CENTRE FOR COMPARATIVE STUDIES IN PERSONAL LAWS

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Personal Laws Newsletter

PERSONAL LAWS IN INDIA:

Hindu Marriage Act, 1955
Hindu Adoption and Maintenance Act, 1956
Hindu Succession Act, 1956
The Surrogacy (Regulation) Act, 2021

Volume I

Issue I

Recap 2022

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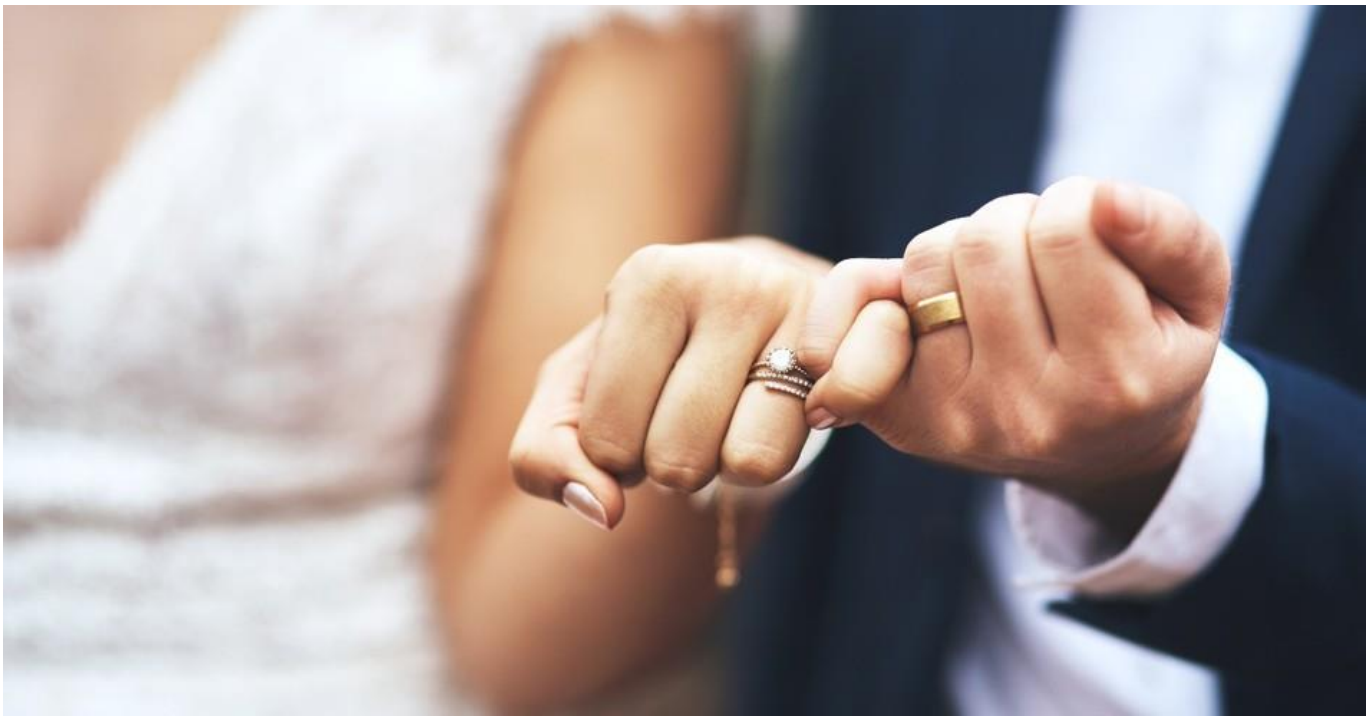


MARRIAGE

- Gulam Deen V. State of Punjab, 2022 SCC Online 1485
- Fija V. Delhi, 2022 SCC Online Del 2527
- Khaledur Rahman V. State Of Kerala 2022 Livelaw (Ker) 601

1. *Gulam Deen v. State of Punjab, 2022 SCC OnLine 1485*

Facts: This was a Criminal Writ Petition under Article 226/227 of the Constitution of India for issuing a writ in the nature of mandamus to protect the life and liberty of the petitioners at the hands of private respondents who were the parents of the petitioners. Here the case was such that a Muslim couple decided to marry each other, wherein the girl was only 16 years of age.

Issue: Was the marriage of a minor girl valid in this case?

