



# BI-MONTHLY LEGAL NEWS

## Vol. No. 9(VI) November-December 2016

*Partners for Law in Development*

### Updates from the UN

- UNGA adopts resolution confirming that SOGI expert should continue work
- Newly-appointed United Secretary General prioritizes gender-sensitivity
- UN bodies jointly call for intensification of efforts to end gender-based violence
- Special Rapporteur urges States to ensure access and support to persons with disabilities
- Experts of the Human Rights Council call on governments to stand up for human rights
- UN-CAT investigates USA and Australia on the prevalence of Inter-Sex Genital Mutilations

### International Developments

- | <i>Asia</i>   | <i>Beyond Asia</i>  |
|---|---|
| <ul style="list-style-type: none"><li>▪ Khyber-Pakhtunkhwa province urges federal government to ensure voting rights for transgender people</li><li>▪ Lahore High Court rules that Transgender people are to be included in the national census</li><li>▪ Cambodia bans commercial surrogacy</li><li>▪ Bangladesh government table amendment seeking marriage for children in 'exceptional' cases</li><li>▪ Kyrgistan passes law penalizing those who facilitate or conduct marriages of those below 18</li></ul> | <ul style="list-style-type: none"><li>▪ Turkey passes legislation pardoning men for having sex with underage girls if they marry the victim</li><li>▪ Mexican President's plan to make laws conducive with marriage-equality defeated</li><li>▪ Texas and Ohio pass laws which discourage abortion</li><li>▪ US Supreme Court agrees to hear case regarding rights of transgender persons to use washrooms in schools</li><li>▪ Australia passes anti-terrorism legislation supporting the suspension of individual freedoms of children as young as 14</li></ul> |

### National Developments

#### *News*

- Amended Delhi Victims Compensation Scheme 2015 notified by Delhi Government
- Expert panel states that Cabinet Bill on surrogacy violates reproductive rights
- New data shows worsening of Sex Ratio at Birth (SRB)
- Scope of Rights of Persons with Disabilities Act is expanded to benefit more persons

#### *Judgments/Orders*

- SC directs all government authorities to strictly implement the SC/ST Act 1989
- SC directs Union Government to take firm steps for addressing the growing problem of drug-usage among children
- SC issues directions to enhance effectiveness and implementation of legislations prohibiting sex-selection
- SC mandates commission of committee to address long pending issue of right to shelter of homeless persons in urban areas
- SC decrees that unnatural death within 7 years of marriage in and of itself is not sufficient for conviction for 'dowry death'
- SC states that allegation of extra-marital relationship must be accompanied by other ingredients to qualify as cruelty under Section 498-A IPC
- SC refuses to extend protections of Juvenile Justice Act for those who commit grave and heinous offences
- High Court of Kerala rules that even a divorced wife is entitled to initiate proceedings under the PWDVA
- High Court of Madras decrees that a victim of acid attack can claim compensation under the Victim Compensation Scheme framed under Section 357-A of Cr.P.C
- High Court of Orissa rules that even if not living with perpetrator, a woman can be aggrieved person under PWDVA
- High Court of Madhya Pradesh holds that wife living separately from husband without 'sufficient reason' is not entitled to maintenance
- High Court of Uttaranchal holds that even contractually or temporarily employed government servants are entitled to maternity leave
- Orissa High Court allows magistrates to issue ex-parte interim order for temporary custody of child
- Allahabad High Court says that Triple Talaq cannot be invoked without serious reasons and attempts at reconciliation
- Delhi High Court rules that unilateral withdrawal of consent from mutual consent divorce amounts to mental cruelty
- Delhi High Court rules that intention to continue marriage just to torment is relevant factor for considerations of cruelty
- High Court of Chhattisgarh decrees that assets left by deceased husband can be proceeded against in petition for maintenance

### Resources

- ESCAP releases report on Gender Equality and Women's Empowerment in Asia and the Pacific
- Inter-Parliamentary Union publishes report recommending intervening to prevent gender-based violence
- Musawah publishes resource on women's rights and reforms in Islamic law

## UN Updates

### UNGA adopts resolution confirming that SOGI expert should continue work

In a move that is significant for protecting persons against violence and discrimination on grounds of sexual orientation and gender identity, the United Nations General Assembly successfully and narrowly voted that VititMuntarbhorn, Independent Expert on Sexual Orientation and Gender Identity, should continue his work. The vote was the successful result of pressure from 851 non-governmental organizations from 156 countries urging the General Assembly's Third Committee to reject language advanced by African and other countries seeking to prevent the expert from working in favour of further debate around the 'legal basis' of the mandate of the newly created post. India abstained from voting whereas 77 countries voted against the resolution and 84 voted in favour.

