



NEWSLETTER ON WOMEN & CHILD RIGHTS



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The newsletter is sent to you purely for informational purposes. The facts/opinions provided in this newsletter do not constitute legal advice and should not be relied upon in any case except with the guidance of a legal counsel.

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 10th 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 April 2023 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in April 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.

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SUPREME COURT OF INDIA

- ◆ Shri Ramesh Raman v/s Smt. Kavita [Irretrievable breakdown of marriage]
- ◆ Shilpa Shailesh v/s Varun Sreenivasan [Irretrievable breakdown of marriage]



SHRI RAKESH RAMAN v/s SMT. KAVITA

CIVIL APPEAL 2012 OF 2012

TOPIC: Irretrievable Breakdown of marriage

DATE OF ORDER/JUDGEMENT: 26/04/2023

BACKGROUND OF THE CASE

In this case, a dispute arose between a husband and wife, which led to them living separately. Both parties filed cases against each other. The couple lived together for four years before separating, and they have been living separately for 25 years. The husband filed a divorce petition on the grounds of cruelty under section 13(1)(ia) of the Hindu Marriage Act, citing irretrievable breakdown of the marriage. The family court granted the divorce petition, but an appeal was filed in the Delhi High Court, which reversed the family court's decision in 2011. The High Court held that the mere filing of cases against a spouse does not amount to cruelty and that, given the facts of the case, it must be determined that the marriage has broken down beyond repair. The husband was dissatisfied with the High Court's ruling and appealed to the Supreme Court.

DECISION OF THE COURT

In this case, the court observed that while it is true that the marriage has broken down and is beyond repair, the concept of irretrievable breakdown of marriage is not recognized as a ground for divorce in the Hindu Marriage Act. The court recognized the landmark judgment of Naveen Kholi v Neelu Kholi on this issue. However, the court ruled that forcing each other to live together would amount to cruelty, and since the parties were registering cases against each other, this also constituted cruelty.

Therefore, the High Court of Delhi's decision to reverse the family court's judgment was not valid. The court held that a marriage that has irretrievably broken down spells cruelty to both parties, as each party is treating the other with cruelty. As such, it is a ground for dissolution of marriage under Section 13 (1) (ia) of the Act.



SHILPA SAILESH v/s VARUN SREENIVASAN**CIVIL APPEAL 2012 OF 2012**

TOPIC: Irretrievable Breakdown of marriage**DATE OF ORDER/JUDGEMENT: 01/05/2023****BACKGROUND OF THE CASE**

In this case the constitutional bench of the supreme court looked into the issue of Irretrievable breakdown of marriage as there is no legal recognition for the same and the petition that is being filed by the writ before the supreme court and high court, so the issue was whether such type of petition is maintainable under the writ or court will use its power under Art 142 and grant the decree of Irretrievable breakdown of marriage. The cases that are related to irretrievable breakdown of marriage need to be looked into for that there need to be a concrete provision for the same. The court formed the constitutional bench to set a judicial precedent for the same.

DECISION OF THE COURT

The Supreme Court has held that the irretrievable breakdown of marriage can be a valid ground for granting divorce using the powers under Article 142 of the Constitution of India. However, the court clarified that parties cannot directly seek relief for dissolution of marriage on the grounds of irretrievable breakdown of marriage by filing a writ petition under Article 32 of the Constitution or under Article 226 before the High Court. The court approved the view taken in the case of Poonam v. Sumit Tanwar that parties should not be allowed to file writ petitions seeking divorce on the ground of irretrievable breakdown of marriage.

The Supreme Court judgment authored by Justice Sanjiv Khanna did not provide specific factors for determining irretrievable breakdown of marriage, but offered illustrative factors to consider. These include the period of cohabitation, last

cohabitation, nature of allegations, orders passed, attempts at settlement, and a sufficiently long period of separation, with six years or more being a relevant factor.





