



NEWSLETTER ON WOMEN & CHILD RIGHTS



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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 5th 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 November 2022 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in November.

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. 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.

ANBAY LEGAL

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HIGH COURT OF DELHI

- ◆ AK v/s State Govt. of NCT of Delhi and Anr. (POCSO Act does not aim to criminalise consensual relationships).



AK V/S STATE GOVT. OF NCT OF DELHI & ANR.

BAIL APPLN. 2729 OF 2022

TOPIC: POCSO Act

DATE OF ORDER/JUDGEMENT: 20/10/2022

BACKGROUND OF THE CASE

In this case, FIR was filed against the accused by the father of the victim. The victim was married to a man, with whom she did not want to stay. She, with her free will, started to stay with the accused.

The Court interacted with the victim in Chamber, where the victim stated that she was staying with the accused without any pressure, threat or undue influence.

DECISION OF THE COURT

The court was of the opinion that the victim was consensually living with the accused. Even though the victim was a minor and her consent holds no legal bearing, but the fact that consensual relationship cannot be ignored while deciding a matter of bail.

The Court further observed that –

“In my opinion the intention of POCSO was to protect children below the age of 18 years from sexual exploitation. It was never meant to criminalize consensual romantic relationships between young adults. However, this has to be seen from facts and circumstances of each case. There might be cases where the survivor of sexual offence, may under pressure or trauma be forced to settle.”



HIGH COURT OF MADRAS

- ◆ A. Veronica Mary v/s The State of Tamil Nadu & Ors.
(Need for stricter Anti-sexual harassment policy for the protection of students.)



A. VERNOICA MARY v/s THE STATE OF TAMIL NADU & ORS.

(W.P. (MD) No. 26039 of 2022)

TOPIC: Anti-Sexual Harassment Policy for Students.

DATE OF ORDER/JUDGEMENT: 17/11/2022

BACKGROUND OF THE CASE

A Public Interest Litigation was filed by a social activist, seeking relief based on the report which was published in newspaper, where a school teacher was arrested for teaching in an obscene manner and sexually harassed a girl who attempted suicide.

The Counsel for the Petitioner claimed that despite the Government Order to set up mobile counselling centre for students and creating awareness, no initiative was taken by the District.

DECISION OF THE CASE

The Court observed that instances of Sexual Harassment in schools, colleges and other educational institutions are often inadequately focused upon.

“ Undoubtedly, unless the Protection of Children from Sexual Offences Act, 2012 and the rules thereunder are implemented diligently, it is impossible to realize the constitutional goals and ensure the rights of children. Protecting the children from sexual abuse, while in care of legal guardian/any person who is taking care of the child, is an internationally recognized obligation under the Convention on the Rights of the Child and the States are required to take measures on all fronts for the same.”

The court ordered the directive for School Education Department in coordination with the State Commission for Protection of Child, to ensure that :-

- Internal Complaints Committee is constituted in schools as required under the Sexual Harassment of Women at Workplace (Prevention, Prohibitions and Redressal) Act, 2013.
- The Schools may frame anti-sexual harassment policy and a copy of the same is distributed to the students and teachers.
- Every School has a reporting and redressal mechanism in place and it is made known to the students.





HIGH COURT OF KERALA

- ◆ Tino Thankachan v/s State of Kerala & Anr. (Ingredients to be fulfilled to constitute the offence of Rape.)
- ◆ Khaledur Rahman v/s State of Kerala & Anr. (POCSO Act prevails over the Personal Laws.)



TINO THANKACHAN v/s STATE OF KERALA & ANR.**(CRL. MC No. 1819 of 2019)**

TOPIC: Rape**DATE OF ORDER/JUDGEMENT: 22/11/2022****BACKGROUND OF THE CASE**

This is a case of rape, where the victim claimed that she was assaulted by the accused and indulged in sexual relationship with the promise to marry her.

The victim was a married woman, but she was separated from her husband. The victim and the accused were in consensual relationship and wanted to marry each other. But that did not happen. They had consensual sexual intercourse and the prosecution claimed that that happened because the accused promised to marry the victim.

DECISION OF THE COURT

The court observed that-

“ . It is a case where the victim who is a married woman voluntarily had sex with her lover. She knew pretty well that she cannot enter into a lawful marriage with the petitioner, in as much as she is a married woman. ”

The court referred to **Ranjith v/s State of Kerala, [2022(1) KHC 195]** and **xxx v/s State of Kerala [2022 KHC 296]** and upheld the view that any promise made by the accused to a married woman that he would marry her is not enforceable in Law. Such an illegal promise which is not enforceable cannot form basis for allegations under Section 376 IPC.

KHALEDUR RAHMAN v/s STATE OF KERALA & ANR.

(CRL. MC No. 1819 of 2019)

TOPIC: POCSO ACT

DATE OF ORDER/JUDGEMENT: 18/11/2022

BACKGROUND OF THE CASE

In this case, a man is accused of raping a minor girl. The accused claimed that they were married as per Muslim Personal Laws and the victim is his lawfully wedded wife.

