



NEWSLETTER ON WOMEN & CHILD RIGHTS



Vol. I

Issue : July 2022

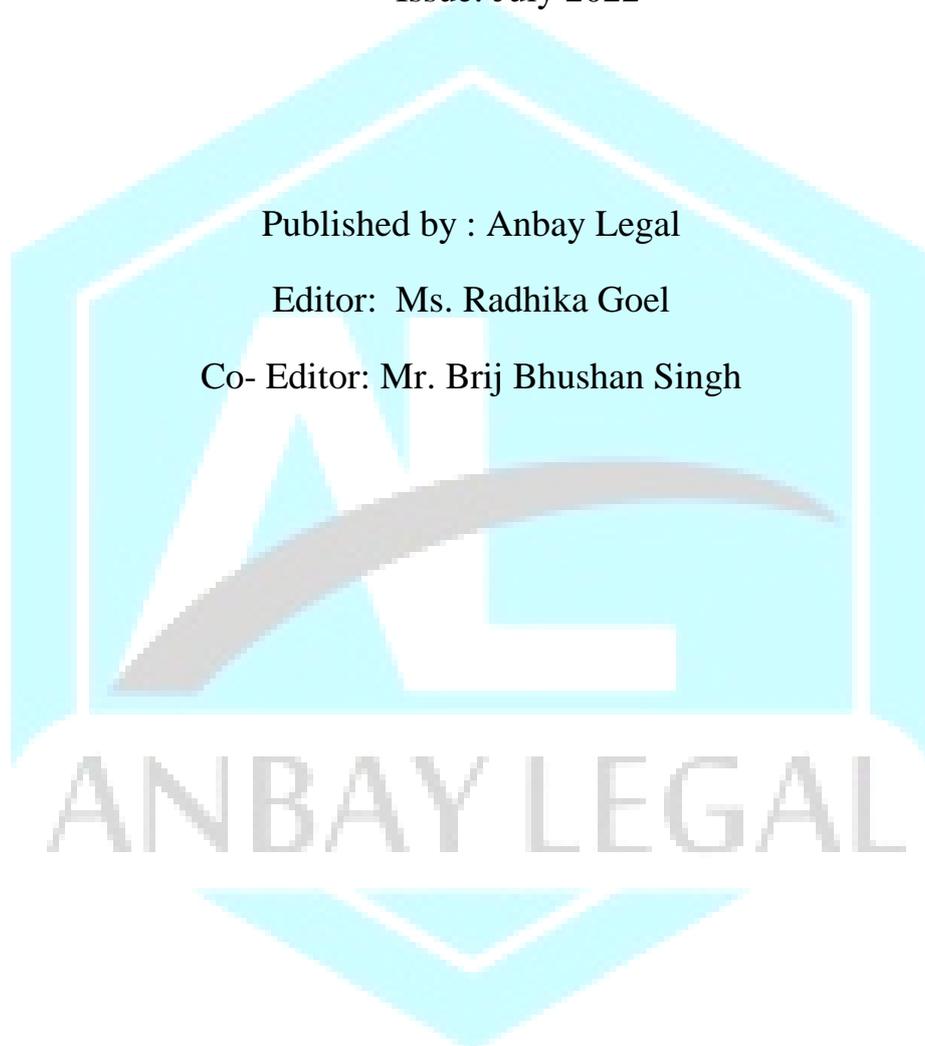


Newsletter on Women & Child Rights

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All information provided in this newsletter, except where appropriately referenced, is entirely the work of the editor.

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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 1st edition 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 July 2022 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in July.