Source: <https://www.hrw.org/news/2016/11/21/un-victory-lgbt-rights>

### Newly-appointed United Secretary General prioritizes gender-sensitivity

At a swearing in ceremony, the Ninth United Nations Secretary General AntónioGuterres noted the emerging disconnect between people and their governments across the world, and discussed the need for the United Nations to change itself to adapt to the emerging challenges of potential international conflict which is likely to occur as a result. He also emphasized that one of his most important goals for the first 100 days of office would be to ensure gender parity in senior-job appointments at the UN.

Source: <http://www.passblue.com/2016/12/12/at-swearing-in-antonio-guterres-pledges-gender-parity-at-the-un/>

### UN bodies jointly call for intensification of efforts to end gender-based violence

On the International Day on the Elimination of Violence against Women (25<sup>th</sup> November), the UN Special Rapporteur on violence against women alongwith the CEDAW and other Special Rapporteurs issued a joint call for intensification of international, regional and national efforts for the prevention of femicides and gender-based violence. The call highlighted the continued prevalence of gender-based violence, the impunity around implementation of global and regional instruments and gaps in legislative prevention efforts. States were strongly called on to step up efforts to prevent gender-based violence, protect survivors and prosecute perpetrators. Moreover, it was suggested that a Femicide Watch be institutionalized to collect, analyse and review data.

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20911&LangID=E>

### Special Rapporteur urges States to ensure access and support to persons with disabilities

The Special Rapporteur on rights of persons with disabilities has submitted a report to the Human Rights Council. The report discusses normative aspects of support, care and assistance as well as State obligations to ensure access to support systems in human rights and international law, as well as approaches in making interventions. Expressing concern

about the intersectional discrimination arising from gender and disability, the report notes that girls with disability are less likely to be educated and employed, and less likely to receive support provisioning. In its recommendations for States the report, among other things, urges States to create systems that are sensitive and responsive to the disadvantage experienced by women and girls.

Source:<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/436/64/PDF/G1643664.pdf?OpenElement>

### **Experts of the Human Rights Council call on governments to stand up for human rights**

The largest body of independent human rights experts of the United Nations has called on governments to recognize that moving away from universal human rights standards and undermining human rights institutions would lead to a world vulnerable to conflicts and incapable of protecting the rights of millions. The statement issued ahead of Human Rights Day (10<sup>th</sup> December) lamented the rise of populist movements invoking nationalism and traditionalism while justifying sexist, xenophobic and homophobic discrimination, as well as the rise of violence against women, children and sexual minorities.

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21009&LangID=E>

### **UN-CAT investigates USA and Australia on the prevalence of Inter-Sex Genital Mutilations**

At the fifty-ninth session of the UN Committee Against Torture (UNCAT) on issues prior to the submission of the sixth periodic report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the body responded to inter-sex NGO reports on the persisting practice of IGM in USA and Australia. The Committee asked USA to comment on reports of premature surgery and medical treatment to which intersex people are generally subjected and to indicate the number of intersex people who have undergone sex-assignment surgery. Australia was asked to provide information on efforts made towards prohibiting sterilization, and civil/criminal remedies available to people. Both countries now need to explain themselves through reports due in 2017 and at a review held in Geneva.

Source: <http://stop.genitalmutilation.org/post/Committee-against-Torture-investigates-IGM-in-US-and-Australia>

## **International Developments**

### **Asia**

#### **Khyber-Pakhtunkhwa province urges federal government to ensure voting rights for transgender people**

The north-western province of Khyber-Pakhtunkhwa unanimously passed a resolution calling on the federal government to ensure voting rights for transgender women. The resolution is an important message of support for the region's transgender women who have witnessed an

increase in violent attacks in recent times. Medical and police services post-violence have also often been unresponsive and guilty of denying basic rights to victims.

Source: <https://www.hrw.org/news/2016/12/07/pakistan-province-pushes-transgender-rights>

### **Lahore High Court rules that Transgender people are to be included in the national census**

The Chief Justice of the Lahore High Court has responded to a petition claiming the enforcement of fundamental rights for transgender persons by ordering concerned authorities to include transgender people in the Census due to occur in March 2017. The petition also asked for trans-people to be included in the upcoming census and provision of the option for a separate gender identity on national ID cards. Being counted is important for claiming access to basic amenities like medical care and employment programs.

Activists however recognize that being acknowledged would not by itself put an end to the violence and marginalization perpetrated by employment spaces and police personnel on transgender persons. Identification of transgender status is also inherently problematic in that it fails to account for the diversity of sexual and gender identities outside the gender-binary. Worse, unless socio-cultural contexts change, surveillance and institutionalized reductionism will continue to be a problem.

