

## LAWBY WRITES



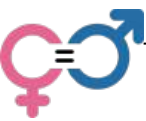
Time for gender-neutral "POSH Plus" legislation in India?

The Prevention of Money Laundering Act: A Legal Tool or Political Instrument?

The Legal Journey of Maggi Noodles

Guidelines for protection of prisoners

Does mandating uniforms amount to cruelty?



# EDITORIAL



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Founder

## Time for gender-neutral “POSH Plus” legislation in India?

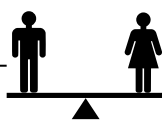
On 14th June 2024, the Uttar Pradesh Police filed a first information report (FIR) against four persons for allegedly raping a 23-year-old man at a hotel in the Chiluatal area of Gorakhpur. The U.P. Police booked the four accused under Section 377 of the Indian Penal Code, 1860 (IPC), which deals with the rape of a man, transgender person or an animal. The Bharatiya Nyaya Sanhita (BNS) that has replaced IPC, which came into force on 1st July 2024, does not have any equivalent provisions to protect men and transgender from sexual harassment.

The need for including men under the ambit of protection from sexual harassment by women or men has been regularly mooted but has not garnered support due to stereotypes like “men are the perpetrators” and “men should know how to handle things for themselves”. Our society suffers from a collective bias that, unfortunately, has not moved the elected representatives to assume gender-neutral tones while legislating. On numerous occasions, men who are harassed do not reveal their situation, fearing social humiliation and becoming an object of weakness and ridicule.

Despite Article 14 of the Indian Constitution providing the basis for enacting gender-neutral laws, the notion of protecting women and children through special enactments, as provided under Article 15(3), has found more merit and has been better utilized. It begs the question as to why, when a gender-neutral law can solve the problems of all victims irrespective of any discrimination, the legislators found it prudent to exclude a gender consciously?

The POCSO Act, 2012, is gender neutral as it protects anyone, irrespective of gender, under the age of 18 years from sexual harassment. Similarly, Regulation 3(1) (d) of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 mandates higher education institutions to take action against all forms of gender-based violence targeted at any gender. However, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) (PoSH) Act, 2013 only covers women, thereby leaving no recourse for men when harassed.

Companies have started adopting POSH plus policy despite the lack of legislations to combat the ground-level reality where even men have started complaining of sexual harassment from women or the same sex. It is time for the Indian Parliament to understand the need for gender-neutral laws in certain areas where stereotypes have to be done away with.





# LEGAL CRISPS

## The Prevention of Money Laundering Act: A legal tool or political instrument?

-Adithya Menon

The Prevention of Money Laundering Act (PMLA), enacted in 2005, was designed to curb financial crime in India by targeting illicit financial activities and promoting transparency within the financial system. Under this law, financial institutions are mandated to verify the identities of their clients, maintain transaction records for five years, and report any suspicious activity to the government. The Enforcement Directorate (ED), empowered to investigate and enforce PMLA provisions, holds significant authority, including the ability to seize assets and detain suspects. However, as the law's scope has grown, critics argue that it has strayed beyond its original mandate, raising serious questions about its impact on individual rights and freedoms.

Several landmark cases illustrate the judiciary's attempts to limit the PMLA's power overreach. In ***Vijay Madanlal Choudhary and Others v. Union of India (2022 SCC OnLine SC 929)***, the Supreme Court ruled that individuals accused of money laundering could seek bail under certain conditions, thus easing PMLA's rigid stance on prolonged detention. Similarly, in ***Prakash Industries Ltd. v. Union of India (2023 SCC OnLine Del 336)***, the Delhi High Court reinforced that the ED's investigations must be limited to specific offences listed in the law, effectively restraining the agency from broadening its scope beyond PMLA's mandate. These rulings have marked important steps in protecting individual rights yet highlight ongoing concerns about the PMLA's expansive authority.

In July 2022, data presented by the Union government in Parliament underscored the low conviction rate under the PMLA. Out of 5,422 cases registered since 2005, only 23 individuals have been convicted, resulting in a conviction rate of less than 0.5%.

Cases involving public figures and activists have deepened concerns about PMLA's use as a tool to stifle dissent. In ***V. Senthil Balaji v. The State (2023 SCC OnLine SC 934)***, the Supreme Court emphasized that the ED must operate within the bounds of the law and cannot function as a "law unto itself." Similarly, in ***Manish Sisodia v. CBI & Ors. (2023 INSC 956)***, the court stressed that prolonged detention without trial could breach constitutional protections, underscoring the need for a balanced approach in applying the PMLA. While the PMLA remains crucial in India's fight against financial crime, the ongoing legal challenges and low conviction rates suggest that reforms may be necessary to prevent misuse, ensuring that the law effectively targets crime without undermining democratic freedoms.





# The Legal Journey of Maggi Noodles

-Nithyaparvathy R G

In June 2015, the FSSAI ordered a nationwide recall of nine Maggi noodle variants due to excessive lead content, prompting Nestlé to withdraw its products and file a lawsuit. The Bombay High Court later quashed the ban, citing violations of natural justice and improper testing procedures, as samples were not analyzed in accredited labs. The court mandated that fresh tests be conducted on five samples from each batch before allowing the product back on the market. Despite this ruling, Nestlé faces ongoing legal challenges.

