



NEWSLETTER ON WOMEN & CHILD RIGHTS



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Published by : Anbay Legal
Editor: Ms. Radhika Goel
Co- Editor: Mr. Brij Bhushan Singh



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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 2nd 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 August 2022 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in August.

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. Shubham Sharma and Mr. Pranjal Apurva 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 with special mention of Sanchit Pandey, who have contributed towards the compilation of the Newsletter.

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SUPREME COURT OF INDIA

- ◆ Benazeer Heena v/s Union of India And Ors (Right to ask for Divorce by a Muslim Women)
- ◆ Deepika Singh v/s Central Administrative Tribunal (Maternity Leave)
- ◆ Ajhola Devi & Anr. v/s State of Jharkhand (Dowry Death)



BENAZEER HEENA v/s UNION OF INDIA AND ORS.

(WRIT PETITION(s) (CIVIL) No(s). 348/2022)

TOPIC: Divorce by Muslim women.

DATE OF ORDER/JUDGEMENT: 16/08/2022

BACKGROUND OF THE CASE

A PIL petition was filed by journalist Benzaneer Heena where her husband through speed post sent his first instalment of talaq on April 19 and other two instalments came in subsequent months. The petitioner raised voice against this discriminatory practice as it was only the men who could exercise it. She stated that the practice was arbitrary and against the provisions of Article 14, 15, 21 & 25 of the Indian Constitution.

DECISION OF THE COURT

The Apex Court stated that in many cases divorce was granted on the ground of irretrievable breakdown of marriage and extended the same option to the petitioner, if incase the Mehr was taken care of.

The Court was of the view that the practice of Talaq-e-Hasan is not so improper after all. The Muslim women have the option of seeking divorce through “Khula”.

DEEPIKA SINGH v/s CAT
(CIVIL APPEAL NO. 5308 OF 2022)

TOPIC: Maternity Leave.

DATE OF ORDER/JUDGEMENT: 16/08/2022

BACKGROUND OF THE CASE

The appellant is a Nursing officer in Post Graduate Institute of Medical Education and Research (PGIMER) at Chandigarh. She married Amir Singh, a widower in the year 2014, who already had two children from his first marriage. The petitioner had the names of the children entered in the official service record at PGIMER.

However, the petitioner wanted to avail maternity leave after the birth of her first biological child in the year 2019. But the same was rejected by the authorities on the ground that she had already availed child care leaves for her husband's two children and therefore was not entitled to benefit for the third child as per CCS (Leave) Rules, 1972.

The petitioner approached CAT, Chandigarh against the decision of the administrative authorities. CAT dismissed the application of the petitioner. She, then filed an appeal before the High Court, but same view was also taken by the court and dismissed the petition.

DECISION OF THE COURT

The Apex Court took a liberal view after considering all the facts and stated that biological children of petitioner's spouse from his first marriage does not disentitle the petitioner from availing maternity benefit for her own biological child. Court also observed that-

“24. ...

The fact that she was granted childcare leave in respect of the two biological children born to her spouse from an earlier marriage may be a matter on which a compassionate view was taken by the authorities at the relevant time. Gendered roles assigned to women and societal expectations mean that women are always pressed upon to take a disproportionate burden of childcare work...

... Time spent in unpaid work includes childcare. In this context, the support of care work through benefits such as maternity leave, paternity leave, or childcare leave (availed by both parents) by the state and other employers is essential. Although certain provisions of the Rules of 1972 have enabled women to enter the paid workforce, women continue to bear the primary responsibility for childcare. The grant of childcare leave to the appellant cannot be used to disentitle her to maternity leave under Rule 43 of the Rules of 1972.”

Therefore, appeal was allowed and it was stated that when the dynamics of the petitioner’s family changed and she applied for maternity leave at PGIMER, it was a case for which the law was not well accounted for. Therefore, in such situations, court try to give effect to the purpose of law in question instead of preventing its application.

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AJHOLA DEVI & ANR. v/s STATE OF JHARKHAND**CRIMINAL APPEAL NO. OF 2022 (Arising out of SLP (Crl.) No. 4221 of 2022)****TOPIC: Dowry Death****DATE OF ORDER/JUDGEMENT: 10/08/2022****BACKGROUND OF THE CASE**

The appellants had filed an appeal against their conviction under section 304-B IPC. The appellants are mother-in-law and father-in-law of the deceased, and are convicted for the offence of dowry death. The deceased died within a period of one year from marriage and accused presented a false story stating that the deceased died due to diarrhoea which could not be proved. The prosecution had duly proved the demand for dowry by the accused and considering the facts, Trial Court awarded 10 years of rigorous imprisonment to the appellants, which was also upheld by the High Court of Jharkhand.