Source: <https://www.pakistantribe.com/48705/transgender-people-included-census-first-time>,  
<https://www.hrw.org/news/2016/11/06/when-being-counted-can-lead-being-protected-pakistans-transgender-and-intersex>

### **Cambodia bans commercial surrogacy**

The health ministry of the Cambodian government distributed a letter to surrogacy providers in the capital Phnom Penh asking them to comply with the new injunction which completely banned the practice of surrogacy. The letter also banned commercial sperm donation. The abrupt ban is likely to drive up surrogacy costs globally and adversely affect expectant parents and surrogates who have not carried the pregnancy to term.

Source: <https://www.bioedge.org/bioethics/cambodia-bans-commercial-surrogacy/12079>

### **Bangladesh government tables amendment seeking marriage for children in 'exceptional' cases**

In December, the Bangladesh government placed an amendment to the Child Marriage Restraint Act before parliament which sought exceptions for child marriage in special cases like elopement or pregnancy in a bid to protect the 'honour' of the child. Civil society has criticized this attempt, recognizing that such a move would only enable a legal loophole that will legitimize an already widespread practice in Bangladesh. The legislation also seeks to lower the legal marriagable age to 16, which would further enhance the problem.

Source: [https://secure.avaaz.org/en/petition/Bangladesh\\_Prime\\_Minister\\_Sheikh\\_Hasina\\_Do\\_not\\_pass\\_the\\_Child\\_Marriage\\_Restraint\\_Act\\_2016/?cacIhab](https://secure.avaaz.org/en/petition/Bangladesh_Prime_Minister_Sheikh_Hasina_Do_not_pass_the_Child_Marriage_Restraint_Act_2016/?cacIhab)  
<https://www.hrw.org/news/2016/12/01/huge-step-backwards-child-marriage-bangladesh>

### **Kyrgistan passes law penalizing those who facilitate or conduct marriages of those below 18**

The President of Krygistan has signed into law criminal sanctions on those who conduct marriages for children below 18. Despite being illegal already, child marriage is a persisting social problem in the country where underage girls are typically forced into marriages that are usually unregistered – and therefore unprotected - owing to the illegality of the practice. Girls are therefore vulnerable to all manner of domestic violence, as well as unentitled to property rights or other spousal rights. The new law will therefore fail to address the larger problem.

Source: <https://www.hrw.org/news/2016/11/21/kyrgyzstan-ops-fight-against-child-marriage>

## **Beyond Asia**

### **Turkey passes legislation pardoning men for having sex with underage girls if they marry the victim**

Turkish MPs have backed a bill in Parliament which seeks to pardon men for having sex with underage girls if they marry the victim. The proponents of the proposed bill say that the objective is to rehabilitate victims who would feel ostracised by their community. However critics contend that the bill only legitimizes rape and child-marriage by providing recourse for men aware of their crime. At any rate, the logic of rehabilitating victims avoids any discourse on the agency of the child and sexual abuse does not at any stage admit for the consent of the victim.

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

### **Mexican President's plan to make laws conducive with marriage-equality defeated**

In a vote on a proposal to change laws and the federal Constitution in an attempt to bring in marriage equality nationwide, a committee of the federal Chamber of Deputies voted against the President's plan (19-8) with one abstention. The voting also saw a legislative assembly member openly declare his homosexuality to the house and advocate for the plan for personal reasons.

Source: <http://www.eluniversal.com.mx/articulo/nacion/politica/2016/11/9/diputado-del-pri-se-declara-homosexual>

### **Texas and Ohio pass laws which discourage abortion**

As part of an overwhelming trend wherein legislative bodies have been passing anti-abortion measures, Texas Department of State Health Services rules requiring the burial or cremation of embryonic tissue came into effect in December. The consequence of such rules would only be to drive up costs of abortion services and encourage a culture of shame around women seeking the same. Critics of these fetal burial rules say that they have no medical basis and will especially affect black and other ethnic minority women.

Ever since the *Whole Woman's Health V. Hellerstedt* judgment recognized that there was an 'undue burden' on the Constitutional right of women to seek abortive services, legislative bodies have been side-stepping the Supreme Court ruling that made it illegal for States to ban abortions. Ohio also passed a 'heartbeat bill' that bans abortions after a fetus' heartbeat can be heard – which is about six weeks into pregnancy. The bill was passed at the last minute and tacked to another bill that discussed reportage of child-abuse.

