensual adult sex including sex work that does not involve coercion, exploitation or abuse. Giving instances of their interactions with people involved in sex work and working with organizations who have been involved in helping sex workers, the documents maintains a strict anti-trafficking stance, but states that the burden of criminalization is borne by sex workers themselves, who are then subject to greater violations of human rights. The policy stands for the criminalization of those who abuse and exploit sex workers.

Source: <https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/>

Kazakhstan, Mozambique decriminalize homosexuality, Egypt acquits gay men of ‘inciting debauchery’, while Russia goes the other way

Mozambique decriminalized homosexuality by introducing revised penal laws, supplanting the colonial Portuguese law, which viewed homosexual acts as ‘vices against nature’. Even though the number of prosecutions under the earlier law were few, and called for punishment of up to 3 years of hard labour, homosexuality now stands completely decriminalized. Kazakhstan’s Constitutional Council announced that a pending legislation on “propaganda of non-traditional sexual orientation” is discriminatory because of its vague wordings. This draft law which was passed in February 2015 in the lower house was never in fact made public but had provisions related to ban on publication or sharing of material involving same-sex setting where children might be involved. It also contained a provision which prohibited “propagandizing non-traditional sexual orientation” among children.

An Egyptian trial court acquitted 26 men charged with ‘inciting debauchery’ in Cairo. Following a raid at a local bathhouse, these men were arrested and the footage of the same was broadcast on local television. Though Egyptian law does not criminalise same-sex sex, adults ‘suspected’ of engaging in same-sex sexual activity are often arrested on charges of debauchery, immorality or blasphemy.

Lawmakers in Russia have introduced a draft bill in the parliament that would penalise any public display of ‘non traditional sexual relations’ by adding it to Russia’s *Code of Administrative Offences*. Introduced by parliament members from the Communist Party, this bill builds upon the existing LGBT propaganda law which bans the “promotion among children of nontraditional sexual relations.” Another law adopted in 2013 banned adoptions of Russian children by foreign same-sex couples.

Source: <http://www.hrw.org/news/2015/05/28/kazakhstan-anti-gay-laws-found-unconstitutional>;
<http://www.hrw.org/news/2015/11/04/russia-homophobic-abusive-bill>;
<http://www.clubofmozambique.com/solutions1/sectionnews.php?secao=mozambique&id=2147489488&t ipo=one>; <http://www.dailynewsegypt.com/2015/02/23/mona-iraqi-tv-channel-owner-face-court-bathhouse-sting/>; <http://www.bbc.com/news/world-middle-east-30775967>

Chile, Ecuador, Greece, Colombia recognise civil unions, while Slovenia votes against through referendum

Greece became the 26th European country to recognize same-sex partnership with 194 parliamentarians voting for it and 55 against. Registered partnership since 2009 could only be availed by heterosexual partners and such a practice was declared discriminatory by the European Court of Human Rights in 2013. Chile’s President signed into law a bill recognising common law marriages, including for people of the same sex. The bill had been challenged on grounds of constitutional validity after the Congress has given it its final approval earlier this year. Within a week of the court upholding the validity of the bill, it was signed into law. Ecuador Parliament also overwhelmingly (89-1 vote margin) approved a bill that would allow for the legal recognition of civil unions. The bill would allow LGBT couples to receive the same rights and obligations of a marriage in terms of pensions, purchasing a home together and other benefits. The Constitutional Court in Colombia ruled that same-sex couples can adopt children. For two years, the petitioner had been trying to adopt the biological child of her partner, who was born through artificial insemination.

Slovenia, on the other hand, voted in a referendum against an amendment which would have given the same-sex couples the right to get married. With a turnout of 36%, 63.5% voted no. Earlier in March 2015, the Slovenian Parliament had agreed to redefine marriage as between ‘two people’ as opposed to ‘man and a woman’ but was opposed by a Church led citizen’s initiative which called for a referendum to repeal this amendment.

The decision of the Constitutional Court of Colombia can be accessed at

<http://www.corteconstitucional.gov.co/comunicados/No.%2050%20comunicado%2004%20de%20noviembre%20de%202015.pdf>

Source: <http://www.washingtonblade.com/2015/02/12/italy-high-court-rejects-sex-marriage/>;
<http://www.washingtonblade.com/2015/04/06/chilean-court-upholds-constitutionalityof-civil-unions-bill/>;
<http://edition.cnn.com/2015/12/21/europe/slovenia-rejects-same-sex-marriage/>;
<http://www.lgbt-ep.eu/press-releases/slovenians-vote-against-marriage-equality/>;
<http://www.bbc.co.uk/news/world-latin->

<http://www.washingtonblade.com/2015/04/23/ecuadorian-lawmakers-approve-civil-unions-bill/>; <http://www.theguardian.com/world/2015/nov/05/colombia-same-sex-couples-must-be-allowed-to-adopt-children-court>; <http://ilga-europe.org/resources/news/latest-news/greece-becomes-26th-european-country-recognise-same-sex-partnerships>; <http://bigstory.ap.org/article/14df800b25264425a0f6f821c40bdc4e/greek-parliament-legalizes-same-sex-civil-partnerships>; <http://www.washingtonblade.com/2015/12/10/puerto-rico-court-issues-historic-adoption-ruling/>; <http://williamsinstitute.law.ucla.edu/research/international/colombian-constitutional-court-relies-on-social-science-studies-in-decision-allowing-same-sex-couples-to-adopt/>

Ireland and Italy dispense with medical treatment for gender recognition, while Polish President vetoes same proposal

Ireland's senate passed the Gender Recognition Bill, which allows trans* persons to gain legal recognition without any requirement of medical intervention or medical treatment. The Act however, does not provide access to gender recognition to children under the age of 16. For those in the 16-17 year old category, a Circuit Family Court decides the eligibility for gender recognition based on parental consent, and reports of a primary physician and secondary physician. The Italian Constitutional Court also ruled against mandatory medical treatment as a pre-requisite for legal recognition of change in gender. The case challenged earlier judicial practices which mandated gender reassignment surgeries, or, at the minimum, mandatory sterilization, to grant legal recognition to the gender of a person distinct from their gender at birth. The court ruled that the State should guarantee the individual's right to gender identity as an expression of personal identity. The court referred to the Article 2 of the Constitution (recognizes the inviolable rights of individuals or in social groups where human personality is expressed) and Article 8 of ECHR (Right to respect for private and family life).

In Poland, however, the President vetoed The Gender Accordance Act, which had earlier been passed by the lower chamber of the Polish senate. The Act allowed persons to choose their own gender as a matter of choice and self-identification, and dispensed with the requirement of medical interventions, hormone therapies or surgeries in order to complete gender recognition process. The veto by the President can now be overturned with only a 3/5 Parliament majority.