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

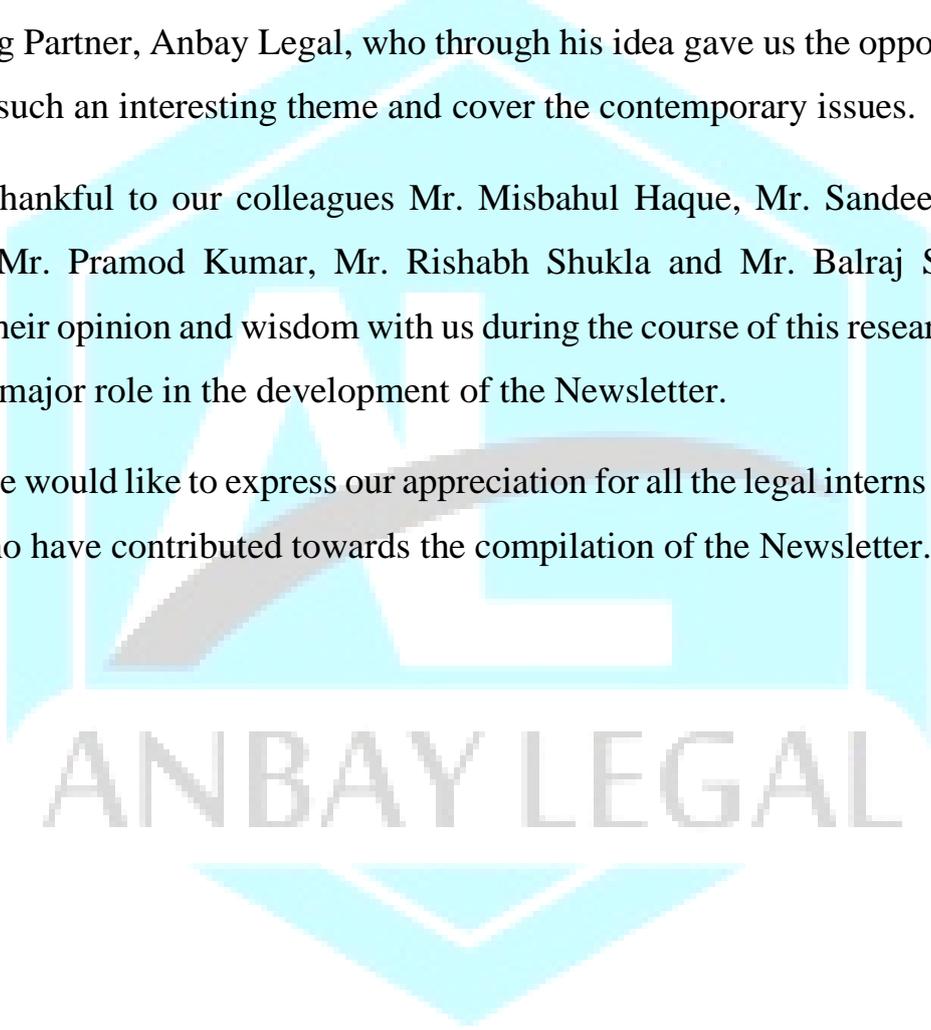
The theme chosen for this newsletter has been done keeping in mind the necessity behind openly talking about these issues. We don't require a special occasion or platform to raise our voice. Through these judgements we would like to highlight the number of cases that come up daily before the Hon'ble 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 and Mr. Balraj Singh 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.

A large, light blue watermark logo for Anbay Legal is centered on the page. It features a stylized 'A' and 'L' inside a shield-like shape, with the words 'ANBAY LEGAL' written in a bold, sans-serif font across the bottom of the shield.

ANBAY LEGAL

TABLE OF CONTENT

<u>S. No.</u>	<u>CASE NAME</u>	<u>TOPIC</u>	<u>Pg. No.</u>
<u>Supreme Court of India</u>			
1.	XXXX vs Kancherla Durga Prasad and ors	Right to Privacy	7
2.	Ansaar Mohammad v. State of Rajasthan	Rape	8
3.	XXXX vs The Principal Secretary, Health & Family Welfare Department	Abortion	9
4.	Akella Lalitha vs Konda Rao and ors	Rights of Mother	11
<u>High Court of Delhi</u>			
5.	Jagbir v State (NCT of Delhi)	POCSO Act	14
6.	Imran v. State of Delhi through Commissioner of Delhi Police & Ors.	POCSO Act	16
7.	Social Jurist v. GNCTD	PIL on Menstrual Health	17
<u>High Court of Madras</u>			
8.	Ganesh Kasinathan v Richa Sharma	Divorce And Child custody	20
9.	C Sivakumar v. A Srividhya	Divorce	21
<u>High Court of Kerala</u>			
10.	XXXX vs State of Kerala and Ors.	Victim Protection	24

11.	XXXX vs State of Kerala and Ors.	POCSO	28
<u>High Court of Bombay</u>			
12.	Anuradha Sharma vs Anuj Sharma	Guardians and Wards Act	31
<u>High Court of Calcutta</u>			
13.	Azad Ali Saha v. State of West Bengal	Rape	34
<u>High Court of Allahabad</u>			
14.	Oyas @ Avesh v. State of U.P	Acid attack	36
<u>High Court of Karnataka</u>			
15.	T. Sadananda Pai v. Sujatha S Pai	Alimony	38

ANBAY LEGAL



SUPREME COURT OF INDIA

- ◆ XXXX vs Kancharla Durga Prasad and ors (Privacy of victim on public domains)
- ◆ Ansaar Mohammad v. State of Rajasthan (Discouraging misuse of rape provisions)
- ◆ XXXX vs The Principal Secretary, Health & Family Welfare Department (Right to abort the child)
- ◆ Akella Lalitha vs Konda Rao and ors



XXXX v/s KANCHERLA DURGA PRASAD AND ORS.

(SLP (Crl) No. 3211/2022)

TOPIC: Right to privacy

BACKGROUND OF THE CASE

The petitioner in the instant case submitted an application before the Supreme court to protect her identity under “Right to be forgotten” and “Right to erasure”, being a part of “Right to privacy”. The petitioner was facing humiliation and her privacy was being infringed due her and respondents name being displayed on public domains with respect to offences committed on the modesty of woman and sexually transmitted diseases.

The petitioner requested the court to either remove or mask the her and respondent no. 1’s name along with all the additional details such as address, identification and case numbers.

DECISION OF THE COURT

The right to privacy of the parties to a case has been discussed time & again and different courts have taken contrasting stand on the matter. However, in the this case, the court understood the plight of the petitioner and the distress she was under, therefore, ordered the registry to mask the details of the petitioner and respondent no. 1 within 3 weeks from the date of passing of the order.

