

Bi-Monthly Legal Newsletter

Partners for Law in Development (PLD), Issue -3, 2008

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INTERNATIONAL NEWS

Nepal: the making of a new secular republic.

On 28th May, 2008, Nepal declared itself as a federal democratic republic after abolishing the 240 years rule of Nepal's monarchy. The newly elected 575-member Constituent Assembly (CA) unanimously passed a proposal tabled by Prime Minister Girija Prasad Koirala and gave the erstwhile King Gyanendra 15 days to vacate the Royal Palace, which will soon be turned into a public museum. In the recent elections to the CA in April, 2008, the former rebel Maoist party led by their leader Prachanda won majority of the seats and is set to draft a new constitution in order to elect a President and a Prime Minister. The Nepal's CA is historic not just because of the abolition of the monarchy and the majority support to Maoists, but because of many novel steps taken to ensure diversity and inclusive representation of persons from all walks of life, including most significantly, a feminist lawyer Sapna Pradhan Malla, President of Forum for Women, Law & Development (FWLD) and gay rights activist, Sunil Babu Pant, founder and former director of Blue Diamond Society.

Source: <http://www.hindu.com/2008/05/29/stories/2008052950050100.htm>
http://news.bbc.co.uk/2/hi/south_asia/7364776.stm

UN Convention on the Rights of Persons with Disabilities, 2008 has come into force

This landmark treaty aims to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities, and to promote respect for their inherent dignity. The treaty was adopted by the UN General Assembly in December 2006 and came into force on 3rd May, 2008, after the 20th ratification by Ecuador, triggering the entry into force of the Convention and its Optional Protocol 30 days later. Though the Convention was one of the fastest treaties ever negotiated at the United Nations, a lot needs to be done in terms of getting the treaty widely ratified by States and ensuring effective monitoring of the fulfillment of State obligations. For more details, refer to

<http://www.un.org/disabilities/>

INDIA'S HUMAN RIGHTS REVIEW BY THE UN HUMAN RIGHTS MECHANISM

India's review at the Universal Periodic Review (UPR) of the Human Rights Council (HRC)

On 10th April, 2008, India's human rights record was reviewed at the 1st session of the UPR of the Human Rights Council (HRC), a newly constituted human rights monitoring body of the United Nations at Geneva. India was asked about the ratification of the Convention against Torture (CAT) by India, existence of the Armed Forces Special Powers Act and the related concern of impunity, communal violence and the state of religious minorities, violence against women and the over all discriminatory attitude towards women and finally about the continuation of section 377, Indian Penal Code, 1860, which criminalizes homosexuality. The final report of the working group is available at

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_8_26_India_E.pdf

India's periodic review at the 40th Session of the UN Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights considered India's second to fifth periodic report of India on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in its 40th session in May, 2008. After reviewing India's national report as well as the shadow report prepared by NGOs, the Committee adopted a series of concluding observations urging India to take all the necessary steps and action to fulfill them before the next review in 2011. The Committee made detailed observations regarding India's poor and ineffective implementation of gender just laws and policies and how widespread gender inequalities, cultural stereotypes and personal laws of minority groups continue to prevail, thereby affecting negatively the equal enjoyment of economic, social and cultural rights by women. The complete concluding observations are available at:

<http://www2.ohchr.org/english/bodies/cescr/docs/co/E.C.12.IND.CO.5.doc>

NATIONAL NEWS

The Supreme Court orders fresh probe into 14 Gujarat riot cases

In a recent directive, the Supreme Court has ordered fresh probe into 14 Gujarat riot cases through a Special Investigation Team (SIT) in order to ensure free and fair trial. The Court stayed the trial in these cases on petitions filed by the National Human Rights Commission and the Citizens for Justice and Peace (CJP), which sought a probe by the Central Bureau of Investigation (CBI) and transfer of the cases outside Gujarat since they apprehended that the trial if conducted in Gujarat would not be free and fair, as witnesses were being threatened. The cases included the Gulberg, Ode and Sardarpur massacres, and the Naroda Gaon, Naroda Patiya, Baranpura, Machipith, Tarsali, Pandarwada and Raghovpura killings. The SIT would consist of 3 officers from Gujarat and 2 from outside Gujarat.