Source: <http://www.retelenford.it/879-la-corte-costituzionale-conferma-la-non-necessariet%C3%A0-delle-modifiche-chirurgiche-ai-fini-del-cambio-di-sesso.html>; http://transfuzja.org/en/artykuly/press_releases/polish_senate_passes_the_gender_accordance_act_with_unnecessary_amendments.htm; <https://www.hrw.org/news/2015/07/16/dispatches-ireland-steps-out-global-transgender-leader>; <https://www.hrw.org/news/2015/07/14/letter-government-ireland-rights-transgender-children>; <http://www.gaystarnews.com/article/polish-president-vetoes-gender-accordance-laws/>; <https://agendaueurope.wordpress.com/2015/10/07/poland-president-vetoes-controversial-gender-re-definition-bill/ry/>

Nuremberg State Court grants damages for Intersex Genital Mutilation treatment

The Nuremberg State Court in Germany ruled that Erlangen University Clinic pay damages and compensation to Michaela Micha Raab for non-consensual Intersex Genital Mutilation treatment including partial clitoris amputation, castration and imposition of hormones. This is the second case worldwide of a verdict against non-consensual intersex genital mutilation. Michaela sued the University Clinic and the surgeon Prof. S. for 250,000 Euros in damages and a monthly pension of 1,600 Euros. Michaela had not been informed prior to the treatment that she had both

female and male sex organs and the Clinic treated Michaela as if they were a woman denying them the opportunity to be treated as a man. The court dismissed the charges against the Surgeon ruling that the lack of disclosure of the diagnosis, karyotype and treatment options was not his fault but responsibility of other doctors, therefore the clinic's.

Source: <https://www.justiz.bayern.de/gericht/olg/n/presse/archiv/2015/05075/index.php>;
<http://stop.genitalmutilation.org/post/Nuremberg-Hermaphrodite-Lawsuit-Damages-and-Compensation-for-Intersex-Genital-Mutilations>

Gambia abolishes Female Genital Mutilation

Gambia banned the practice of Female Genital Mutilation saying that it has no place in Islam, the country's predominant belief system. The Inter-African Committee which is currently operating in 28 African countries and who work to bring an end to FGM practice say that growing pressure from international and national rights groups over decades has been a driving force in bringing about this change in Gambia. Around 76% females in Gambia are subjected to the practice of FGM. It remains to be seen whether the ban would be effective by mere legislation.

Source: <http://www.theguardian.com/society/2015/nov/24/the-gambia-bans-female-genital-mutilation>;
<http://www.aljazeera.com/news/2015/11/gambia-bans-female-genital-mutilation-151125151025550.html>

Chad reinstates death penalty for acts of terrorism, as Connecticut holds death penalty unconstitutional for the remaining inmates on death row

Following attacks by Boko Haram Islamist militants, 146 out of 189 MPs in Chad voted in favour of reinstating the punishment of death penalty for acts of terrorism. Chad has been active in helping Nigeria curb the terrorist activities including bomb attacks and suicide bombing by Boko Haram and other terrorist organizations. Opposition to this new anti-terror legislation argue that such measures will significantly curb civil liberties and is inconsistent with contemporary human rights standards.

Significantly, it was on the basis of the same arguments that the Connecticut Supreme Court abolished the capital punishment in a decision 3 years ago. The Court observed that death penalty “no longer comports with contemporary standards of decency and no longer serves any legitimate penological purpose”. The Court noted how multiple racial and other biases often determine death sentences. The inmates would follow the sentence of lifetime life imprisonment without the possibility of release. However, the decision left intact the death sentences of those inmates who were already on the death row. Recently, in the case of *State of Connecticut v. Eduardo Santiago*, the Connecticut Supreme Court further ruled that the execution of these remaining inmates on the death row is also unconstitutional.

The Connecticut Supreme Court judgment can be accessed
<https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR318/318CR306.pdf>.

US Supreme Court upholds termination of employment of employee for seeking access to the lactation room

In a regressive decision, the United States Supreme Court, rejected to admit a review filed by a woman against her employer, for terminating her employment when she asked to access the lactation room. The review was filed against the trial court order which dismissed her anti-

discrimination suit. The court while rejecting the suit found that the aggrieved woman had not adequately resisted or contested the resignation or the challenges she faced with the human resources department. It further held that even if she was forced to resign because she was breastfeeding, it could not have been sex discrimination because men also lactate under certain circumstances.

Source: http://www.huffingtonpost.com/2015/02/10/ames-vs-nationwide-breastfeeding-discrimination_n_6653418.html?ir=India

El Salvador enhances penalties for Hate Crimes

In light of increased violence against LGBT individuals in El Salvador, the Legislature approved amendments to the Criminal Code imposing enhanced penalties for hate crimes based on sexual orientation and gender identity. The amendments include Article 129 which imposes jail term of 30-60 years to a person who is convicted of killing someone and Article 155 which imposes jail term of 3-6 years to a person who is convicted of threatening a person based on their sexual orientation, race, ethnicity, political affiliation or gender.

Source: <http://www.washingtonblade.com/2015/09/09/el-salvador-lawmakers-approve-enhanced-hate-crime-penalties/>; <http://www.pgaction.org/news/salvadoran-pga-members-reform-penal-code.html>

Ukrainian Parliament passed anti-discrimination law in employment for LGBT persons, while Houston rejects the anti-discrimination ordinance

The Ukrainian Parliament has approved the proposed amendment to Ukraine's labour codes, banning employment discrimination based on sexual orientation, gender identity, HIV status, race, age etc. This law comes in the light of Ukraine's attempts to integrate with the European Union, by which it is mandated to ban employment discrimination for LGBT persons.

Voters in the city of Houston in Texas, United States of America rejected The Houston Equal Rights Ordinance (Hero) through a referendum. This anti-discrimination ordinance by the City Council sought to ban discriminatory and unequal treatment and create an environment free from any discrimination based on sex, race, colour, ethnicity, national origin, age, familial status, marital status, religion, disability, sexual orientation, gender identity or pregnancy. The ordinance covers all privately owned and operated 'public accommodations', that is, facilities that are used by the public. These include restaurants, bars, entertainment venues, places of entertainment and amusement, hotels, bathrooms etc. Currently the state of Texas currently does not have any statewide law banning discrimination against LGBT people.

