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Partners for Law in Development

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UN Updates

Human Rights Council adopts resolution to protect the rights of LGBTI persons

In a historic move, UN adopted a resolution which mandates the appointment of an Independent expert on ‘Protection against violence and discrimination based on sexual orientation, and gender identity.’ The resolution was ratified by 23 member states, while 18 were against and 6 abstained from voting. The Expert will be tasked with assessing implementation of existing international human rights law, identifying best practices and gaps, raising awareness of violence and discrimination based on sexual orientation and gender identity, engaging in dialogue and consultation with States and other stakeholders; the mandate will also facilitate provision of advisory services, technical assistance, capacity-building and cooperation to help address violence and discrimination on these grounds.

The Organization of Islamic Cooperation (OIC), comprising of 57 member states, strongly rejected this resolution of the Human Rights Council, saying the notion is against fundamental precepts of religious and cultural societies around the world. Views of the OIC were supported by a number of non OIC countries from Asia, Africa and Europe, which led to some key amendments to this resolution, such as that the importance of respecting the national, regional and religious particularities, avoiding external pressures or coercive measures to avoid influencing views of developing countries; in addition to the need for implementing the resolution in accordance with national laws and in conformity with universally recognized international human rights law.

Source: <http://www.arabnews.com/node/948991/saudi-arabia>

Source: <https://www.hrw.org/news/2016/06/30/un-makes-history-sexual-orientation-gender-identity>

Special Rapporteur on torture recommends applicability of international law on torture, cruel inhuman or degrading treatment of punishment to specific experiences Women, Girls and LGBTI persons

In his report to the Human Rights Council, Juan E. Méndez, Special Rapporteur, called for a paradigm shift in the framing of torture and other cruel, inhuman or degrading treatment or punishment, from a gender perspective, to integrate the lived experiences of women, girls, intersex and LGBT community into international law. Since historically the framework of ill-treatment and torture evolved in response to the plight of men which excludes and renders invisible the narratives of other genders, the report frames concerns from a gender perspective, emphasising state obligation to combat gender-based violence and discrimination. It recommends to repeal laws that exempt marital rape from the offence of rape, or laws that pardon rapists who marry their victims, as well as criminalisation of adultery; it also calls for decriminalisation of same-sex relationships, provision for gender-sensitive trainings of public officials, guaranteeing the right to effective legal assistance, to provide for non-custodial means of protection, such as shelters and other community-based alternatives, and stipulates that women be placed in detention centres for purposes of protection, only where necessary and expressly requested by the woman in question, only if this is temporary and subject to supervision by competent authorities.

The report can be accessed here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement>

Economic and Social Council adopts draft resolution on ‘mainstreaming a gender perspective into all policies and programmes in the United Nations system’

The 2016 Session of Economic and Social Council adopted a draft resolution to bring about gender parity and anchoring it in the responsive implementation of 2030 Agenda on Sustainable Development. The Council charted a multi-year agenda prioritizing women’s

economic empowerment, rural women and girl's empowerment, and social protection systems. A comprehensive set of recommendations for Governments and other stakeholders were outlined, emphasising the importance of a robust and non-discriminatory legal framework and the involvement of women in decision-making processes at all levels.

Source: <http://www.un.org/press/en/2016/ecosoc6767.doc.htm>

The draft resolution can be accessed here:

http://www.un.org/ga/search/view_doc.asp?symbol=E/2016/57

United Nations Operation in Côte d'Ivoire and UN OCHCR jointly releases report on rape crimes and their prosecution in Côte d'Ivoire

United Nations Operation in Côte d'Ivoire (UNOCI) and the United Nations High Commissioner for Human Rights (OHCHR) jointly issued a report on the findings of investigations carried out by the Human Rights Division (HRD) of UNOCI on rape cases and their judicial prosecution in Côte d'Ivoire between 1st January 2012 and 31 December 2015. The findings revealed that majority of the victims were children; and that this is due to proliferation of rape culture in conflict situation. The data collected also revealed that in most cases, the rape offence is reclassified and passed off as a less grave offence. Irregular holding of sessions by the court further marred the situation. The report highlighted the importance of a national strategy, of building institutional capacity to respond to gender based violence and recommends revision of Criminal Code in accordance with international standards.