Source: [https://www.buzzfeed.com/emaconnor/ohio-passes-law-that-bans-abortion-after-a-month-and-a-half?utm\\_term=.ipzDAQJk0M#.lyQXbqzQwm](https://www.buzzfeed.com/emaconnor/ohio-passes-law-that-bans-abortion-after-a-month-and-a-half?utm_term=.ipzDAQJk0M#.lyQXbqzQwm),  
<http://edition.cnn.com/2016/12/01/health/texas-abortion-fetal-burial-cremation-trnd/>

### **US Supreme Court agrees to hear case regarding rights of transgender persons to use washrooms in schools**

The Supreme Court has chosen to take up a case involving a 17 year old transgender boy in Virginia who is fighting for the right to use the boy's restroom at his school. The case will deliberate on significant aspects of the right to equitable treatment. It would examine the legal question of whether the government can interpret existing prohibitions on discrimination as including within its scope gender-discrimination. The decision by the apex body to hear the case is in itself significant because the ruling will have bearing on transgender-rights for years to come.

Source: <https://www.hrw.org/news/2016/11/03/us-supreme-court-takes-transgender-rights-case>,  
<https://www.nytimes.com/2016/10/29/us/politics/supreme-court-to-rule-in-transgender-access-case.html>

### **Australia passes anti-terrorism legislation supporting the suspension of individual freedoms of children as young as 14**

The Australian Parliament has passed legislation that reduces the minimum age for the imposition of 'control orders' from 16 years to 14. Control orders are a mechanism whereby courts can restrict the movement of suspects' movements by electronic tagging, curfews and other rules. The legislation means that serious restrictions can be imposed on children below 16 even if not yet charged with an offence. The move is part of Australia's recent trend of counter-terrorism legislation that raises questions about fundamental rights violations.

Source: <https://www.hrw.org/news/2016/11/22/australia-expands-control-orders-children>

## **National Developments**

### **News**

#### **Amended Delhi Victims Compensation Scheme 2015 notified by Delhi Government**

The newly amended Delhi Victim Compensation Scheme 2015 has been notified by the Govt. of Delhi in December. Some laudable features of the new scheme include an increase in compensation amounts for rape survivors an inclusion of victims of burning and sexual-assault related miscarriage within the Scheme. Victims can also file applications for interim and final compensations directly. However, interim compensations have been capped at Rs. 50,000/- except for cases of extreme hardship and gravity of offence.

Source:<http://dlsa.org/wp-content/uploads/2015/12/Victim-Compensation-Scheme-2015.pdf>

#### **Expert panel discussion states that Cabinet Bill on surrogacy violates reproductive rights**

The government-approved Surrogacy (Regulation) Bill, 2016 has been criticized on multiple controversial points by industry experts. The Bill proposes a complete ban on commercial

surrogacy, restricts altruistic surrogacy to legally wedded infertile Indian couples married for at least five years and prohibits foreigners, unmarried couples, single parents and gay couples from commissioning surrogacy. The panel experts strongly claimed that the State has no right to interfere in the very private domain of the right to reproductive autonomy. In a bid to protect women from exploitation, the Bill violates the rights of people wanting to have a family by making the option practically unfeasible.

Source: <http://www.thehindu.com/news/national/%E2%80%98Surrogacy-Bill-violative-of-privacy-rights%E2%80%99/article16437493.ece?homepage=true>

### **New data shows worsening of Sex Ratio at Birth (SRB)**

New data released from the Civil Registration System (CRS) shows that the sex-ratio has continued to decline since 2011 when the figure was 909. The number as of 2014 was 887. Manipur, Rajasthan and Tamil Nadu have the worst figures, while Lakshwadeep has the highest number.

Although the Pre-Conception & Pre-Natal Diagnostic Techniques (PC-PNDT) Act 1994 banned sex determination and pre-conception sex-selection, the problem only seems to have slipped underground. Doctors cash in liberally on society's male preference by providing sex determination services. By and large, implementation of the PC-PNDT Act has been poor across the board, with marginal improvement visible in Haryana's sex ratio and Rajasthan's administration having conducted raids and set up a Bureau of Investigation under the PC-PNDT Act. The Supreme Court also recently passed measures designed at fast-tracking legal proceedings as well as obligating states to maintain detailed databases of birth-rates for each district and undertake active campaigning on media.

Source:<http://www.hindustantimes.com/india-news/illegal-sex-determination-services-leaving-urban-hubs-for-remote-villages/story-D4XMWkJ3dxoAIpIHxTzBWO.html>,  
<http://www.hindustantimes.com/india-news/supreme-court-gives-more-teeth-to-law-banning-sex-determination/story-UyTcpe05RntGUNsdmT7wO.html>,  
<http://www.thehindu.com/todays-paper/Sex-ratio-at-birth-on-the-decline/article16728001.ece>

### **Scope of Rights of Persons with Disabilities Act is expanded to benefit more persons**

The number of infirmities listed in the Rights of Persons with Disabilities Act has been increased from 7 to 21, through a Bill that was tabled in the winter session of Parliament. Responding to a Supreme Court directive and suggestions from the home ministry, the Act now includes Parkinson's disease and acid-attack among its recognized infirmities. Other provisions include a stress on making public buildings accessible, the strengthening of the offices of public authorities, the creation of funds to provide financial support as well as education-related interventions.