ANSAAR MOHAMMAD v/s STATE OF RAJASTHAN
(CRIMINAL APPEAL No. 962 OF 2022)

TOPIC: Section 376(2)(n) of IPC - Offence of committing repeated rape on same woman

BACKGROUND OF THE CASE

An appeal was filed against the order of the High court of Rajasthan, in which the appellant had filed for anticipatory bail for the offences under Section 376 (2)(n), 377 and 506 of the IPC and the application was dismissed.

High court stated that the appellant had promised to marry the complainant and due to their relationship, a girl child was born. The case is serious in nature and therefore, the pre-arrest bail application was rejected.

DECISION OF THE COURT

The Apex court took an opposed view from that of the High court. Supreme court held that the appellant and the complainant were living together for almost 4 year with the consent of both the parties. Also, when their relationship began, the complainant was 21 years old. Court stated a strong opinion that just because the relationship did not work and turned bitter, then it cannot form a valid ground to lodge a FIR under Section 376(2)(n). Therefore, the appeal was admitted and the order of the Rajasthan High Court was set aside.

XXXX v/s THE PRINCIPAL SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT

SLP (C) NOS. 12612/2022

TOPIC: Termination of Pregnancy

BACKGROUND OF THE CASE:

The petitioner was an unmarried women, who was in a consensual relationship. On 5th July, through an ultrasound she found out that she was 22 weeks pregnant. The petitioner wanted to get her pregnancy terminated. She has completed her B.A. degree and does not have a source of income, which will make it difficult to raise a child alone, since her relationship had also failed. She had moved a writ petition before the High Court of Delhi.

However, the High Court took a restrictive view and did not issue any notice about terminating the petitioner's pregnancy as it is not covered under Rule 3B and consequently Section 3(2)(b) is also not applicable. The Court only issued a notice in the matter, where the petitioner prayed for inclusion of "unmarried woman" within the purview of Section 3(2)(b) of MTP Act.

The petitioner approached the Supreme Court while she was in her 24th week of pregnancy, where the bench took a rather liberal stand on the matter.

DECISION OF THE COURT

⇒ The Apex court stated that the interpretation of the statute should be done in its entirety. According to the 2019 amendment made to the MTP Act, the word "husband" was replaced by "partner" and "married woman" by "woman" under Section 3(2) of the Act. Court further stated that –

“16. ... The Parliamentary intent, therefore, is clearly not to confine the beneficial provisions of the MTP Act only to a situation involving a matrimonial relationship. On the contrary, a reference to the expression “any woman or her partner” would indicate that a broad meaning and intent has been intended to be ascribed by Parliament. The statute has recognized the reproductive choice of a woman and her bodily integrity and autonomy. Both these rights embody the notion that a choice must inhere in a woman on whether or not to bear a child.”

⇒ On the other hand, Rule 3B of the Act does not bring unmarried women within its ambit and recognizes other categories of women. However, the court did not find any relevant ground to exclude unmarried woman to terminate their pregnancy. Therefore, passed a favorable order, allowing the petitioner to terminate her pregnancy, and not be disadvantaged just because she is unmarried.

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AKELLA LALITHA v/s KONDA RAO AND ORS**CIVIL APPEAL Nos. 6325-6326 of 2015**

TOPIC: Rights of a mother.**BACKGROUND OF THE CASE:**

In this case, the appellant was married to Konda Balaji, who is the son of the respondents, on 18th December 2003. The appellant gave birth to a baby boy, Ahlad Achintha, on 27th March 2006, however, two months later the husband of the appellant expired. The appellant then married Akella Ravi Narasimha Sarma, after an year.

The respondents, who are the grandparents of Ahlad Achintha, filed a petition appointing them as the guardians of the child and be granted visiting rights to them until the disposal of the petition. The trial court dismissed the petition, declaring mother as the natural guardian of the child and granting visiting right to the grandparents. This order was challenged before the High Court by both the parties.

The High Court passed the judgment-

- declaring the appellant/mother as the natural guardian of the child.
- It was observed by the court that the surname of the child was changed from Konda to Akella, against which the court ordered restoration of the surname to father's surname.
- In case, father's name needs to be mentioned then natural father should be named and if not permissible, Ravi Narasimha Sarma will be named as stepfather.

The appellant challenged the above judgment and raised two main issues before the Supreme Court. Firstly, whether the mother who is the natural guardian has

the right to change the surname of the child if she remarries after the death of her first husband and whether the child can be given for adoption to her husband. Secondly, whether the High court can pass an order on an issue for which relief has not been sought.

DECISION OF THE COURT:

- ⇒ The Apex Court taking a liberal stand on the matter stated that since the mother is the only natural guardian of the child after the death of her husband, she cannot be restrained from changing the surname of the child on remarrying. The court observed that –
- “10. ... Surname is not only indicative of lineage and should not be understood just in context of history, culture and lineage but more importantly the role it plays is with regard to the social reality along with a sense of being for children in their particular environment.”*
- ⇒ The court also stated that adoption is a way to restore a family life for a child who has been deprived of his family. Therefore, the first issue was in favour of the appellant.
- ⇒ Regarding the second issue, the court was of the view that the High Court had traversed beyond the relief sought under the pleadings and this could lead to miscarriage of justice. Therefore, set aside the said direction.