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20258&LangID=E>

Security Council commits to effective implementation of Resolution 1325(2000) while emphasizing on women, security and peace

The Presidential Statement of Security Council marked the urgent need of involving women in peace-building and conflict resolution initiatives for a comprehensive approach to the sustenance of peace, in line with resolution 1325(2000). The Security Council stressed on the importance of equal participation of women in decision-making processes, with emphasis on political participation and leadership. The Council also highlighted the positive impact of economic empowerment of women on security endeavours, and reiterated the need for provision of better educational and occupational opportunities. To this effect the Council encouraged its Member States to increase funding on women, peace and security including more aid in conflict situations

Source: <http://www.un.org/press/en/2016/sc12403.doc.htm>

UNHRC adopts resolution committing states to protect civil society space

UNHRC adopted a resolution committing States to protect civil society space thereby responding to the shrinking of civic space in all parts of the world. The resolution emphasises the essential role of civil society in contributing to peace and security, human rights and sustainable development, citing the recently adopted 2030 Agenda for Sustainable Development. The draft resolution was led by Chile, Ireland, Japan, Sierra Leone, and Tunisia. Based on states' existing obligations under international human rights law, the resolution also gives crucial guidance to states on a diverse range of issues, including on civil society participation in decision making processes, access of civil society to resources, and access to information, among many others.

The resolution can be assessed here:

http://ecn1.org/dindocuments/454_HRC%20resolution%20on%20civil%20society%20space.pdf

International Developments

Asia

Malaysia's Penang legislative assembly forms transgender committee and Pakistan cleric's issues fatwa declaring transgender marriages legal

Penang Legislative Assembly has formed a committee to oversee transgender issues. Formed after a delay of 2 years, the eight member committee will be focussing on the issue of use of public toilets by the transgender community, healthcare and legal representation; and will oversee issues related to transgender in hospitals and under arrest. The committee aims to create awareness about the experiences and rights of transgender community through symposiums. As effective planning and implementation is contingent on community participation, there have been calls to include at least one transgender person in the committee.

Also, Pakistan's *Tanzeem Ittehad-i-Ummat*, a clerical body has issued a fatwa declaring that a transgender with male indications on his body may marry a transgender with female indications on her body. The declaration also provided for men and women to marry transgender with clear markings of the opposite gender. However, it excluded person with visible signs of both genders. The Fatwa was mute on what indications and signage meant and might give rise to contestation in future. It also declared sinful any act of humiliating, harassing the transgender community and pronounced that they will be qualified inheritors and will possess the right to be buried in Muslim ceremonies. Since, *Tanzeem Ittehad-i-Ummat Pakistan* is not a state agency or statutory body, its fatwas are not legally binding. Yet, it remains to be seen whether their fatwa will influence the government in formulating policy on the subject.

Source: <http://m.themalaymailonline.com/malaysia/article/penang-reps-transgender-committee-finally-formed>
<http://www.telegraph.co.uk/news/2016/06/27/pakistani-clerics-declare-transgender-marriages-legal-in-islam/>

Federal Court of Malaysia recognises sexual harassment as a Tort

The Federal Court of Malaysia has introduced the tort of sexual harassment by defining it as “a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person which is calculated and does cause that person alarm, fear or distress.” The Employment (Amendment) Act of 2002 and the 1999 Practice code did not define the rights and liabilities of the harasser and victim and was insufficient, which necessitated the civil remedy. The possibility of tortious action broadens the avenue for a victim of sexual harassment to damages.

Source: <https://asklegal.my/p/turning-the-tables-on-perpetrators-of-sexual-harassment>

The judgment can be accessed [here](#)

Pakistan Islamic Council proposes ‘lightly beating wife permissible’ under its draft women’s protection bill

The Council of Islamic Ideology, a constitutional body that advises the legislature on bills’ compatibility with Islam, has passed its own draft version of a Women’s Protection Bill, where it proposes husbands may “lightly beat” their wives as a form of discipline. It also prohibits female nurses from taking care of male patients, and bans the presence of women in receptions held for visiting foreign dignitaries. Earlier this year, the Punjab Assembly passed a women’s protection bill, which the council and religious parties strongly rejected, declaring it ‘un Islamic’ [PLD Newsletter Vol. 9(II) March-April 2016].

