



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 8th 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 February 2023 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in February 2023.

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 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

◆ Bachpan Bachao Andolan v/s. GNCTD & Ors [Child Labour]



BACHPAN BACHAO ANDOLAN v. GNCTD & ORS

WRIT PETITION (CIVIL) No. 13119 OF 2019

TOPIC: Child Labour

DATE OF ORDER/JUDGEMENT: 11.01.2023

BACKGROUND OF THE CASE

This writ petition is filed by the NGO, Bachpan Bachao Andolan. A fire broke out in a building in Anaz Mandi, Sadar bazar, which led to the death of 43 persons, out of which 12 were children of age group 12 to 18 years. They were being made to work in hazardous conditions. The building had not complied with the required fire safety norms and therefore, the no. of casualties were so high. The petition was filed to ensure proper inquiry into the illegal factories employing children and for protection of such children from any form of child labour.

DECISION OF THE COURT

The Court was empathetic towards the plight of the children who are being forced to work in such unhygienic, inhabitable conditions.

The Court observed that –

“ 7. For their greed for money and profit, unscrupulous factory owners employ children as they have to be paid less than minimum wages and, driven out of extreme poverty, these children are forced to work at these places instead of seeking education in order to earn bread for their families. The laudable object of Article 21A of the Constitution of India has been completely thrown to the winds.”

The Court further stated that such activities were being carried right under the nose of the Police officers, yet no action was being taken to curb it. Time and again, Courts have emphasised on the need to control child labour but it merely remains on paper.

Therefore, the Court ordered compensation for the victims under the Delhi Victim Compensation Scheme, 2018. Also, committee needs to be formed in each District to inspect the premises of such units where children are being employed and a Status Report regarding the action taken by the Committee be filed before the next date of hearing.





HIGH COURT OF BOMBAY

- ◆ Shaikh Shaukat S/O Majit @ Majit Patel & Ors v/s State Of Maharashtra & Anr [Quashing of Domestic Violence proceedings]



**SHAIKH SHAUKAT s/o MAJIT @MAJIT PATEL & ORS V/S
STATE OF MAHARASHTRA & ANR**

(CR. APPLICATION No. 229 of 2022)

TOPIC: Quashing of Domestic Violence proceedings

DATE OF ORDER/JUDGEMENT: 18.01.2023

BACKGROUND OF THE CASE

In this case, the wife, who is the respondent no. 2, filed an FIR against the petitioner under section 498-A, 323, 504, 506 r/w 34 IPC. The Magistrate pronounced the judgment and found the petitioner to be guilty. Therefore, the petitioner filed an appeal before the District and Sessions Judge. Meanwhile, the petitioner and respondent no. 2 amicably settled the dispute. So, the petitioner filed the instant quashing petition before the Hon'ble Court.

DECISION OF THE CASE

The court relied on the case of Ramawatar v/s State of Madhya Pradesh , and came to the conclusion that the inherent power of the court under section 482 of the Cr.P.C. can be exercised in post-conviction matters when the appeal is pending before the any judicial forum.

The court observed that –

“ There is no embargo in exercising power under Section 482 of Cr.P.C to quash present proceedings at post-conviction stage, particularly considering the fact that the proceedings are emanating from the matrimonial dispute.”

Therefore, the court was of the view that in the instant case, the relationship of the parties was strained and ready to move on in life, therefore, the case was fit to be quashed.



HIGH COURT OF ALLAHABD

- ◆ Suneeta Pandey v/s State of UP & Anr. [A Woman facilitating the offence of rape]
- ◆ Shakila Khatun v/s State of UP & Anr [Maintenance by Muslim women under Section 125 Cr.P.C.]



SUNEETA PANDEY v/s STATE OF UTTAR PRADESH & ANR

(WRIT PETITION NO. 1357 of 2023)

TOPIC: A Woman facilitating the offence of rape

DATE OF ORDER/JUDGEMENT: 13.02.2023

BACKGROUND OF THE CASE

The instant application was filed by the woman (applicant), who was called to face trial in FIR under sections 376D and 212 of IPC. The counsel of the applicant contended that the applicant is a woman and therefore, the offense of rape cannot be made out against the applicant.

DECISION OF THE COURT

The court interpreted the amended Sections 375 and 376D IPC. The Section 375 IPC specifically states that the offence of “rape can be committed by a man” whereas in Section 376D, it states that the offence of “rape committed by one or more persons”.