Source:  
<http://www.thebetterindia.com/78948/why-rights-of-persons-with-disabilities-bill-worth-wait/>,  
<http://pib.nic.in/newsite/PrintRelease.aspx?relid=155592>,  
[http://timesofindia.indiatimes.com/india/government-opposition-come-together-briefly-to-pass-disabilities-bill/articleshow/56028274.cms?TOI\\_browsernotification=true](http://timesofindia.indiatimes.com/india/government-opposition-come-together-briefly-to-pass-disabilities-bill/articleshow/56028274.cms?TOI_browsernotification=true)

## Judgments/Orders

### **SC directs all government authorities to strictly implement the SC/ST Act 1989**

Responding to a public interest petition seeking a writ of mandamus to the Union Government to implement a national, the Supreme Court took cognizance of the continued large-scale violation of rights of Dalits and other minority groups despite Constitutionally guaranteed rights and the objective of social equality. The Court said that the Central government was as responsible as State governments to ensure that the Act was effectively implemented. Both levels of government were therefore directed to strictly enforce the legislation and also formulate schemes to spread awareness and provide free legal aid to members from the SC and ST and other minority communities.

Source: <http://blog.scsonline.com/post/2016/12/20/central-and-state-governments-directed-to-strictly-enforce-the-scheduled-castes-and-scheduled-tribes-prevention-of-atrocities-act-1989/>,

Citation: *National Campaign on Dalit Human Rights v. Union of India*, 2016 SCC OnLine SC 1488

### **SCdirects Union Government to take firm steps for addressing the growing problem of drug-usage among children**

Responding to a public interest petition seeking a writ of mandamus to the Union Government to implement a national plan of action to protect children from drug-abuse, the Supreme Court noted the presence of multiple different statements of policy but the lack of a comprehensive and collaborative formulation. Drawing from India's international obligations, the three-judge bench declared that there was need for a national data-base on the number of victims to enable a realistic assessment of the nature of policy interventions required. They demanded that the Union Government take certain immediate measures such as the formulation of a national action plan for children, the creation of a curriculum for awareness generation under the aegis of the New Education Policy 2016 and a standard operating procedure for enforcing the penal Juvenile Justice Act 2015.

Source:<http://blog.scsonline.com/post/2016/12/15/union-government-to-prepare-nation-plan-for-protecting-children-from-drug-abuse-within-4-months/>,

Citation: *BachpanBachaoAndolan v. Union of India*, 2016 SCC OnLine SC 1467

### **SCissues directions to enhance effectiveness and implementation of legislations prohibiting sex-selection**

The Supreme Court has passed extensive directions in response to a writ petition contending that the sex ratio in most States have decreased and that the aims and objectives of the Pre-Conception & Pre-Natal Diagnostic Techniques Act (PC-PNDT Act) 1994 have therefore not been realised. Recognizing the mushrooming of pre-natal diagnostic centres as indicative of the persisting scourge of female infanticide, the Court lamented the violence and injustice meted out to women in the country. The two-judge bench justified taking affirmative action in light of the inherent equality of both sexes in the Constitution, and thus passed directions which placed duties on a range of authorities including States and Union Territories, statutory authorities, appropriate Courts, judicial officers, State Legal Service Authorities and legal authorities. These duties include the maintenance of a database of civil registration records listing the number of boys and girls being born, display of birth information from every

district and municipality, the constitution of statutory authorities under the PC-PNDT Act, the impartation of periodic training to appropriate authorities as well as judicial officers, fast-tracking of complaints under the PC-PNDT Act, the commission of an oversight committee of judges, the dissemination of awareness and publicity and the framing of Rules and Schemes at the State and Central levels.

Source:<https://indiankanoon.org/doc/168133848/>,

<http://blog.scconline.com/post/2016/11/08/extensive-directions-issued-for-%20implementation-of-prohibition-of-sex-selection-laws/>

Citation: *Voluntary Health Association of Punjab v. Union of India*, 2016 SCC OnLine SC 1244

### **SC mandates commission of committee to address long pending issue of right to shelter of homeless persons in urban areas**

Responding to two decade-old writ petitions concerning the right to shelter of homeless persons in urban areas, the Supreme Court expressed dissatisfaction with the steps taken by the Government of India in terms of implementation of the Scheme of Shelters for Urban Homeless and the guidelines issued under them. They noted that despite availability of funds and mechanisms, there was no real improvement on the ground. In light of the urgency of the approaching winter, the Court suggested constitution of a Committee with Justice Kailash Gambhir as its Chairman. The role of the Committee would be to ensure physical verification of available shelters, verify compliance with operational guidelines, inquire into the reasons for slow progress and non-utilization of funds allocated, and also issue suitable recommendations to the State Governments to ensure that at least temporary shelters are provided for the homeless in the urban areas to protect them during the winter season. The State Governments were also directed to ensure compliance with the recommendations along the time frame indicated by the Committee.

