

No. Q2-37439/2020/PHQ

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Dated: 03/09/2020

Circular No. 33/2020/PHQ

Sub:- **Hon'ble Supreme Court Judgement in WP (Civil) No.382 of 2013 amending in effect Exception 2 of Sec. 375 of the IPC, 1860 - Invoking appropriate provisions under the POCSO Act, 2012 in cases related to child marriages - Instructions - Reg.**

- Read:- 1) Judgment of the Hon'ble Supreme Court of India dated 11th Oct, 2017 in Independent Thought Vs Union of India.
2) Govt. Letter No.G3/753/2017/Home dated 19/02/2020 forwarding D.O.Letter No.16/9/2017-WW dated 10/11/2017 from Secretary, Ministry of Women & Child Development, Govt. of India.

Section 375 of the Indian Penal Code was amended by the Criminal Law Amendment Act, 2013, to raise the age of consent to sexual intercourse to 18. This brought the law in consonance with all other statutes like Juvenile Justice (Care and Protection of Children) Act, 2015, the Protection of Children from Sexual Offences Act, 2012 and Prohibition of Child Marriage Act, 2006, where a child is recognised as a person below the age of 18. Further, under the Prohibition of Child Marriage Act, 2006, a marriage contracted between two parties where one of them is a minor, i.e. below the age of 18 in case of girls and 21 in case of boys, is declared voidable. It can be nullified by the person who was a minor at the time of the marriage, within two years of attaining majority. However, Exception 2 to Sec.375 of the Indian Penal Code, which creates an exception to the offence of rape in cases of forced sexual intercourse by a man with his wife if she is of 15 years of age or above, has not been amended. This resulted in a strange situation where forced sexual intercourse by a husband with a minor wife between the ages of 15 and 18 was legally permitted.

02. Hon'ble Supreme Court, vide judgment 1st cited, raised the age of consent to 18 for the purpose of Exception 2 to Sec. 375 IPC. It also called for legal reforms to prevent and address violations of girls' rights due to child marriage. Hence, the apex court, in effect, has amended Exception 2 of Sec. 375 IPC to be read as : "*Sexual intercourse or sexual acts by a man with his own wife, **the wife not being under eighteen years of age, is not rape.***"

03. In view of the directive of the apex court in the judgment cited, it is directed that appropriate provisions of the Protection of Children from Sexual Offences Act, 2012, shall be mandatorily invoked in all cases related to child marriages. As the evil practice of child marriage is a matter of grave concern to the Government as well as to the society, all Police Stations, including the Crime Branch, are directed to strictly implement the above directions without fail. If any laxity or negligence is noticed on the part of any officer concerned in complying with the above directions, strict disciplinary action should be initiated against such officer by the disciplinary authority concerned.

Mr. 3.9.2020

Loknath Behera IPS
DGP/State Police Chief

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