The Houston Equal Rights Ordinance can be accessed at

https://archive.org/stream/equal_rights_ordinance/equal_rights_ordinance_djvu.txt

Source: http://www.huffingtonpost.com/entry/houston-equal-rights-ordinance_5638de92e4b00a4d2e0bee4e?section=india&adsSiteOverride=in;

<http://www.washingtonblade.com/2015/11/13/ukrainian-lawmakers-approve-anti-lgbt-discrimination-measure/>; <http://www.theguardian.com/us-news/2015/nov/04/houston-anti-discrimination-bathroom-ordinance>; <http://foreignpolicy.com/2015/11/17/lgbt-gains-in-ukraine-are-in-danger/>

New Jersey court holds 'gay conversion' a consumer fraud

A New Jersey Superior Court judge, in a welcome ruling held that misrepresenting

homosexuality as a disorder in marketing conversion therapy services violates the state's consumer protection laws. The ruling came in light of a consumer fraud lawsuit filed against a New Jersey based conversion therapy provider under the Consumer Fraud Act (CFA). This is the first time that a US court has found that homosexuality is not a disease or a disorder and that it is fraudulent for conversion therapists to make such a claim. The court held that the therapy provider's claims are 'a misrepresentation in violation of the CFA, in advertising or selling conversion therapy services to describe homosexuality, not as being a normal variation of human sexuality, but as being a mental illness, disorder, or equivalent'.

The judgement can be accessed

http://www.splcenter.org/sites/default/files/downloads/case/ferguson_v._jonah_1-5473-12_summary_judgment_orders_statement_of_reaso.pdf

National Updates

New Laws/ Amendments

Parliament passes new Juvenile Justice Act with reduced age of juvenility

The Parliament passed the Juvenile Justice (Care and Protection of Children) Act, 2014 to replace the Juvenile Justice (Care and Protection of Children) Act, 2000. The new legislation allows juveniles aged between 16-18 years accused of heinous crimes like rape, murder, arson etc. to be tried as adults under the Indian Penal Code. According to the amendment, the Juvenile Justice Board (JJB) will make an assessment of the mental state of the juvenile, and whether the crime was committed with an understanding of its consequences. Based on this assessment, the Board will determine whether to try the child as a juvenile or as an adult through the procedure laid down in the Code of Criminal Procedure. Changes in the age were made despite the recommendations of the Parliamentary Standing Committee drawn from the Convention on the Rights of the Child. The amendment to the age of juvenility was made based on misrepresented NCRB data, actually shows that only 1.2 % of the cognizable crimes were committed by persons below the age of 18 years, which has also witnessed a steady decrease over the years. It also opposed volumes of scientific data which has consistently found the need for reform of juvenile offenders instead of retribution through adult incarceration.

Source: <http://www.firstpost.com/india/juvenile-justice-bill-public-pressure-forces-rajya-sabha-to-take-it-up-for-debate-but-it-may-not-be-a-smooth-passage-2555798.html>; http://www.huffingtonpost.in/harpal-singh/new-juvenile-justice-act-_b_8893144.html

Amendment in the SC/ST Atrocities Act introduces stringent provisions

The Centre amended the Prevention of SC/ST Atrocities Act (POA), seeking to strengthen the law by including more crimes categorised as "atrocities". The amendments propose stringent provisions for sexual / gestures or for touching a Dalit or tribal woman in a sexual manner without consent; and includes practices related to the outlawed Devadasi system. The bill introduces a presumption of castist motives, in case an offence occurs, placing the onus on the accused to prove otherwise. It also introduces new elements of accountability of public officials for failure to register a complaint. The amendment also proposes the establishment of exclusive courts to dispose of cases within two months, mandating three months for disposal of appeals by high courts.

Source: <http://timesofindia.indiatimes.com/india/SC/ST-atrocities-Act-to-be-made-more-stringent/articleshow/48245254.cms>

Judgments/ orders

Supreme Court and Rajasthan High Court uphold education and property disqualifications for candidates contesting Panchayat elections

The Rajasthan and Haryana State Governments introduced the Rajasthan Panchayati Raj Act, Second Amendment, Ordinance, 2014 and Haryana Panchayati Raj (Amendment) Act, 2015, simultaneously, regarding eligibility criteria making academic qualifications and some other conditions mandatory for those contesting panchayat elections. When challenged before the Rajasthan High Court, the Court passed an order refusing to interfere with the workings of the ordinance. The Punjab and Haryana High Court, however, stayed the amendment which was subsequently challenged in the Supreme Court. In the case of *Rajbala v. State of Haryana and others*, the Supreme Court upheld the constitutional validity of the law. The bench held that, “The proclaimed object of such classification is to ensure that those who seek election to panchayats have some basic education, which enables them to more effectively discharge various duties which befall the elected representatives. The object sought to be achieved cannot be said to be irrational or illegal or unconnected with the scheme and purpose of the Act or provisions of Part IX of the Constitution”.

The verdict effectively rendered 43 percent of the rural population, 68 percent of the scheduled caste women and 41 percent of the scheduled caste men in Haryana ineligible for the elections. By further disadvantaging already vulnerable groups from representing themselves politically, the judgments neglects that it is the obligation of the state to provide education to all, instead of adding to marginalization.

The judgment of the Supreme Court can be accessed at:

http://supremecourtindia.nic.in/FileServer/2015-12-10_1449739272.pdf.

Supreme Court holds that accused must prove innocence beyond reasonable doubt under the reversal of burden of proof in S.304B, IPC

The Supreme Court has interpreted Section 304-B of the Indian Penal Code, which deals with dowry related deaths, to hold that the word ‘shown’ in the provision has to be read up to mean ‘proved’, and ‘deemed’ has to be read down to mean ‘presumed’. It was held that the ‘burden of proof weighs on the husband to dislodge his deemed culpability. This would be the case only when, in terms of Section 304-B, the prosecution has to prove, on a preponderance of probabilities, the following three requirements - i) the death of the woman in abnormal circumstances; ii) within seven years of her marriage; and iii) the death having a ‘live link’ with the cruelty related with the demand of dowry. However, the accused would be subjected to the standard of ‘beyond reasonable doubt’ to prove his innocence, once the above ingredients were proved by the prosecution by a balance of probability.

The Court, in its judgment, paid heed to the importance of ‘presumption of innocence’, a common law corner stone of criminal jurisprudence. However, it also drew a distinction in cases like dowry deaths where societal circumstances compel the legislature to pass harsh laws placing

the burden of proof on the accused. It is relevant to remember that the stringent anti dowry laws were passed in the criminal law amendments of 1983 and 1986, when civil society mobilization against dowry deaths was at its peak.

The judgment can be accessed at <http://indiankanoon.org/doc/36736141/>.