DECISION OF THE COURT

The Hon'ble Apex Court strongly put forth the opinion that dowry death is a crime against the society and must be dealt with a firm hand. It is a menace that needs to be controlled. Therefore, upheld the order of the High Court and decided that there is no reason to interfere with the same. The Court also stated that –

“2. ... The offence under Section 304B – offence of dowry death is the offence against society. Such offences have serious impact upon society. Keeping in mind the aforesaid aspects, imposition of sentence for the offence of dowry death is required to be considered. A strong message must go in the society that a person who commits such an offence of dowry death and/or the offences under the Dowry Prohibition Act shall be dealt with an iron hand.”



HIGH COURT OF DELHI

- ◆ V v/s State of Delhi & Anr (Sexual Assault)
- ◆ Kajal v/s State (NCT of Delhi) (Rights of undertrial pregnant women)
- ◆ Fija & Anr v/s State Govt. of NCT of Delhi & Ors. (POCSO Act and Personal Laws)



V v/s STATE NCT OF DELHI & ANR.

(BAIL APPLICATION 565/2022)

TOPIC: Sexual Assault

DATE OF ORDER/JUDGEMENT: 05/08/2022

BACKGROUND OF THE CASE:

In this case, the complainant and the accused are husband and wife, who got married on 02/12/2014 but were living separately since 2015 due to matrimonial differences. The complainant had previously lodged a complaint against the accused under Section 498A/406/323/34 IPC and Section 3&4 D.P. Act. This matter is still pending before the Trial Court. Petition for divorce was also filed and domestic violence proceedings were also initiated. A daughter was born to them out of wedlock in the year 2016.

In the present instance, the complainant filed an FIR against the accused on the grounds of sexually assaulting their 5 year daughter, under section 377 IPC and section 6 POCSO Act, later section 376AB IPC was also invoked against the accused. Now, the accused approached the Hon'ble Court for anticipatory bail under Section 438 r/w 482 Cr.P.C.

Counsel for the petitioner contended that the statements of the complainant with regard to the time of the incident was inconsistent with the evidence procured and that the statement of the victim under Section 164 Cr.P.C. shows ambiguity with regard to the date of occurrence of the incident. Also, that the complainant was trying to take revenge using the daughter as a bait since there were already pending matrimonial disputes.

DECISION OF THE COURT:

The Court observed that Section 438(4) Cr.P.C. bars anticipatory bail in offences u/s 376AB IPC. By virtue of Section 42 of POCSO Act, an offence punishable

under POCSO Act as well as 376AB IPC, the accused if found guilty will be punished under either which has greater degree of punishment. Just because the accused is charged with both 376AB IPC and Section 6 POCSO Act, Section 438(4) Cr.P.C. does not stand obliterated.

Further the Court took the following stand and dismissed the application for anticipatory bail.

“11. Considering the background of series of litigations between the petitioner and the complainant, who is the mother of victim and a lawyer, the possibility of false allegations for purpose of achieving ulterior motives through tutoring of a minor child cannot be ruled out as the consequences of prosecuting a father of a victim under rape are very serious, since the person comes down in the eyes of society and is virtually shunned from the main stream of life.

However, at the same time, in case of allegations of offences against a minor victim, the Courts have to be sensitive to their plight when faced with a situation wherein allegations have been lodged by mother of the victim against her own husband of having sexual contact with his own daughter and that too in her presence in the house. “

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KAJAL v/s STATE NCT OF DELHI.

(BAIL APPLICATION 2286/2022 & CrI. M.A. 15991/2022)

TOPIC: Rights of under-trial pregnant woman.

DATE OF ORDER/JUDGEMENT: 18/08/2022

BACKGROUND OF THE CASE:

The petitioner in this case, filed an application for interim bail for a period of 6 months on account of being pregnant and her due date approaching.

