



NEWSLETTER ON WOMEN & CHILD RIGHTS



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Newsletter on Women & Child Rights

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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 4th 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 October 2022 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in October.

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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HIGH COURT OF DELHI

- ◆ X v/s State of NCT of Delhi (acting through its secretary) & Anr. [POCSO Act]



X v/s STATE OF NCT of DELHI (acting through its Secretary) & Anr.
CRIMINAL APPEAL NO. 63 OF 2022

TOPIC: POCSO Act

DATE OF ORDER/JUDGEMENT: 20/10/2022

BACKGROUND OF THE CASE

An appeal was filed against the compensation was awarded to the victim in a POCSO Act. The Ld. ASJ convicted the accused and ordered a RI of 12 years and Rs. 20,000/- fine, along with Rs. 50,000/- as compensation to the victim. The appellant, prays for the enhancement of the compensation. An application was also sent to DLSA and DSLSA for review of the compensation under the Delhi Victim Compensation Scheme, 2018 but the authorities claimed that the application was not maintainable, since provision for review was not available under the scheme.

DECISION OF THE COURT

The Hon'ble court was of the view that the compensation being awarded to the victim must be assessed on case-to-case basis, fact & circumstances of each case differs as well as the nature and capacity of the accused to pay.

“ 42. When the act provides two spectrum one minimum one maximum, the leaning must be towards the maximum...”

“46. The compensation as per DVC scheme provides a maximum and a minimum. The statues/ scheme should not decide the maximum. The court has the power to scale up and scale down. To scale down these provisions would mean injustice to the survivors who have suffered. These are the situations which require scaling up. For instance, the compensation for —rape in the schedule has been provided

as 7 lakhs maximum. In view of the aforesaid discussion, I am of the view that purposive interpretation and beneficial legislation requires the said sum of Rs. 7 lakhs to be considered as a minimum base while adjudicating compensation in POCSO cases.”

Therefore, the court suggested that for POCSO survivors, the final compensation should not be less than Rs. 10.5 Lacs, i.e., $7+3.5=10.5$ lacs (3.5lacs being 50% of 7 lacs getting added in matters of POCSO as per the Delhi Victim Compensation Scheme).

With respect to the interim compensation being granted to the victim, it should be less than 25% of the maximum awardable compensation and if the special court is of the opinion that the compensation awarded is not sufficient then the same can be increased after giving appropriate reasons.

The court also observed that-

“54. I do not find this approach consistent with the objectives of POCSO. The interim compensation is mandatory provision. Therefore, an outright rejection of compensation to survivors of sexual abuse who turn hostile or do not succeed in conviction of the accused would result in ignoring the failures of the State in protecting survivors of sexual abuse, and in providing them fullest support as envisaged under the Constitution, the POCSO Act and Rules. Even in the absence of conviction (for whatever reasons), in cases of sexual abuse, the child has undergone severe physical, social and psychological trauma. The child cannot be left to his/her state in the absence of conviction...”



HIGH COURT OF BOMBAY

- ◆ Shubham @Bablu Milind Suryavnashi v/s The State of Maharashtra [Juvenile Justice Act]



SHUBHAM @ BABLU MILIND SURYAVANSHI v/s THE STATE OF MAHARASHTRA

BAIL APPLICATION NO. 2282 of 2021

TOPIC: Juvenile Justice Act

DATE OF ORDER/JUDGEMENT:21/10/2022

BACKGROUND OF THE CASE:

The applicant has filed a bail application before the Hon'ble court, where he has been charged with committing murder. The applicant is a juvenile, who 17 years 11 months old. Upon the arrest of the applicant, the Juvenile Justice Board directed that the applicant to be tried as an adult.

The Children's court rejected the bail application of the applicant since he does not come under Section 12 of JJ Act because he was being tried as an adult and neither did the psychiatric evaluation of the applicant allegedly show any mental incapacity to commit the said offence.

