



# **NEWSLETTER ON WOMEN & CHILD RIGHTS**



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*Newsletter on Women & Child Rights*

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The newsletter is sent to you purely for informational purposes. The facts/opinions provided in this newsletter do not constitute legal advice and should not be relied upon in any case except with the guidance of a legal counsel.

## PREFACE

*“I measure the progress of a community by the degree of progress which women have achieved.”*

**-DR. B.R. AMBEDKAR**

**ANBAY LEGAL** is releasing its 3<sup>rd</sup> Volume of monthly newsletter on rights of women and children. The aim is to publish monthly compilations of landmark judgements passed by the Apex Court and High Courts in India, which bring to light various issues that affect women and children and to start a conversation on such matters. This newsletter is for the month of September 2022 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in September.

### About Anbay Legal

**ANBAY LEGAL** is a full-service law firm having its offices at New Delhi & Lucknow. We are a team of dedicated lawyers, including professionals from allied fields to meet the need of corporates and individuals. We believe in high standard of ethical values and honesty with our clients, with commitment to provide high-quality legal advice and solutions in a time bound manner.

### About the theme

The theme chosen for this newsletter has been done keeping in mind the necessity behind openly talking about these issues. We don't require a special occasion or platform to raise our voice. Through these judgements we would like to highlight the number of cases that come up daily before the Hon'ble courts for adjudication and how we are taking small steps towards positive change through these landmark judgments.

## **ACKNOWLEDGMENT**

We would like to extend our deepest gratitude to Mr. Ashutosh Kumar Mishra, Managing Partner, Anbay Legal, who through his idea gave us the opportunity to work on such an interesting theme and cover the contemporary issues.

We are thankful to our colleagues Mr. Misbahul Haque, Mr. Sandeep Kumar Mishra, Mr. Pramod Kumar, Mr. Rishabh Shukla, Mr. Balraj Singh, Mr. Pranjal Apurva and Mr. Shubham Sharma for sharing their opinion and wisdom with us during the course of this research which played a major role in the development of the Newsletter.

Lastly, we would like to express our appreciation for all the legal interns of Anbay Legal, who have contributed towards the compilation of the Newsletter.

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## **SUPREME COURT OF INDIA**

- ◆ X v/s The Principal Secretary, Health and Family Welfare Department, Govt/ of NCT of Delhi & Anr.(MTP Act)



**X v/s THE PRINCIPAL SECRETARY, HEALTH AND FAMILY  
WELFARE DEPARTMENT, GOVT/ OF NCT OF DELHI & ANR.**

**(CIVIL APPEAL No. 5802/2022)**

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**TOPIC: MTP Act**

**DATE OF ORDER/JUDGEMENT: 29/09/2022**

**BACKGROUND OF THE CASE**

The appellant is a 25 year old unmarried women seeking termination of her pregnancy which arose due to a consensual relationship. However, her partner refused to marry her and she, under the fear of societal isolation and harassment along with the lack of financial stability, does not wish to raise a child alone. Therefore, she filed a writ petition before the High Court of Delhi, under the provisions of section 3(2)(b) of MTP Act and Rule 3B (c) MTP Rules, to terminate her twenty-two week pregnancy along with other ancillary reliefs. Other reliefs being inclusion of unmarried women within the ambit of Rule 3B of the MTP Rules 2003 and restraining the respondent from taking any coercive action or criminal proceedings against the petitioner for terminating the pregnancy. The appellant instituted a Criminal Miscellaneous Application for grant of interim relief to terminate her pregnancy during the pendency of the Writ Petition.

However, the High Court issued notice only with regard to inclusion of unmarried woman within the ambit of Rule 3B of the MTP Rules 2003, rejecting rest of the prayers as well as the Criminal Miscellaneous Application.

The High Court observed that Section 3(2)(b) of the MTP Act was inapplicable since the appellant, being an unmarried woman, whose pregnancy arose out of a consensual relationship, was not covered by any of the sub-clauses of Rule 3B of the MTP Rules. Hence, this appeal was filed before the Apex Court.

## **DECISION OF THE COURT**

The Hon'ble Supreme Court, passed the interim order allowing the appellant to terminate her pregnancy. There were landmark observations made in this case.

They are stated as below-

While interpreting Section 3(2)(i) & (ii) of MTP Act, the court observed that-

*“14. ... In determining whether the continuation of the pregnancy would involve grave danger to the pregnant woman’s physical or mental health, her actual or reasonably foreseeable environment may be taken into account. We are of the opinion that significant reliance ought to be placed on each woman’s own estimation of whether she is in a position to continue and carry to term her pregnancy.”*

It was also observed that the spectre of criminalisation casts a chilling effect on Registered Medical Practitioners, thereby causing unnecessary delays with increased legal compliances.