Court, further stated that-

“In other words this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action. In such cases, there must be criminal sharing, marking out a certain measure of jointness in the commission of offence.

... Unlike man, a woman can also be held guilty of sexual offences. A woman can also be held guilty of gang rape if she has facilitated the act of rape with a group of person.”

SHAKILA KHATUN v/s STATE OF UTTAR PRADESH & ANR
(CRIMINAL REVISION NO. 3573 of 2021)

TOPIC: Maintenance by Muslim women under Section 125 Cr.P.C.

DATE OF ORDER/JUDGEMENT: 21.01.2023

BACKGROUND OF THE CASE

The revision petition was filed by a Muslim woman, claiming maintenance under section 125 Cr.P.C. The revisionist and the husband were married for 3 years, after which they got divorced. The revisionist did not remarry and is claiming maintenance for her child and herself.

The Family Court had set aside her claim for maintenance on the ground that muslim woman is not entitled to maintenance under Section 125 Cr.P.C.

DECISION OF THE COURT

The Court relied on landmark judgments such as the *Danial Latifi v. Union of India*, *Shabana Bano v. Imran Khan*, and allowed the revision petition. The Court held that the revisionist was entitled to maintenance under Section 125 Cr.P.C. till the time she does not re-marry, and the maintenance granted will not be restricted to the period of Iddat.

Therefore, the matter was sent back to the Family Court , in order to decide the amount of maintenance to be granted to the revisionist.



HIGH COURT OF PUNJAB & HARYANA

State of Punjab & Anr. v/s Amarjit Kaur [Rights of married daughter]



STATE OF PUNJAB & ANR v/s AMARJIT KAUR
(LPA- 462-2021 (O&M))

TOPIC: Rights of married daughter

DATE OF ORDER/JUDGEMENT: 25.01.2023

BACKGROUND OF THE CASE

In the present case the appeal is presented by the petitioner as the previous order passed by learned single bench which have allowed the appointment of a married daughter in the case of compassionate ground in the place of the father. The rule is made by the govt of Punjab is that the appointment in the case of compassionate ground will exclude the married daughter however it will include the unmarried daughter. The respondent of the present case challenges the same and single judge bench ruled in the favour of the defendant.

In the present case the contention was put before the court was that the said rule will not violate Art 14 and 15 of the Indian constitution as it is based on the reasonable classification. The petitioner submission was that once the daughter get married she is not dependent on father and she become the member of other family so the exclusion from compassionate appointment is valid. Further petition said that the making power is vested with legislature so there is no wrong if such rule is made.