HIGH COURT OF CALCUTTA

- ◆ Y. v/s State of West Bengal & Ors. [Termination of Pregnancy of a minor]



Y v/s STATE OF WEST BENGAL & ORS.**(WPA 817 of 2023)**

TOPIC: Termination of Pregnancy**DATE OF ORDER/JUDGEMENT: 05/04/2023****BACKGROUND OF THE CASE**

The Writ Petition is filed by the mother of a minor girl (12 years old), for terminating the pregnancy of the minor girl. The minor girl was a victim of sexual assault and rape that resulted in the pregnancy. The Writ Petition was filed when the minor was 25 weeks pregnant with two live foetuses. As per the Medical Examination report filed, the minor girl was at a high risk of suffering from massive haemorrhage, infection, sepsis, surgery and anaesthetic risks to the extent of maternal death, if the pregnancy was terminated as the current stage of gestation.

DECISION OF THE CASE

The Court observed that they have to be mindful of the risks that are involved in the termination of the pregnancy. The Court asserted that termination of an unwilling pregnancy when it is followed by the risk of maternal death, then it must protect the right to personal life, liberty, and dignity of the minor girl, enshrined under Article 21 of the Constitution. Therefore, Court did not grant the relief of termination of the pregnancy to the minor girl. Further, observed that in the event that the minor girl and her family is incapable of maintaining the twin children and there are no claims for adoption, then the minor girl can approach the appropriate authority under the JJ Act for adoption and foster care of the twin children.



HIGH COURT OF BOMBAY

◆ Ashu Dutt v/s Aneesha Dutt [Custody of Child]



ASHU DUTT v/s ANEESHA DUTT**(FAMILY COURT APPEAL NO. 17 of 2021)**

TOPIC: Custody of the Child**DATE OF ORDER/JUDGEMENT: 11/04/2023****BACKGROUND OF THE CASE**

Two Interim applications were filed by the petitioner, the father. The first application was filed to meet his youngest of the three children, a 15-year -old residing with the mother in Thailand and pursuing his education there. He claimed to have visitation rights for the first half of the summer vacation. The second application was filed by the mother enumerating the lengths the father had gone to in the past to restrain the boy who is a USA & Thailand citizen and her, from moving to Thailand, including look out circulars etc.

The applications were filled in the father's appeal against the Family Court order dated September 30, 2020, partly allowing his custody petition. Which the father was granted physical custody of the daughter (now a major) the mother was granted custody of their youngest son.

DECISION OF THE COURT

The court said it was "important to understand the feelings" of the son and what would be the best manner to meet his father. The court reproduced its previous interaction with the boy wherein he had enumerated the set-back he had suffered in view of the bitterly fought litigation between his parents.

The child remembered violent instances from when he was 5-7-years-old, of the police making enquiries with him and his mother, father banging on the door threatening them. He informed the court that he intended to pursue Aerospace Engineering in the United States in one of the Ivy League colleges. He expressed an apprehension that his father may "lay a trap" to keep him back in India.

The court observed-

“The child is required to be treated as an individual, and it is also necessary to respect his thoughts. If his thoughts and views are not given due weightage, the same can be detrimental to his future. Hence, it is necessary to strike a just and proper balance between the requirements of the parents and the welfare of the child”

The Court, therefore, directed the mother to file an affidavit stating when she would be able to get the son to India for ten days to meet his father, two elder siblings and grandmother. During this time, he would reside with the mother. Significantly, the court directed the father to file an affidavit-cum-undertaking stating that he shall not initiate any complaint or trigger any action for the arrest/detention of his estranged wife and son.

The State and central agencies were also directed to ensure safe passage for the duo’s entry and exit from the country.

The logo for Anbay Legal is a large, light blue watermark centered on the page. It features a stylized house-like shape with a white outline. Inside the house, there is a white silhouette of a person with their arms raised in a 'V' shape. Below the house shape, the words "ANBAY LEGAL" are written in a bold, white, sans-serif font. The entire logo is semi-transparent, allowing the text of the article to be seen through it.