*“23. These extra-legal requirements have no basis in law. As noted above, it is only the woman’s consent (or her guardian’s consent if she is a minor or mentally ill) which is material. RMPs must refrain from imposing extra-legal conditions on women seeking to terminate their pregnancy in accordance with the law. They need only ensure that the provisions of the MTP Act (along with the accompanying rules and regulations) are complied with.”*

The court further added that-

*“ 92. ... If Rule 3B(c) is understood as only for married women, it would perpetuate the stereotype that only married women indulge in sexual activities. This is not constitutionally sustainable. The artificial distinction between married and unmarried women cannot be sustained. The benefits in law extend equally to both single and married women.”*

The court also observed that if the state forces a woman to continue a pregnancy against her wishes it will be equivalent to attacking her dignity. Every woman should be given the choice to whether continue or terminate her pregnancy. Also, that it is imperative to interpret laws keeping in mind the changing society and the norms that exist in the society. The women does not require the permission of her husband or in-laws to terminate the pregnancy. It is her choice to terminate the pregnancy.

While discussing on rights of women especially married woman, the court expanded on the ugly reality that exists in the society with respect to marital rape.

*“71. Married women may also form part of the class of survivors of sexual assault or rape. The ordinary meaning of the word ‘rape’ is sexual intercourse with a person, without their consent or against their will, regardless of whether such forced intercourse occurs in the context of matrimony. A woman may become pregnant as a result of non-consensual sexual intercourse performed upon her by her husband. We would be remiss in not recognizing that intimate partner violence is a reality and can take the form of rape. The misconception that strangers are exclusively or almost exclusively responsible for sex- and gender-based violence is a deeply regrettable one. Sex- and gender-based violence (in all its forms) within the context of the family has long formed a part of the lived experiences of scores of women.”*

This judgment passed coincidentally on international safe abortion day raises questions that we as a society needs to think and talk about. At the same time, the court took a very liberal approach to answer some of the sensitive issues with respect to women and their rights.



## **HIGH COURT OF BOMBAY**

- ◆ Chand Rathod v/s Prakash Singh Rathod (Maintenance is gender-neutral u/s 24 & 25 of HMA)



**CHANDA RATHOD v/s PRAKASH SINGH RATHOD**  
**(FAMILY COURT APPEAL No. 04 of 2022)**

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**TOPIC: Maintenance**

**DATE OF ORDER/JUDGEMENT: 19/09/2022**

**BACKGROUND OF THE CASE**

In this case, matrimonial dispute arose between the parties and because of that the appellant-wife left the matrimonial home to live with her parents. The respondent-husband filed for restitution but the wife did not cohabit with the husband and then he filed for divorce u/s 13(1) (i-a) (i-b) of Hindu Marriage Act. In the meantime, the wife filed for maintenance of her children and herself, under section 125(1) as well as Section 489-A. Maintenance was granted for the children under section 125. However, the wife while filing the written statements in the divorce case also filed for maintenance under section 24 of Hindu Marriage Act. Due to the absence of the wife, the case was disposed off after granting the divorce. Hence, the appeal.

**DECISION OF THE COURT**

The court allowed the appeal since –

*“10. In the present case, without disposing of the interim application the petition was disposed of by granting divorce in favour of the husband. The roznama reflects that it is not only the appellant-wife who remained absent during the proceedings and therefore the Court proceeded with the matter, but it is reflected from the roznama that on several occasions both the parties were absent, on some occasions even the respondent-husband remained absent. Though the appellant had filed an interim application for maintenance pendente*

*lite, it was not decided and the main petition for divorce was decided without assigning any reason.”*

Therefore, the case was remanded back to the Family court to hear both the parties and decide the matter and trial court was directed to decide the interim application for maintenance *pendente lite*.

An important observation made in this case was that the provisions of Section 24 & 25 of Hindu Marriage Act are gender-neutral and any spouse who is incapable of taking carrying or maintaining him/her along with inability to pay for litigation expenses can demand for maintenance.





## **HIGH COURT OF KERALA**

- ◆ X v/s Union of India & Ors. (Termination of Pregnancy)



**X v/s UNION OF INDIA & ORS**

**(WP (C) NO. 29402 OF 2022 (A))**

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**TOPIC: Medical Termination of Pregnancy**

**DATE OF ORDER/JUDGEMENT:26/09/2022**

**BACKGROUND OF THE CASE:**

The petitioner was pursuing B.A. Economics, and during that time she met the respondent no. 7 and fell in love. They eloped and got married in November 2021. After marriage, the respondent no. 7 and petitioner's mother-in-law started to ill-treat her.