Held: The court relied on the 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla' and held the marriage to be valid. The judge cited the case of Yunus Khan vs State Of Haryana & Ors judgment and that of Moh Samim vs State Of Haryana And Ors. as precedents to further substantiate this ruling. In these cases, it was noted that a Muslim girl's marriageable age was governed by the Muslim Personal Law, which equated one's marriageable age with the age of Puberty.

The court finally ordered the Senior Superintendent of Police to provide protection to the couple from their family members, as they married against their will.

2. *Fija & Anr v. State Govt of NCT of Delhi, 2022 SCC OnLine Del 2527*

Facts: The petitioners, Mohammedans by religion, were in love with each other and got married in accordance with Muslim rites and rituals by a Maulana. The parents of the girl were against the marriage and registered an FIR under *Section 363 of the Indian Penal Code*, 1860 and Section 6 of the POSCO, 2012 (*Protection of Children from Sexual Offences*) against the husband. The present petition was filed seeking directions for protection to the petitioners. The girl submitted that she was regularly beaten by her parents at home and the parents tried to forcibly marry her to someone else. It was also submitted that she is pregnant and they both are expecting a child together. The state submitted that the petitioner was only 15 years and 5 months on the date of the marriage, thus justifying the charges alleged.

Issue: Is POSCO applicable in cases of intimate partner violence in Muslim Couples where the girl is a minor?

Held: The Court noted that as per Mohammedan Law, a girl who had attained the age of puberty could marry without the consent of her parents and had the right to reside with her

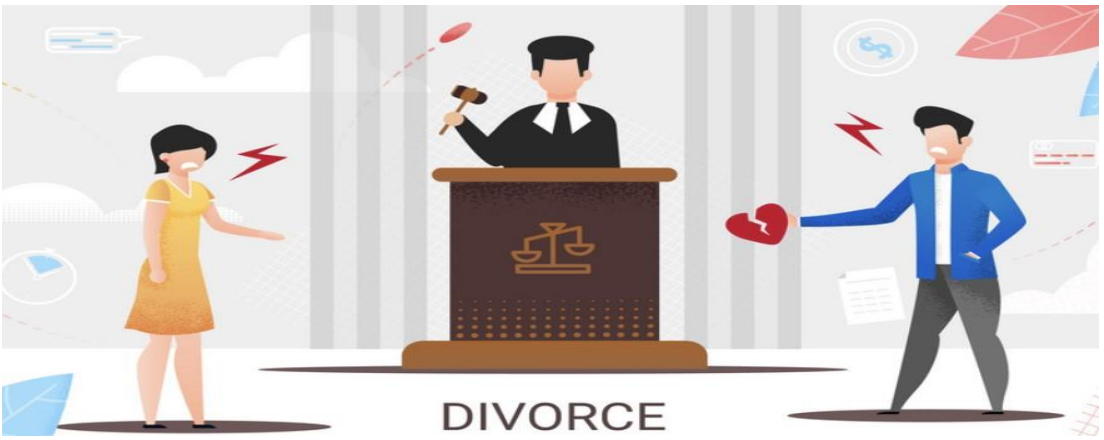
husband even when she was less than 18 years of age and thus otherwise a minor girl. Furthermore, reliance was placed on the case of *Imran v. State of Delhi, (2011) 10 SCC 192* to prove the point that POCSO is an Act for the protection of children below 18 years from sexual abuse and exploitation and will apply to Muslim law. However, the Court clarified that this case cannot be relied on, in terms of the facts of the present case. The Court further noted that the present case is not a case of exploitation but a case where the petitioners were in love, got married according to Muslim laws, and thereafter, had physical relationships, thus giving no strength to the charges alleged under POCSO.

3. Khaledur Rahman v. State of Kerala 2022 LiveLaw (Ker) 601

Facts: Both the petitioner and the victim, in this case, were alleged to be Muslims. While the petitioner was 31 years, the victim was just 15 years and 8 months old. The crime was reported after receiving information from the doctor whom the victim and petitioner had visited for a pregnancy checkup. Their marriage was said to have taken place according to Islamic rituals and customs under Mohammedan law and was recorded under the *West Bengal Act XXVI of 1961*. Petitioner was charged with kidnapping and rape of a minor under Sections 366 and 376 of the IPC, as well as *Sections 5(j),(ii),5(i), and S6 of the POCSO Act*, and requests release from incarceration on the grounds that he legally married the victim.

Issue: Is POSCO applicable in cases of Muslim Couples?