DECISION OF THE COURT:

The court after a detailed perusal of the provisions under section 12 of the JJ Act, was of the opinion that-

“9. Reading of Section 12 makes it imperative to release the applicant, who is alleged to have been committed bailable or non-bailable offence and this power has to be exercised notwithstanding anything contained in the Code of Criminal Procedure, which expect a decision of release, taking into account the provisions of Section 439 of Cr.P.C. It is not in dispute that the applicant is a child at the time of commission of offence and would fall within the meaning of ‘child in conflict with law’, as defined in the Act of 2015.”

The court explained that the JJ Act is a beneficial legislation which aims to provide care, protection, treatment and rehabilitation to delinquent juveniles.

“12. ... While construing the provision contained in Section 12, which contemplate that a juvenile shall be released on bail notwithstanding anything contained in the Cr.P.C. ... The only embargo in not releasing such a person on bail is the proviso, which prescribes that if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person’s release would defeat the ends of justice.”

The court then granted bail to the applicant.





HIGH COURT OF MADRAS

- ◆ S Tamilselvi v. The Secretary to Government, Health and Family Welfare Department. [Special reservation for transgenders]



S. TAMILSELVI v/s THE SECRETARY of GOVT., HEALTH & FAMILY WELFARE DEPARTMENT & Ors.

(W.P. No. 26506 of 2022 & W.M.P. Nos. 25572 & 25574 of 2022)

TOPIC: Special reservation for third gender

DATE OF ORDER/JUDGEMENT: 11/10/2022

BACKGROUND OF THE CASE:

The petitioner is a transgender woman who has filed this writ for quashing the prospectus issued for Post Basic (Nursing) Course and Post Basic Diploma in Psychiatric Nursing Course for the academic year 2022-2023, since transgenders were not categorised under special category.

The state has argued that there was no reservation for transgender since the percentage of transgender in the state is very less and there is a chance that the seats reserved for them could go waste.

DECISION OF THE CASE:

The Hon'ble court, suggested that if there is a small percentage of transgender in the state then a provisional note alongwith the prospectus can be made and provided to the candidates, in order to spread the information.

“30.... the non-inclusion of the petitioner in the special category meant for transgender for the purpose of calculating the merit for admission to the course of B.Sc. (Nursing) etc., for which the present notification was issued, is not a mere omission, it is against the judgments given by the Hon'ble Supreme Court as well as this Court and also against the provisions of the Transgender Persons (Protection of Rights) Act, 2019”

Therefore, the petitioner was entitled to receive reservation for the third gender category. Also, a separate merit list needs to be prepared for the transgender candidates and admission be done on that basis.





HIGH COURT OF KERALA

◆ Sreekanth Sasidharan v. State of Kerala & Ors. [Rape]



SREEKANTH SASIDHARAN v/s STATE OF KERALA & Ors.**(W.P. (C) No. 26103 of 2022)**

TOPIC: Rape**DATE OF ORDER/JUDGEMENT: 06/10/2022****BACKGROUND OF THE CASE:**

In this case, the 4th respondent filed a case against the petitioner under sections 406, 420 and 376 of IPC. From 2010 to 31st March 2019, the petitioner under the pretext of marriage with the 4th respondent, was sexually involved with her and dishonestly induced her to deliver Rs. 15,00,000/- and gold to him. The 4th respondent claimed that the petitioner was already married and hid that fact from her.

DECISION OF THE COURT:

The court after examining all the documents on record believed the 4th respondent eventually got to know about the marriage of the petitioner in the 2013-2014, however, she continued to have sexual relationship with the petitioner. This indicates consent on the part of the 4th respondent, which forms an important ingredient under rape.

“12. A close reading of Annexure A1(a) FI statement, the statements of the 4th respondent recorded under Section 161 of Cr.P.C and under Section 164 of Cr.P.C would show that the allegation of sexual intercourse allegedly had between the petitioner and the 4th respondent is so vague.”

“15. The alleged sex can only be termed as one on account of love and passion for the petitioner and not on account of misrepresentation made to her by the petitioner. Therefore, even if the facts set out in the FIS are accepted in totality, no offence u/s 375 of IPC has been made out.”

Also, the parents of the 4th respondent had met the petitioner about their marriage proposal. But allegedly the 4th respondent withdrew from the proposal after getting know about the petitioner's marriage.

