

News from here and there

Homosexuality not a criminal act, rules the Delhi High Court

On 2 July 2009, the Delhi High Court 'read down' section 377 of the Indian Penal Code that criminalizes homosexual sex between consenting adults in private. The court ruled that this violated Articles 14, 21 and 15 of the Constitution of India. Section 377 was introduced by the British in 1860 and could be used to punish men indulging in homosexual acts with a sentence of 10 years or more. It will remain applicable in cases of 'non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors'.

The public interest litigation was first filed in the Delhi High Court by Naz Foundation in 2001, seeking legalization of gay sex among consenting adults. Following a series of dismissals and review petitions, including an appeal to the Supreme Court, the matter was finally heard in the Delhi High Court which issued its landmark judgment. The judgment followed years of advocacy by gay activists as well as those working in public health programmes. Some months ago, the presidents of psychiatrists' societies in India, the UK and the USA issued a statement that homosexuality is not a mental illness.

The National AIDS Control Organization (NACO) has opposed the use of Section 377 for consensual gay sex, arguing that it is used to harass peer educators in the gay community, thus hampering prevention efforts in a marginalized group. Harassment also made gay men reluctant to seek medical treatment.

Mr Vivek Raj Anand, chief executive officer of the Mumbai-based gay advocacy organization, notes that the Delhi High Court judgment went one step beyond this public health argument—it accepted that criminalizing same sex activity is discrimination on the basis of sexual orientation and therefore a violation of fundamental rights.

SANDHYA SRINIVASAN, *Mumbai, Maharashtra*

Dr Binayak Sen released from jail

Civil rights activist Dr Binayak Sen walked out of a Raipur jail on 26 May 2009 after 2 years of incarceration. The Chhattisgarh government had booked Sen, the vice-president of People's Union for Civil Liberties (PUCL), under the anti-terror law, Unlawful Activities Prevention Act, for his alleged links with Maoists. He was accused of acting as a courier for an alleged Naxal leader lodged in a Chhattisgarh jail while on a visit as a doctor.

After his release, Dr Sen said that he was a human rights worker and will continue to stay so and that peace must prevail over violence. Replying to questions about his alleged support to Naxalism, he said he has condemned all forms of violence, whether by Naxals or by the police, or that involved during the forceful displacement of people from their land. Dr Sen, who has opposed the Salwa Judum movement against Naxals, vowed to continue doing so as he believed that many atrocities had been committed on people in course of the movement. He said that he was the representative of the people and many had been troubled

by such laws. Dr Sen said the Chhattisgarh Jansuraksha movement was still in place and there were several people who have been put in jail under 'that law'.

Dr Sen had won the prestigious Jonathan Mann award in 2008 for his work in health and human rights. However, he was denied permission to attend the award ceremony and his wife had received the coveted global health award on his behalf. Dr Sen has been working in Chhattisgarh for more than a decade, making health accessible to the poorest. He had raised his voice when the state government launched the Salwa Judum movement, a state-sponsored initiative to set up private militias to fight Naxals, saying it led to massive violations of human rights. Dr Sen had helped establish a hospital that serves poor mine workers in the region, and founded a health and human rights organization that supports community health workers in 20 villages, and is the general secretary of the People's Union for Civil Liberties (PUCL).

Dr Sen denies having committed any crime and his lifetime contribution to strengthen democracy and fight for the most underserved communities defies such accusations. Rights groups, intellectuals and over 2000 doctors as well as Nobel laureates from all over the world had signed petitions for his release.

ANIMESH JAIN, *Mangalore, Karnataka*

Medical negligence: Supreme Court awards Rs 10 million compensation

On 14 May 2009, in a path-breaking judgment, a Supreme Court bench comprising Justices B. N. Agrawal, H. S. Bedi and G. S. Singhvi awarded a software engineer from Bangalore a compensation of Rs 10 million in a case of medical negligence filed against the Nizam Institute of Medical Sciences (NIMS), a leading hospital in Hyderabad and a University established under an Act of Andhra Pradesh State Legislature.

This is the highest amount awarded so far in a case of medical negligence in India and exceeds the Rs 1.9 million compensation granted by the Supreme Court in 1995 to ex-national table tennis player V. Chandrasekhar. The judgment could lead to an increasing trend of doctors and hospitals seeking liability insurance cover. It is not clear in this case how NIMS being a public sector hospital will arrange for the compensation amount.

The case relates to the treatment received by Mr Prashant S. Dhananka (then an engineering student) in 1990 at NIMS. Admitted to the hospital on suspicion of a tumour in the chest cavity, Dhananka was operated upon by an NIMS surgeon to remove a sample of the suspected mass to check if it was malignant. The complainant alleged that the surgeon, in spite of discovering that the mass was benign and without consulting a neurosurgeon, removed the tumour; during the operation, blood vessels in the spinal area got damaged leading to Prashant being paralysed from his waist down. Initially, in 1993, he filed a case with the National Consumer Disputes Redressal Commission (NCDRC), which awarded a compensation in 1999, of Rs 1.4 million to be paid to

Prashant, Rs 150 000 to his father and Rs 25 000 as costs. NIMS challenged this in the Supreme Court where finally the case has been decided in 2009 in favour of Prashant.

Expressing happiness about the case being finally decided, Prashant however has articulated an interest in filing a review petition asking for the compensation amount to be enhanced as his family considers that the amount is not enough to cover the costs associated with his continuing treatment and requirement for 2 attendants. He had asked the court for a compensation amount of Rs 70 million and also argued his own case.

ANANT BHAN, *Pune, Maharashtra*

Nature, Elsevier voted the most influential journal, publisher in biology and medicine in past 100 years

The BioMedical and Life Sciences Division (DBIO) of the Special Libraries Association has voted *Nature* as the most important journal and Elsevier as the most influential publisher in biology and medicine in the past 100 years. The Special Libraries Association is celebrating its centennial and as part of the

celebrations, the DBIO division, in 2008 and 2009 created panels of experts who with the 686 members of the DBIO made a list of the 100 most important journals in the field over the past century. The list included 33 journals in the clinical and molecular division, 33 journals in molecular, cellular and general science, and 34 journals in the natural history division. Subsequently, they chose the 3 top journals in the 3 categories. These were the *New England Journal of Medicine*, *JAMA* and *BMJ*; *Science*, *Nature* and *Proceedings of the National Academy of Sciences of the USA*; and *American Journal of Botany* and *Journal of Zoology* and *American Journal of Physical Anthropology*.

In a separate poll for the 3 top journals of the century, the winners were *Nature* followed by the *New England Journal of Medicine* and *Science*.

Elsevier was voted the most important publisher as it had the most number of journals (20) in the list of 100 journals, while Wiley with 14 journals was next. The latter lists were announced on 16 June 2009 at the Centennial Conference in Washington, DC, USA. Further information is available at <http://units.sla.org/division/dbio/publications/resources/dbio100.html>

SANJAY A. PAI, *Bangalore, Karnataka*

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