Held: The petitioner is arrested for offences under the POCSO Act and the IPC, and because the POCSO Act was enacted specifically to protect children from sexual offences, sexual exploitation of any kind against a child is treated as an offence, and marriage is not excluded from the statute's scope. The Court also stated that when the provisions of a statute are repugnant to or contrary to, customary law or personal law, the statute will prevail in the absence of any express exclusion of the said personal law from the statutory provisions, and the personal law or customary law will be abrogated to the extent of the inconsistency.



DIVORCE

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- Debananda Tamuli V. Kakumoni Kataky
  (2022) 5 SCC 459
- C Sivakumar V. A. Srivadhya, 2022 SCC Online Mad 3672

4. X v. X, 2022 SCC OnLine Ker 5512

Facts: A review petition was filed by the husband challenging a divorce decree granted to a Muslim wife under the *Dissolution of Muslim Marriages Act, of 1939*. In the review petition, the husband did not contest the Muslim wife's authority to invoke *'khula*,' but rather challenged as a ground of review the method recognised by the Court for the Muslim wife to invoke the remedy of *khula*.

Issue: Is the consent of the husband required?

Held: The Court held that the issue that existed in this instance was due to a long-standing practice that ignored the requirement of the legal norm that grants Muslim women the ability to divorce without the consent of the husband. The Court stated in the judgement under review that the residuary ground as referred to under *Section 2(ix) of the Dissolution of Muslim Marriages Act, 1939 ('DMM Act')* cannot be equated with *khula*, as the 1939 Act only contemplates the dissolution of marriage at the instance of Muslim women on fault grounds. Furthermore, if the Quran expressly allows spouses to end the marriages of their own free choice, it cannot be stated that the *Sunnah* qualifies it by subjecting it to the decision of the husband in the instance of *khula*. Because Sunnah is the secondary source of legislation, while the first source is the *Quran*, *Sunnah* cannot be read in such a way that it either abrogates or limits the scope of the lawgiver's instruction in the primary legislation.

Thus, the Court held that the nature of *khula* is in the form of a *'permissible'* action to the Muslim wife seeking to exercise the option of terminating her marriage and that this reflects the wife's autonomy of choice. The will of the wife so expressed cannot be related to the will of the husband who has not expressed his choice to terminate the marriage, as the very idea of categorization under the law, of action as permissible, is to retain that action within the domain of the person exercising the option, by relating it with his or her autonomy, as extending such actions to the will of another would certainly keep the action out of the category of 'permissible'. Thus, the law cannot be whittled down or confined by her husband's desire, who has no jurisdiction to execute such authorization.

5. Nalini N Uphalkar v. Nagnath Mahadev Uphalkar, 2022 SCC OnLine Bom 4075

Facts: In an appeal filed by the wife contesting the Family Court's decision and order dissolving the marriage by a decree of divorce under *Section 13 of the Hindu Marriage Act, 1955* on the grounds that the charges constitute an act of cruelty. The petitioner-wife testified that the respondent-husband was a habitual alcoholic and a womaniser who was constantly under the influence of liquor and used to physically assault her. She claimed that he used to return home late at night, that she was deprived of her conjugal rights, and that he was in the habit of visiting her sister under hazy skies.

Issue: Did the women's allegations against her husband qualify as 'cruelty'?

Held: The Court found that the woman had no proof to substantiate her claims. Notably, the petitioner's own sister did not confirm the petitioner's claims and just testified that the husband used to take booze but made no claim that he was an alcoholic, which has a separate meaning. As a result, the petitioner's evidence on record failed to support the charges she stated in her petitions. The Court concluded that the wife making unwarranted, false, and baseless allegations about the husband's character, labelling him as an alcoholic and womaniser, has harmed his reputation in society, particularly where he was doing social work, and that he cannot continue with the matrimonial relationship in the face of such allegations. As a result, the Court determined that the case qualified for divorce under *Section 13(1)(i-a) of the Hindu Marriage Act of 1955* on grounds of cruelty.