Source: The Hindu, 26th March 2008

<http://www.hindu.com/2008/03/26/stories/2008032658150100.htm>

Extension of NREGS to all districts of India

From 1st April, 2008, the National Rural Employment Guarantee Scheme (NREGS) has been extended to all 604 districts of the country. The scheme, which came into existence in 2005, was aimed at enhancing the livelihood security in the rural areas by providing 100 days of guaranteed employment in a financial year to every household whose adult members volunteer to do unskilled manual work. The Union Government announced that in 2007–08, a total of 3.10 crore households demanded employment, against which jobs were provided to 3.08 crore. The first priority would be to ensure transparent and corruption-free implementation of the programme since there have been reports of leakages and diversion of funds by some State governments in the social audits of the NREGA.

Source: The Hindu, 2nd April, 2008

<http://www.hindu.com/2008/04/02/stories/2008040257890100.htm>

Office of Chief Justice of India to be covered within the ambit of RTI

A Parliamentary Committee on Ministry of Law and Justice, in its report placed in Parliament made it clear that all the constitutional authorities, including the Chief Justice of India (CJI), would come under the ambit of the Right to Information Act, 2005. In its 25th report, the Committee said that “except the judicial decision making,

all other activities of administration and the persons included in it (judiciary) are subject to the RTI Act.” Interpreting Section 2 (h) of the Act”, the Committee opined that “the definition of public authority is very clear that all the constitutional authorities come under the definition of public authority. All the three wings of the state — the executive, the legislature and the judiciary — are fully covered under this Act, since all organs of the state are accountable to the citizens of India in a democratic state.”

Source: The Hindu, 1st May, 2008

<http://www.hindu.com/2008/05/01/stories/2008050160211300.htm>

The CrPC amendments passed by the Union Cabinet

The Cabinet has approved certain major amendments in the Code of Criminal Procedure (CrPC) aimed at bringing relief to litigants and those accused of petty offences and is about to table the proposal in the Parliament for ratification. The changes relate to the procedure of arrest, right of the arrested person to meet an advocate of his/her choice, investigation of rape cases and recording of statement in electronic form. The amendments are the following:

- Under Section 41 of CrPC, it proposes that the police officer may, instead of arresting a person charged with committing a cognizable offence that is punishable with imprisonment up to 7 years, issue a notice of appearance, asking him/her to cooperate with the police officer in the probe.
- Another amendment in Section 41 proposes that every police officer while making an arrest shall “bear an accurate visible and clear identification of his/her name.” When any person is arrested and interrogated by the police, he/she shall be entitled to meet an advocate of his/her choice during interrogation, though not throughout interrogation.
- The amendment in Section 54 makes it mandatory for the police to conduct examination of an arrested person by a medical practitioner.
- In Section 164, the amendment proposes that any confession or statement made under it may also be recorded by audio–video electronic means in the presence of the advocate of the person accused.
- In Section 167 an amendment authorises a magistrate to extend further detention in judicial custody of an arrested person on production of the accused either in person or through the medium of electronic video linkage.
- An amendment in Section 173 proposes that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer–in–charge of the police station. Trial of rape cases shall also be held, as far as possible, by a woman magistrate and preferably in a fast track court.
- Under Section 309, an amendment makes adjournment of cases in the court

more difficult.

Source: The Hindu, 3rd May, 2008

<http://www.hindu.com/2008/05/03/stories/2008050359641700.htm>

National Commission for Women has prepared a draft bill on acid attacks

The National Commission for Women (NCW) has drafted a *Prevention of Offences (by Acids) Bill, 2008* to provide stringent punishment to those indulging in acid attacks and compensation to the victims. According to NCW, acid attacks could be termed an act of gender-based violence that could lead to permanent disfigurement, debilitation and eventual death. The treatment was costly and very often the victim was left to fend for herself since at present there was no statutory provision for compensation. Hence, the draft Bill was needed to establish a board that would decide on financial and other reliefs.