In April 2022, the petitioner got pregnant and due to increased cruelty she left her matrimonial home in August 2022. She wanted to get her pregnancy terminated but it was refused by the doctors since there was no proof that the petitioner was separated or divorced from her husband.

She filed an FIR under section 498A r/w 34 IPC. After which the termination of pregnancy request was still rejected since her pregnancy was of over 21 weeks and no foetal anomaly or maternal illness. The matter then reached High Court.

**DECISION OF THE COURT:**

The court was of the view that if the matrimonial life of a pregnant woman changes then it can be considered as "change in her marital status". Relying on the judgement of *x v. Principal Secretary, Health and Family Welfare Department and another*, the court observed that the terms "widowhood and divorce" should be given a purposive interpretation than a restrictive interpretation.

Another important point observed by the court was that the MTP Act does not mention that a pregnant woman requires the consent of her husband to terminate

her pregnancy because in the end it is the woman who has to bear the pain and labour of pregnancy.

On the basis of these reasons, the petitioner was granted permission to get her pregnancy terminated.





## **HIGH COURT OF MADRAS**

- ◆ Kanthan v/s State & Ors (Teenagers involved in sexual offences)



**KANTHAN v/s STATE AND OTHERS****(H.C.P.(MD)No.1655 of 2021)**

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**TOPIC: Sexual offence by teenagers****DATE OF ORDER/JUDGEMENT: 6/09/2022****BACKGROUND OF THE CASE:**

A habeas corpus petition was filed before the court by the father of a 18 year old boy. The boy was detained by District Collector and held him as a “sexual offender” under Section 2(ggg) of Tamil Nadu Act 14 of 1982.

The petition challenged the order passed by the District collector on the ground that there was inordinate delay in considering the representation of the petitioner and also there were gross violations regarding procedural safeguards since there was a delay of 5 days in submitting the remarks by Detaining Authority and 21 days in consideration of the representation submitted by the petitioner.

**DECISION OF THE CASE:**

The court was satisfied that there was unexplained delay and therefore the concerned order was quashed. However, the court also observed that-

*“13. The information technology is posing a great challenge and it has a lot of impact on the mind of the teenagers. The case on hand is a textbook case, where the detenu is aged about 18 years and the co-accused is a minor and they are now branded as "sexual offender". The teenagers, who are easily exposed to pornography even from their mobile phones, get confused and misled at an age where they are in the grips of hormonal changes, and they indulge in activities without understanding its consequences. Once these teenagers are arrested and kept inside the prison, efforts must be taken to attend to their mental perversion. The purpose of confining a teenager in the prison is not to*

*abandon him and throw him out of the mainstream of the society and all steps must be taken to reform such a person. Hence, this Court suggests that the State Government must come up with some mechanism whereby, offenders of this nature are being properly counselled when they are in prison and when they come out of the prison, they are reformed, and they are able to lead a normal life. If this effort is not taken, a teenager will lose his entire life and there are all chances that he will become a hardened criminal and such a scenario will neither be helpful to the teenagers / or to the society.”*





## HIGH COURT OF CALCUTTA

- ◆ Soumen Biswas @ Litan Biswas v/s State of West Bengal & Ors. (POCSO Act)



**SOUMEN BISWAS @ LITAN BISWAS v/s STATE OF WEST BENGAL**

**(C.R.M. (DB) 2220 of 2022)**

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**TOPIC: POCSO ACT**

**DATE OF ORDER/JUDGEMENT: 23/08/2022**

**BACKGROUND OF THE CASE:**

In this case, a 13 year old girl was sexually assaulted. During her examination-in-chief, the victim supported the prosecution story and narrated the acts of the accused. However, the victim changed her story during the cross-examination which was conducted fortnight.

On this ground stated above, the accused moved to high court for bail.

**DECISION OF THE COURT:**

The court was of the view that the –

*“The manner of examination of the minor victim is not in accordance with the procedure laid down in Section 33 of POCSO Act. The aforesaid provision, inter alia, provides for a child friendly atmosphere for examination of a minor. Such examination is to be conducted in presence of her guardian, a friend or relation. The Court is also required to see that the minor is not intimidated through aggressive or embarrassing questions which may affect the dignity of the child.”*

The court observed that the trial court has lost sight of the above stated requirement and adjourned the cross-examination on the request of the defence. This led to the victim being influenced and changing her story Also, a victim should not be asked to come to court again and again. The court shunned this course of action and directed special courts to bear the safeguards given under Section 33 of POCSO Act while conducting examination of the victim.