HIGH COURT OF DELHI

- ◆ Jagbir v State (NCT of Delhi) (Marriage between the accused and minor victim/survivor of sexual abuse will not mitigate the offence).
- ◆ Imran v. State of Delhi through Commissioner of Delhi Police & Ors. (Personal laws will not be considered above POCSO Act)
- ◆ Social Jurist v. GNCTD (Distribution of sanitary napkins in schools)



JAGBIR v/s STATE (N.C.T. OF DELHI)**(BAIL APPLICATION 111/2022)**

TOPIC: POCSO Act**BACKGROUND OF THE CASE:**

In this case, the mother of the victim filed a FIR under Sections 363, 366, 376 of IPC and Section 4 & 6 of POCSO Act. The complainant alleged that the petitioner/accused, who was then 27 years old had kidnapped her daughter, who was only 15 years old, on 9th August 2019.

After due investigation, the victim was finally found on 5th October 2021 and she had a 8 months old female child with her and she was found to be 1.5 months pregnant too. It was also alleged that the accused/petitioner was the caretaker of the house in which victim's boyfriend used to stay on rent and that after kidnapping her, petitioner lured her into marrying him in a temple.

The petitioner filed for a bail before the Hon'ble court on the grounds that he had a duty to take care of his wife/victim and his child.

DECISION OF THE COURT:

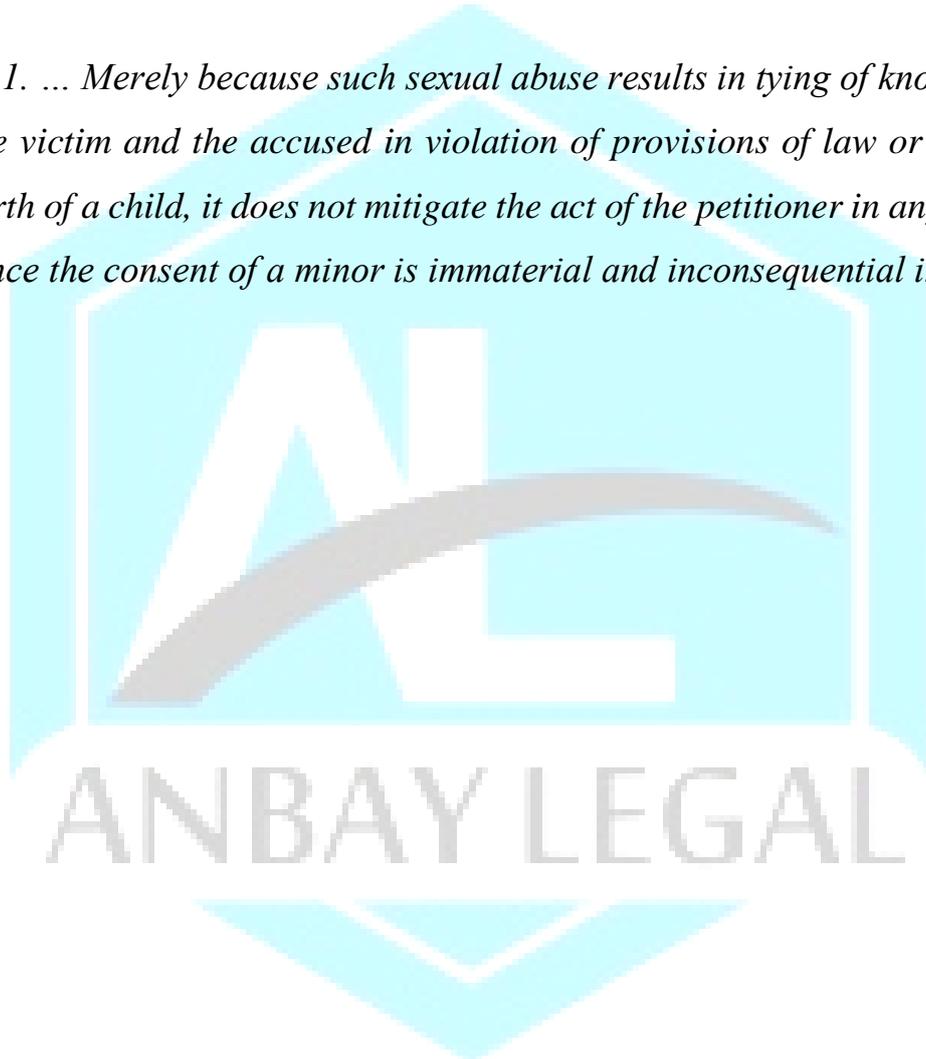
- ⇒ The court placed reliance on Section 375(6) of IPC, which stated that sexual intercourse by man with a woman below the age of 16 years, irrespective of her consent will amount to rape, to dismiss the claim that the relations established between the victim and accused were consensual in nature.
- ⇒ The court also relied on provisions of Prohibition of Child Marriage Act, 2006, since the marriage of the victim with the accused will fall under child marriage, which is prohibited as per law. Also that getting married in a

temple will not sanctify the crime committed by the accused since the victim was a minor and that marriage was yet to be proved on record.