Judiciary emphasizes the importance of victim-centric measures for victims of violence, through compensation, free treatment, among others

Through the year, several Supreme Court and High Court judgments have ordered measures towards support and rehabilitation of victims of violence. The Supreme Court issued directions all private hospitals to provide free treatment, including specialized surgeries, follow up treatment and after care to acid attack victims. It also directed states and Union territories to take action under Section 357C of CrPC against private hospitals and clinics for refusal to treat such victims and to notify acid as a scheduled substance to stop its unregulated sale. Disposing of a 2006 PIL filed by acid attack survivor Laxmi, the court made it mandatory for all private hospitals to issue certificates to such people endorsing them as acid attack victims. The court further observed that governments should provide Rs 3 lakh financial relief to acid attack victims. In another appeal arising out of a conviction under an offence under Section 304-A, IPC, the Supreme Court in addition to the compensation to be paid to the heirs of the deceased victim by the accused, also directed the state to further pay Rs 3 lakhs as compensation in terms of Section 357 A from the funds under the District Legal Services Authority.

The Allahabad High Court in *Guriya Swayam Sevi Sansthan v. Union Of India & Others* directed the Uttar Pradesh state government to constitute a Victims Compensation Fund under Section 357A of Criminal Procedure Code (CrPC) for the enforcement of Rule 7(4) of Protection of Children from Sexual Offences (POCSO) Rules, 2012, to cover offences under the Sections 7, 9 and 11 dealing the offences of sexual assault and sexual harassment. At present, only Sections 4, 6, and 14 are covered under the victim compensation scheme. In another case relating to acid attack, the Allahabad High Court ordered the state to pay compensation to a victim of acid attack, under the Uttar Pradesh Victim Compensation Scheme formulated under S.357-A of the Code of Criminal Procedure. The Court ruled that the regime of criminal law can no longer claim that the responsibility of the state ends at registering a case, conducting investigation and initiating prosecution. It is now an established duty of the state to also provide compensation to the victim and enable her to live a life of dignity, within the criminal law machinery.

Furthermore, in a case involving a minor rape victim, who gave birth to a female child conceived through the rape. Focussing on the rehabilitation of the victim, the court directed the State Government to provide monetary compensation to the girl under Section 357-A of the Code of Criminal Procedure, under which the Uttar Pradesh government formulated the Uttar Pradesh Victim Compensation Scheme 2014. The court added that such schemes help compensate the victim to some extent, and this responsibility lies on the State as the State has failed in its duty to protect its citizens.

The judgments can be read at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42381>;
<http://indianemployees.com/index.php?module=judgments&p=pdf&id=447>;
<http://elegalix.allahabadhighcourt.in/elegalix/WebShowJudgment.do?judgmentID=4385424>;
<http://indianexpress.com/article/india/india-others/allahabad-hc-asks-up-govt-to-report-on-action-taken->

[to-compensate-acid-attack-victims/](#)

Gujarat High Court and Himachal Pradesh High Court direct attention to appalling conditions of shelter homes for women

Stating that the prevailing conditions in state home for destitute women as inhabitable and criticising the fact that the inmates are not provided with disability pension or old age pension, the Himachal Pradesh High Court directed the state to issue disability certificates and old age pension to the required inmates and the State to provide vocational training to the inmates. The Court observed that the children with special needs fall in separate class altogether and it is the duty of the State to provide free and compulsory education to such children up to University level and all the professional courses in all the educational institutions under Articles 21, 21 A of the Constitution and suggested the State to enact such a law for the children with special needs up to University level and professional courses in all the educational institutions including Universities.

The Gujarat High Court admitted that the conditions in the Women Protection Centres across the state of the State were below the expected levels as far as the condition of the buildings, numbers of requisite staff, facilities available for living with minimum dignity are concerned. However, before directing the State Government to update the facilities, the court constituted a committee

The judgments can be accessed at: <https://indiankanoon.org/doc/141374729/>;
<http://elegalix.allahabadhighcourt.in/elegalix/WebShowJudgment.do> .

Supreme Court upholds dismissal from service of man for bigamy

The Supreme Court has upheld the dismissal of a Muslim man on grounds of misconduct. The man had contracted a second marriage during the subsistence of his first marriage, in violation of the UP Government Servant Conduct Rules of 1956. The Supreme Court held that the impugned conduct rules were not violative of Article 25 of the Constitution, which deals with freedom of religion. Relying upon an earlier judgment of the Supreme Court in *Javed v. State of Haryana*, it held that ‘polygamy was not integral part of religion and monogamy was reform within the power of the State under Article 25.’

The judgment can be accessed at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42361>.

Supreme Court strikes down Section 66A of IT Act as ‘unconstitutional’

In a landmark judgment in the case of *Shreya Singhal vs Union of India* Supreme Court struck down section 66A of Information Technology Act as “unconstitutional” for being in conflict with fundamental right of freedom of expression guaranteed by the Constitution. Section 66 gave wide police powers to arrest anyone for sending offensive messages from mobiles and computers with up to 3 years in jail. A bench of justices J Chelameswar and R F Nariman found that the provision did not fall within the reasonable restrictions of the freedom of speech as enshrined in the Constitution. The court considered each of the grounds listed under Article 19(2) to test for the nature and reasonableness of the restriction and drew a distinction between ‘advocacy’ and ‘incitement’, finding that only the latter, which speaks of a certain imminence, could fall within the ambit of Article 19(2). The court, however, upheld validity of Section 69A and the 2011 guidelines for the implementation of the IT Act that allowed the government to block websites if

their content had the potential to create communal disturbance, social disorder or affect India's relationship with other countries. The verdict came as a relief to the growing social media users, who felt the statutory provision obstructed free speech, discussion, dissent, exchange of ideas and satire on social platforms.

Source: <http://ibnlive.in.com/news/sc-strikes-down-section-66a-of-it-act-calls-it-unconstitutional-and-untenable/535858-3.html>

Supreme Court holds unwed mother to be child's guardian without father's consent

In the case of *ABC v. State of NCT of Delhi*, the petitioners challenged the statutory necessity of involving the father of her child in a guardianship petition when the mother never married him and he did not even know about the existence of the child. The Supreme Court ruled that an unwed mother can be appointed as the sole legal guardian of her child without the consent of the father and it is not required of the mother to disclose. The Court noted that it is in the best interest of the child to do away with such procedural requirements of issuing a notice to the father when a guardianship petition is moved.

The judgment can be accessed at: http://supremecourtfindia.nic.in/FileServer/2015-07-06_1436184974.pdf.