The bill proposes that after the prima facie satisfaction of a case of acid attack, the board would be empowered to order an interim financial relief of up to Rs.5 lakhs within 30 days from the date of receipt of application and the payment would be sent directly to the hospital where the victim was being treated. Any further sum approved by the board and the monitoring authority from time to time should be used for the treatment of the victim, subject to a maximum of Rs. 30 lakhs. If the victim died, the board could order a compensation of Rs.2 lakhs to the legal heirs, preferably her children. This would be in addition to any expense incurred on treatment of the victim. The board could also announce measures for rehabilitation, legal aid or any other special needs of the victim for which a sum of up to Rs.5 lakhs could be given. The draft Bill also recommends imprisonment for a minimum of 10 years extending up to life and a fine of Rs.2 lakhs to Rs.5 lakhs to the guilty.

Source: The Hindu, 3rd May, 2008

<http://www.hindu.com/2008/05/03/stories/2008050355931300.htm>

Women's Reservation Bill tabled in the Parliament

On 6th May, the UPA government tabled the Constitution (108th Amendment) Bill, 2008, namely the Women's Reservation Bill, in the Rajya Sabha, after nearly 10 years of the bill lying in limbo. The Bill seeks to provide one-third of the seats to women in Parliament and State Assemblies. Amidst protest from certain political parties, the bill was introduced in the parliament and then sent to a Standing committee on Law and Justice which has been set up to deliberate on this issue and give recommendations to the Parliament. Earlier, the Committee had no woman member but now 4-5 women have been nominated by different political parties to be part of the same. The

committee has laid down the modalities to take on board views of not only political parties but also of the public. Regional sittings are to be held in Chennai, Kolkata and Mumbai during June.

Source: The Hindu, 7th May, 2008

<http://www.hindu.com/2008/05/07/stories/2008050758190100.htm>

Centre to set up a commission to rehabilitate Bhopal gas victims

The Centre has agreed “in principle” to set up an empowered commission to rehabilitate the survivors and victims of the Bhopal gas leak that happened in Dec, 1984. It is in “in principle agreement with the demand for a specially empowered commission to carry out medical, economic, social and environmental rehabilitation of the victims and would soon take the initiative to work out the modalities,” This Commission would subsume the committees on various rehabilitation aspects constituted by the Supreme Court, the Centre, the Madhya Pradesh government and the Madhya Pradesh High Court and other courts. Also, the Madhya Pradesh government is being asked to prepare a detailed plan of action for schemes for rehabilitation of the victims with estimates of the funds required. However, the government did not agree on the demand for legal action against Union Carbide and Dow Chemicals for environmental and health damage and soil and water contamination.

Source: The Hindu, 30th May, 2008

<http://www.hindu.com/2008/05/30/stories/2008053061201500.htm>

LANDMARK JUDGEMENTS

Supreme Court upholds the 27% OBC quota in state higher educational institutions

The Supreme Court has upheld the law enacted by the Centre in 2006 providing a quota of 27 per cent for candidates belonging to the Other Backward Classes in Central higher educational institutions. But it directed the government to exclude the ‘creamy layer’ among the OBCs while implementing the law. This has thus paved the way to giving effect to the *Central Educational Institutions (Reservation in Admission) Act, 2006*, from the academic year 2008–2009. A five-Judge Constitution Bench headed by Chief Justice K.G. Balakrishnan and including Justices Arijit Pasayat, C.K. Thakker, R.V. Raveendran and Dalveer Bhandari, also held the 93rd Constitution Amendment as valid which inserted Article 15(5) in the Constitution to enable the

Centre and the States to enact laws concerning quotas.

