

SECOND
ISSUE

Sishu Surakhya



Quarterly Newsletter

The Juvenile Justice Committee, Orissa High Court

Editorial Board

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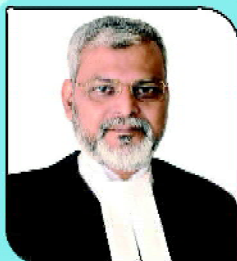
It takes a big heart to shape little minds



Juvenile Justice Committee Orissa High Court



Hon'ble **Kumari Justice Sanju Panda**
Judge, Orissa High Court
Chairperson, Juvenile Justice Committee



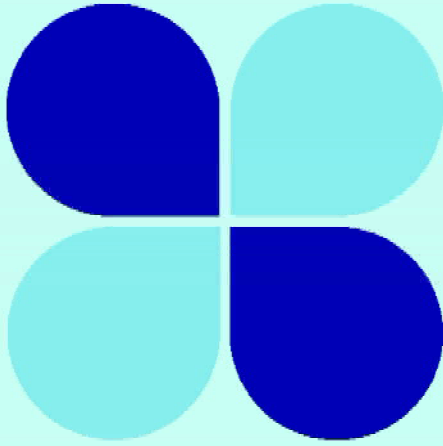
Hon'ble **Shri Justice S. K. Mishra**
Judge, Orissa High Court
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Hon'ble **Shri Justice Biswanath Rath**
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Hon'ble Shri Justice Vineet Saran
Chief Justice, Orissa High Court

MESSAGE

I am glad to know that the Orissa High Court Juvenile Justice Committee is going to publish the second issue of the quarterly Newsletter "Sishu Surakhya".

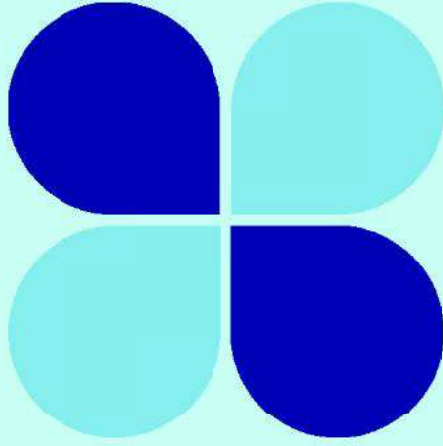
Juvenile Justice in India is based on the principle of safeguarding and protecting children from litigation, exploitation and vulnerable situations, and our Committee is governed by the fundamental principles of Juvenile Justice.

It is indeed a matter of pleasure to say that, the Committee is making various efforts for the protection of the rights of children, including pursuing the stakeholders for expeditious disposal of cases, imparting them quality training and sensitizing them to ensure effective implementation of the provision of the legislations on Juvenile Justice.

The Newsletter speaks volumes of the activities of Juvenile Justice Committee, including publication of recent case laws on the subject. The valuable contents of the newsletter are highly informative and useful to all. I hope that the Newsletter will work as a medium in proliferating the rights of children and increase the sense of public responsibility towards mitigation of juvenile delinquency in our State.

I wish the publication a grand success.


(Vineet Saran)



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MESSAGE



Hon'ble Kumari Justice Sanju Panda
Judge, Orissa High Court
Chairperson, Juvenile Justice Committee

Children are considered to be the greatest asset of a nation and Orissa High Court Juvenile Justice Committee is committed to ensuring a protective and positive environment to them ; free from violence, abuse and exploitations; conducive for their growth and development. The inaugural issue of the Quarterly Newsletter "Sishu Surakhya" was published with an objective to disseminate legal knowledge and apprise of the activities of different stakeholders of the State of Odisha and their endeavour for effective implementation of Juvenile Justice (C& P C) Act, POCSO Act and Central Adoption Resource Authority (CARA) guidelines.

I am delighted to know that second issue of the Newsletter is going to be published. Like the preceding issue, this issue lays a strong focus on numerous accomplishments of Juvenile Justice Committee and reflects the dedication and hard work of all the stakeholders, their utmost involvement and unwavering commitment to the cause.