6. Duleshwar P. Deshmukh v. Kirtilata Deshmukh, 2022 SCC OnLineChh 1567

Facts: In a case involving an appeal filed against a family Court decision in which an application filed by the husband seeking divorce was dismissed, Goutam Bhaduri, J. held that the marriage must be dissolved under *Section 13 of the Hindu Marriage Act, 1955 ('HMA')* by a decree of divorce based primarily on customary divorce followed by desertion of each other. Furthermore, for a custom to have the colour of a rule of law, the party claiming it must argue the custom is ancient. In this case, the spouses married in 1982, and a customary divorce was granted in 1994. Because the parties' employment did not recognise the customary divorce, the husband filed an application under *S. 13 HMA in 1995*, and an ex-parte divorce decree was issued. Following that, the appellant married again, and the wife filed an action to set aside the

earlier ex-parte decree under *Order 9 - Rule 13 of the Code of Civil Procedure, 1908 (CPC)*. The ex-parte decree was overturned by the Family Court. The initial suit was then continued, and it was eventually rejected by the impugned order. The wife then launched a civil claim for declaration, requesting that customary divorce be declared bad in law and rendered ineffective. The petition was finally dismissed, but the wife prevailed on appeal.

Issue: Can marriage be dissolved as per customary divorce?

Held: The Court observed that a plain reading of *S. 29(2) HMA*, clears that marriage can still be dissolved in accordance with the custom governing the parties or under any other law providing for the same. The operating words of this section that 'nothing contained in this Act shall be deemed to affect any right recognised by custom' would lead to demonstrate that the provisions of the Act do not nullify the existence of any custom which confers a right on a party to obtain a dissolution of a Hindu marriage. Furthermore, customary divorce is not recognised, but the saving clause of *S. 29(2)* recognises customary divorce unless it is contrary to public policy.

The Court noted that the parties had been living separately for three years prior to the execution of the customary divorce, and it was written that they could not adjust with each other. It also states that both partners are allowed to remarry following the customary divorce, and custody of the children has been decided. Furthermore, there has been no attempt at a reunion to date, and they have been living separately for the past 28 years, and the facts would indicate that there is an irreversible collapse of the marriage and the parties have forsaken each other, both mentally and physically.

7. Vandana Singh v. Satish Kumar, 2022 SCC OnLine Del 19

Facts: In 2010, the couple married. It was the wife's case that the Respondent's husband moved to Canada for work shortly after their marriage and when he returned to India he was physically, emotionally, and sexually abusive to her. The husband, on the other hand, refuted the charges in a written statement, claiming that their marriage was joyful and that the wife's refusal to live with him was due to pressure from her family, who were opposed to their inter-caste marriage.

Issue: Whether long periods of separation and the husband’s conduct caused mental cruelty to the wife?

Held: The Court considered whether the parties' long periods of continuous separation caused the matrimonial bond to be breached beyond repair, which amounted to cruelty, and whether the husband's conduct before or after the filing of the Divorce Petition caused mental cruelty to the wife to the extent that she cannot be reasonably expected to live with him. The Court determined that the duration of separation and the parties' deciduous interactions were sufficient to demonstrate that their marriage relationship was damaged and beyond repair. The Court notably objected to the husband's allegation against the wife's father, in which he claimed that her father, upon learning of the parties' marriage, suggested that the wife should be gang-raped and aborted at the time of birth for the kind of act she had performed.

As a result, the Court decided that the husband's actions would have resulted in tremendous mental cruelty to the wife, which was sufficient for her to rationally infer that she cannot continue her connection with him.

8. Rishu Aggarwal v. Mohit Goyal, 2022 SCC OnLine Del 1089

Facts: The Court was hearing an appeal filed under *Section 19 of the Family Courts Act*, which challenged a Family Court ruling in which the joint petition to seek divorce by mutual consent under *Section 13B of the Hindu Marriage Act, 1955*, as well as an application under Section 14, was denied. The court must decide if the denial of sex by married parties to each other constitutes "*extreme hardship*" under *Section 14 of the Hindu Marriage Act, 1955*, and so waives the one-year waiting time for filing a divorce case. The appellant relied on a 2013 Kerala High Court judgement finding that divorce can be granted immediately after marriage if there is no sex between husband and wife.

Issue: Can denial of cohabitation in a marriage be considered as an “exceptional hardship” or “extraordinary depravity” to waive the one-year period exception?

Held: A case of the Punjab and Haryana High Court was also cited in support of his contention that the denial of sex by the parties to each other is sufficient to create exceptional hardship or deprivation for the parties. Noting that *Section 14 of the Hindu Marriage Act* is intended to dissuade couples from breaking the holy bond of marriage in haste, the court decided that an obligatory one-year time allowed under *Section 14 of the Act* encourages couples to cool down and reconsider their marriage. The High Court ruled that because denial of cohabitation in a

marriage cannot be considered "exceptional hardship" or "extraordinary depravity," it cannot call for a one-year required time to be waived as an exception rather than a rule.