The Department of Consumer Affairs filed a complaint against Nestlé India, focusing on its popular Maggi Noodles and alleging deceptive labelling strategies as well as potential health risks related to lead amount. The suit alleged that the labelling "No Added MSG" deceived consumers, particularly kids, into believing that the product was healthier than it actually was. The Department stated that these activities constitute unfair trade practices and violate provisions of the Consumer Protection Act, 1986 and the Food Safety and Standards Act, 2006.

The case (***Union of India v. Nestle India Ltd., 2024 SCC OnLine NCDRC 33***) was brought before the National Consumer Disputes Redressal Commission (NCDRC), which ultimately dismissed the complaint. The dismissal was based on the findings that the complaint did not establish any violation of the abovementioned legislation. The court stated that scientific findings and clarifications offered by government authorities did not link Nestlé to any misconduct. Remarkably, the **tests carried out by the Central Food Technological Research Institute (CFTRI) showed that Maggi Noodles' lead content fell within the allowable ranges established by food safety regulations.**

The NCDRC stressed in its evaluation that although consumer safety is of utmost importance, complaints should not be directed at manufacturers in order to subject them to excessive harassment. The Commission acknowledged that consumer protection laws must be applied carefully in order to protect against defective goods and related health hazards.

In reference to the "No Added MSG" label, the Commission emphasized government authorities' clarifications that any MSG-related claims ought to be validated through extensive investigation. These clarifications emphasized that legal action could only be taken if MSG was proven to be intentionally added during production.

In conclusion, the Commission found no evidence of unfair trade practices or deficiency in service against Nestlé. The dismissal of the complaint underscored the importance of evidence-based assessments in consumer protection cases while reaffirming Nestlé's compliance with food safety regulations.





# CASE CHRONICLE

## Guidelines for protection of prisoners

-Seethala B

**Case:** Suhas Chakma vs. Union of India

**Citation:** Writ Petition No. 1082 of 2020

The Supreme Court, in the writ petition concerning the protection of prisoners from torture, cruel, inhumane and degrading treatment, issued several directions focusing on free legal aid and overcrowded prisons. The Division Bench of B.R. Gavai and K.V. Viswanathan, JJ., identified two key issues:

- (1) **Open Correctional Institutions** and
- (2) **Modalities for visitation by lawyers in jail to ensure free legal aid to deserving prison inmates.**

The Court directed Legal Services Authorities (NALSA, SLSAs, DLSAs) to work efficiently towards constitutional objectives under the Legal Services Authorities Act, 1987, and ensure the implementation of the SOP-2022 for Prisoner Legal Aid Clinics (PLACs). NALSA must periodically update the SOP to address operational challenges. Monitoring and audits of Legal Aid Defence Counsel (LADCS) are to be conducted to ensure proper functioning. Service conditions of the legal personnel should be improved when necessary.

Promotion of legal aid schemes should involve the use of local languages, radio campaigns, websites, and public boards at locations like police stations and bus stands. Nukkad Nataks (street plays) can be conducted to raise awareness without disturbing citizens' routines. The Undertrial Review Committee (UTRC) SOP must be reviewed to address gaps between recommended and actual releases of undertrial prisoners, ensuring liberal bail use for women and vulnerable persons.

The Legal Aid Defence Counsel System (LADCS), currently operational in 611 districts, ensures dedicated legal representation. **Legal authorities are tasked with regular interaction with convicts, particularly those who have not filed appeals, informing them of their legal aid rights.** Jail Visiting Lawyers (JVLs) and Paralegal Volunteers (PLVs) must undergo continuous education, with access to legal resources.

The Court highlighted the importance of ensuring pre-litigation assistance and effective coordination between NALSA and other authorities. It emphasized that legal aid to the poor should not be inferior and urged NALSA to bridge gaps between prison data and court processes. **The Court commended NALSA's efforts, underscoring the constitutional commitment under Article 39-A and Article 21, and directed the Registry to circulate the judgement among all High Courts for further action.**





# BEYOND THE OBVIOUS

## Does mandating uniforms amount to cruelty?

-Sri Sai Kamalini M S

The case of ***Sindhu Sivadas v. State of Kerala and Another (CRL.MC NO. 2948 OF 2022)*** has recently garnered attention due to its implications on school discipline and child welfare laws in India. The Kerala High Court delivered its judgment on October 7, 2024, addressing the legality of a school principal's insistence on students wearing uniforms. In this case, the petitioner, Sindhu Sivadas, challenged the actions of a school principal who mandated that students adhere to a uniform policy. The principal's directive was questioned under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which pertains to acts of cruelty towards children.

The court emphasized that such requirements are essential for maintaining discipline within educational institutions and do not inherently cause mental or physical harm to students. Justice Badharudeen articulated that if actions aimed at enforcing discipline were classified as criminal offences, it could lead to detrimental effects on the operational integrity of schools. The ruling underscored the importance of maintaining a structured environment conducive to learning while balancing the rights and protections afforded to children.

This decision has significant implications for educational policies across India. It reinforces the notion that school authorities have the right to enforce uniform policies as part of their duty to maintain order and discipline. Moreover, it sheds light on how courts interpret child protection laws in relation to standard educational practices.

The ruling also serves as a precedent for future cases involving similar disputes between parental rights, child welfare laws, and school authority regulations. By clarifying what constitutes cruelty under the Juvenile Justice Act, the court has set a benchmark for evaluating complaints against educators regarding disciplinary measures.



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# MEET THE TEAM



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