It is earnestly hoped that, the newsletter would be greatly informational and beneficial to all those associated with Juvenile Justice and would contribute towards the wellbeing of children.


(Justice S. Panda)

From the Desk of Editor-in –Chief

Hon'ble Dr. Justice D.P. Choudhury
Judge, Orissa High Court

We are pleased to present the second issue of SISHU SURAKHYA. The first part of this issue highlighted the reformative approach of the Juvenile Justice (Care and Protection of Children) Act 2015 in the context of children in conflict with law. Equally important dimension of the juvenile justice system in India is protecting children from risk of abuse, exploitation, disadvantaged situation as a part of protection of rights of children. Basically such children do not have adequate parental or family support and thereby needed special protection. They have been categorized 'Children in Need of Care and Protection' (CNCP) by the Juvenile Justice (Care and Protection of Children) Act, 2015.

I would like to throw light on 'child in sexual abuse' and 'child marriage' in this issue of Newsletter. I have picked up the former because the recently published report of National Crime Records Bureau, specialized agency of the Ministry of Home Affairs, Government of India has thrown up alarming data as far as sexual abuse of children in India is concerned. I wish to keep child marriage for discussion as the JJ (CPC) Act, 2015 has incorporated new clause to include child 'who is at imminent risk of marriage before attaining the age of marriage' in the category of CNCP.

World Day for Prevention of Child Abuse was observed on 19th November 2017 reminding us of the importance of child physical safety and efficient protection structures to respond to children's plight. In this context let me express that child protection sector in India lacks robust, comparable, and quality data to comprehend and evaluate child protection deprivations in all fronts. However data provided by the National Crimes Record Bureau

(NCRB) in Crime in India report offers hindsight to ascertain the magnitude of child sexual abuse. Crime in India-2016 reported that the cases registered under Protection of Children from Sexual Offence (POCSO) in 2016 have accounted 34% of cases registered under crime against children. The statistics reveals that child sexual abuse remains the primary form of crimes against children.

A quick reflection into NCRB statistics in Odisha context reveals an increase of 40% of POCSO cases in 2016 over 2015. There were 1372 cases during 2015 while in 2016 number of registered cases was 1928. Of course there are many more that go unreported and unrecorded. Another worrisome revelation is that out of all rape cases registered in Odisha during 2016, in 63% cases the survivors are girls below eighteen years of age. What is also worrying that sexual crime against children continues to rise irrespective of the fact the POCSO Act is in place as a strong legal deterrent to address sexual abuse against children.

Effective implementation of the Protection of Children from Sexual Offences Act could be a strong panacea to curb growing sexual menace against children. Implementation of POCSO Act 2012 is a must needed strategy. This can be achieved though concrete inter-linkages among implementing agencies, greater sensitivity of diverse set of stakeholders, effective community protection structures, safe infrastructure in schools and child care institutions.

The POCSO Act, 2012 envisages providing child friendly system for reporting and investigation of child sexual cases. But challenges are

presented to investigation in 'love or eloping cases' i.e. cases in which victim and accused claim to be in relationship and 'child marriage cases' in which age of married girl is below eighteen years. In such situations the perennial question is whether a woman below eighteen years competent to decide for herself her sexual choice. Another prejudice lies with the investigation regarding the applicability of POCSO Act in child marriage cases since Prohibition of Child Marriage Act 2006 says that marriages under this act shall be voidable at the option of child, and every child begotten or conceived of such marriage shall deemed to be a legitimate child for all purposes.

I must take the opportunity to encapsulate few important points emerged out in the National Conference of High Court Juvenile Justice Committees held in 2017 in the context of linkage of the stakeholders in JJ (CPC) Act, 2015 and POCSO Act 2012. Lack of coordination among them, linkage between special court and CWC, non-production of victims before CWC, delays in payment of compensation, absence of data base of service providers and experts, inadequate provision for rehabilitation of child victims and negative attitude towards victims of sexual offence amongst other issues and challenges.