9. Debananda Tamuli v. Kakumoni Kataky, (2022) 5 SCC 459

Fact: The District Court dismissed the 'husband's' petition based on cruelty and desertion. The husband's appeal was denied by the Guwahati High Court. While hearing Husband's appeal, the Supreme Court recognised that they have been living separately since July 1, 2009. Because the wife visited her matrimonial house in December 2009 and stayed for only one day due to her mother-in-law, the court ruled that there was no return to cohabitation.

Issue: What are the requisite elements of desertion? Are the requisite elements satisfied in this case?

Held: The Court had repeatedly held that desertion is defined as the purposeful abandonment of one spouse by the other without the agreement of the other and without a justifiable justification. The deserted spouse must demonstrate that there is a factum of separation and that the deserting spouse intends to stop the cohabitation permanently. In other words, the deserting spouse should exhibit *animus deserendi*. There must be an absence of consent on the part of the deserted spouse, and the deserted spouse's conduct must not provide a legitimate basis for them to depart the matrimonial home. The wife has not said that she returned to her marriage residence on December 21, 2009, intending to resume cohabitation. The respondent's intention to reestablish cohabitation is not proven. Thus, the factum of separation has been shown in the facts of the case. An inference can be formed from the evidence on record that the respondent had animus deserendi. The woman did not plead or demonstrate any justifiable justification for her absence from her marital residence.

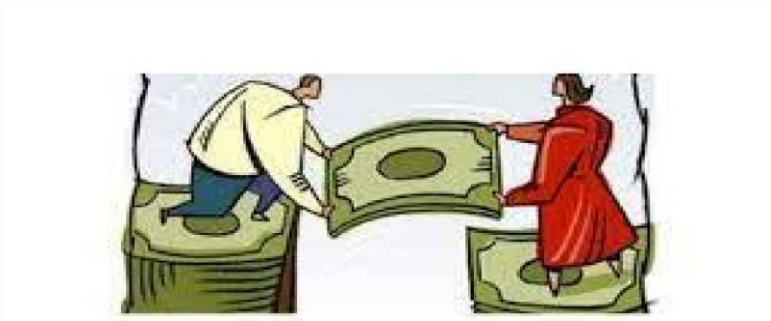
The Supreme Court dissolved the marriage on the grounds of desertion, noting that the 'wife' had not pleaded or proved any justifiable explanation for her absence from her matrimonial residence.

10. *C Sivakumar v. A. Srivadhya, 2022 SCC OnLine Mad 3672*

Facts: The appellant/husband requested a divorce based on cruelty. He claimed that the respondent and he were married on October 10, 2008. He was employed as a Lecturer at Vivekanandha Medical College at the time of the marriage, while the respondent/wife was employed as a Teacher in a Government School. They shared a residence with the appellant's parents for two and a half years during which time Sreedhanya, a female child, was born out of wedlock. The appellant claimed that the respondent/wife formed doubts about his behaviour and character and humiliated him by introducing him to his female coworkers. Respondent's wife filed a fictitious complaint against the appellant's husband at the Thiruchengodu All Women Police Station, which was noted as Ex.P.2. Following the police's advice, the parties established their core family on the first floor of the appellant's parents' house. The appellant/husband further claimed in his petition that the respondent/wife had visited the appellant's workplace (the college) with the malicious motive of destroying his reputation and had spoken poorly of him by associating him with other female instructors. According to the appellant/husband, they have been living separately from January 2011 onwards. The appellant also submitted that all his attempts for reunion resulted in failure and hence he was constrained to file the above petition for divorce on the ground of cruelty.

Issue: Did the Acts of the wife in throwing the *Mangalsutra* and suspecting the character of the husband amount to mental cruelty?

Held: The court noted that the respondent herself admitted in her pleadings, as well as, oral evidence that she had given a police complaint before All Women Police Station, connecting the appellant with other women employees of the college in which he was working without specifically naming anybody. The Court held that suspecting the character of the other spouse and making a complaint to the police would certainly amount to mental cruelty when it is not substantiated by any evidence. The court also held that the act of the wife in removing her *Mangalsutra* amounted to mental cruelty towards the husband coupled with other facts of the case.