The Court opined that “the 93rd Amendment Act does not violate the basic structure of the Constitution so far as it relates to State maintained institutions and aided educational institutions. Article 15(5) of the Constitution is constitutionally valid and Articles 15(4) and 15(5) are not mutually contradictory.” While agreeing with the decision to exclude the minority institutions from Article 15(5), the court held that the Act does not violate Article 14 as minority educational institutions are a separate class and their rights are protected by other constitutional provisions.” However, it also viewed that the creamy layer should be excluded from the socially and educationally backward classes. The creamy layer principle would not apply as far as the Scheduled Castes/Scheduled Tribes are concerned. Though the Bench did not consider the applicability of the 93rd Amendment to private unaided institutions, Justice Bhandari did mention it in his judgement.

Source: The Hindu, 11th April, 2008

<http://www.hindu.com/2008/04/11/stories/2008041161220100.htm>

Delhi High Court starts hearing the final arguments in the Naz petition

Final arguments have begun in the Delhi High Court on the petition seeking decriminalisation of homosexuality in India by reading down of Section 377 IPC to exclude private sexual acts between consenting adults. The petition was first filed in 2001 by Naz Foundation (India) Trust, an NGO working on HIV/AIDS, but it was rejected in 2004 by the Delhi High Court, on grounds that the petitioner has no locus standi. Naz appealed to the Supreme Court which remanded the case back to the Delhi High Court, saying that it was an important matter that had to be heard expeditiously. The case now positions petitions from Naz India, along with Voices Against 377, a group lobbying for change in the law on grounds of human rights of sexual minorities including gay people, hijras and kothis, against the government, Joint Action Committee, Kannur, an NGO that opposes all HIV/AIDS prevention efforts and B.P.Singhal, who is opposing on grounds of traditional morality. The case has surfaced contradiction in the government's stand on the petition. While the petition is opposed by the Home Ministry, on the grounds that changing 377 will open the floodgates of delinquent behaviour, the Health Ministry acting through the National AIDS Control Organisation, is supporting the petition. The final arguments have started and a decision is expected soon.

Source: Queer Media Watch

<http://qmediawatch.wordpress.com/2008/05/21/reports-on-day-one-of-final-delhi-hc-hearing-in-the-sec377-case/>

EVENTS

2nd National Consultation on ICC-India Campaign

The *2nd National Consultation on International Criminal Court & India* was held on *25th and 26th April, 2008*, at *Vishwa Yuva Kendra, New Delhi*. The ICC-India campaign is an eight year old anti-impunity campaign, which works on issues of justice and accountability for mass crimes in India, using principles from the law relating to International Criminal Court (ICC). PLD has been an active participant in the campaign, seeking not just ratification of the ICC treaty by India but also the incorporation of international standards in the domestic legislation and jurisprudence. A book on the completion of seven years of the ICC-India campaign was released and new campaign strategies discussed to advance the campaign and its outreach.

National Consultation of Voices Against 377

Voices against 377, a Delhi based coalition of NGOs, progressive groups and non-funded collectives, is leading a campaign against the existence of section 377, Indian Penal Code (1860) which criminalizes private consensual sexual acts deemed to be against the order of nature. Voices had its first independent *National Consultation on 9th May, 2008 at Lok Kala Manch, New Delhi* in the light of the several pressing issues affecting the LGBT community and the Naz petition listed currently for arguments in the Delhi High Court. Several groups from different parts of India came together and discussed ways to handle crisis-interventions and case work better, creating institutional/legal/social mechanisms to deal with human rights violations of the LGBTs including police harassment, socio-economic discrimination, family violence, etc.

National Consultation of the Naz Foundation (India)

The Naz Foundation (India) Trust held a *National Consultation* along with Lawyers Collective on *10th and 11th may, 2008 at Lok Kala Manch, New Delhi* to discuss legal strategies regarding the s.377 petition being filed in the Delhi High Court by them. The Consultation was called to plan new and innovative legal reasoning and arguments to counter the government stand on the need for sec. 377, i.e. to prevent child abuse and to restore public morality. The Naz Counsel Mr. Anand Grover talked about various legal strategies to be employed in order to convince the Court about the reading down of Sec. 377 to exclude consensual same sex in private out of the criminal purview of the section. Besides legal tactics, non-legal ways to raise awareness about the human rights violation of the LGBT people were also discussed including documenting the violence for further campaign purposes.