I would like to wish holistic approach and strong commitment from all the stakeholders to take the challenges head-on to strengthen juvenile justice and child protection structures in the State of Odisha.

We are interested in your feedback on this issue. We also encourage all the institutions of juvenile justice system to share their best practices and success stories.

ELIMINATION OF CHILD LABOUR : AN INTROSPECTION

Hon'ble Shri Justice S. K. Mishra
Judge, Orissa High Court

The fundamental rights enshrined in the Constitution of India prohibit employment of children below the age of 14 years in any factory or mine or in any hazardous work under Article 24. This shows vision and wisdom of the founding fathers of our Constitution to protect children from exploitation and abuse, prohibiting their engagement in work unsuited to their age and strength. This has led Indian Parliament to formulate new law like the Child Labour (Prohibition and Regulation) Act, 1986 and the Government of India to formulate the National Policy on Child Labour (1987) to prohibit children to be employed as child labour in various establishments.

The judiciary in India has made significant contribution too for elimination of child labour through its effective directions and landmark judgements. Some such cases include the *People's Union for Democratic Rights vs. Union of India*, *M.C Mehta vs. State of Tamil Nadu and Ors*, *Bandhua Mukti Morcha vs. Union of India and Ors*, and *Bachapan Bachao Andolan vs. Union of India*. In those cases the judiciary endeavoured to expand and develop the scope of law so as to respond to the hope and aspiration of the framers of the Constitution as well as the people of India.

Despite all measures with regard to elimination of child labour, be it legislative reforms, programmatic interventions, policy development, institutional strengthening and civil awareness initiatives, child labour continues to be an invasive problem in India. Child labour, by and large, is a problem of poor and destitute families where parents cannot afford education of their children. Let us admit that there exists a vicious circle between poverty, illiteracy and child labour. A child born in a poor family begins life in a disadvantaged position, most often missing school. Children excluded from education grow up to be illiterate and economically vulnerable. These children are at high risk of exploitation and more likely to be pulled into child labour.

In this context it is pertinent to mention that India has of late ratified two important conventions of International Labour Organization (ILO) reassuring its commitment to eliminate child labour. They are Convention on the minimum age for admission to employment and work (138) and Convention on worst forms of child labour (182). Among others, these two conventions are the two core international labour standards which lay down fundamental principles and rights at work.

It may also be alluded that the Child Labour (Prohibition and Regulation) Act passed in 1986 prohibited child labour only in so called hazardous occupations for children under the age of 14. In other words, that law banned hardly 20% of all child labour in India and was silent on the rest of 80%. That did not also qualify India to accede ILO convention because the worst form of child labour such as hazardous work for children in the age of 15 to 18 years was not prohibited in the existing law. The amendment effected to the Child Labour (Prohibition and Regulation) Act of 1986 could be viewed as a significant legal reform in India in the context of child labour. The present law, i.e Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 has made blanket ban on the employment of children below the age of 14 years in any occupations, and complete prohibition of hazardous work by children in the age of 15-18 years.

Right to Education laid down in our constitution guarantees free and compulsory education to all children between the ages of 6-14 years. Further the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as 2015 safeguard children below the age of 18 years from all kinds of abuse and exploitation. What was missing is the interconnectivity of Child Labour (Prohibition and Regulation) Act 1986 with Right to Education and juvenile justice. But amendment effected in 2016 to the 1986 Act has harmonized child labour law with Right to Education and Juvenile Justice Act, thus paving way for protection of child labour in right-based approach.

A LOOK BEYOND THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) Act, 2015

Hon'ble Shri Justice Biswanath Rath
Judge, Orissa High court

Section 2(12) of the Juvenile Justice (Care & Protection of Children) Act, 2015 says juvenile or child means a person who has not completed eighteen years of age.