Source: <http://www.independent.co.uk/news/world/asia/pakistani-men-can-beat-wives-lightly-say-islamic-council-a7054241.html>

Japan proposes to revise its sexual harassment guidelines to also address discrimination against sexual minorities

The Health, Labour and Welfare Ministry of Japan plans to introduce revised guideline under the Equal Employment Opportunity Law to bring discriminatory acts against sexual minorities within its ambit of sexual harassment. A draft of the revised guidelines points out that people can be victims of sexual harassment regardless of their sexual orientation and self-identification. The draft also urges the companies to provide counselling to pregnant women, mothers and fathers who face workplace harassment on asking for maternity and paternity leaves respectively. A bill in consonance with this has been tabled by four parties to the Diet for elimination of discrimination against sexual minorities. The bill stresses on the responsibility of the Central Government, municipalities and fellow citizens to end discrimination against LGBT people.

Source: <http://kyodonews.net/news/2016/05/26/62618>

China's newly adopted law restricts NGO freedom

China's National People's Congress has adopted the draconian law on the 'Management of Foreign Non-Governmental Organizations Activities in China' that places restrictions on foreign NGOs and their domestic partners. Under the new law, foreign NGOs are banned from undertaking activities deemed as 'endangering national unity, national security or ethnic unity or harming China's national interests and societal public interests' The law also prohibits foreign NGOs from conducting 'political activities' without specifying what such activities entail, leaving room for arbitrary and broad interpretations of the law. This will have severe consequences for freedom of expression, peaceful assembly and association, which are already sharply curtailed under existing laws and policies. The law is the latest in a raft of legislations passed last year, including Anti-Terrorism Law and National Security Law which aims at bolstering government power at the cost of human rights under the guise of national security.

Source: <https://www.hrw.org/news/2016/04/28/china-new-law-escalates-repression-groups>

South Korean gay couple seeks legal status for their same-sex marriage

In a first of its kind case, a lawsuit filed by a gay couple seeking legal status for same sex marriage was rejected by a South Korean district Court. While homosexuality is legal in South Korea, same-sex marriage is not recognised and the country remains deeply conservative about matters of sexual identity. Although the Court rejected the lawsuit saying that it cannot be recognised as legitimate under the current legal system, it identified the need for a separate legislation to recognize such unions as marriage.

Source: http://www.koreatimes.co.kr/www/news/nation/2016/05/116_205575.html

Beyond Asia

Italian parliament approves same sex civil unions

The Italian Chamber of Deputies' passed same sex civil unions bill in a vote of confidence ensuring that it will become a law. Already approved by the Senate in February, a final vote in the lower house was required for the legislation to take effect.

The issue has been highly controversial, amid staunch opposition from Catholic conservatives. Until the vote, Italy had been the last major Western democracy that did not recognise gay partnerships in law. The bill grants same-sex couples many of the same rights as married heterosexual couples. Partners in a civil union will now be able to apply for public housing as couples and can also inherit their partners' pensions. Though a milestone in the

struggle toward legal recognition for same sex-couples, the bill falls short of giving the partner, rights to their partner's children.

Also, in the case of *Taddeucci and McCall v. Italy*, where the Italian authorities refused to grant a residence permit to a gay couple on family grounds, the European Court of Human Rights held it in violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life) of the European Convention on Human Rights. Whereas the outcome of this judgement is of little importance to Italy since the approval of same sex unions, the decision is of the great importance to all those Council of Europe Member States that yet provide no recognition and discriminate for immigration purposes on the ground of marital status.

Source: <http://www.bbc.com/news/world-europe-36269605>

<http://www.coe.int/en/web/sogi/-/judgment-on-taddeucci-and-mccall-v-italy>

US Supreme Court strikes down Texas abortion access laws

In a historic ruling, the Supreme Court struck down a Texas abortion law which imposed numerous restrictions on access to abortion. With a 5-3 decision in *Whole Woman's Health v. Hellerstedt*, the court reversed a decision by the 5th U.S. Circuit Court of Appeals, which had upheld the law thereby closing many clinics and further reducing availability of abortion in Texas. The restrictions imposed required all clinics in the state to meet the standards for ambulatory surgical centers, including regulations concerning buildings, equipment and staffing and required doctors performing abortions to have admitting privileges at a nearby hospital. The court recognised that these restrictions put an "undue burden" on women seeking to terminate pregnancies without doing enough to protect women's health. The ruling represents the most vigorous affirmation of abortion rights in the United States since the 1992 ruling of *Planned Parenthood v. Casey* that reaffirmed the constitutional rights to abortion. Hailed as a historic victory for abortion rights advocates, the ruling does not automatically apply to the entire country; each of the other state laws will have to be challenged in Court.