Source: <http://blog.scconline.com/post/2016/11/11/committee-to-be-constituted-to-ensure-shelter-to-homeless-persons-in-urban-areas/>,

<https://indiankanoon.org/doc/157970699/>

Citation: *E.R. Kumar v. Union of India*, 2016 SCC OnLine SC 1256

### **SC decrees that unnatural death within 7 years of marriage in and of itself is not sufficient for conviction for ‘dowry death’**

Ruling that the prosecution had failed to prove that the husbands and relatives had caused the death of the wife due to dowry pressures, especially since the family was wealthy and enjoyed status in society, the Court said that the legislative presumption as to dowry death under Section 113B of the Dowry Prohibition Act, 1961 would only get activated when it was proved that the deceased lady had indeed been subject to cruelty in the ‘reasonable contiguity of death’. The mere fact of unnatural death within 7 years of marriage is not ipso facto sufficient for conviction for ‘dowry death’.

Source:<https://indiankanoon.org/doc/73277952/>,

<http://blog.scconline.com/post/2016/11/18/factum-of-unnatural-death-within-7-years-of-marriage-is-not-ipso-facto-sufficient-for-conviction-for-dowry-death/>

Citation: *Bajnath v. State of Madhya Pradesh*, 2016 SCC OnLine SC 1287

### **SC states that allegation of extra-marital relationship must be accompanied by other ingredients to qualify as cruelty under Section 498-A IPC**

Despite the fact that the accused was involved in an extra-marital affair, and that the wife, the paramour and the latter's relatives killed themselves because of abject social humiliation, the Supreme Court ruled that this could not be regarded as mental cruelty and would better constitute grounds for divorce. It was felt that, although immoral, other ingredients needed to be brought home to constitute a criminal offence. The judges also commented that the wife was 'guided by rumour' and also that her suspicion 'has no boundary', and that this would not constitute an offence or establish guilt under Section 306 of the IPC.

Source: [http://supremecourtfindia.nic.in/FileServer/2016-11-24\\_1479989961.pdf](http://supremecourtfindia.nic.in/FileServer/2016-11-24_1479989961.pdf)

Citation: *K.V. PrakashBabu v. State of Karnataka*, 2016 SCC OnLine SC 1363

### **SC refuses to extend protections of Juvenile Justice Act for those who commit grave and heinous offences**

Responding to the issue whether the appellants were juveniles at the time of commission of the offence, in a case of murder where the accused were now between 35 and 40 years of age, the Supreme Court said that there was a margin of some years even with medical opinions as to age. They refuted the contention that the accused were children even by their very appearance, saying that if that were so, they would have been dealt with accordingly by the concerned juvenile court. Saying that since the burden lay on the juvenile, a blind mechanical view as to age could not be adopted solely on the basis of medical opinion.

Source: <http://blog.scconline.com/post/2016/12/02/the-purpose-of-juvenile-justice-act-2000-is-not-to-give-shelter-to-the-accused-of-grave-and-heinous-offences/>

Citation: *Mukarrab v. State of U.P.*, 2016 SCC OnLine SC 1413

### **High Court of Kerala rules that even a divorced wife is entitled to initiate proceedings under the PWDVA**

Recognizing that even after divorce certain obligations like custody of children and operation of bank accounts continue, the High Court of Kerala ruled that it would be illogical to hold that the scope of protections under the Protection of Women from Domestic Violence Act, 2005, cease after dissolution of marriage. The claim for maintenance had been challenged by the husband on the ground that there was a pre-nuptial agreement between the couple that no claims would be made after marriage. The Court rejected this saying that the statutory provisions of the Domestic Violence Act could not be contracted out unless it was proved that there was a mutually satisfactory settlement of all claims. The legally divorced wife thus had a locus standi during her entire lifetime.

Source: <http://blog.scconline.com/post/2016/12/02/legally-divorced-wife-also-entitled-to-see-relief-under-the-domestic-violence-act-2005/>

Citation: *Bipin v. Meera D.S.*, 2016 SCC OnLine Ker 19559

### **High Court of Madras decrees that a victim of acid attack can claim compensation under the Victim Compensation Scheme framed under Section 357-A of Cr.P.C**

The High Court of Madras directed the victim of an acid attack to file an application for compensation under the Victim Compensation Scheme (framed under Section 357-A of the CrPC) before the District Legal Services Authority (DLSA) within a period of three weeks

from the judgment. The court also directed the DLSA to consider the same and pass orders recommending the petitioners case for compensation.