In two cases, Delhi High Court passes orders promoting rights of children to privacy and access to justice

Justice Muralidhar and Justice I.S. Mehta in the case of *X v. Z* before the Delhi High Court condemned the practice of producing the personal diaries of children and other documents carrying sensitive and personal information in evidence as violative of the child's fundamental rights to privacy. The court issued directions to Family Courts that such documents may be produced in evidence only by first applying to the court seeking leave to produce such documents, and should only be presented in a sealed cover. The court also issued direction to the Family Courts to conduct the proceedings *in camera* if the circumstances so require.

The Court, in the case of *Ankush Kumar v. State*, directed all trial courts to adopt all reasonable precautions to ensure that victims of child sexual abuse are able to present a true testimony free from fear and intimidation. The Court held that trial courts must provide the atmosphere and circumstances necessary to ward off pressure from the accused, including the parents, in bringing truth before the Court. The judgment recognised that the impact of child sexual abuse is profound because of the sheer frequency with which it occurs and because of the trauma brought to the lives of the children who have experienced this crime.

The Judgment can be accessed at: <http://lobis.nic.in/dhc/SMD/judgement/11-06-2015/SMD11062015MATFC782015.pdf>; <http://lobis.nic.in/dhc/PST/judgement/01-10-2015/PST30092015CRLMM40462015.pdf>.

Delhi High Court holds rules regarding age-determination procedure under Juvenile Justice Act constitutional

The Delhi High Court has upheld the procedural rules stipulated by different states under the Juvenile Justice Act for age determination. As per the Act, the age of a person will be determined as per the Matriculation or equivalent certificate of the child, followed by the date of birth

certificate provided by the school, and third, by date of birth certificate of a local body. The court dismissed the writ petition on the ground that the petitioner failed to show how these Rules are in violation of Article 14.

Source: <http://blog.scconline.com/post/2015/11/26/rules-regarding-age-determination-procedure-under-juvenile-justice-act-are-not-unconstitutional/>.

Supreme Court and Kerala High Court strike down gender discriminatory laws affecting right to employment and livelihood of women

The Supreme Court granted an interim stay on the ban on dance bars in Maharashtra under S.33 (A) (1) of Maharashtra Police (second amendment) Act. The Maharashtra government re-introduced the ban by extending it to all hotels across all categories, after its previous ban on dance bars in three star hotels was struck-down by the Bombay High Court in 2005. This ban has been stayed for the moment by the Supreme Court, pending final hearings in November. The Court, however, added a rider that the Maharashtra police will have to ensure that dignity of women was not affected by the dance performances and that the licensing authority will also regulate indecent dance performances, following the protests by women rights activists against the ban as it threatened the livelihood of the performers in the name of morality and culture.

The Kerala High Court declared unconstitutional the new rule of the Kerala Foreign Liquor Rules, prohibiting women from being employed “in any capacity for serving liquor on the licensed premises”. The Court ruled that the said Rule falls foul of the Constitutional scheme of gender equality as has been spelt out in Articles 14, 15 (1) & (2) and 16 (1) & (2) of the Constitution of India as it deprives a woman of employment solely on the ground of her gender.

The judgments can be accessed at: <http://lobis.nic.in/dhc/PST/judgement/01-10-2015/PST30092015CRLMM40462015.pdf>; http://supremecourtindia.nic.in/FileServer/2015-10-15_1444911573.pdf.

Supreme Court rolls back rights of women in the Hindu Undivided Family under the Hindu Succession Act

The Supreme Court ruled that the Hindu Succession (Amendment) Act, 2005 will not give property rights to a daughter if her father died before the amendment came into force. The Court held that the amended provisions of the Act could not have retrospective effect, so the partitions that have already taken place are not to be disturbed. The father would have had to be alive on September 9, 2005 for the daughter to become a co-sharer with her male siblings. This judgment adds a restriction to the Amendment Act, which sought to bring about equality by making daughters as co-parceners in ancestral property. Before this, the only restriction to inheritance by daughters was if the concerned property was alienated or partitioned before December 20, 2004. The Court added another restriction, that in cases where the father was dead but the partition had not taken place before the December 20, 2004, daughters were still eligible to receive a share of the property.

In another case, the Supreme Court held that a Hindu widow cannot be a ‘karta’ of a Hindu Undivided Family. In cases where the only male member is a minor, the Hindu widow may assume the role of a ‘manager’ in her capacity as the natural guardian of the sole surviving male co-parcener, to manage the day-to-day affairs of the HUF until the co-parcener assumes

majority. This is because a Hindu widow is not a coparcenor in the HUF, but enjoys only limited estate during her lifetime after the death of her husband. The Supreme Court held that the funds belonged to the HUF, which she managed not as a 'karta', but in her capacity as the guardian of the minor male co-parcenor. This case brings to light the limited rights of ownership to property of Hindu widows.

The judgments can be accessed at: <http://www.livelaw.in/law-on-equal-right-for-daughters-over-property-is-prospective-sc/>; <http://judis.nic.in/supremecourt/imgst.aspx?filename=43191>.

Bombay High court allows divorce petition before two year separation for Christians

Bombay High Court passed a judgment allowing divorce petition before the expiry of mandated two year separation period for Christian couples stating that it violates their fundamental right to equality. Similar judgments have been passed by the Kerala and Karnataka High Court where the period has been read as one year keeping it in consonance with the matrimonial laws governing other communities.

Source: <http://indianexpress.com/article/cities/mumbai/christian-couple-case-hc-allows-divorce-petition-before-two-year-separation/>.

Delhi High Court rules against discrimination on the basis of gender and sexuality

In the case of *Shivani Bhat v. NCT of Delhi*, the Delhi High Court ruled that gender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom of individuals. The Supreme Court has previously, in the case of *Suresh Kumar Koushal v. Naz Foundation and Others*, refused to declare Sec. 377 of the IPC, which criminalises homosexuality, as unconstitutional. However, in this case, the court relied on another pathbreaking judgment of the Supreme Court in *NALSA v. Union of India*, which recognised the constitutional rights and freedoms of transgender persons, including those who identify as third gender.

The judgment can be accessed at: <http://lobis.nic.in/dhc/SID/judgement/05-10-2015/SID05102015CRLW21332015.pdf>

Bombay High Court directs Municipal Corporations to provide women public toilets

The Court observed that various provisions of the Constitution including Articles 47 and 48-A impose a duty on the state to ensure the welfare of its citizens which includes right to clean toilets. It also said that the health of the people in the city is inextricably linked to its toilets and it is imperative to provide them in sufficient number and that no human being can live with dignity unless there are facilities to maintain basic hygiene. The Court also added that public health is of paramount importance and that it is the duty of the State and the Corporations to ensure that public latrines, urinals and similar conveniences are constructed, maintained and kept in a hygienic condition. In furtherance of these observations, the Court issued various guidelines to the Municipal Corporations for construction of toilets/ urinals/ restrooms/ privies for women walking on the streets by forming a 'committee' within 4 weeks. It also directed the corporations to file their first compliance before 8th of March, 2016 setting out details of the scheme formulated by them and steps taken pursuant to the same.