⇒ Considering all the facts, stated that the instant case falls within the ambit of Section 5 of POCSO Act, which talks about aggravated penetrated assaults and is punishable under Section 6 of POCSO Act.

⇒ The court dismissed the petition, stating that-

“11. ... Merely because such sexual abuse results in tying of knot between the victim and the accused in violation of provisions of law or results in birth of a child, it does not mitigate the act of the petitioner in any manner, since the consent of a minor is immaterial and inconsequential in law.”



IMRAN v/s STATE OF DELHI THROUGH COMMISSIONER OF DELHI POLICE & ORS.

(W.P. (CRL) 1449/2022 & CRL. M.A. 12616/2022)

TOPIC: POCSO Act

BACKGROUND OF THE CASE:

The petitioner in this instant case filed for petition quashing the FIR filed under Section 376 and 506 of IPC and Section 6 of POCSO Act and chargesheet holding the petitioner liable under Section 376, 506, 406, 377 of IPC, Section 6 of POCSO Act and Section 4 of Dowry Prohibition Act.

The FIR states that the accused/petitioner had approached the victim's family with a proposal of marriage. The proposal was accepted on the condition that the victim will first complete her studies till 12th std and then marriage will be arranged. The parents of the victim had given lakhs of rupees and other material assets to the accused during the engagement. It is further claimed that the accused established physical relationship with the victim after the engagement on two occasions and then refused to marry her. During the time of the first occasion, the victim was only 16 years and 5 months old.

One of the main grounds submitted by the Counsel for the Petitioner is that Section 6 of POCSO Act will not be applicable because as per Muslim Personal Law, the victim was a major since she had attained puberty.

DECISION OF THE COURT:

The court clearly stated that POCSO Act is for safeguarding and protecting children below the age of 18 years from offences like sexual abuse and exploitations, it has nothing to do with the customary laws. It is only concerned with the age of the child and not the religion. Therefore, rejected the claim that victim attained puberty under Muslim Law and non-application of POCSO Act.

SOCIAL JURIST v/s GNCTD**(W.P. (C) 7947/2022)**

TOPIC: Menstrual Hygiene**BACKGROUND OF THE CASE:**

A Civil Rights Group, Social Jurist filed a writ petition before the Hon'ble court over non- distribution of sanitary napkins to female students in Delhi Government schools under the Kishori Yojana Scheme.

Kishori Yojana Scheme was formulated by Directorate of Education, under this scheme, all the female students studying in Delhi Government Schools would be provided with sanitary napkins in order to ensure personal hygiene and ensure a healthy environment in which they feel comfortable. It was claimed that since January 2021, the distribution was stopped causing distress to female students and also leads to them discontinuing their education due to lack of menstrual hygiene.

However, the Respondent claims that e-tender for the supply of sanitary napkin to all Delhi Government Schools has been floated and it will be finalised soon. Also, funds have been provided to Heads of Schools to secure sanitary napkins from Government e-Marketplace for distribution.

DECISION OF THE COURT:

The Court has accepted the argument regarding interim arrangements being made by the Government for distribution of sanitary napkins and disposed of the petition. But has specifically ordered the Delhi Government to ensure that there is uninterrupted supply of sanitary napkins under the Kishori Yojana to ensure that female students have a comfortable and tension-free environment to study.

This order has two-fold benefit, not only does it promote and ensure good menstrual hygiene but also promote education by welcoming female students to school by guaranteeing them a healthy atmosphere.





HIGH COURT OF MADRAS

- ◆ Ganesh Kasinathan v Richa Sharma (Judicially separated couples should treat each other with respect before their child)
- ◆ C Sivakumar v. A Srividhya (Suspecting spouse of having an affair without proof and insulting them at workplace amounts to cruelty)



GANESH KASINATHAN v/s RICHA SHARMA

(O.P. No. 633 of 2021 & O.A. No. 627 of 2021 & A. No. 3534 of 2021)

TOPIC: Divorce and Child custody

BACKGROUND OF THE CASE:

In this case, the applicant and respondent are parents of a child and are living separately. The applicant has approached the Court regarding the visitation right to meet and spend time with his child.

While passing the order for the case, the Court has stated some very relevant points which are utmost important to provide a healthy and safe environment for the child to grow in, while the parents are going through a separation or divorce.

DECISION OF THE CASE:

The court permitted and specified the days and time during which the applicant can meet and spend time with his child.

The court emphasised on the need to create a love environment for the child even though the parents might not be on the best of the terms with each other. Also, that sometimes spouses develop bitterness toward each other which gets displayed in front of the child too in the form of fights, alienating one parent or just ill- treating each other. All these situation may lead to the child feeling helpless and frightened, which can eventually lead to bigger issues in the future.

Therefore, it is the duty of the parents to create a friendly environment for the child and at least treat each other as guests and abide by our cultural custom of “Atithi Devo Bhava”.