Source: <https://www.washingtonpost.com/news/wonk/wp/2016/06/27/what-the-supreme-court-abortion-ruling-means-for-texas/>

U.N. Committee finds Ireland's abortion laws cruel, inhumane and degrading

UN's human rights committee called on the Irish government to reform its restrictive abortion legislation, after ruling that it subjected a woman to cruel, inhuman and degrading treatment thus violating her human rights. The ruling was based on a complaint by Amanda Mellet, who in 2011 was denied abortion in Ireland even after doctors informed her that her foetus had a heart defect and could not survive outside the womb. This ground-breaking judgement marks the first time that, in response to an individual complaint, an international human rights committee has recognized that by criminalizing abortion a state has violated a woman's human rights. The Committee found Ireland's abortion laws are in violation of Articles 7 and 26 of the International Covenant on Civil and Political Rights and affirmed that outlawing women's access to abortion services can cause severe suffering and undermines their personal integrity and autonomy, which results in acute violations of their human rights.

Source: <http://www.un.org/apps/news/story.asp?NewsID=54180#.V4y5aNJ974Y>

You can access the judgement [here](#)

Kenyan Court upholds forced anal examinations for charges of homosexuality

Mombasa High Court in Kenya upheld the constitutionality of forced anal examinations and forced HIV and Hepatitis B tests of men suspected of homosexual conduct. The case was brought by two men who were subjected to forced anal exams, HIV tests, and Hepatitis B

tests at Mombasa's Madaraka Hospital in February 2015. Forced anal exams violate the Convention against Torture, the International Covenant on Civil and Political Rights and the African Convention on Human and Peoples' Rights, all of which are treaties that Kenya has ratified. Additionally, under international law and Kenya's Sexual Offenses Act, any form of unwanted penetration during the examinations constitute sexual assault and possibly rape. Setting a devastating precedent, this ruling would allow the government to continue these abusive practices and to use the test results as evidence in criminal prosecutions for consensual same-sex conduct.

Source: <https://www.hrw.org/news/2016/06/16/kenya-court-upholds-forced-anal-exams>

Seychelles parliament passes bill to decriminalize sodomy

Seychelles' National Assembly has passed a landmark bill to amend the country's penal code that decriminalizes the act of sodomy, making it one of the few African countries to decriminalize the acts. The bill amended Section 151 of the penal code dating back to British colonial rule that penalised anyone who "has carnal knowledge of any person against the order of nature" up to 14 years of imprisonment. This move comes 5 years after Seychelles accepted to implement the recommendation of the Universal Periodic review (UPR) towards the decriminalisation of same sex relationships in 2011.

Source: <http://www.mambaonline.com/2016/05/19/seychelles-parliament-votes-legalise-homosexuality/>

Nauru Government updates Criminal Code to decriminalise homosexuality and broaden definition of rape

Bringing Nauru's laws in line with the international human rights standards, Nauru's Government has updated its archaic criminal code to decriminalise homosexuality. The reformed legislation replaces the Criminal Code of 1899 and broadens the definition of rape to include marital rape, and introduces the offence of stalking and voyeurism while also increasing penalties for sexual offences. Sentences such as the death penalty, imprisonment with hard labour and solitary confinement have also been removed.

Source: <https://www.theguardian.com/world/2016/may/29/nauru-decriminalises-homosexuality-and-suicide>

Campeche and Sonora states in Mexico approve same sex marriage

Campeche and Sonora become 7th and the 8th state in Mexico to legalise same sex marriage wherein same-sex couples will no longer need a court injunction to marry. Other states to legalise such marriages are Mexico City and the states of Campeche, Chihuahua, Coahuila, Guerrero, Jalisco, Nayarit and Quintana Roo. While legislations to change laws covering same sex marriages are still pending in several other states, Mexico's President Enrique Peña Nieto had also signed an initiative to amend the Constitution in order to legalise same sex marriage throughout the nationwide.