MAINTENANCE

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- Pradeep Sharma V. Deepika Sharma, (2022) 2 HCC (Del) 427
- Poonam Sethi V. Sanjay Sethi, 2022 SCC Online Del 69
- Kiran Tomar V. State of Uttar Pradesh, 2022 SCC Online Sc 1539
- Mohd Shakeel V. Sabia Begum 2022 SCC Online Del271
- Prabha Tyagi V. Kamlesh Devi, (2022) 8 SCC 90
- Tarun Pandit V. State of U.P. and Anr, 2022 SCC Online All 38

11. Sandeep Walia v. Monika Uppal, (2022) 4 HCC (Del) 423

Facts: The marriage between the parties was solemnized on 25.10.2015. Soon after the marriage, they started living separately due to family disputes. The Wife filed an application under *Section 125 Cr.PC*. She alleged that she left the matrimonial home due to the harassment meted out to her. The wife claimed that the husband had a salary of 40,000 per month, had rental income and also had no dependents to maintain. The learned Family Court recorded the evidence and held that the wife is entitled to maintenance of Rs. 10,000 per month. The respondent contended that the order of the family court was bad as there was no evidence on record e.g.: salary certificates or employment details to prove that he was financially stable. It was further submitted by the husband had left his job in December 2016. According to him, he was not able to get a good job and was working as a driver under his uncle. Rebutting the claims of the husband, the wife drew the attention of the court to the fact that the respondent's monthly expenditure amounts to Rs. 35,210, even though he claims to be unemployed. She further submitted that the husband's mother draws a pension of Rs. 25,000 and hence he has no dependents to maintain.

Issue: Whether the duty of the husband to pay maintenance to the wife be relaxed, when there is no sufficient evidence to prove the income of the husband?

Held: The court held that it is the sacred duty of the husband to maintain his wife and that there is no escape from paying maintenance unless the wife is not legally entitled to it due to bars stipulated in *Section 125 Cr.P.C.* In maintenance suits, often the husband does not disclose his actual income, to avoid paying maintenance. It must be noted that the object of this section is to protect destitute women and hapless children, hence it should be ensured that strict rules of evidence do not defeat this purpose. The court noted that the husband was renting a 3 BHK flat and had a considerable monthly expenditure. Thus, the court laid down "Bald submissions that the petitioner does not have any income is no ground to exonerate him from the liability of maintaining his wife under the facts of the present case. Even experience shows that actual income is normally not disclosed by the parties. Under such circumstances, it is always safe to come to a realistic conclusion considering the status of the parties and their lifestyle etc." This ruling seeks to expedite the process of maintenance under *Section 125 CrPc* instead of relying on strict rules of evidence which would cause the litigation to go on for a long time.

12. Pradeep Kumar v. Bhawana, (2022) 4 HCC (Del) 595

Facts: The current petition was filed under *Section 482 of the Criminal Procedure Code* (CrPC) against an order requiring the petitioner-husband to pay a total of Rs. 20,000 as interim maintenance for the respondents- the wife and child.

The husband filed a petition under Section 482 of the CrPc for quashing the order of the family court awarding Rs. 20,000 per month as interim maintenance to the wife and child. The High Court had directed the petitioner to pay the difference between the amount that was fixed by the trial court and that which he offered to pay i.e., Rs. 4,000. The respondents refuting the claim that the petitioner was going through financial hardships contended that the petitioner drew a salary of Rs. 28,000 per month and his father was a government servant. It was also submitted by the wife that the husband had paid Rs. 4,000 per month as promised only up to September 2021 whereas he was obligated to pay until February 2022.

Issue: Whether the duty of the husband to pay maintenance to the wife be relaxed, when there is no sufficient evidence to prove the income of the husband?

Held: The court noted that the authority granted to it by Section 482 of the Criminal Procedure Code is extraordinary and should only be used when it is clear that continuing the criminal case would result in a miscarriage of justice. According to the evidence on file and the documents submitted to the court, it is clear that the petitioner overstated his expenses, particularly the Rs. 10,000 per month for his elderly parents, who are admittedly residing in their own home on a 50 square-yard plot in Bhajanpura, Delhi, owned by his father. The petitioner claimed to pay the respondent Rs. 4,000 per month in maintenance (in front of this Court, Rs. 5,000 per month), which is less than half of the amount he purportedly spends on his elderly parents. He also owned a Hyundai EON automobile and a Samsung smartphone. The Court held that a growing child and a mother who is providing for all of that child's necessities are entitled to maintenance to resolve marriage and family issues in a more amicable and pain-free manner, Family Courts were established, Counseling Centers were established, and mediation was made available both before and during litigation. Even from a humanitarian standpoint, denying maintenance to an estranged wife and child is the worst crime.