The victim was less than 16 years old when she was married to the 31 years old accused. The victim was also pregnant. It was contended by the accused that since it is a marriage under Muslim Personal Law and the victim is above the age of 14 years, the marriage is valid.

DECISION OF THE COURT

The court observed that POCSO Act is a special statute enacted for the specific purpose of protecting the children from sexual offences.

“In this context, it is relevant to refer to the legal maxim ‘Generalia Specialibus Non Derogant’ - a special law will prevail over the general law and ‘Specialia Generalibus Derogant’ special things derogate from general things. The said legal principle has been deployed for resolving conflicts between two different Acts.”

The court highlighted that the POCSO Act is a trite law, so whenever it is repugnant or contrary to the customary law, unless explicit exclusion has been

stated, POCSO Act will prevail and the concerned customary law will stand abrogated.

The court further stated that it does not agree with the contention that a 15 year old girl was capable of giving her active consent to the marriage. Therefore, upholding the provisions of POCSO Act over the Personal law, the bail application of the accused was dismissed.





HIGH COURT OF ORISSA

- ◆ Jaga Sarabu v/s State of Orissa. (Quashing of a case under Section 489A cannot be dismissed on the sole ground that the marriage is invalid).



JAGA SARABU v/s STATE OF ORISSA
(FIRST APPEAL NO. 700 OF 2022)

TOPIC: Quashing case under Section 498A IPC

DATE OF ORDER/JUDGEMENT: 29/11/2022

BACKGROUND OF THE CASE

In this case, the FIR was registered against petitioner under Section 498A, 323, 506 and 34 of IPC r/w Section 4 of DP Act. The Magistrate Court took cognizance and issued process, therefore, the petitioner approached the High Court.

The petitioner contended that the Family Court, while deciding the application under Section 125 Cr.P.C, found that respondent-wife is not the legally wedded wife of the petitioner. Therefore, no offence is made out.

DECISION OF THE COURT

The court observed that –

“ It is extremely unfair and harsh to a woman who claims herself to be wife of a person by entering into a marital relationship and later on become a victim of desertion by the said person taking plea of absence of a valid marriage. The obvious objective of enacting offence under section 498-A of IPC is to secure the prevention of harassment to a woman from cruelty meted out to her by husband or his relatives.”

The court stated that the plea of “no marriage” that the petitioner claims, has to be decided the Civil Court. Furthermore, the Court observed that taking into consideration the FIR and the witness statements, there is prima facie case made out against the petitioner.



HIGH COURT OF PUNJAB & HARYANA

- ◆ Mansi v/s State of Punjab & Ors. (Custody of a child).



MANSI v/s STATE OF PUNJAB & ORS.**(CRWP 7332 OF 2022)**

TOPIC: Child Custody**DATE OF ORDER/JUDGEMENT: 7/11/2022****BACKGROUND OF THE CASE**

The petition was filed by a mother to receive the custody of her 2 year old child from the respondents, i.e. the husband, in-laws. The petitioner has claimed that the respondents subjected the petitioner to harassment and demanded dowry. However, the respondents have alleged that the petitioner was suffering from mental health issues and was undergoing treatment for the same. Both the husband and wife are working professionals.

Therefore, the respondents claimed that due to the mental health issues of the petitioner, she was incapable of taking care of the child.

DECISION OF THE COURT

The court placed reliance on the provisions of Mental Healthcare Act, 2017, where it states that if a mother is admitted in a Rehabilitation Centre, even then the child below the age of 3 years will not be separated from the mother. However, in the present case, the petitioner is not admitted in rehab and is receiving the required treatment. Also, she is working in a MNC and the Court finds no reason to separate a 2 year old child from his mother.

The court further stated that –

“In fact, denial of custody to the petitioner who is the natural and biological mother of the child would be detrimental to the mental health of not only the child but the mother as well. It may also be pertinent to mention here that the bond between a mother and child is hard to replicate. Therefore, in the case of a

mother, specially where the custody concerns a child less than 05 years old, she ought to be granted custody unless she is so mentally or physically incapacitated that handing over custody to her would be physically or mentally detrimental to the health of the child.”





HIGH COURT OF **KARNATAKA**

- ◆ The State through Grameen Police Station v/s Sharanu @ Sharanappa @ Sharanabasappa. (School certificate prevails over the doctor's opinion in matters.)



**THE STATE THROUGH GRAMEEN POLICE STATION v/s
SHARANU @ SHARANAPPA @ SHARANABASAPPA**

(CRL-A-17 of 2022)

TOPIC: Juvenile Justice Rules

DATE OF ORDER/JUDGEMENT: 27/10/2022

BACKGROUND OF THE CASE

In this case, the accused was acquitted of charges under Section 450, 376 & 506 of IPC, from Session's Court. The accused is a married man and has a child and he was accused of raping the minor victim. This incident of rape came to light, when the victim was pregnant. The accused claimed that the sexual relationship established between the parties was consensual and the radiology test clearly shows that the victim was 19 years old.