C. SIVAKUMAR v/s A. SRIVIDHYA**(C.M.A. no. 3249 of 2017)**

TOPIC: Divorce**BACKGROUND OF THE CASE:**

In this case, an appeal was filed against the dismissal of divorce petition by Family Court. The appellant and respondent were married since 10th November 2008 and also had a child. However, the appellant/husband on the grounds of cruelty by the respondent/wife filed for divorce.

The appellant claimed that the respondent would come to his workplace and create a scene by accusing him of having an affair with a colleague, throw abuses at him and humiliate him, which had tarnished his reputation. The respondent had also filed two complaints in police station alleging that the appellant has had affairs with his female colleagues.

The respondent claimed that the complaints were an attempt to reunite with her husband and live together for the sake for their child. However, she did not provide evidence to support the allegations of her husband's affairs.

The Court in this case, highlighted the ambit of cruelty and reiterated that it is not limited to just physical cruelty.

DECISION OF THE COURT:

The court majorly relied on the definition of cruelty as mentioned in *A. Jayachandra v. Annel Kaur [(2005) 2 SCC 22]*, where it was held that cruelty need not be just physical but creating an apprehension in the mind of the spouse about his/her mental welfare then it also amounts to cruelty.

The court, therefore, held that –

“ 13. ... we can safely infer that the respondent/wife visited the college in which the appellant/husband was working and she created a scene there by connecting the appellant with other female teaching staff in the presence of other staff members and students. Certainly this act of the respondent would amount to mental cruelty within the meaning of Section 13(1)(ia) of Hindu Marriage Act as explained by the Apex Court in the case law A.Jayachandra versus Annel Kaur cited supra. We can also add that this act of respondent would certainly cause serious, irreparable injury to the image of the appellant in the minds of his colleagues and students.

14. ... Suspecting the character of other spouse and making complaint to police would certainly amount to mental cruelty, when it is not substantiated by any evidence. In the case on hand, the respondent herself admitted that she did not know the name of the lady with whom the appellant was allegedly having illegal intimacy.”

Relying on the points stated above, the court ordered dissolution of the marriage and held that there has been mental cruelty inflicted upon the appellant by the respondent due to her conduct.

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HIGH COURT OF KERALA

- ◆ XXXX vs State of Kerala and Ors. (Necessary steps taken to ensure protection of victim)
- ◆ XXXX vs State of Kerala and Ors. (Every allegation against the accused should not be considered as the ultimate truth)



xxx v/s STATE OF KERALA AND ORS.

(W.P (C) No. 22276 OF 2021)

TOPIC: Victim Protection

BACKGROUND OF THE CASE:

A plea was filed by a sexual attack survivor. She alleged that, she was harassed by the accused and two other police officers. However, various interim orders were passed, and no further specific order was required. But the court observed that the victim on various occasions had to visit the police station without the appointed victim liaison officer.

This situation concerned the court about the state of the victims as this is not an isolated incident. There arose a need to have a gender-neutral mechanism in place for the empowerment of the victim, so that they feel safe to approach the law enforcement agencies and obtain the necessary support.

DECISION OF THE COURT:

The court welcomed suggestions from all the lawyers on how to create a safer environment for the victim and protect from the trauma they face during the investigation process.

After the discussions at the bar and reflecting on the suggestions from the State, the Court came up with the following mechanisms, which are already implemented schemes:

- ⇒ One Stop Centre: An initiative of the Ministry of Women and Child Development, one stop centres are established to support women affected by violence both in public and private places, within the family, community, and the workplace. It provided wide range of support to women such as medical, legal, psychological support. Along with these

services, centre will provide medical assistance and aid in lodging FIR/ statement. Supervision and Monitoring committees have been set up at district, state, and national level.

Kerala has already established these centres in each district.

⇒ Victim Rights Centre (VRC): To ensure fair and equitable justice to victims, Kerala High Court Legal Services Committee conceptualised a service platform which was brought to action by Kerala Legal services Authority. VRC is an integrated action between governmental, non-governmental and inter-governmental organisations to provide psychological, legal and sociological assistance to the victim. Any women, child or transwomen, who suffered as a result of act or omission which is against the law, will be protected by the centre, if asked for help.

Email id of the VRC is vrckhclsc@gmail.com and phone no. is 8330035547.

⇒ Victim Liaison Officer (VLO): The primary role of the VLO was conceptualized to maintain regular communication with the family of the victim/deceased and to establish significant link between them and the Investigating Officer. In homicide cases, VLO will be deployed in the rank of a Senior Police Officer/ Police Officer and in rape/molestation cases of minor children, Women Senior Police Officer/Women Police Officer will be deployed. When the investigation begin, within 48 hours VLO will be appointed and who shall meet the victim or the family of the deceased at least once a week to inform about the progress of the investigation. She/he will also have to maintain a dairy listing the details of the visits and report to the investigation officer.