The Court observed that the respondent had increased his monthly expenditure by Rs. 10,000 for his parents living in their own house separately. The court called the attitude of the man in not

providing even Rs. 4000 per month to his wife and child as *shameful*. Many times, matrimonial alliances break down due to ego clashes. The malafide intention of the husband is to depress his income for the sadistic pleasure of seeing his wife suffering. According to the court, it is to avoid such bitterness in litigation that Family Courts, with counselling and mediation centres, have been set up. The family is a very important institution that helps in maintaining women and children. The legal fraternity must make its efforts in ensuring that even in case of a breakdown of family relations, the dependents are maintained. The court observing that to *deny maintenance to estranged wife and child is the worst offence from a humanitarian perspective* dismissed the present petition.

13. Pradeep Kumar Sharma v. Deepika Sharma, (2022) 2 HCC (Del) 427

Facts: The petitioner filed the case seeking the setting aside of order and judgment dated 31st July 2020 passed by the learned Additional Principal Judge, Family Court, Tis Hazari Courts, Delhi granting maintenance to the wife. The husband pleaded that the wife had sufficient means to maintain herself and that she was being maintained by her father and brother. It was also alleged that the respondent had started living separately without any reason. The son of the parties, in his affidavit of evidence very clearly stated that he along with his mother started living together with a person, Pankaj Arya.

Issue: Whether the wife is entitled to maintenance under *Section 125 of Criminal Procedure* Code. if she is financially stable?

Held: The court held that the husband can avoid paying maintenance under this Section only if the wife commits a matrimonial wrong mentioned in *Section 125(4) of the Cr.P.C*. The court held that cruelty on the part of the wife does not disentitle her from maintenance under Cr.PC. The court also observed that the petitioner failed to establish that the wife was 'living in' adultery. The law mandates that to extract the provision under *Section 125(4) of the Cr.P.C* the husband has to establish with definite evidence that the wife has been living in adultery and one or occasional acts of adultery committed in isolation would not amount to living in adultery. Living in adultery is living together as husband and wife and exercising sexual rights and duties implied by such relation when legally created. Proof of occasional acts of illicit intercourse may fall short of what is intended by the expression living in adultery.

Hence the court held that repeated acts of adultery or living together in adultery would only attract the bar of Section 125(4). This ruling upholds the spirit of *Section 125(4) Cr.P.C.* ensuring that an occasional lapse in matrimonial devotion of the wife does not make her hapless.

14. Poonam Sethi v. Sanjay Sethi, 2022 SCC OnLine Del 69

Facts: The appellant wife and respondent husband got married in 1986 and three children were born out of wedlock. It was the case of the appellant that the three children were brought up by her without any contribution from the father. They also contended that providing maintenance to major daughters is outside the scope of *Sections 24 and 26 of the Hindu Marriage Act* which talks about the maintenance of minor children. The Appellant filed an application for maintenance pendente lite under *Section 24 read with Section 26 of the Hindu Marriage Act ,1955* for herself and her minor son. The respondent wanted compensation from the father towards the children as he was also responsible for their upbringing.

Issue: Whether the interim maintenance can under *section 24 of Hindu Marriage Act* be given by the Husband to the wife and her minor son?

Held: The family court noted that both spouses were gainfully employed. Hence no maintenance was granted to the wife and major daughters, however, maintenance of Rs. 25,000 was granted for the minor son till he attained majority. The appellant relied on *Jasbir Kaur Sehgal v. The District Judge, Dehradun (1997) 7 SCC 7*, wherein the Supreme Court observed that the wife who was maintaining the unmarried major daughter of the parties, would be entitled to maintenance for both herself and the major unmarried daughter. The respondent contended that the daughters were earning a handsome salary and hence were in a position to 'maintain' themselves. The key question before the court thus was: "Whether unmarried daughters who have attained majority and are earning their own income are entitled to maintenance and expenses towards their marriage?" The respondents relying on *Chaturbhuj v. Sita Bai, (2008) 2 SCC 316* contended that the wife has to prove that the husband has sufficient means to maintain and that the wife and her children are unable to maintain themselves. Further, the court noted that the ability to maintain and earn an income are two separate concepts. The test is whether the wife is able to maintain the standard of living that she was used to in the matrimonial home. The court relying on *Jasbir Sehgal* observed that the maintenance of the wife during the proceedings under Section 24 cannot be viewed in isolation and that it includes the maintenance of an unmarried major daughter living with the wife.