The state filed an appeal against the order of the Session's court.

DECISION OF THE COURT

The court observed that the victim, her parents, and the aunt have unequivocally stated that the sexual intercourse was forced upon the victim and the same can be relied upon because the rigorous cross-examination of the parties.

The court did not rely upon the contention of the accused that the victim was a major during the time of the incident. The victim during recording of the evidence, has stated herself to be a minor who has studied till 8th std. The court observed that-

“The opinion of the Government Doctor (PW-10) is based upon the report of the Radiologist, who, in turn, appears to have based his opinion on an X-ray report. Admittedly, no Ossification Test has been conducted in the matter. Further, it

also cannot be ignored that the medical opinion based upon the Radiologist's opinion does not specifically say that the victim girl was major in her age, i.e. above 18 years of age as on the date of her examination.”

The court further stated that the school certificate of the victim should be relied upon over the opinion of the doctor when the minor victim's age is in question.

"There is nothing to suspect or disbelieve that the date of birth of the victim girl was not correctly shown in the said certificate at Ex. P-6, which in turn, was an extract of the records maintained by the school authorities."

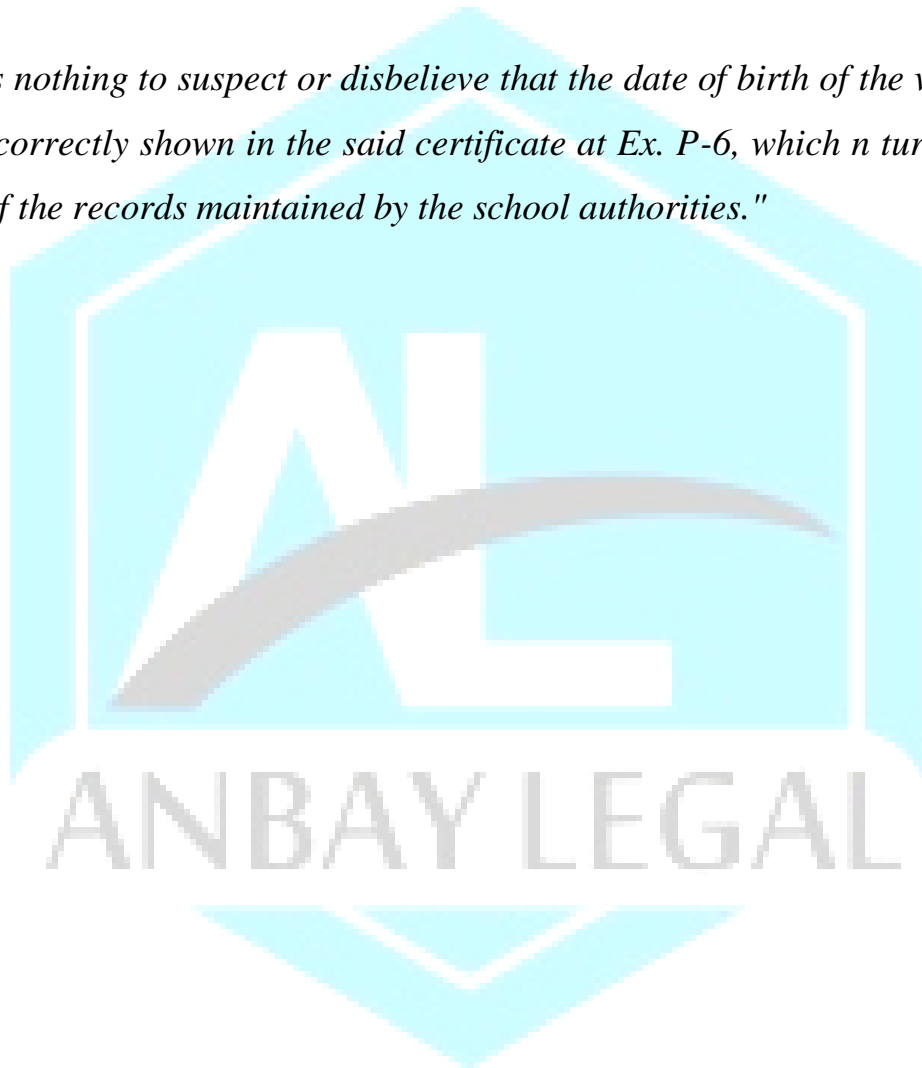


TABLE OF ABBREVIATIONS

<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.	DSLISA	Delhi State Legal Service Authority
8.	DVC Scheme	Delhi Victim Compensation Scheme
9.	DP Act	Dowry Prohibition Act.
10.	JJ Act	Juvenile Justice Act
11.	POCSO Act	Protection of Children from Sexual Offences Act, 2012
12.	S.L.P.	Special Leave Petition
13.	W.P. (C)	Writ Petition (Civil)
14.	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/>