The word "**Juvenile**" originates in "**Juvenis**" (Latin, Young). Juvenile Justice in the legal system envisages to protect all children, bringing within its ambit the children in need of protection, besides those in conflict with law. Despite the Constitutional guarantee and a number of child centric legislations and civil rights, innumerable Indian children face wide spread discrimination and deprivation. Thus, time has come for all Stakeholders including the custodian of the Constitution to be more alert and responsive to save our juveniles by providing all sorts of their rights. Thus, it has become a duty to ensure free and compulsory education up to 14 years of age with provision of minimum basic requirement such as food, shelter and a hope of future prospect to all juveniles. It is high time now for the Stake holders including the Social Workers, the Child Welfare Committees to take up the role of a friend, advisor, reformer and leader. It is also observed that despite elucidation of comprehensive beneficial schemes for juveniles, implementation is still defective, which requires appropriate training. Juvenile crime has become a cause of serious concern all over the world. With the release of crime report in India, 2014, it shows that from 2003 to 2014, crime committed by children has increased from 1% to 1.2 %. In fact children of age group 16-18 years are responsible for 66% of crimes committed by all children in 2013 referring an increase of 10% from 2003 records. Increasing youth violence has become an international concern and juvenile arrest is on the rise. The state of America's Children (R) 2017 report released on December 20, 2017 states that millions rely on to survive, the reality is millions of America's children today are still suffering from hunger, homelessness and hopelessness. Report further provides a comprehensive look at the

status of America's children in 11 areas i.e. child population, child poverty, income and wealth inequality, housing and homelessness, child hunger and nutrition, child health, early childhood, education, child welfare, juvenile justice and gun violence. Situation in Asian countries is still worse. Need of the hour is to effectively make the case for policies, programmers and strategies for improving the conditions of the children, the juveniles.

Juvenile crime involves rape, robbery, aggravated assault in the caption of violent crime, burglary, lurking-theft, motor vehicle theft and arson in the caption of property crime, other assaults, forgery and counterfeiting, fraud, embezzlement, stolen property (buying, receiving, possessing, vandalism, weapons (carrying, possessing etc.), prostitution and commercialized vice, sex offences, drug abuse violations, gambling, offences against the family and citizens, driving under influence, liquor related violations. Time has come to take a decision as to how to accommodate these Juvenile delinquents in the Juvenile Centers. Can a juvenile committing rape and murder be accommodated with a juvenile involved in theft or burglary? Thus, need of hour is not only to have proper trainer but also to have good counselor, appropriate observation halls to accommodate different types of juvenile accused as well as child-friendly-court atmosphere for proper disposal of Juvenile cases.

It be stated here that Juvenile Justice (Care and Protection of Children) Act, 2015 is only one limb of it. Let all stake holders come forward to facilitate appropriate training in this area. Let us ensure our juvenile does not fall to the hand of bad elements and start leading them in a way to bring a bright tomorrow from within the present juveniles. Our attempt should not confine only to poverty stricken area but it should also cover other areas where there may be food, wealth and education for the juveniles facing lack of scope of future prospect.

State of Juvenile Offences and Crimes Against Children In Odisha

National Crime Records Bureau (NCRB), an agency under the Ministry of Home Affairs, Government of India has brought out annual crime entitled Crime in India-2016 which provides data and detailed analysis of crimes in the country. The report has thrown up alarming data on juvenile crimes and crimes against children in Odisha. The data on sexual violence on children in Odisha showed an increase in the number of cases of sexual crimes against children being reported under Protection of Children from Sexual Offences Act 2012. Analysis of NCRB data reveals the following in Odisha context.