Also, the court stated that –

*“Repeated summoning of the minor for giving evidence would create trauma and undue stress on her and degenerate the process of adjudication to an ordeal of pain and harassment. This is to be avoided at all costs and a balance must be struck between the right of the victim to friendly and conducive access to justice on one hand and the due process rights of the accused on the other.”*





## **HIGH COURT OF** **ALLAHABAD**

- ◆ X thru her legal guardian Bharat Lal v/s State of U.P.  
(MTP Act)



**Ms. X THRU. HER LEGAL GUARDIAN BHARAT LAL v/s  
STATE OF U.P.**

**(WRIT-C No. 6102 of 2022)**

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**TOPIC: MTP ACT**

**DATE OF ORDER/JUDGEMENT: 12/09/2022**

**BACKGROUND OF THE CASE:**

A writ petition was filed before the court to terminate the 24-week pregnancy of a 12 year old rape survivor.

**DECISION OF THE COURT:**

The court was sympathetic to the plight of the victim and therefore admitted the petition by stating that the survivor should be freed from any trauma and social miseries that she could face in the future. The court further ordered that the victim be provided with all the medical care that she requires.

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# HIGH COURT OF HIMACHAL PRADESH

- ◆ State of Himachal Pradesh v/s Shiv Lal (Protecting the identity of child victim)



**STATE OF HIMACHAL PRADESH v/s SHIV LAL  
(CRIMINAL APPEAL NO. 152 OF 2021)**

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**TOPIC:POCSO Act**

**DATE OF ORDER/JUDGEMENT:13/09/2022**

**BACKGROUND OF THE CASE:**

An appeal was presented before the court against the acquittal order of the accused. Charges were framed against the accused for the commission of offences under section 363, 366, 376 IPC and section 4 of POCSO Act.

**DECISION OF THE COURT**

The court did not find any ground to interfere with the judgment of the Trial court and therefore, upheld the acquittal of the accused.

However, the important observation made by the Hon'ble court was-

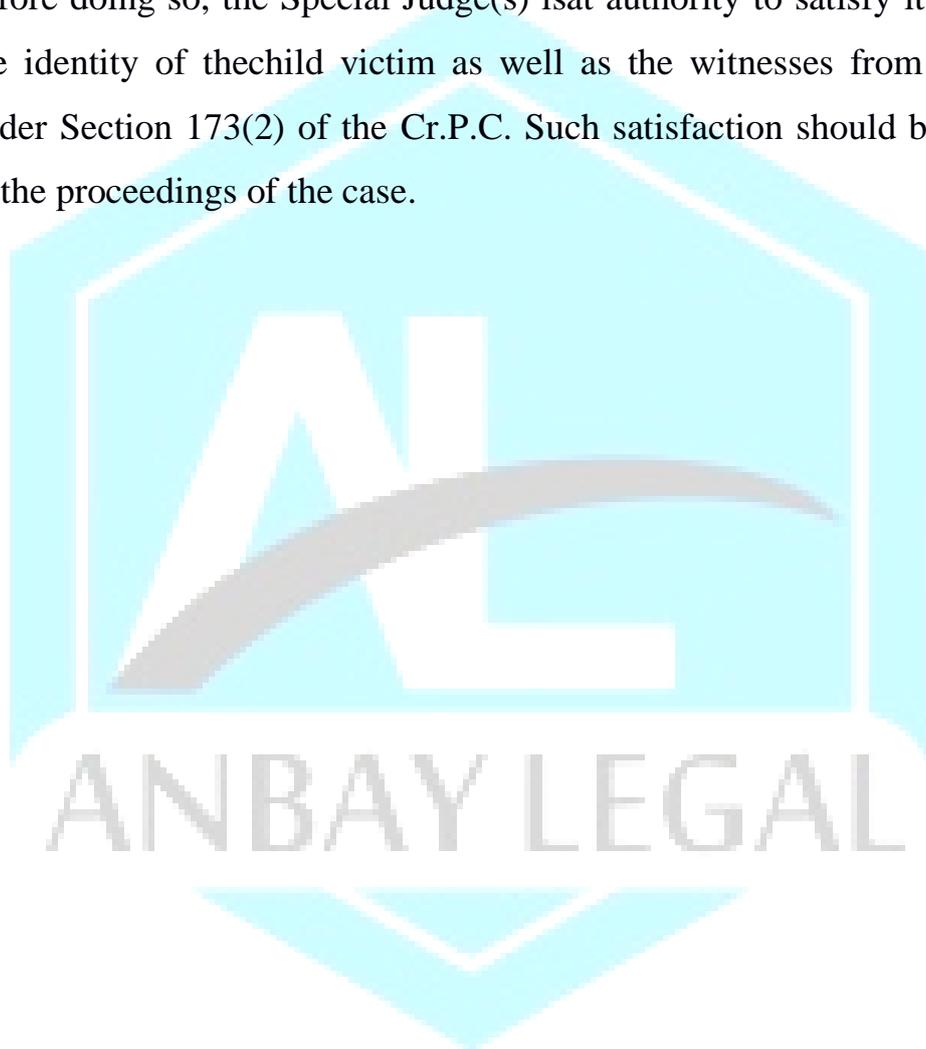
*“46. ... The POCSO Act has been enacted by the legislature to protect the interest of child victims by including certain safeguards in it. Those safeguards were incorporated in the Act to protect the child victim as well as her family from exposure, as sometimes, the child victim, as well as their parents, do not prefer to go to the police station and to report the crime....”*