Source: <http://blog.scconline.com/post/2015/12/28/court-issues-detailed-guidelines-to-corporations-in->

[setting-up-toilet-facilities-for-women-walking-on-the-streets/](#)

Delhi High Court holds that foreign airlines need to comply with sexual harassment law

The Delhi High Court observed that any foreign airline having even one office in the country is bound by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The bench opined that once the sexual harassment law has come into force, all including foreign airlines having a place of work in India and to whom such law may be applicable, are expected and required to comply therewith and there is no need for the court to issue any direction for the law to be complied with.

Source: <http://www.thehindu.com/todays-paper/tp-national/foreign-airlines-come-under-sexualharassment-act/article7050657.ece>

Supreme Court rules that women can claim *stridhan* even after separation from husband

The Supreme Court, in *Krishna Bhattacharjee v. Sarathi Choudhury*, held that a woman can claim her *stridhan* after judicial separation from her husband. It was ruled that the woman continued to be an ‘aggrieved woman’ as per the definition under the PWDVA as she was part of a ‘domestic relationship’ under the Act, which included any two persons who have at any time in the past lived together as part of a shared household.

The judgment can be accessed at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=43128>.

Bombay High Court strikes down circular preventing pre-litigation mediation and counselling in domestic violence cases

The Bombay High Court, in the case of *Dr. Jaya Sagade v. State of Maharashtra*, has set aside a State Government circular that prohibited pre-litigation counseling and mediation in domestic violence cases. The Court ruled that the circular is “*discriminatory, arbitrary and unreasonable*”, and set aside directions prohibiting women from approaching service providers for counselling under the Protection of Women from Domestic Violence Act, 2005. The Court also laid down guidelines for counselling/mediation under the Act which include, *inter alia*, informing a victim of domestic violence of her right to choice of future course of legal action.

The judgment can be accessed at: <https://indiankanoon.org/doc/173350388/>.

Delhi High Court rules that commissioning mothers of surrogate babies can avail maternity leave

The Delhi High Court in the case of *Rama Pandey v. Union of India & ors.*, ruled that surrogate mothers/commissioning mothers who have children through surrogacy are entitled to maternity leave, which includes pre- and post-natal period. HC laid down guidelines and filled a vacuum in law since the Centre or state governments have no maternity benefit policy for surrogate mothers. The Court ruled that the commissioning mother would become the principal care giver upon the birth of child and she needs to bond with the child and at times take over the role of a breast-feeding mother, immediately after the delivery of the child.

The judgment can be accessed at: http://lobis.nic.in/d_dir/dhc/RAS/judgement/17-07-2015/RAS17072015CW8442014.pdf

Madras High Court rules for recognition of monetary value of unpaid domestic work by women

The Madras High Court has, while increasing the compensation awarded by the State Motor Accidents Claims Tribunal for the death of a 31 year old woman killed in a road accident, stressed upon the need to properly value unpaid domestic work by women. While the Court made observations essentialising the responsibility of the home maker to taking care of the husband and children, it also recognized the neglect and devaluation that voluntary domestic work has to suffer. The Motor Vehicles Act lays down that the income of a non working spouse should be considered to be one third of the surviving spouse which completely blindsides the value of domestic work rendered by the woman.

The judgment can be accessed at: http://judis.nic.in/judis_chennai/qrydisp.aspx?filename=72339.

Setback for access to justice for rape victims, as Madras High Court and Bombay High Court order settlement of rape cases between accused and victim

In a case of rape of a minor girl, the Madras High Court directed District Legal Services Authority in Tiruvallur and Tamil Nadu State Legal Services Authority to mediate in the matter and asked advocates appearing from both sides to assist the mediators. The court recorded that since a child was born due to the rape, it was a ‘fit case’ for attempting compromise between the parties, neglecting that rape is a non-compoundable offence under law. Subsequent to a decision by Justice Dipak Mishra stating that mediation in rape cases is unlawful and should not be encouraged, the judge in the Madras High Court also recalled the order mandating mediation and revoked the bail to the accused.

The Bombay High Court, in the case of *Jaya D. Ovhal v. State of Maharashtra*, quashed a rape charge after the victim stated that the accused had agreed to marry her and that they had settled the dispute amicably. In this case, the victim admitted in court that she had a consensual physical relationship with the accused and had filed the rape charges only because he had refused to marry her and that she has no objection for quashing the criminal proceedings initiated by her against the accused.

The judgments can be accessed at: http://supremecourtindia.nic.in/FileServer/2015-07-01_1435727878.pdf; <https://indiankanoon.org/doc/173350388/>

Source: <http://www.hindustantimes.com/india/madras-hc-gives-bail-to-rape-convict-to-mediate-with-victim/story-gXDtXGIGD7uffG7lUp8ytN.html>, <http://indianexpress.com/article/india/india-others/no-compromise-in-rape-case-over-wedlock-rules-supreme-court/>

Progress in rights of women in intimate relationships, Madras HC grants second wife right to claim pension without marriage certificate and Supreme Court rules that couple living together will be presumed married

While considering whether the second wife of a deceased government employee is entitled to claim the family pension without production of her marriage certificate, Justice Hariparanthaman of the Madras High Court ruled in the affirmative. The court observed that the petitioner has proved her eligibility as the heir of the deceased by producing documents like the death certificate of her husband and the birth certificate of her child.

In the case of *Dhannulal and Ors vs Ganeshram and Anr*, the Supreme Court ruled that couple living-in together will be presumed as legally married and consequently the woman would be eligible to inherit the property of her partner after his death. The bench stated that continuous cohabitation of a couple would raise the presumption of a valid marriage and that it would be for the opposite party to prove that they were not legally married.

The judgments can be accessed at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42562>

News and Events

Law Commission of India recommends abolition of death penalty

In its 262nd Report on the Death Penalty, the Law Commission of India recommended the abolition of the capital sentence. This is a landmark document, since this is the first time the Law Commission has recommended the complete abolition of the death penalty, in the face of growing evidence of the arbitrariness of the ‘rarest of rare’ standard, and of its staunch anti-poor bias. Finding that the application of the death sentence does not comply with due process requirements in Article 21 and is patently unequal, the Report states that the death penalty is unconstitutional. However, the current report carves out an exception for terror-related offences, even though it notes that ‘*there is no valid penological justification for treating terrorism differently from other crimes*’. Three members of the Law Commission have filed their dissenting notes separately.