- A total of 994 cases of crimes against juveniles (children in conflict with law) were registered in Odisha as compared to 838 in 2014 and 934 in 2015.
- Juvenile crimes reported in 2016 shows an increase of 6.4% over 2015 and 18.6% over 2014.
- Odisha has 12th rank in terms of incidence of juvenile crimes among all the States and Union Territories of India with a share of 2.8% to the total juvenile crimes in the Country.
- The most common crimes by juveniles in Odisha are Theft (17.5%) followed by Criminal trespass & burglary (13.6%), Rape (12.5%), Robbery (5.3%) and Assault on women with intent to outrage her modesty (4.0%).
- Odisha registered 3286 cases under crimes against children in 2016 as compared to 2562 in 2015 and 2196 in 2014.
- Odisha recorded 28.2% increase in crimes against children in 2016 over 2015 as compared to the increase of 16.6% between 2014 and 2015.
- Compared to national average of 2.2%, the proportion of crimes committed against children to total number of cases registered during 2016 was 3.1% in Odisha.
- Odisha has shown an increasing trend in violent crimes against children. Analysis reveals 63% of rape victims, and 37% victims of kidnapping & abduction were children.
- Out of 3286 cases under crime against children, 1928 cases were registered under the Protection of Children from Sexual Offences Act-2012(POCSO) 1154 cases for kidnapping & abduction, 19 cases for murder, 20 cases for trafficking ,55 cases for the offences under Juvenile Justice (Care and Protection of Children) Act-2015 and 15 cases Prohibition of Child Marriages Act-2016 together accounting 97% of the total cases whereas the share of these crimes was 89% to the total cases (1,06,958) registered in India in 2016.
- In 2016 Odisha registered 58.6% of the crime against children under POCSO as compared 38.7% in India which speaks that physical safety and modesty of girl children in Odisha is unprotected
- Of the cases reported under POCSO during 2016, 65% of cases registered under 'penetrative sexual assault' or 'aggravated penetrative sexual assault', i.e. rape followed by sexual assault (20%), and sexual harassment (13%).
- Crime rate under POCSO for the year 2016 was 13.7% in Odisha as against 8.1% in India.
- Out of the 1258 cases of rape of minor girls in 65% of cases victims were in the age group of 16-18 years and in 32% cases the victims were aged 12-16 years. What concern most is that even though strong legal deterrent including the POCSO Act are in place, sexual crimes against children continue to rise.
- With 3286 cases under crimes against children during 2016 Odisha is in 12th place next to Uttar Pradesh(16079), Maharashtra (14559), Madhya Pradesh(13746), Delhi (8178), West Bengal (7004), Chhatisgarh (4746), Karnataka(4455),Rajasthan(4034),Assam(3964), Bihar(3932), and Gujarat (3637).

Programmes and Events

1. **“Sishu Surakhya”**, the quarterly Newsletter of Juvenile Justice Committee, Orissa High Court, was inaugurated on 12.11.2017 by Hon’ble Shri Justice Dipak Mishra, Chief Justice of India in the august presence of Hon’ble Shri Justice Vineet Saran, Chief Justice of Orissa, Hon’ble Kumari Justice Sanju Panda, Judge, Orissa High Court and Chairperson of Juvenile Justice Committee and other Hon’ble judges.

2. In order to sensitize the Child Development Project Officers-cum-Child Marriage Prohibition Officers, Protection Officers and District Child Protection Officers on Prohibition of Child Marriage Act, 2006, strengthen implementation of the Act and ensure standard reporting system and build capacity on cross cutting legal aspects Department of Women and Child Development and Mission Shakti, Govt. of Odisha have undertaken an one day training programme for all the CDPO-cum-CMPOs, District Child Protection Officers (DCPO) and Protection Officers (PO) of the State in 8 batches. A total of 287 Child Development Project Officers (CDPO), 21 Protection Officers (POs) and 22 District Child Protection Officers (DCPOs) from thirty districts participated in the training programme held from 15th - 24th November 2017 at Mission Shakti Bhawan, Bhubaneswar.

There were three technical sessions namely:

(I) “Situation analysis and Social Dimensions of Child Marriage – India & Odisha scenario”,

(II) “PCM Act & Rule: Provisions and institutional mechanism, Role

and responsibilities of Child Marriage Protection Officers, Offences and punishment”,

(III) “Other legal provisions to address child marriage – Selected provisions of POCSO, RTE, ITPA, JJ (C&PC) Act, PWDVA, IPC, CrPC”: Provisions and inter-linkages with PCMA, wherein experts following reflection on child marriage among the participants using a questionnaire asking key causes of child marriage practices in their respective localities, defining impact of child marriage on children and their families, community and society at large and key strategies to address the issue of child marriage in their locality.