The court has issued the following directions in order to ensure that proper procedure is followed and to safeguard the identity of the parties involved: -

- Every effort should be made by the Special Judge, as well as, by the police, to ensure that during investigation or trial, the identity of the child victim shall not be disclosed, unless it is in the interest of the child.
- The trial of the case should be held in camera.
- While recording the statement(s), the Special Judge shall ensure that the identity of the child victim, as well as the identity of his/her family,

school, relatives or neighbourhood or any other information by which his/her identity could be revealed, shall not be disclosed. Also, during the judgments uploaded should not contain any particulars of the child victim.

- While recording the statement(s) of the child victim, his/her relatives, the Special Judge would be at liberty to give a made-up name to them and before doing so, the Special Judge(s) is at authority to satisfy itself about the identity of the child victim as well as the witnesses from their report under Section 173(2) of the Cr.P.C. Such satisfaction should be recorded in the proceedings of the case.





## **HIGH COURT OF SIKKIM**

- ◆ Subash Chandra Chettri v/s State of Sikkim (POCSO Act)



## **SUBASH CHNADRA CHETTRI v/s STATE OF SIKKIM**

*(CRL. A. No. 01/2022)*

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**TOPIC: POCSO ACT**

**DATE OF ORDER/JUDGEMENT: 07/09/2022**

### **BACKGROUND OF THE CASE:**

In this criminal appeal, the appellant claimed that there was no offence of rape or sexual assault made out since there were no external injuries on the private parts of the victim during the medical examination. There was only redness found on labia minora of the victim and the hymen was intact. Therefore, the appellant claimed that these grounds were sufficient to prove that no offence of penetrative sexual assault exists.

### **DECISION OF THE COURT**

The court upheld the decision of the Special Judge since the story of the prosecution is proved beyond reasonable doubt and the statement of victim was clear and fairly detailed which was sufficiently corroborated with prosecution witnesses.

With regard to the ground relating to no offence of penetrative sexual assault arising, the court observed that –

*“17. ... Both under sections 376 AB of the IPC as well as section 5 of the POCSO Act, a slight penetration without any visible injury is enough to constitute rape and aggravated penetrative sexual assault. Penetration to any extent is sufficient to constitute rape under IPC and penetrative sexual assault under the POCSO Act. The victim’s deposition is specific, consistent and clear that the appellant had inserted his penis into her vagina. The redness on her*

*labia minora noticed by Dr. Tukki Dolma Bhutia on 09.07.2020, the same day of the assault sufficiently corroborates the victim's version. There is no reason for us to doubt it."*



## TABLE OF ABBREVIATIONS

<b><u>S.No.</u></b>	<b><u>Abbreviations</u></b>	<b><u>Definition</u></b>
1.	C.M.P	Civil Miscellaneous Petition
2.	C.R.P. (PD)	Civil Revision Petition (PD)
3.	CAT	Central Administrative Tribunal
4.	CCS Rules	Central Civil Services Rules
5.	Cr.P.C.	Code of Criminal Procedure, 1973
6.	DP Act 1961	Dowry Prohibition Act 1961
7.	F.I.R.	First Information Report
8.	I.P.C.	Indian Penal Code, 1860
9.	MTP Act	Medical Termination of Pregnancy Act, 1971
10.	O.A.	Original Application
11.	O.P.	Original Petition
12.	PIL	Public Interest Litigation
13.	POCSO Act	Protection of Children from Sexual Offences Act, 2012
14.	S.L.P.	Special Leave Petition
15.	W.P. (C)	Writ Petition (Civil)
16.	W.P. (CrI)	Writ Petition (Criminal)

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