The 262nd report can be accessed at <http://lawcommissionofindia.nic.in/reports/Report262.pdf>.

Law Commission recommends amendments to the Hindu Adoptions and Maintenance Act, and shared child custody between parents

The Law Commission, in its 252nd report, has recommended amending the Hindu Adoptions and Maintenance Act, 1956 to provide for the maintenance of the wife in case the husband is incapacitated and unable to maintain her. The proposed amendment to Section 18 of the Act provides for the wife's maintenance from the husband's joint family if, due to physical disability, mental disorder, disappearance or renunciation, the husband cannot maintain her.

In its 257th report recommended changes in various legislations to introduce a codified mechanism for shared parenting and joint custody of a child between parents. This recommendation proposes natural guardianship to both the parent unlike the present scenario where the father is considered as the natural guardian. It also proposes that the parents should evolve a parenting plan on their own, under the supervision of family courts. The Law Commission recommended the inclusion of these changes in all religious and secular personal laws, including Indian Divorce Act, the Parsi Marriage and Divorce Act, the Hindu Marriage Act, Hindu Minority and Guardianship Act and the Guardians and Wards Act.

The 252nd report can be accessed at <http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20-%20A%20relook%20at%20Section18%20of%20the%20Hindu%20Adoption%20and%20Maintenance%20Act,1956.pdf>.

The 257th report can be accessed at <http://lawcommissionofindia.nic.in/reports/Report%20No.257%20Custody%20Laws.pdf>.

Inquiry Commission confirms fake encounter of Meena Khalkho

The Anita Jha judicial inquiry commission on the Meena Khalkho killing, a 16 year old tribal girl from Chhatisgarh, was finally placed before the state cabinet close to four years after the incident. On 6 July 2011, Meena was killed by police personnel near Navadih in Sarguja. The police claimed that she was a Maoist, in possession of a rifle, and was later killed in an encounter. An inquiry was ordered into the incident after people in Navadih challenged the story, and medical records were produced which showed that Meena was raped before being murdered. The commission report concluded that the encounter was 'fake', and that Meena Khalkho died of a bullet fired from a police weapon, while also challenging the claim that she was in fact a Maoist.

Source: <http://www.thehindu.com/news/national/other-states/police-killed-girl-on-fake-claimspanel/article7078337.ece>

Socio-Economic and Caste Census 2011 released

After much delay, the government released the Socio-Economic and Caste Census 2011. The census in rural areas was conducted by the Department of Rural Development, census in urban area was conducted by Ministry of Housing and Urban Poverty Alleviation, and caste census by the Ministry of Home Affairs under the coordination of Department of Rural Development. The census reveals that approximately 48% of India's rural population is female and that 0.1% of the rural population is transgender. Andaman & Nicobar islands, West Bengal, Gujarat, Odisha and Mizoram have the highest proportions of transgenders. Also it reveals that 41.6% of the rural population was unmarried and 40% was married while only 3.5% were divorced. The average household in rural India has close to five members. Only 12.8% of the total rural households are headed by women and only 12.09% women own a house. Lakshadweep bucks this trend, with over 40 per cent of its rural households headed by women. The data suggests that women still do not have a financial independence and backing in the rural areas. Moreover, the caste census says that only 18.46% of the total rural households are SCs, while 10.97% of the household are STs and the rest 68.52% household belong to other castes.

The Census report can be accessed at <http://www.secc.gov.in/staticReport>.

Rajya Sabha passes the Rights of Transgender Persons Bill, 2014

In a historic move, the Rajya Sabha passed a private members Bill after 45 years, on the rights of transgender persons. The Bill addresses different questions pertaining to transgender persons and social inclusion, rights and entitlements, financial and legal aid, education, skill development, and mechanisms to address abuse, violence and exploitation of transgender persons. It also proposes reservations in education and jobs, establishment of Centre and State-level welfare boards and Transgender Rights Courts. The government, while supporting the Bill in principle, claimed that the proposals contained therein required synergy between 9 distinct ministries, and therefore required improvement. While it assured to bring an updated version of the Bill to the Lok Sabha soon, no such move has been made so far.

Source: <http://www.thehindu.com/news/national/rajya-sabha-passes-private-bill-ontransgenders/article7138056.ece>

Central government proposes changes in laws on surrogacy, human trafficking, but ignores marital rape

The Central Government announced significant changes in the Artificial Reproductive Technologies Bill (ART Bill). In the current form the Bill fails to address the profound vulnerability of the surrogate and her family. The Draft bill does not elaborate on the kind and extent of insurance that will be provided, particularly in the context of post delivery and follow-up care. Also, counselling remains a one-time information giving process completely dependent on the discretion of the clinic. The value of her gestational motherhood is denied, and weight is given to the commissioning parents as owners of the genetic material. This negation of the potential of a humane relationship between the two mothers and their families that can generate an open environment around surrogacy reflects the fears of a patriarchal society and its inability to address new challenges with a new vision.

On the issue of trafficking of girls, the Central Government informed the Supreme Court in response to the PIL filed by a Hyderabad-based NGO, Prajwala, that it intends to introduce a new comprehensive law on human trafficking, instead of amending existing laws. At the moment, amendments proposed in Immoral Traffic (Prevention) Act and the Protection of Children against Sexual Offences (POCSO) do not deal with any other form of exploitation apart from sexual exploitation. The Ministry of Women and Child Development will also set up a standing committee having representatives from various ministries and some NGOs to prepare a plan of action covering amendments to laws, mechanism to control trafficking and other issues discussed. The National Legal Services Authority has also submitted recommendations to the Supreme Court, defining ‘sexual exploitation’ broadly, which disregards the choice and free will of several sex workers entering the profession. The report recognizes inter-generational prostitution i.e., traditional or community based prostitution also as exploitation.

Lastly, in reply to a question by DMK MP Kanimozhi on whether the Government intended to introduce an amendment to the Indian Penal Code to remove the marital rape exception, Minister of State for Home JP Chaudhury claimed that the criminalization of marital rape is inconsistent with Indian cultural values that treat marriage as a sacrament. The Government justified the marital exception on the basis that the Indian context is distinct from other jurisdictions due to the “*level of education/ illiteracy, poverty, myriad social customs and values, religious beliefs, mindset of the society to treat the marriage as a sacrament*”, and that even the Law Commission Report reviewing rape laws did not recommend the deletion of the exception.