Source: <https://theperchybird.wordpress.com/2016/05/10/mexico-campeche-becomes-7th-state-with-same-sex-marriage/comment-page-1/>
<https://theperchybird.wordpress.com/2016/05/11/mexico-sonora-becomes-the-8th-state-with-same-sex-marriage/>
<http://www.latimes.com/world/mexico-americas/la-fg-mexico-same-sex-marriage-20160517-snap-story.html>

National Developments

National Judgments

High Court directs Maharashtra Government to set up State Coordination Committee for granting benefit of child care leave

The Bombay High Court directed the state of Maharashtra to set up a coordination committee for granting benefit of child care leave. The direction was given while deciding a petition filed under Article 226 of the Constitution of India. The petitioner pleaded for the issuance of writ of mandamus for not providing child care leave and contended that she is entitled to the child care leave relying upon the provisions of Central Civil Services (Leave) Rules, 1972. The respondent argued that since the leave rules of State Government are not at par with the Central Civil Services Rules, they cannot grant leave; and further that such leave will affect the functioning of the Government if a large number of women government servants go on leave. The court directed the respondents to grant leave to the petitioner for 730 days for bringing up and welfare of a disabled daughter. It also directed the State Government to constitute State Co-ordination Committee which shall take decision whether to grant child care leave with pay or not.

Citation: *Deepika Sagar Nersekar v State of Maharashtra*, 2016 SCC OnLine Bom 2762.

Delhi High Court holds consent of a minor immaterial for reduction of sentencing in rape

The Delhi High Court disposed an appeal challenging the conviction and sentence under Sections 363, 366 and 376 of the Penal Code, 1860. The appellant contended that it was apparent from the evidence laid before the court that the prosecutrix was a consenting party having an affair with the appellant and therefore the sentence of the appellant should be reduced. The court held that since the consent of a girl below the age of 16 years is immaterial, it cannot be a mitigating circumstance so as to award a sentence lesser than 7 years rigorous imprisonment based on the facts and circumstances of the case. The Court observed that the prosecutrix was minor at the time of incident and the accused had enticed her to give consent, making her consent immaterial. It said that as per Section 376 IPC, the minimum sentence prescribed for the offence of rape of a minor below 16 years is 7 years and hence the sentence of the appellant cannot be reduced to the period already undergone.

Citation: *Raju Kumar Verma @ Raju v. State (Govt. of NCT) of Delhi*, 2016 SCC OnLine Del 2993.

Delhi High directs due process of law to be followed before depriving adoptive parent of child's custody

The Delhi High Court disposed of a habeas corpus writ petition directing the NGO to hand over the custody of a minor adopted child to the adoptive mother. The petitioner contended that she had the rightful custody and guardianship on the child based on the adoption deed signed in 2008. The dispute between the biological parents and adoptive mother on the custody of the child was settled in 2015 wherein CWC passed an order in favour of the adoptive mother. However, in May 2016 the CWC suo moto took up the matter based on a newspaper report that the child's biological mother contended that she was forced to part with the child and made to sign various documents, which were not even explained to her. Based on this the petitioner was directed to be present before CWC and custody of the child was forcibly taken by CWC and handed over to an NGO in the presence of the biological mother.

The court held that the adoptive mother cannot be deprived of the child's custody without following the due process of law and the procedure adopted by CWC was extremely unusual and dangerous and not in the best interest of the child.

Citation: *Sulekha v. State NCT of Delhi*, 2016 SCC OnLine Del 3566

Supreme Court holds that presumption of abetment of suicide cannot be disturbed

The Supreme Court upheld that judgment of the Karnataka High Court which invoked presumption of abetment of suicide against the husband and his relatives in cases where the woman has committed suicide within seven years of the marriage. It cautioned that only in rarest of cases Court can refuse to invoke the presumption of cruelty. However, if the prosecution succeeds in establishing the component of cruelty leading to conviction under Section 498A, and if other requirements of Section 113A of the Evidence Act stand satisfied, the statutory presumption stands. According to the prosecution, victim committed suicide due to the dowry demands. But the appellant contended that suicide was an outcome of the victim being stopped from going to her mother's place. Rejecting this appellant's contention as untrustworthy, the Supreme Court said that no explanation was given by the accused for the injuries on the person of the victim. Therefore, the Court upheld the order of the High Court cancelling the bail and directing the appellant to serve the remaining period of the sentence.

Citation: Satish Shetty v. State of Karnataka, 2016 SCC OnLine SC 589.

Punjab and Haryana High Court rules that a complaint under Domestic Violence Act cannot be sustained after divorce

The Punjab and Haryana High Court held that the provisions of the Domestic Violence Act can only be invoked while the marital relationship is in existence. Once a marital relationship is ended by a divorce decree, a complaint under Domestic Violence Act cannot be filed at all.