3. District level competitions and State Level competition of “Hausla” 2017, was organized on November, 2017, in different events viz. painting, chess, speech on Child Rights. Athletic events like 100 meters Race, 100X4 meters Relay Race, Long Jump, High Jump and football, for representing the State in the National level competition “Hausla -2017” which was held in New Delhi from 16th to 20th Nov’17.

The event was an interstate –Child Care Institution (CCI) festival for children in need of care and protection and orphans residing in Child care institutions. The festival’s objective was to inspire the children to express their creativity, co-curricular and physical abilities.

4. Adoption Awareness Week, 2017 was observed by State Adoption Resource Agency (SARA) and Odisha State Child Protection Society (OSCPS) in collaboration

with Odisha State Council for Child Welfare (OSCCW) at Hotel Kalinga Ashok on 20.11.2017. On the eve of the observation of Adoption Week, 2017 and to promote the adoption programme, SARA felicitated 20 numbers of successful adoption parents. Apart from this representative of Adoption Agencies, winners of the national painting competitions were also invited felicitated.

5. Hon’ble Dr. justice D.P. Choudhury, Member, Juvenile Justice Committee, Orissa High Court, paid a visit to Mahila & Sishu Desk of Rainrangpur Town P.S. on 3rd December 2017. He reviewed its facilities and conditions and gave valuable suggestions for its improvement.

6. A review meeting was held at Phulabani on 17.12.2017 presided over by Hon’ble Dr. Justice D.P. Choudhury on effective implementation of Juvenile Justice (CPC) Act. All the stakeholders of Kandhamal District attended the meeting.

7. A three days review cum orientation program for Legal cum Probation Officers placed under ICPS program organized by State Commission for Protection of Rights of Children in partnership with UNICEF, held in Bhubaneswar during December 29-31, 2017. The program received guidance and technical inputs from Hon’ble Dr. Justice D.P Choudhury, member of JJ Committee, Orissa High Court in his valedictory speech. The program was attended by Legal cum Probation Officers and Public Prosecutors representing 30 districts of Odisha.

Statistics given below provides information for the period from October to December 2017 in the context of State of Odisha.

Children in Conflict with Law

- As many as 459 cases of children in conflict with law were registered during the period between October to December 2017. The District of Khordha, Sambalpur, Sudargarh, Ganjam & Bargarh stood in top five in the list of thirty districts in terms of registration cases in the Juvenile Justice Board.
- 119 cases registered were reported for the petty offence, 139 for serious offences and 120 for heinous offences. (Information relating to the districts of Mayurbhanj, Keonjhar, Kandhamal, Ganjam, Balangir is not furnished)
- Of the cases registered, 120 cases were reported relates to theft, 22 cases to rape, 62 cases to criminal trespass/ burglary, 16 cases to kidnapping & abduction and cases to sexual assault/ outraging modesty. (Information relating to the districts of Mayurbhanj, Keonjhar, Kandhamal, Ganjam, Balangir is not furnished)
- Majority of the children in conflict with law apprehended were in the age group of 15-17 years.
- 64.54 % of the children alleged to be in conflict with law were released on bail whereas 35.46 % children were sent to the observation homes during the pendency of inquiry. (Information relating to the districts of Mayurbhanj, Keonjhar, Kandhamal, Ganjam, Balangir is not furnished)
- 'Preliminary Assessment' into the heinous offences was made by the JJBs in the cases of 34 children out of which 24 cases transferred to the Children's Courts. (Information relating to the districts of Mayurbhanj, Keonjhar, Kandhamal, Ganjam, Balangir is not furnished)
- The pendency of cases in the Juvenile Justice Boards as on 30th June 2017 were 4822 which was reduced to 4772 as on 31st December 2017.
- 41 children were sent home after advice or admonition, 7 sent to Special Homes, 515 children were acquitted or otherwise disposed of and final order in 2543 cases remained pending as on 31st December 2017. (Information relating to the districts of Mayurbhanj, Keonjhar, Kandhamal, Ganjam, Balangir is not furnished)
- 14 children in conflict with law were rehabilitated through after-care program or sponsorship. (Information relating to the districts of Mayurbhanj, Keonjhar, Kandhamal, Ganjam, Balangir is not furnished)