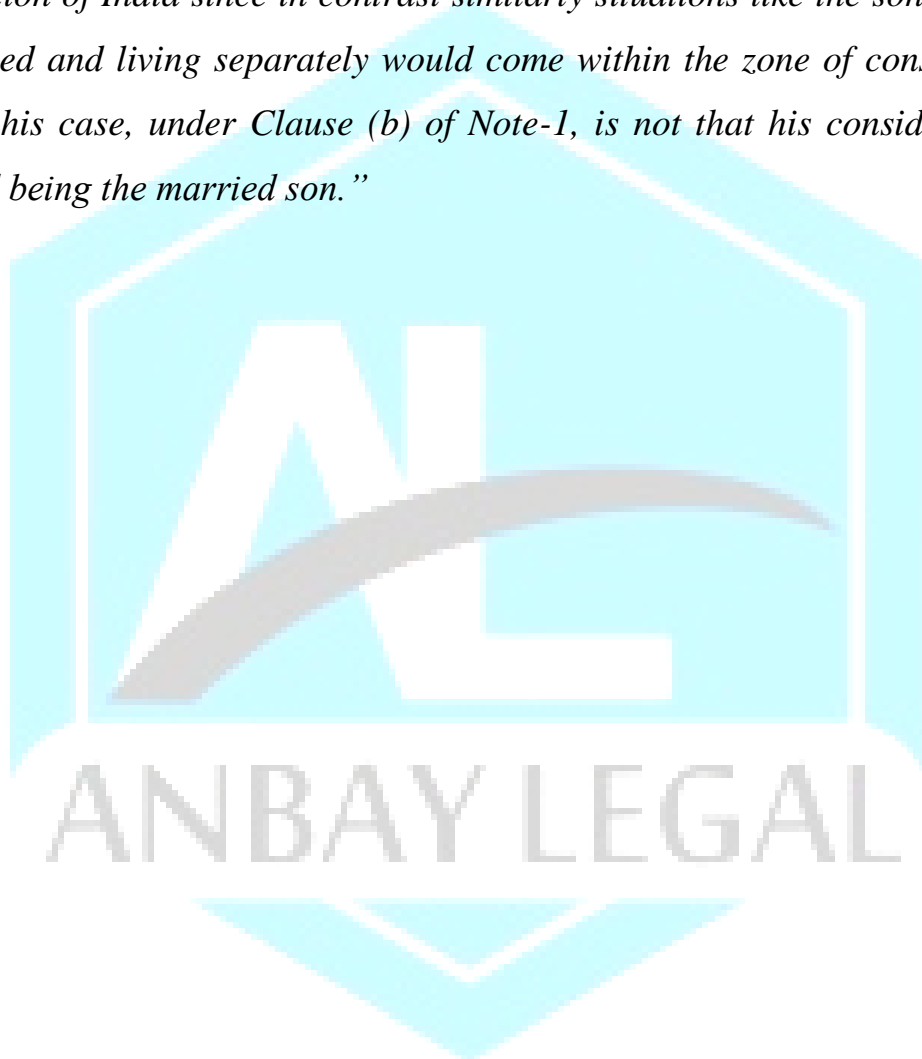
DECISION OF THE COURT

Court heard the contention raised by petitioner and respondent and held that the exclusion of married daughter and including the unmarried daughter is a violation of the fundamental right to equality. The court also said that the son who is living separate from his family and having nothing to do with father is not excluded from the appointment so why a female who gets married is excluded. The court

said that once a daughter is always a daughter and no such discrimination should be made as it is violation of fundamental right.

Important content of judgement are-

“We are of the considered opinion that the exclusion at the outset in the case of a married daughter is apparently arbitrary. The rejection at the threshold only on the ground of gender would be violative of Articles 14 and 15 of the Constitution of India since in contrast similarly situations like the son who may be married and living separately would come within the zone of consideration since in his case, under Clause (b) of Note-1, is not that his consideration is excluded being the married son.”





HIGH COURT OF MEGHALAYA

- ◆ Shri Bhalang Shylla & Anr. v/s State of Meghalaya
[Quashing of Rape case]



SHRI BHALANG SHYLLA & ANR v/s STATE OF MEGHALAYA.
(CRL. PETITION NO. 2 OF 2023)

TOPIC: Quashing of a Rape Case

DATE OF ORDER/JUDGEMENT: 06.02.2023

BACKGROUND OF THE CASE

In this case, the petitioner were in a relationship since 2017, when the petitioner no. 1 was 23 years old and petitioner no. 2 was 17 years old. Later, in the year 2020, petitioner no.2 got to know that petitioner no. 1 was a married man. However, in 2022, petitioner no. 1 lured petitioner no. 2 to meet him and then he raped her. As a result of which she got pregnant and gave birth to a baby boy. Pursuant to which, the instant FIR was registered against petitioner no.1. But petitioner no. 2 was convinced by petitioner no.1 that he will take up his responsibility and take care of the baby and petitioner no. 2. Hence, this quashing petitioner was filed.

DECISION OF THE COURT

The court made a note that the petitioner no. 1 did not deny any of the facts stated in the FIR and observed that-

“14. It may be true that after a change of heart or on extraneous circumstances, the petitioner No. 2 is persuaded to come together along with the petitioner No. 1 before this Court with this instant petition to quash the said FIR and proceedings, but the fact remains that an allegation of a heinous crime such as rape being committed and perpetrated on a woman, coupled with a threat for her life if she dared to reveal the incident to anyone cannot be taken lightly.”

The court could not ignore the situation and therefore, dismissed the petition.

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.	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. (CrI)	Writ Petition (Criminal)

REFERENCES

Online resources:

1. <https://main.sci.gov.in/judgments>
2. <https://delhihighcourt.nic.in/case.asp>
3. <https://www.mhc.tn.gov.in/judis/madras-do/index.php/casestatus/caseno>
4. <https://hckinfo.kerala.gov.in/digicourt/Casedetailssearch>
5. <https://hphighcourt.nic.in/#>
6. <https://www.sconline.com/>





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