The court refuted all the allegations made by the 4th respondent in the FIS and therefore, the criminal proceedings against the petitioner were quashed.





HIGH COURT OF ALLAHABAD

- ◆ Azizurrahman v/s Hamidunnisha @ Sharifunnisha
[Bigamy under Muslim Law]
- ◆ Prveen Kashyap v/s State of U.P. & Ors [POCSO Act]



**AZIZURRAHMAN v/s HAMIDUNNISHA @ SHARIFUNNISHA
(FIRST APPEAL NO. 700 OF 2022)**

TOPIC: Bigamy under Muslim Law

DATE OF ORDER/JUDGEMENT: 19/09/2022

BACKGROUND OF THE CASE:

The appellant-husband and respondent-wife were married as per Muslim Law in 1999. After which, they had 4 children, one of whom died. Since, the father of the respondent-wife was sick, she stayed with him to take care of him. During this time, the appellant-husband secretly contract another marriage and had children. None of this was disclosed before the respondent-wife. Later, the appellant-husband wished to live with both of his wives but the first wife refused to live with him. Therefore, the appellant filed a petition seeking restitution of conjugal rights. However, the Family Court dismissed the plea. The appellant is now appealing before the Hon'ble Court.

DECISION OF THE COURT

The court was of the view that wilfully not disclosing the second marriage to the first wife will amount to cruelty to the first wife and neither can she be asked to live with the appellant against her will.

“15. If the contention of the plaintiff-appellant/ husband for grant of decree of conjugal rights is accepted, then from point of view of the defendant-respondent/wife, it would amount to breach of her fundamental rights guaranteed under Article 21 of the Constitution of India.”

The also referred to Sura 4 Ayat 3 of the Holy Quran to emphasis on the aspect of bigamy.

“12. The religious mandate of Sura 4 Ayat 3 is binding on all muslim men which specifically mandates all Mulim men to deal justly with orphans and then they

can marry women of their choice two or three or four but if a Muslim man fears that he will not be able to deal justly with them then only one. If a muslim man is not capable of fostering his wife and children then as per above mandate of Holy Quran, he cannot marry the other woman.”

Therefore, the appeal was dismissed.



PRVEEN KASHYAP v/s STATE OF U.P. & Ors.

(CRIMINAL MISC. BAIL APPLICATION NO. 36810 OF 2022)

TOPIC: POCSO Act

DATE OF ORDER/JUDGEMENT: 12/10/2022

BACKGROUND OF THE CASE:

The applicant is accused of offences under Section 363, 366, 376 of IPC and Section 3 & 4 of POCSO Act. The applicant is in jail since 04/06/2022 and therefore has filed an application of bail before the Hon'ble Court. The Id. Counsel for the applicant has argued that the statements of the victim recorded under Section 161 & 164 of Cr.P.C. reflect that she was also a consenting party and the marriage solemnised before the parties was with her consent. Also, that after the marriage the parties lived as husband and wife.

DECISION OF THE COURT

The court took the view that the school certificate was submitted by the victim, which can be relied upon for age-determination of the victim, even if the ossification test has not been conducted. As per the school certificate, the victim was a minor as on the date of the offence. Since, there is no evidence to prove that the victim was a major as on the date of the offence, the consent of the victim with respect to solemnisation of the marriage and alleged subsequent establishment of physical relations will hold no value.



HIGH COURT OF PUNJAB & HARYANA

- ◆ Renuka v/s Shelly Kumar [Terminating of pregnancy]
- ◆ X v/s State of Haryana & Ors. [Rape]



RENUKA v/s SHELLY KUMAR**(FAO 6740 OF 2018)**

TOPIC: Terminating of pregnancy**DATE OF ORDER/JUDGEMENT: 26/09/2022****BACKGROUND OF THE CASE**

In this case, the appellant and respondent were married on 12/08/2012. The appellant live with her in-laws in a joint family. The appellant claimed that she was being tortured physically, mentally and emotionally, and also there was demand for dowry. Later, in October 2012, the appellant for pregnant, but her pregnancy was forcibly terminated as the respondent wasn't ready to bring up a child. After the termination, the appellant faced complications and could not conceive again. The appellant was under a lot of mental agony.