Source:<https://indiankanoon.org/doc/82216813/>,

<http://blog.scconline.com/post/2016/12/23/victim-of-acid-attack-can-claim-compensation-under-victim-compensation-scheme-vcs-framed-under-section-357-a-of-cr-p-c/>

Citation: *Muthulakshmi v. The District Collector, Ramnad District*, 2016 SCC OnLine Mad 10398

### **High Court of Orissa rules that even if not living with perpetrator, a woman can be aggrieved person under PWDVA**

The High Court of Orissa ruled that even if a woman is not living with the accused/respondent at the time of filing of application under Protection of Women from Domestic Violence Act, 2005, she could file an application before Magistrate under the PWDV Act. It would be deemed sufficient if the aggrieved person lived with the respondent at any point of time and despite living at separate places currently, they are related by consanguinity, marriage, or through a relationship in the nature of marriage.

Source: <http://blog.scconline.com/post/2016/11/21/women-can-file-application-before-magistrate-under-pwdv-act-irrespective-of-whether-she-was-living-in-with-respondent-at-the-time-of-filing-application/>

Citation: *GiridhariNath v MamitaraniSutar*, 2016 SCC Online Ori 818

### **High Court of Madhya Pradesh holds that wife living separately from husband without 'sufficient reason' is not entitled to maintenance**

Responding to a revision petition filed against a family court decision, the High Court of Madhya Pradesh ruled that since the wife was unable to prove the charge of harassment it cannot be held that she was forced to leave her matrimonial home under too much harassment. The Court noted facts such as that there were no allegations of harassment during the first week of residence in her matrimonial home, but that the allegations were made regarding the next twelve days; the lack of complaints made to police authorities or the brother. The judges thus felt that she could not be said to have been forced to leave her matrimonial home, and thus was living separately without reason.

Source: <http://blog.scconline.com/post/2016/12/14/wife-is-not-entitled-to-maintenance-if-living-separately-without-any-sufficient-reason/>,  
<https://indiankanoon.org/doc/158482333/>

Citation: *Anil Jain vs Smt. Sunita*, 2016 SCC OnLine MP 6368

### **High Court of Uttaranchal holds that even contractually or temporarily employed government servants are entitled to maternity leave**

Responding to a petition for maternity leave filed by a contractually employed lecturer of sociology, the High Court of Uttaranchal stated that maternity leave is key for maternal and child health and family support. The judges located maternity benefits in the context of the broader struggle against social injustice, poverty and gender inequality by seeing it as a form of social insurance.

Accordingly, they directed the State to grant maternity leave to the petitioner with full pay and to grant all female employees maternity leave with full pay for 180 days; even those working on contractual basis, ad hoc/tenure or temporary basis. Further, at least 60 days' maternity leave was to be granted to daily wage female employees working for more than 240 days' in a block of 12 months calendar with full wages. Other directions included the requirement of every establishment of 50 or more employees to have crèche facilities and the right of every mother to visit the crèche/nursing care at least four times daily, including the interval for rest allowed to the employees. Male employees are also entitled to paternity leave.

Source: <https://indiankanoon.org/doc/84071403/>

Citation: *Smt. Dr. Deepa Sharma vs State Of Uttarakhand And Others*, 2016 SCC OnLineUtt 2015

### **Orissa High Court allows magistrates to issue ex-parte interim order for temporary custody of child**

In a criminal revision petition involving the granting of custody of a five-year old child to the mother by ex-parte interim order, the Orissa High Court upheld the granting of custody contingent on the condition that there is a circumstance of exigency, which can only be considered if the application prima facie suggests the commission of domestic violence.

Source: <http://blog.sconline.com/post/2016/12/19/magistrate-can-issue-ex-parte-interim-order-granting-interim-custody-of-child-to-aggrieved-party-based-on-affidavit/>

Citation: *Vinay Gupta v. SaveriNayak*, 2016 SCC OnLineOri 862

### **Allahabad High Court says that Triple Talaq cannot be invoked without serious reasons and attempts at reconciliation**

A Muslim couple approached the Allahabad High Court petitioning that police and others were harassing them for living together, and that they were at liberty to choose their life partner. The Court criticized the manner in which the husband had divorced his first wife using triple talaq only to marry his current wife, noting that “the view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions”. The judges observed that the idea of divorce in Islam is itself permissible only in cases of extreme emergency and that the law of talaq as ordained by the Holy Quran is that talaq must be for a reasonable cause preceded by attempts at reconciliation between husband and wife by an arbiter from each family.