In this case, an FIR was registered by the victims Raman and Menka who got married against the will of Menka's parents and therefore, the family member of Menka abducted both of them. They even beat up Raman and amputated his private part and stabbed him too. He was later recovered from a drain and admitted in AIIMS Delhi.

16 members of the family were arrested while 3 are still absconding and 2 are charge sheeted without arrest.

The APP for the state contended that the pregnant under-trial should not be granted bail just because she is pregnant, since she can be a huge threat to the victims and that her pregnancy has no complications which would require any special care.

DECISION OF THE COURT:

The Court stated that the offence committed is of a serious nature and all aspects have to be considered while granting bail. However, pregnancy of a woman can be seen as a special circumstance.

“5. ... giving birth to a child while in custody, would not only be a trauma to the mother but also create an everlasting adverse impact on the child, whenever questioned about his birth. Every pregnant female deserves the dignity enshrined under Article 21 of the Constitution of India during motherhood. The Court is

expected to take note of interest of a child, who is not expected to be exposed to the prisons, until and unless there is a grave danger in releasing the petitioner on bail. “

Reliance was also placed on proviso of Section 437(1) Cr.P.C. which states that if a person charged with offences punishable with death or life imprisonment can be granted bail if such person is below 16 years or a woman or sick or infirm.



FIJA & ANR v/s STATE NCT OF DELHI.**(W.P. (Crl) 763/2022)**

TOPIC: Personal Law & POCSO Act**DATE OF ORDER/JUDGEMENT: 17/08/2022****BACKGROUND OF THE CASE:**

In this case, the petitioners are Muslim and were married on 11/03/2022 as per Muslim rituals. Petitioner no. 1 is now pregnant. However, their marriage was opposed by Respondent no. 4&5 who are the parents of the wife. The petitioner no. 1 claimed that her parents used to beat her and forced her to marry someone else, even though she was in love with petitioner no. 2.

Parents of petitioner no. 1 filed an FIR against petitioner no. 2 under Section 363, 376 IPC and Section 6 POCSO Act.

As per Muslim Personal Law, a girl is major when she attains puberty which she before the age of 18 years which is the age of majority under POCSO Act. Also, the status report stated that the couple established physical relationship after getting married. Therefore, the petitioner contended that petitioner no. 1 is not a minor and wilfully married petitioner no. 2 and resided with him as a married couple, therefore, case is not made out under POCSO Act.

DECISION OF THE COURT:

The Court reaffirmed that as per Mohammedan Law, a girl can get married when she attains puberty without the consent of her parents even though she might be below the age of 18 years.

Court also stated that –

“18. ... The object of the POCSO Act states that the Act is aimed to secure the tender age of the children and ensure they are not abused and their childhood and youth are protected against exploitation. It is not customary law specific, but the aim is to protect the children below the children below the age of 18 years from sexual abuse.

20. ... in the present case, it is not a case of exploitation but a case where the petitioners were in love, got married according to the Muslim laws, and thereafter, had physical relationships.”

Emphasis was also placed on the petitioners being lawfully married and if they were separated it affects them and also their unborn child. It is imperative to protect the interest of petitioner no. 1. Since, there was consent of petitioner no. 1 in marrying petitioner no. 2, they should not be separated and if so done, will lead to encroachment of personal space.

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HIGH COURT OF MADRAS

◆ V. Anusha v/s B. Krishnan (Matrimonial Disharmony)



V ANUSHA v/s B KRISHNAN

(C.R.P (PD).No.1824 of 2022 & C.M.P.No.9350 of 2022)

TOPIC: Matrimonial Disharmony

DATE OF ORDER/JUDGEMENT: 11/08/2022

BACKGROUND OF THE CASE:

In this case, a revision petition has been filed by the respondent's wife, granting relief of mandatory injunction directing the husband/respondent to leave the matrimonial home in order to maintain peace and welfare of the children. The Family Court had partly allowed the petition, directing the husband to not disturb the peace of the house while living under the same roof. Aggrieved by this order, the petitioner referred this civil revision petition.

The counsel for the petitioner submitted that the respondent has an abusive behaviour and on several occasions has insulted the petitioner for her profession (Advocate), manhandled her, used filthy language and shown violent behaviour in front of the children. This forced the petitioner to file for mandatory injunction to remove the husband from the matrimonial house.

Despite accepting the facts, the Family Court did not grant the injunction instead directed the respondent to not interfere with the peaceful life of the petitioner while living together. But that did not stop the respondent and he was back on his abusive behaviour.