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HIGH COURT OF ODISHA

- ◆ Rabindra Kumar Mishra & Anr v/s State of Odisha & Anr. [Domestic Violence Act]



RABINDRA KUMAR MISHRA & ANR v/s STATE OF ODISHA & ANR.
(CRLMC No. 2334 OF 2021)

TOPIC: Domestic Violence Act

DATE OF ORDER/JUDGEMENT: 17.03.2023

BACKGROUND OF THE CASE

The complainant was married to one Sudhir Kumar Kara in the year 1996 and a son and daughter were born out of wedlock.

However, the complainant alleged she was being subjected to cruelty by her in-laws and her husband. Also, that this marriage was solemnised against the wishes of her in-laws.

She further alleged that her husband was having an illicit relationship with a woman who is the Petitioner no. 2 in this petition. The petitioners approached the court for the quashing the case against petitioner no.2 on the ground that no case is made out against her.

DECISION OF THE COURT

The court was of the view that the Petitioner no.2 did not have any relationship with the complainant. As per Section 2 (f) of the DV Act, “domestic relationship” is defined, two persons when related through consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, can be said to have domestic relationship.

The court also referred to the definition of “respondent” under Section 2(f) of the DV Act, for which the Petitioner no. 2 does not qualify.

Therefore, the Court observed that –

“In other words, unless there is a domestic relationship between the parties, mere residence in the same household will not come within the purview of the definition of shared household as per Section 2(s). Therefore, primarily, the relationship between the parties has to be examined.”





HIGH COURT OF MADHYA PRADESH

- ◆ Veekesh Kalawat v/s State of Madhya Pradesh
[Awareness of POCSO Act]



VEEKESH KALAWAT v/s STATE OF MADHYA PRADESH
(MISC. CRIMINAL CASE 4521 OF 2023)

TOPIC: POCSO Act

DATE OF ORDER/JUDGEMENT: 17.03.2023

BACKGROUND OF THE CASE

The applicant herein is alleged to have kidnapped the prosecutrix on 26/04/2018. The FIR was registered for an offence punishable under Section 363 of the IPC (punishment for kidnapping a person from lawful guardianship). Thereafter, on 10/09/2020, the prosecutrix and applicant along with a son born to them on 26/06/2020, were recovered by the police from the house of one Prabhulal Kalawat (presently the father-in-law of the prosecutrix). The applicant was arrested on 10/09/2020 and continues to languish in prison as an under trial.

The prosecutrix has testified before the Ld. Trial Court on 18/01/2021 as PW1. She has been declared hostile as she did not support the case of the prosecution.

DECISION OF THE COURT

The Court held that when there is a complete abandonment of the State on two crucial fronts viz., providing a meaningful education to its people and to create employment opportunities the people, the result is the inevitable instances like the present case.

Apart from urging the Law Commission to suggest necessary changes in the POCSO Act, the Court directed the State Government to widely propagate the provisions of the POCSO Act through the print media, television and radio, as it is a bounden duty of the State under Section 43 to make the public aware about the provisions of the Act.

Accordingly, the Court ordered the Principal Secretary, Department of Public Relations, State of Madhya Pradesh that he/she shall-

(a) forthwith publish, thrice a week the stringent provisions of the POCSO and the effect of its violation in all prominent Hindi newspapers having circulation in the state;

(b) Disseminate through the local Television channels and FM/AM radio; and

(c) train the teaching staff of all state government schools to convey to the students, the liability under the POCSO. This shall commence forthwith this order being served upon the aforementioned authority.

The Court made it clear that this shall continue for three months and thereafter, the Department of Public Relations can reassess the frequency with which the directions have to be complied with. However, it was directed to continue at regular intervals as required under Section 43.

It cautioned that the Principal Secretary, Department of Public Relations shall be held in contempt for any failure in compliance of the above directions as given by the Court.



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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