Children in Need of Care and Protection

- 4433(2257 pending + 2176 newly registered) cases of matters relating to children in need of care and protection reported to Child Welfare Committees.
- 1299 children were restored with parents or families.
- 692 children were sent to child care institutions, 316 children were placed in the custody of fit person/ institutions.
- 52 children were declared legally free for adoption, 52 children were placed in pre-adoption foster care, and 61 children had been placed in adoption. 52 children were taken in In-country adoption and 09 in Inter-Country Adoption.
- 338 Children were provided with sponsorship out of which 172 for preventive sponsorship and 166 for rehabilitative sponsorship.
- Government of Odisha have released grants for Rs.7,76,06,400/- to Child Care Institutions for providing improved quality services.
- 662 Children has been deinstitutionalized.

Case Laws

Case No. 1

In the Supreme Court of India
Criminal Appeals No 968 OF 2017
Prateek Gupta Vs. Shilpi Gupta &
Ors.

Hon'ble Judges : Dipak Mishra,
Amitava Roy, J. J.

Decided on 6 December 2017

In this case, the Appellant (father) approached the Supreme Court against High Court's order, whereby the High Court had directed the appellant to handover the custody of child (Master Aadvik, aged about 5 years) to the Mother (respondent).

Case in Brief : The parties after solemnization of their marriage were residing in the USA and out of their wedlock two sons were born. Due to irreconcilable marital issues between the parties, they separated and both the children resided with the respondent. The appellant however, made short time visits in between and on one such occasion he allegedly took along with him Aadvik (child whose custody is disputed in the instant case) by foul play and thereafter the appellant left U.S. with the child to India without any prior information or permission or consent of hers. Aggrieved by this, the respondent approached Juvenile and Domestic Relations Court Fairfax County in the US and filed "Emergency Motion For Return of Minor Child and Established Temporary Custody", whereby the appellant was directed to return the child to the Commonwealth of Virginia and to the custody and control of the respondent. The respondent in the case also invoked the writ jurisdiction of the High Court of Delhi seeking a writ of habeas corpus against the appellant for the custody of the child alleging its illegal and unlawful charge by him. The High Court directed the Appellant to handover the custody of the child to respondent-mother in case.

The Hon'ble two judge bench set aside the High Court order and observed that :

(i) no material has been brought on record, persuasive and convincing enough, to take a view that immediate restoration of the custody of the child to the respondent-mother in the native country is obligatorily called for in its interest and welfare.

(ii) the appellant being the biological father of Aadvik, his custody of the child can by no means in law be construed as illegal or unlawful. In view of the facts and circumstances, the Court opined that the dislodgment of the child as directed by High Court would be harmful to it.

(iii) the child, till he attains majority, ought to continue in the custody, charge and care of the appellant, subject to any order to the contrary, if passed by a court of competent jurisdiction in an appropriate proceeding deciding the issue of its custody in accordance with law.

Case No. 2

In the Supreme Court of India
Writ Petition (Civil) No. 382 of
2013

Independent Thoughts Vs. Union of
India (UOI) and Ors.

Hon'ble Judges: Madan B. Lokur
and Deepak Gupta

Decided on 11.10.2017

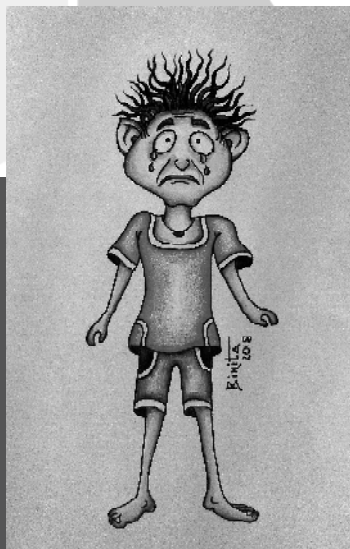
In the present case, the Supreme Court of India ruled that sex between man and his wife below 18 years of age would be rape and the husband can face up to 10 years imprisonment under IPC or even a life term under the Protection of Children from Sexual Violence Act, 2012. This case had been filed by a registered society working in the area of child rights in a petition of public interest with a view to draw attention to the violation of the rights of girls who were married between the ages of 15 and 18 years.