The above-mentioned platforms are already available but hardly availed. Therefore, the court also included the following protocols in the writ petition-

- a) The Government will, constantly broadcast the Toll Free Number '112' as an Emergency Support System to be known to every citizen, so that the victim of a child abuse or sexual assault can access it whenever required.
- b) Every victim of sexual assault and child abuse must be encouraged to access the Toll-Free Number or the Police Control Room Number '100'; and on such intimation being received, it will be fed into a digital system, to be then brought to the notice of the jurisdictional Police Station, for necessary steps under Section 154 of the Cr.P.C.
- c) The Court recorded the further undertaking of the State that calls made to the Toll-Free Numbers of '112' and '100' will only be attended by well sensitized and trained personnel, who will make sure that the victim is given sufficient support from the inception, until the time she/he requires it thereafter.
- d) On intimation of a sexual assault or child abuse being received by the Toll-Free Numbers, the Police Control Room or the jurisdictional Police Station, will take immediate steps to contact the victim either personally or through phone without, however, summoning him/her to the Police Station.
- e) While taking the statement of the victim, mandatory provisions of Section 157(1) of the Cr.P.C., namely, that same be recorded at his/her residence or in the place of his/her choice and as far as practical, by a Police Officer in the presence of his/her parents/guardian/near relatives or social worker, shall be scrupulously complied with.
- f) On registration of FIR, VLO will be appointed by the Investigating Officer, who shall contact the victim immediately.
- g) After this, the investigation officer will introduce the victim to numbers of Stop crisis centre and VRC.
- h) 24 hours access to VLO and One stop crisis centre/VRC , as required, be made available to the victim.

- i) One stop crisis centre/ VRC will provide psychological as well as legal support to the victim.
- j) The VLO as also the 'One Stop Crisis Centre'/'VRC', shall make available every assistance necessary to the victim for the processes under Section 164A of the Cr.PC, and must actively guide and instruct, advising her/him of her/his rights under it, thus being able to exercise it diligently and with confidence.



xxx v/s STATE OF KERALA AND ORS.

BAIL APPLICATION No. 5271 of 2022

TOPIC: POCSO Act

BACKGROUND OF THE CASE:

In this case, the petitioner is the uncle of the victim, who allegedly misbehaved with the victim who is 12 years old. Therefore, the case was filed under various provisions of POCSO Act.

The counsel for the petitioner claimed that it is false case, filed by the sister of the petitioner under the garb of family property dispute. Whereas, the counsel for the victim, contended that victim started to show difference in behaviour and during her counselling, it was revealed that she had been sexually assaulted. While the Addl. Director General of Prosecution relying on *Shri.Gurbaksh Singh Sibbia and Others v. State of Punjab [(1980) 2 SCC 565]* and *Sushila Aggarwal and others v. State (NCT of Delhi) and Anr [(2020) 5 SCC 1]* stated that limited custody of the petitioner would suffice the investigation.

DECISION OF THE COURT:

The court made the following observation while allowing the pre-arrest bail application of the petitioner:

“... 8. Though the court ought to be sensitive, that does not mean that the allegations ought to be accepted as the gospel truth in every case. The court must always be cautious of false allegations for the purpose of achieving ulterior objectives. Tutoring a witness at the hands of the parents, especially when the victim is a child, cannot be ignored even while considering an application for regular bail or pre-arrest bail... It is in this context, that the decisions in Gurbaksh Singh’s case and Sushila Aggarwal’s case (supra) have struck a balance between the interests of investigation into the alleged crime as well as

the personal liberty by providing for the concept of limited custody of an accused.”





HIGH COURT OF BOMBAY

- ◆ Anuradha Sharma v/s Anuj Sharma (Mother cannot be asked to choose between her career and child).



ANURADHA SHARMA v/s ANUJ SHARMA**(W.P. No. 6569 OF 2022)**

TOPIC: Guardian and Wards Act**BACKGROUND OF THE CASE:**

The petitioner and the respondent were married on 08th July 2010 and blessed with a daughter on 8th July 2015. However, the petitioner claimed that she was being treated with cruelty by her husband/respondent and his family. Her professional life was affected due to the pressure to do domestic chores. She, therefore, filed for divorce on the ground of irretrievable breakdown of marriage on 14th November 2017.

Another petition was filed by the petitioner for the sole custody of the minor daughter under the Guardians and Wards Act. She claimed that she had been taking care of her daughter single-handedly without any contributions from the respondent. That the respondent was always focused on his career and position in the society.

The petitioner was offered a job in Poland which is a great opportunity for her career growth that she wishes to take it up and shift to Poland with her daughter. The petitioner will also be accompanied by her mother. The respondent claims that shifting to Poland will only result in breaking the bond between the child and father.

DECISION OF THE COURT:

The court observed that for the welfare of the child, it is important that presence of both the parents is provided to the child. However, in this case, the child has been in the constant care of the petitioner/mother from the beginning who is working and has been able to provide a healthy environment to the child to grow in. Therefore, it is not possible to separate the child from her mother.

The court considering the affidavit filed by the petitioner which restricts her time in Poland for just two years and also lists down the schedule according to which the respondent can meet his child, accepted the request of the petitioner to move to Poland along with her child. The court further stated that a mother cannot be asked to choose between her child and her career.





HIGH COURT OF CALCUTTA

- ◆ Azad Ali Saha v/s State of West Bengal (Non-ruptured hymen of the minor does not rule rape).