DECISION OF THE CASE:

The Court took a liberal view and stated that abusive behaviour shown especially before the children can adversely affect them since they are at an impressionable age. Merely directing the husband to not act in an abusive manner is not enough

to maintain the peace of the matrimonial home. When a couple lives together and behaviour of one party towards the other plays a major role in establishing respect and recognition they get from each other. When that peace is disturbed by any one party, there shouldn't be any ounce of hesitation in removal of such party from the house.

The Court further stated that-

“12. If the removal of the husband from home alone is the only way to ensure domestic peace, the courts need to pass such orders irrespective of the fact whether the respondent has or has not another accommodation of his own. If the husband has got an alternate accommodation, it is fine that he can be asked to accommodate himself in that alternate premises. If he does not have any other accommodation, it is upto him to secure an alternate accommodation.”

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HIGH COURT OF KERALA

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



xxx v/s UNION OF INDIA & Ors.

(W.P. (C) No. 26103 of 2022)

TOPIC: Termination of Pregnancy

DATE OF ORDER/JUDGEMENT: 16/08/2022

BACKGROUND OF THE CASE:

A writ petition was filed before the Hon'ble Court to terminate the pregnancy of a 14-year-old rape survivor. She was 28 weeks pregnant.

DECISION OF THE COURT:

The Court taking a liberal stand, stated that if the pregnancy is continued then it could lead to grave injury to the mental health of the survivor.

The Court had previously ordered constitution of a Medical Board for examining the victim and look into the plea for termination of pregnancy. The medical board had suggested the opinion of affecting mental health.

The Court issued directions allowing termination of pregnancy of the victim. Also, if the baby is alive at birth, the hospital should give best medical treatment to the baby. Finally, if the victim is not willing to take the infant, then state and the concerned agencies will take up responsibility and provide medical support to the child.



HIGH COURT OF HIMACHAL PRADESH

- ◆ Durgi Devi v/s State of Himachal Pradesh & Ors. (Family Pension and Personal Law)



DURGI DEVI V v/s STATE OF HIMACHAL PRADESH & ORS
(CIVIL WRIT PETITION No. 1657 OF 2016)

TOPIC: Family Pension & Personal Laws

DATE OF ORDER/JUDGEMENT:05/08/2022

BACKGROUND OF THE CASE:

In this case, the petitioner married Bhola Ram as per the rituals and 6 children were born to them from wedlock. However, the petitioner at the time of marriage wasn't aware that Bhola Ram was already married. Petitioner came to know of this much later. Bhola Ram died in the year 2002, and named the petitioner for family pension. But a claim was put forth by Bhola Ram's first wife Ramku Devi and respondents concluded that since she is the legally wedded wife, was therefore entitled to the family pension. The petitioner had previously filed a civil writ petition to quash the above decision to grant pension to Ramku Devi. The petitioner is now claiming that since Ramku Devi died in 2015, the benefits of the pension should be given to the petitioner and her children.

DECISION OF THE COURT

The Court observed that -

“ 4(ii). While dismissing the writ petition on 27.07.2011, the Court had held that the deceased had solemnized second marriage with the petitioner during subsistence of his first marriage with Smt. Ramku Devi, which is void, therefore, there could not be a valid nomination in favour of the petitioner by the deceased for the payment of family pension. The Court also held that even otherwise the nominee is only a trustee of the rightful claimant, and no relief cannot be granted to him.”

Therefore, family pension can be granted to second wife only when personal laws applicable on the parties permits more than one marriage. This is strongly supported by Rule 45 of CCS Pension rules which disentitles second wife of family pension when married as per Hindu Personal Laws.



TABLE OF ABBREVIATIONS

<u>S.No.</u>	<u>Abbreviations</u>	<u>Definition</u>
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. (Crl)	Writ Petition (Criminal)

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ANBAY LEGAL

NEW DELHI LUCKNOW

CONTACT US:



anbay.legal@gmail.com, info@anbaylegal.com



011-35592375



251, Upper Ground Floor, Kailash Hills, East of Kailash, New Delhi- 110065

2nd Floor, Gyan Vihar Colony, near Kamta Power House, Chinhath, Lucknow, U.P.- 226028



<https://www.anbaylegal.com/>