The pivotal issues emerged in this case were: (i) whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age was rape, and (ii) Whether Exception 2 Section 375 of IPC, in so far as it relates to girls aged to 15 to 18 years, was constitutional or was liable to be struck down.

The Apex Court viewed that there is no real distinction between definition of rape under the IPC and definition of 'penetrative sexual assault' under the POCSO Act. Another observation of the Hon'ble Court was that there is no real distinction between the rape a married girl child and aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act. The Supreme Court held that the distinctions between 'rape' and 'penetrative sexual assault' and 'marital rape of girl children between 15 and 18 years of age' and 'aggravated penetrative sexual assault' are only notional or linguistic distinction. There is no rationale for this distinction and it was nothing but a completely arbitrary and discriminatory distinction. Therefore Exception 2 to Section 375 of IPC that relates to girls below 18 years is discriminatory and thus liable to be struck down on the following grounds:-

- (i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India;
- (ii) it is discriminatory and violative of Article 14 of the Constitution of India
- (iii) it is inconsistent with the provisions of POCSO, which must prevail

Children in Media



- 2 children die in wall collapse of an orphanage.
- Odisha Human Rights Commission awards compensation of Rs. 4.5 lakh to an eight year old boy who lost his limb after being electrocuted.
- Odisha government exempts differently-abled students from paying school fees.
- NCPCR issues guidelines on internet use of children.
- 80 students fall ill after consuming Mid-day meal in a school in Bhadrak district
- 11% of girls in Odisha get pregnant by the age of 18 years.
- Odisha Government decides to provide caste certificates 19 lakh students belonging to SC, ST and SEBC in school itself.
- Sevashram students shiver while officials go blanket shopping.
- 12 year old boy suffers hearing loss after Headmaster slaps him.
- Teachers makes kids work on the field, pays them @ Rs.100 per day for paddy harvest in Mayurbhanj district.
- 28% rise in crime against Kids in Odisha.
- NHRC directs Odisha government to pay a compensation of Rs.1,000/- each to 161 tribal girl students of Malkangiri district for not giving them enough food.

Photo Gallery



Hon'ble Shri Justice Dipak Mishra, Chief Justice of India inaugurated "Sishu Surakhya", the Quarterly Newsletter of Orissa High Court Juvenile Justice Committee on 12.11.2017 at New Conference Hall



Photo Gallery



Guests & Dignitaries on the release of inaugural issue of "Sishu Surakhya"



Photo Gallery



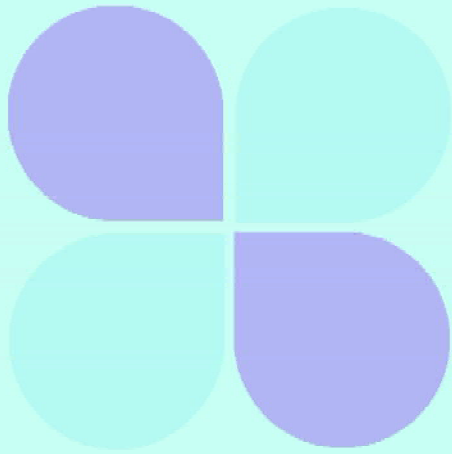
Training on Prohibition of Child Marriage Act 2006



Observation of Adoption Awareness Week, 2017 by State Adoption Resource Agency (SARA) and Odisha State Child Protection Society (OSCPs) in collaboration with Odisha State Council for Child Welfare (OSCCW) at Hotel Kalinga Ashok on 20.11.2017



HAUSLA- 2017: Winners of National Level Competition for Children of CCI



Our children are our greatest treasure.
They are our future.
Those who abuse them tear at the fabric of
our society and weaken our nation.

- Nelson Mandela



Sishu Surakhya

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