This finding of the Court was made on an appeal filed by the husband seeking to quash a complaint filed by his wife under the Domestic Violence Act. He claimed that the marital relationship between the petitioner and his wife had ended by an ex parte divorce decree, and therefore a complaint under the Domestic Violence Act was not maintainable.

The Court noted that the language of relevant provisions i.e. Section 2(a) and 2(f) of the said Act uses 'who is' and 'has been', both being verbs are in present tense, requiring the marital relationship to be in existence. In relying upon technicalities to reject the case, the judgment does disservice to the goals of the statute that extends protection to wives, girl friends and live in partners amongst others, to address intimate partner abuse arising from the power inequalities. The court failed to question the circumstances of the ex parte divorce decree, or go into the substance of domestic violence allegations, neglecting the core concerns that this law seeks to remedy.

Citation: Amit Agarwal v. Sanjay Aggarwal, 2016 SCC OnLine P&H 4200.

Supreme Court rules 3 percent quota for persons with disability in all central government posts

On a petition filed by S.K. Rungta (the only visually impaired senior counsel in India) as well as Rajan Mani (of Disability Law Initiative) challenged the recruitment policy of in the state run broadcasting agency, the Prasar Bharati. The policy restricts reservation for persons with disability to only the initial level of recruitment, but not the promotion based higher levels of office. The Supreme Court rejected the government's stance that the persons with disabilities (PWD) have no right to demand reservation at promotion based offices. This was based on the precedent set in *Indira Sawhney & Ors v. Union of India* where it was held reservation should be confined to recruitment at the initial level only and not at the stage of promotions.

Holding the Indira Sawahney case inapplicable, the Court noted that the basis for reservation for PWD under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and not based on grounds of religion or or caste. The purpose the Act cannot be frustrated by prescribing a mode of recruitment for grounds other than disability. Therefore, the three per cent reservation be provided to PDWs in all posts and services under the Government of India.

Source: <http://indianexpress.com/article/india/india-news-india/disability-quota-disability-reservation-supreme-court-2892283/>

Bombay High Court strikes down criminalisation possession and consumption of beef in Maharashtra as infringement of right of privacy

Upholding the constitutional validity of Maharashtra Animal Preservation (Amendment) Act, 1995 (that received presidential assent 20 years later in 2015), the Bombay High Court struck down three controversial provisions of the Act as infringement of right of privacy, as being integral aspect of personal liberty protected by Article 21 of the Constitution. The Amendment Act sought to extend the bans on the slaughter of calves and cows, to bulls and bullocks, prohibit the transport, sale and purchase and disposal of cows, bulls and bullocks for the purpose of slaughter. It also sought to prohibit the possession of beef per se whether or not it was obtained from the state or elsewhere, shifting the onus of proof on the accused. On 20 writ petitions filed by farmers, lawyers, students, film makers, the Court has struck down Section 5D of the Act that criminalises the possession of beef brought from outside Maharashtra and 9B that put burden of proof on the person accused of possessing beef, holding these provisions to be in intrusion in the privacy of an individual's home and the right to eat food of one's choice. The court however upheld the power of a competent authority to enter, stop and search any vehicle used for the export of cow, bull or bullock and seize it; and also the provision that no prohibited animal can be transported for slaughter or with the knowledge or likelihood of it being slaughtered and the ban on purchase, sale or disposal of flesh.

Citation: *Shaikh Zahid Mukhtar and Ors. V. State of Maharashtra and Ors*

National News

University Grants Commission notifies gender neutral regulations on sexual harassment in higher educational institutions

The Ministry of Human Resource Development (University Grant Commission) has notified University Grants Commission's regulations on Sexual Harassment of Women Employees and Students in Higher Educational Institution made in 2015, that are applicable to all higher educational institutions in India.

The regulation defines sexual harassment, identifies the responsibility of higher educational institutions with regard to all gender based violence against employees and students. The regulation says that primarily women employees and students are subjected to sexual harassment but also recognizes sexual harassment with male students and students of the third gender. It puts obligations on institutions to take action on complaints of employees and students of all sexes. In addition, the regulation sets out the duties of Internal Complaints Committee [ICC] such as providing assistance in lodging FIR with the police and ensuring provision of victim and witness protection measures.