AZAD ALI SAHA v/s STATE OF WEST BENGAL

C.R.A. 513 of 2013

TOPIC: Rape

BACKGROUND OF THE CASE:

In this case, a 5 year old girl who was living with her mother in a village was allegedly raped by the appellant on 22th March 2007. During the incident, the mother of the victim had gone out to fetch water, on returning she saw the appellant committing rape on her daughter. She cried for help and the appellant immediately ran away.

The mother of the victim tried to lodge FIR but none were registered. Finally, she approached the West Bengal Commission for Women, then finally in June 2007 the complaint was filed.

During the trial, after examining the witnesses and evidence on record, the Trial Judge found the appellant to be guilty and convicted him. Then, the appeal was filed by the appellant against the judgment of the Sessions Court convicting him under Section 376(2)(f) and sentencing him to rigorous imprisonment for a period of 10 years and fine of Rs. 2000/-.

DECISION OF THE COURT

The court stated that the delay in filing of the FIR was due to the weak local police administration in responding to a case of such sensitive nature.

An important observation made in this case is that even though the medical report shows that the hymen of the minor girl is not ruptured, the possibility of rape cannot be ruled out. In the instant case, apart from non-rupturing of the hymen, there were injuries found on victim's vulva as well as abrasions over her inner thigh. So, the defence of the appellant on the non-rupturing of the hymen was dismissed by the court. The appeal was dismissed.



HIGH COURT OF ALLAHABAD

- ◆ Oyas @ Ayesh v/s State of U.P.(Charges can be framed under Section 326 of IPC, even if acid attack survivor did not suffer grievous hurt).



OYAS @ AYESH v/s STATE OF U.P.**(CRIMINAL REVISION No. 2407 of 2022)**

TOPIC: Acid Attack**BACKGROUND OF THE CASE:**

A revision plea was filed by the accused against the order of the lower court dismissing the discharge application. The accused was charged under sections 326-A, 504, 506 of the IPC.

The accused claimed that no charges arise under Section 326-A since the victim did not suffer grievous hurt as defined under Section 320 of the IPC. However, the State's Counsel submitted that there is sufficient evidence to support charge under Section 326-A against the accused and that the co-accused is already convicted under Sections 326-A and 506 of IPC .

DECISION OF THE COURT:

The court dismissing the criminal revision, emphasised that there are 9 'ORS' in the definition of Section 326-A of the IPC and stated that –

“But from the reading of the Section 326-A IPC, it reveals that nine "OR" has been used which shows that for the charge under Section 326A IPC can be framed without grievous hurt to the victim. But grievous hurt to acid burn victim, is not mandatory in each case.”

The court dismissed the argument put forth by the accused and considered the injuries caused to the survivors/victims which were acid burn injuries. Also, the court laid emphasis on the point that since the court was at the stage of framing charges, the trial court should only consider the materials placed before it and can even frame charges based on strong suspicion centred on such material.



HIGH COURT OF KARNATAKA

- ◆ T. Sadananada Pai v/s Sujatha S. Pai (Denying alimony to able-bodied husband with a capacity to earn).



T. SADANANADA PAI v/s SUJATHA S. PAI**(M.F.A. No. 1797 of 2021 (MC))**

TOPIC: Alimony**BACKGROUND OF THE CASE:**

The appeal in this case has been filed against an order of the family court dismissing the petition of the appellant filed under Section 25 of the Hindu Marriage Act, asking the respondent for permanent alimony.

The appellant and respondent were married on 25th March 1993. The appellant claimed that the respondent left the matrimonial home in February 1994. Later, a son was born to them out of wedlock, but the respondent did not return. Appellant filed for restitution of conjugal rights which was dismissed and subsequently the appeal was also dismissed.

The appellant then filed for dissolution of marriage by divorce and a petition seeking permanent alimony from the respondent. The family court dissolved the marriage and rejected the petition for alimony.

The respondent is an Assistant manager with a co-operative society with a monthly salary of Rs. 8000/- and the appellant is a security guard in a temple on contract basis.

DECISION OF THE COURT:

The court observed that the respondent has the responsibility to take care of the child by ensuring a healthy environment and good education, while the appellant has no contribution in that regard. Therefore, putting the pressure on the respondent to maintain the appellant also is not justified. At the same time, the appellant had admitted that he holds share in the lands held by his father. The

court emphasised that the appellant is an able-bodied person and is in a capacity to earn, therefore, the respondent is not required to maintain the appellant.



TABLE OF ABBREVIATIONS

<u>S.No.</u>	<u>Abbreviations</u>	<u>Definition</u>
1.	C	Civil
2.	C.M.A.	Civil Miscellaneous Appeal
3.	C.R.A.	Cross Appeals
4.	Cr.P.C.	Code of Criminal Procedure, 1973
5,	CrI	Criminal
6.	CrI M.A.	Criminal Miscellaneous Appeal
7.	F.I.R.	First Information Report
8.	I.P.C.	Indian Penal Code, 1860
9.	M.F.A.	Miscellaneous First Appeal
10.	MTP Act	Medical Termination of Pregnancy Act, 1971
11.	O.A.	Original Application
12.	O.P.	Original Petition
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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