Source: <http://www.thehindu.com/opinion/op-ed/ending-discrimination-in-surrogacy-laws/article5970609.ece>; <http://www.ibnlive.com/news/india/government-to-change-surrogacy-laws-single-women-can-become-surrogate-mother-23-years-to-be-minimum-age-1152348.html>; http://www.telegraphindia.com/1150430/jsp/nation/story_17494.jsp#.VUswj16qqkp; <http://timesofindia.indiatimes.com/india/Centre-bats-for-new-comprehensive-law-on-human-trafficking/articleshow/49342579.cms>

Chapter on Sexual Offences in Modi’s Medical Jurisprudence and Toxicology updated to reflect legal amendments

Modi’s textbook on Medical Jurisprudence and Toxicology, the authoritative guide on medical jurisprudence since 1920, was recently revised to overcome misinformation and negative stereotypes relating to sexual violence and victims thereof. The textbook is widely used by

medical students and professionals, and provides relevant instructions on conducting medical examinations for criminal trials as well. Previous versions of the textbook stated that injuries and marks of resistance on the body of the victim were crucial factors to establish the offence of rape. It also invoked stereotypes relating to the physical built and character of the victim as relevant factors for the determination of rape. Furthermore, the textbook reflected severe insensitivity to victims by writing that women generally put false charge of rape on men for causing harm to their reputation or in some situations women consensually make sexual relation and later they accuse the man of rape. These views were reflected as late as the 23rd edition of the textbook that was published in 2012.

Since 2012, several consultations were held among experts, academicians and judges relating to revisions in the textbook. Subsequently, Justice Kannan of the Punjab and Haryana High Court substantially revised the chapter on sexual offences in its 25th Edition. The revised version says that the book need to make a departure from the insensitive medical approaches due to which even the trial processes becomes humiliating for victims. It says that there is no need to find the hymenal status of the woman and determine the vaginal laxity to give opinion about her past sexual history. It also says that there is no need to conduct the two finger test on the victim of rape. It says that, finding out that whether the victim was sexually active or not is illegal, irrelevant and inappropriate. The victim should be provided physical care and mental counseling. The medical practitioners should always respect the privacy and should conduct the tests on with the consent of the victim.

Central Government bans ‘India’s Daughter’, a documentary on the December 16, 2012 gang rape

The BBC documentary “India’s Daughter”, directed by filmmaker Leslee Udwin on the December 16 gang rape of a student which sparked nationwide outrage, was banned by the Central Government, for showing India in an unfavourable light, and sought to justify it on the ground that there were irregularities in procuring permissions to access the accused in jail. The documentary included an interview with Mukesh Singh, one of the death row convicts in the case, and his lawyer, ML Sharma. The decision to ban was taken on the basis of snippets aired in advance of the broadcast, in which Mukesh Singh was shown blaming the victim for the brutal rape.

Source: <http://www.deccanchronicle.com/150305/nation-current-affairs/article/despise-bandelhi-gangrape-controversial-documentary-%E2%80%98india%E2%80%99s;>
<http://www.theguardian.com/world/2015/mar/03/india-outraged-interview-man-convicted-gangrape-student>

Mumbai police illegally raids hotel rooms and detains consenting adult couples for ‘public indecency’

A team from the Malwani police conducted raids in lodges and two-star hotels in and around Madh Island and Aksa in Mumbai and detained 40 adult, consenting couples, in an act of moral policing that has invited mass outrage. Couples reported being harassed by the police, and one girl was also slapped by a police officer for resisting detention. They were later charged with committing ‘public indecency’ for consensually sharing a hotel room with their partners, were fined Rs.1200, and harassed and detained in the police station for 5 hours. Several college

couples were also forced to call their parents, in an attempt to shame them. The raids by the police invited outrage for a blatant violation of the privacy of individuals, and for harassing consenting adults in a private space with charges of public indecency.

Source: <http://indianexpress.com/article/cities/mumbai/mumbai-hotel-raids-made-a-mistake-cops-were-overzealous-admit-mumbai-police/>

Programmes/Policies/Institutions

Mumbai University includes third gender as a category in admission forms

The Mumbai University decided to recognize ‘third gender’ as a category in its admission forms. The step comes after an order from the University Grants Commission (UGC) notifying a ‘third gender’ category enabling transgendered persons to avail benefits of all scholarship schemes and fellowship programs in higher educational programs.

Source: <http://www.mid-day.com/articles/mumbai-university-grants-recognition-to-third-gender-in-application-forms/15990175>

Injectable contraceptives to be used for family planning programme

The Drug Technical Advisory Board’s proposal for introduction and use of the injectable contraceptives for women in the family planning programme was accepted by the Health Ministry. The Drug Technical Advisory Board of Drug Controller General of India in its meeting had recommended that India should provide the option of Deoxy medroxy progesterone acetate (DMPA) in its National Family Planning Programme (NFPP) to increase the choice of contraceptives for women. The move disregards research by health professionals which brings to light significant side-effects of the drug, such as irregular periods or no periods at all, loss of bone mineral density and worsening of depression etc. Women who are administered the drug require constant care and monitoring by a physician. Although, the drug has been in the Indian market for a couple of decades but it is rarely used and prescribed by the doctors in the private sector because their patients may hold them accountable due to its side-effects. At the same time some doctors in the public sector promote the drug because they say it is more suitable for poor women, who are often the target of discriminatory and invasive population control policies.

Source: <http://indianexpress.com/article/india/india-others/health-gives-nod-to-use-of-injectable-contraceptives/#sthash.nniVnMhC.dpuf>; <http://theladiesfinger.com/why-does-indias-public-health-system-want-to-use-scary-injections-for-birth-control-in-women/>

Maharashtra government to appoint protection officers in all talukas

The Maharashtra government began the process of appointing protection officers in all 358 of its talukas to deal with cases registered under the Protection of Women from Domestic Violence Act of 2005. Rs 12.69 crores has been sanctioned by the finance department to start off the process. Until now, the Child Development Project Officers were handling the additional responsibility of handling domestic violence cases in the talukas.

Source: <http://indianexpress.com/article/cities/mumbai/state-to-finally-appoint-protection-officers-in-talukas/>

Delhi witness protection scheme notified by the government

A policy named “Delhi witness protection scheme” was notified by the Delhi Government to bring in a witness protection programme to ensure protection of witnesses in crucial cases. This policy envisages categorization of witnesses, creation of witness protection fund, types of protection and procedure for processing such request by the competent authority. This policy came after two years of the Delhi High Court direction to the government (in 2013) to frame a witness protection policy to provide guidelines and principles which the police, prosecution and executive agencies will have to follow. A sub-committee comprising of officers of Law Department (Home Department), Directorate of Prosecution, the Delhi Police and Delhi State Legal Authorities was formed by the Home Department for deliberations on the formation of this policy.

Source: <http://www.ndtv.com/delhi-news/delhi-government-notifies-witness-protection-policy-1202275>.