Source: <http://blog.sconline.com/post/2016/06/14/ugc-prevention-prohibition-and-redressal-of-sexual-harassment-of-women-employees-and-students-in-higher-educational-institutions-regulations-2015/>
<http://www.livelaw.in/ugc-notifies-indias-first-gender-neutral-regulations-sexual-harassment/>

Supreme Court asks Central Government to form a National Policy on Compensation for victims of sexual violence

In a Public Interest Litigation, of the Supreme Court directed the Center to frame a uniform policy provide financial compensation to the victims of sexual violence. It was observed by the Supreme Court that there is a division and contrast among states on the implementation of

the compensation scheme which is hindering justice and relief to the victims. It has issued notice to the Centre, the states and the union territories for the proper implementation of Section 357-A of the Criminal Procedure Code. This provision states that the states must coordinate with the Centre in order to compensate and rehabilitate victims of sexual violence or their dependents.

Source:<http://thewire.in/39053/the-gender-beat-activist-woman-murdered-sc-asks-for-national-policy-on-compensation-for-sexual-violence-victims/>
<http://www.thehindu.com/news/national/frame-national-policy-for-relief-to-rape-victims-supreme-court/article8651996.ece>
<http://indianexpress.com/article/india/india-news-india/supreme-court-rape-victim-compensation-scheme-2821116/>

Central Government notifies new Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Amendment Rules

The Central Government has notified the new Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016. The Rules have increased relief to victims ranging from Rs 85,000 to Rs 8.25 lakh depending on nature of offence, which were earlier between Rs 75,000 and Rs 7.5 lakh. A separate provision of relief for offences of rape and gangrape have been introduced, with no requirement of medical examination for non-invasive offences such as assault, outraging the modesty, attempting to or disrobing a woman, sexual harassment, voyeurism and stalking. It stipulates that investigation and filing of charge sheet in cases of atrocities against SC/ST women must be completed within 60 days of commission of the offence, a departure from the earlier rules that set no time limit for filing the charge sheet.

Source:<http://indianexpress.com/article/india/india-news-india/govt-scraps-medical-exam-for-non-invasive-sexual-crimes-against-sc-st-women-2789996/>

MWCD releases draft National Policy for Women 2016

Ministry of Women and Child Development has released a draft National Policy for Women 2016 which will replace the National Policy for the Empowerment of Women, 2001. The draft aims at re-scripting women's empowerment by following a socially inclusive rights-based approach and has invited comments on the same. Women's groups critiqued this policy for lack of a directional preamble, contextualising status of women, acknowledgment of specific challenges or indeed, impact of structural inequalities of caste, class, conflict, sexuality and ableism amongst others on specific groups of women.

The draft policy can be accessed here:

<http://wcd.nic.in/sites/default/files/draft%20national%20policy%20for%20women%202016.pdf>

MWCD proposes new bill on human-trafficking

Ministry of Women and Child Development has produced a comprehensive anti-trafficking bill named "Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016". The bill will treat survivors as victims rather than criminals. For providing immediate relief and support to the victim, the bill has provided for setting up of protection homes and for the long term institutional support it talks about the setting up of shelter homes.

In wake of widespread criticism of the bill, in terms of lack of consultation with key stakeholders, its exclusive focus only on policing sex workers, neglecting to define trafficking or indeed trafficking relating to illicit organ trade, marriage and bonded labour in mines, beedi factories and domestic work, children, the bill was withdrawn and another bill is slated for proposal instead.

Source: <http://wcd.nic.in/sites/default/files/Draft%20Trafficking%20of%20persons%20Bill%202016.pdf>
<http://indianexpress.com/article/india/india-news-india/india-unveils-first-ever-comprehensive-draft-anti-human-trafficking-law/>
<http://www.pudr.org/?q=content%2Faccused-hence-guilty-open-letter-minister-women-and-child-development-pudr>

UN experts urge India to repeal the FCRA

The independent human rights experts appointed by the Human Rights Council to examine the situation of human rights defenders, freedom of speech and expression and right to freedom of peaceful assembly and of association have asked Government of India to repeal the Foreign Contribution Regulation Act (FCRA) citing that it is being used to harass and silence the human rights defenders and to obstruct civil society's access to foreign funding.

The human rights experts said that FCRA fails to comply with the international human rights norms and standards as its provisions are mostly used to silence organizations involved in advocating civil, political, economic social, environmental or cultural rights. The vague terms used in the Act such as 'political nature', 'public interest' are very broad and broadens the net of restriction on the civil society.