Source: <http://indianexpress.com/article/india/triple-talaq-unconstitutional-violates-rights-of-muslim-women-allahabad-hc-4416535/>

Citation: *Hina v. State of U.P.*, 2016 SCC OnLine All 994

### **Delhi High Court rules that unilateral withdrawal of consent from mutual consent divorce amounts to mental cruelty**

In a case where the husband withdrew consent after having entered into a settlement deed for mutual consent divorce with his wife, the Delhi High Court took into due consideration the emiserating situation in which the wife would be left by such an action. The two-judge bench observed that when there was no allegation of force, fraud or undue influence, and considering that the wife had also withdrawn her divorce petition and hence her claim for

custody of her son, the husband's action could only amount to mental cruelty. The judges also relied on case precedent to reiterate that when there is continual separation and a concomitant refusal to sever legal ties, the law does not then serve the sanctity of marriage by reinforcing that tie. In fact, it would amount to showing scant regard for the feelings and emotions of the parties.

Source: <https://indiankanoon.org/doc/169701404/>

Citation: *Rajiv Chhikara v. Sandhya Mathur*, 2016 SCC OnLine Del 6224

### **Delhi High Court rules that intention to continue marriage just to torment is relevant factor for considerations of cruelty**

The Delhi High Court observed that where it was evident that the husband and wife indulge in mutual bickering till the stage where they target each other mentally, insistence by one of them on retaining the matrimonial bond would be relevant to consideration of the issue of cruelty, since it could be deemed obvious that the intention of said spouse would be to torment and traumatise the other.

Source: <http://blog.sconline.com/post/2016/12/15/intention-to-continue-marriage-just-to-torment-and-traumatise-ones-spouse-is-a-relevant-factor-to-decide-upon-cruelty/>

Citation: *Anurag Sharma v. Manushi Sharma*, 2016 SCC OnLine Del 5871

### **High Court of Chhattisgarh decrees that assets left by deceased husband can be proceeded against in petition for maintenance**

The High Court of Chhattisgarh decreed that the assets left behind by the husband can be proceeded against for the satisfaction of a decree of maintenance, irrespective of their subsequent transfer to his legal heirs. The Family Court order against which the appeal was made in this court had granted maintenance to the divorced wife but declared that she could not claim permanent alimony as her husband had died. However, the High Court remitted the matter back to the lower court stating that, since no other decree gets extinguished, a decree for alimony also does not terminate with the death of the husband but may be satisfied as against the assets left behind by him in the hands of his legal heirs. The proper course for the executing court therefore would be to direct parties to provide full particulars of all movable and immovable properties belonging to the husband so that the amount of permanent alimony is recoverable from these. Though the heirs are not personally liable, they were found to be liable to the extent that they were in possession of the assets. The High Court directed them not to transfer or create a third-party interest in the immovable properties till the time that the executing court resolves the matter.

Source: <http://www.livelaw.in/assets-deceased-husband-can-proceeded-satisfaction-decree-maintenance-chhattisgarh-hc/>

Citation: *Arial I. Kumar v. Shrimati Shikha Kumar*, 2016 SCC OnLineChh 1458

## **Resources**

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

The Economic and Social Commission for Asia and the Pacific have published a report on progress regarding gender equality and women's empowerment in the region, with respect to the Beijing Declaration and Platform for Action.

Source:[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)

### **Inter-Parliamentary Union publishes report recommending intervening to prevent gender-based violence**

The Inter-Parliamentary Union, a body with permanent observer status at the UN General Assembly, has published an outcome-document called “Human rights abuses as precursors of conflict : Parliaments as early responders” wherein it has made recommendations to world Parliaments regarding the establishment of an overarching human rights framework towards preventing conflict situations. The recommendations include combating gender-based violence and gender-sensitive approaches in work and policy interventions.

Source:<http://wunrn.com/2016/12/human-rights-abuses-as-precursors-of-conflict-parliaments-as-early-responders-ipu/>

### **Musawah publishes resource on women's rights and reforms in Islamic law**

Relying on the guiding ethical principles of the Quran, contemporary human rights norms as well as lived experiences of women, the international network ‘Musawah’ publishes a compendium on women's rights in Islamic and Muslim family laws, including theoretical literature and advocacy tools, as well as country and region specific resources.

Source:

[http://www.musawah.org/sites/default/files/Compilation%20of%20Resources%202016\\_.pdf](http://www.musawah.org/sites/default/files/Compilation%20of%20Resources%202016_.pdf)

[http://www.musawah.org/sites/default/files/Musawah%20Paper\\_Issue%202\\_English\\_FA.pdf](http://www.musawah.org/sites/default/files/Musawah%20Paper_Issue%202_English_FA.pdf)