National Consultation on Rights in Intimate Relationships

Partners for Law in Development organized a *National Consultation on Rights in Intimate Relationships* on 12th and 13th May, 2008 at Vishwa Yuva Kendra, New Delhi. It provided a forum for diverse groups to discuss concerns in relation to non normative relationships, concern about approaches and support by groups to such relationships and potential changes to improve support and secure rights through community intervention and policy level work on the theme. The consultation covered a diverse range of intimate relations and intimacies, including customary contemporary, same sex and common law relationships – discussing issues that were specific to each type of relationship as well as those that were cross cutting. The forum provided rich analysis on exclusions and limitations to women resulting from treating normative/ legal intimacies as legitimate, and included reflections on binaries of monogamy/bigamy, hetero/homosexual, etc.

2nd Regional Meeting on CEDAW Orientation

The Government of India (GOI) along with UNIFEM organized a two days *Regional Meeting on CEDAW Orientation* on 15th and 16th May, 2008 at Hyderabad. It is part of a process to build technical capacity of state Government officials to implement of the CEDAW Concluding Comments to GOI, and thereby take steps towards elimination of discrimination against women. The training focused on CEDAW's core principles to build conceptual clarity as well as on tools of implementation such as Gender Budgeting. It covered the reporting process, the Concluding observations and inter-ministerial commitment and issues arising in relation to its implementation. It also provided a platform for exchange of experiences and suggestions by participants on ways to move ahead.

South Asia Regional Consultation on the Implementation of Concluding Observations of the CEDAW Committee

The International Women's Rights Action Watch Asia Pacific (IWRAP-AP) in collaboration with the South Asian Taskforce on the Advancement of CEDAW (SATAC) organised the *South Asia Regional Consultation on the implementation of Concluding Observations of the CEDAW Committee* from 22nd – 25th May, 2008 at New Delhi. The purpose of the Regional Consultation was to reflect on the follow up undertaken to further the implementation of Concluding Observations nationally, sharing experiences, good practices and common obstacles and to develop national and cross-national strategies towards advocating for the application of Concluding Observations. The four days regional consultation was enriching since it gave participants from each South Asian country exposure to the notable developments in relation to women's rights in other countries of the region and an opportunity to learn from each others' achievements and mistakes. This sharing was also important in the context of planning strategies and reinforcing solidarities and coalitions amongst

NGOs to continue to implant concluding observations. The consultations provided space to understand the special challenges in relation to CEDAW implementation in conflict or post conflict states such as Afghanistan, Nepal, Pakistan etc, calling for greater attention to be paid to Afghanistan in particular.

RELEVANT RESOURCES

The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women

By **Hanna Beate Schöpp-Schilling**, Editor, **Cees Flinterman**, Associate Editor

Published by **The Feminist Press at CUNY, December 2007**

This landmark book consists of a series essays and personal reflections written by 42 former and current members of CEDAW's Committee and 5 UN staff members which reveal the profound impact this Convention has had on women's lives around the world.

Women Hold Up the Sky: Manual and 8 Drama Videos produced by PDHRE

PEOPLE'S MOVEMENT FOR HUMAN RIGHTS EDUCATION (PDHRE) has introduced a manual and eight video materials for CEDAW trainings in commemoration of the 20th anniversary of CEDAW. It is named as "*Women Hold Up The Sky*": A dramatic video series which consists of eight short training videos for learning about CEDAW and its relevance to women's daily lives.

They are available at

<http://www.pdhre.org/videoseries.html>

CEDAW Benchbook

A Benchbook on CEDAW has been launched by Amparita Sta. Maria of the Ateneo Human Rights Center with the support of the Philippine Judicial Academy, UNIFEM and CIDA. This is a good resource on Philippine judicial decisions and how they have reflected or failed to reflect norms of the CEDAW and hence provides guidance on its domestic application.

This is available at

<http://cedawbenchbook.org/>