Source: <http://freeassembly.net/news/india-repeal-fcra/>
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

Nagaland government pledges to grant 25% reservation to women in Urban Local bodies

Nagaland government has announced a 25% reservation to women through nomination and not election to the Urban Local Bodies (ULB). The nominations will be done by the Deputy Commissioners of the respective districts after thorough consultation with Naga Mothers' Association (NMA) and women bodies of the districts. Election to the urban local bodies (ULBs) in the state has been pending in the wake of the ongoing case filed in the Supreme Court by Naga Mothers' Association (NMA) demanding 33 per cent reservation for women in Municipal and Town Councils.

Source: http://www.business-standard.com/article/pti-stories/naga-cm-pledge-to-grant-25-pc-reservation-to-women-in-ulbs-116060101386_1.html

Celebrities asks SC to strike down Section 377 of IPC

Celebrities of LGBT community have moved the Supreme Court seeking quashing of Section 377 of IPC to protect their sexual preferences, saying these are part and parcel of the right to life. The petition, moved by chef Ritu Dalmia, hotelier Aman Nath and dancer NS Johar among others argues that section 377 is an infringement of their fundamental rights. The present petition is the first time that individuals who are directly aggrieved by Section 377 have challenged its constitutional validity. The petitioners said their lives have been "inexorably constricted and their rights infringed" by Section 377. "Despite their achievements and contributions to India in various fields, they are being denied the right to sexuality, the most basic and inherent of fundamental rights. The court directed that this matter be clubbed with the curative petition against 377, which is to be heard by a five judge bench.

Source: <http://woodworkinginfo.org/news/LGBT-celebs-move-SC-against-Sec-377,-say-sexual-preferences-a-right-to-life>

Resources

ESCAP releases report on Gender Equality and Women's Empowerment in Asia and the Pacific

United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) released a report on Gender Equality and Women's Empowerment in Asia and the Pacific. The report looks critically at the perspectives of Governments on 20 years of implementation of the Beijing Declaration and Platform for Action, which was adopted by the Fourth World Conference on Women in 1995. The report identifies achievements and challenges by conducting national-level reviews and regional surveys. The three areas of progress highlighted in this work are the strengthening of gender equality in national governments and governance; the recognition and addressing of violence against women and girls, and promotion of the leadership and political participation of women. This report outlines priority actions for the coming years, along with the core implementation requirements.

The report can be accessed here:

[http://www.unescap.org/sites/default/files/B20%20Gender%20Equality%20Report%20v10-3-E%20\(Final%20for%20web\).pdf](http://www.unescap.org/sites/default/files/B20%20Gender%20Equality%20Report%20v10-3-E%20(Final%20for%20web).pdf)

ILO publishes 'Women at Work – Trends 2016'

International Labour Organisation published its report on 'Women at Work- Trends in 2016.' The report is an important contribution to further the objectives of improving the conditions of work for women. The report also highlights the innovative practices that could breathe new energy to the agenda of creating non-discriminatory and gender just work place, and closing the gender wage gap. The authors have studied the unemployment rates, working conditions and the impact of economic downturn in 142 countries. The report calls for a policy framework to promote women's access to more and better jobs for substantive gender equality.

The report can be accessed here: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf

Organization for Refuge, Asylum & Migration releases glossary of terminology for LGBT individuals

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

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

PLD publishes resource book on Protection of Children from Sexual Offences in Hindi

The resource book titled '*Bal Yaun Soshan par Kanoon*' is a comprehensive guide on Protection of Children from Sexual Offences Act, 2012. Written in simple Hindi, it discusses the law, its background, objectives and scope, as well as its core concepts; it details the offences, procedures and special mechanisms constituted to implement the law, incorporating relevant provisions from the Juvenile Justice Act, Criminal Procedure Code and the National Commission for Protection of Child Rights Act, in addition to the main law, POCSO.

Obituary

Activist Trupti Shah passes away

Activist Trupti Shah passed away on 26th May evening after a long battle with cancer. She worked at the intersections of caste, environmental issues, communal conflicts, labour and human rights, relating them to capitalist exploitation and the struggles of women. She began her activism at the age of 18 on joining the Communist League. In 1984, she formed an autonomous Women's group named *Sahiyar*.

She infused her grassroots level work with her academic prowess and sensitivities. She participated in the Anti-Narmada dam agitation, the anti-nuclear protests, the fight against industrial pollution in Gujarat, the 2002 Gujarat riots, and also raised concerns in respect of environmental violations, livelihood issue and damage due to these projects in Gujarat.