After constant humiliation and torture by her husband and in-laws, the appellant filed for divorce which was dismissed by the Family Court.

DECISION OF THE COURT

The court was of the view that –

“Motherhood is innate, natural, and fulfilling to every woman; and the fact that the appellant was denied the same and was forced to terminate her pregnancy against her will, at the insistence of the respondent, and thereafter could not conceive again due to gynaecological complications in our view, constitutes cruelty.”

The court acknowledged that the parties had been living separately since 2015 and that mediation attempts had also failed. This was no a mere wear and tear of marriage. There was cruelty and it formed ground for granting of divorce.

X v/s STATE OF HARYANA & Ors.

(CRM-A-1736 of 2019)

TOPIC: Rape

DATE OF ORDER/JUDGEMENT: 30/09/2022

BACKGROUND OF THE CASE:

In this case, the victim got engaged to the accused. The alleged incident took place on 09/08/2017. After the incident, the accused would call her and threaten to kill her. Eventually, the victim filed an FIR on 19/09/2017.

The Trial Court particularly highlighted the point that the engagement between the parties took place on 31/05/2017 and 2/07/2017 and they apparently the parties did not meet then but instead met the first time on the date of the incident. Therefore, acquitting the accused.

DECISION OF THE COURT

The Hon'ble Court was of the opinion that the statement of the prosecutrix must be given pre-dominant consideration, however, implicating or holding someone guilty purely on that basis will not be correct.

“The statement of prosecutrix cannot be treated as gospel truth and the court must see that she is a witness of sterling quality. If the statement of prosecutrix is held as gospel truth and courts are bound to hold someone guilty just because there is allegation by prosecutrix, it would travesty of justice and there would be no need to conduct trial.”

While upholding the grounds of Trial Court for acquitting the accused, the Hon'ble court also dismissed the appeal.



HIGH COURT OF MEGHALAYA

- ◆ Swill Lhuid v/s State of Meghalaya & Ors. [POCSO Act]



SWILL LHUID v/s STATE OF MEGHALAYA & Ors.**(CRL-A-17 of 2022)**

TOPIC: POCSO Act.**DATE OF ORDER/JUDGEMENT:13/10/2022****BACKGROUND OF THE CASE:**

A 7 year old girl was raped by the appellant, for which he was convicted by the Trial Court and sentenced to 15 years of RI. The medical examination of the victim reveals that there were signs of vaginal penetration and that the hymen was intact. The appellant also claimed that no medical examination was conducted of the appellant and question was raised that the appellant who is 60 years old was capable of performing sex. Considering the various evidences submitted on record, the Trial Court convicted the appellant.

DECISION OF THE COURT

The Hon'ble Court, observed that –

“ 25. Penetrative sexual assault, for the purpose of the relevant provision, does not require deep or complete penetration. The slightest amount of penetration would suffice for the purpose. The medical examination report revealed penetration, albeit at the level of the introitus. Even though the hymen may have been intact so as to indicate that the extent of penetration may not have been to any great length, the factum of penetration was medically established.”

The court also stated that since no medical examination of the appellant was conducted to establish if the appellant was capable of an erection, which is an error on the part of the investigating agency, does not establish that no case can be made out against the appellant.

The court upheld the decision of the Trial court and dismissed the appeal filed by the convict.



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.	Cr.P.C.	Code of Criminal Procedure, 1973
4.	F.I.R.	First Information Report
5.	I.P.C.	Indian Penal Code, 1860
6.	DLSA	District Legal Service Authority
7.	DSLSA	Delhi State Legal Service Authority
8.	DVC Scheme	Delhi Victim Compensation Scheme
9.	JJ Act	Juvenile Justice Act
10.	POCSO Act	Protection of Children from Sexual Offences Act, 2012
11.	S.L.P.	Special Leave Petition
12.	W.P. (C)	Writ Petition (Civil)
13.	W.P. (Crl)	Writ Petition (Criminal)

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