The court held that a father has a duty and an obligation to maintain his daughters and to take care of their expenses, including their education and marriage. This obligation is legal and absolute and arises from the very existence of the relationship between the parties. *Kanya Daan* is a solemn and pious obligation of a Hindu Father, from which he cannot renege. The court noted that in the Indian context marriage of the child is performed as per the financial situation of the parents. This is particularly true in the marriage of the daughter to ensure that she is looked after well in a good family. Taking into account the high income and living standards of the respondent the court held that Rs 37 Lakhs would be 'reasonable' maintenance towards the marriage of the daughter.

15. Kiran Tomar v. State of Uttar Pradesh, 2022 SCC OnLine SC 1539

Facts: The family court directed the second respondent to pay maintenance at the rate of Rs 20,000 per month to the first appellant and Rs 15,000 each to the second and third appellants, who are daughters of the first appellant and the second respondent. The High Court overturned the judgment of the family court, observing that the family court took the income of the Father/ Husband to be Rs. 2 Lac per month, however, as per income tax returns the income of the husband was only Rs. 4 Lac per annum.

Issue: Whether the Income Tax return filed by the Family Court represent the true income of the Husband?

Held: The Supreme Court ruled that income tax returns do not necessarily furnish an accurate estimation of the income of the parties. In matrimonial disputes there is always a tendency to suppress or exaggerate the income of the respondent. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income of the second respondent so as to enable the appellants to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together. This ruling tries to ensure that unscrupulous men are not able to avoid their duty of maintaining the children and women, by merely producing false or doctored returns. The rules of evidence have been relaxed while computing the income of the respondent to ensure that the suit is disposed of in an efficient manner and that destitute women and hapless children receive adequate protection.

16. Mohd Shakeel v. Sabia Begum 2022 SCC OnLine Del 271

Facts: This case arises out of a revision petition filed in the High Court of Delhi by the respondent challenging the order of the Family Court which directed him to pay maintenance to his wife and children under Section 125 Criminal Procedure Code. According to the respondent, due to matrimonial discord, the petitioner and his first wife started living separately and the petitioner stopped maintaining the respondent and their children. Taking into account the photographs of the marriage, the children born and the deposition of three neighbours, the trial court concluded that the petitioner and respondent are spouses. The petitioner on revision contended that a valid Muslim marriage is performed in the presence of two witnesses, however, no such witness was produced by the respondent. Petitioner contended that the respondent lived as a tenant in his premises and that there was no proof to show that the said children were born out of wedlock.

Issue: Whether maintenance under S.125 is given without proving the marriage of the spouses.

Held: The Court held that before deciding on the quantum of maintenance under S 125 Cr.PC, it must be decided if the parties are lawfully married to each other or not. The court must be satisfied at a *prima facie* level that there exists a lawful domestic relationship among the parties. As per *Zulekha Khatoon V State of Bihar 2000 SCC OnLine Pat 425* the proceedings under Section 125 CrPc are summary proceedings meant to protect women and children from destitution and vagrancy. Thus, unless the relationship is illegal or invalid without any scope of doubt the wife cannot be denied maintenance under this Section. The full determination of the marital status of the parties is the job of the family court. For the purposes of Section 125 CrPC, the *factum of marriage* is the relevant factor and not the *legality of marriage*. The Apex Court in *Santosh v. Naresh Pal, (1998) 8 SCC 447* also held that for the purposes of maintenance under S 125 Cr.P.C. the marriage is to be proved via a prima facie test. This interpretation ensures that the technicality of personal law criteria for a legally valid marriage does not prevent a woman from claiming maintenance. This ruling is in consonance with principles of natural justice as it does not let a man take advantage of a *de-facto* marriage without taking responsibility for it.

17. Prabha Tyagi v. Kamlesh Devi, (2022) 8 SCC 90/2022 SCC OnLine SC 735

Facts: In this case, the court considered the maintainability of an application under Section 12 of the PWDVA (*Protection of Women from Domestic Violence Act, 2005*) filed by a widow following

the death of her husband against her mother-in-law and father-in-law, seeking a residence order to reside in her late husband's property, among other reliefs. The court was asked whether an aggrieved woman who had never actually lived with the respondents in a shared household and had no subsisting domestic relationship between the complainant and the respondents [after the death of the complainant's husband] at the time of the complaint was entitled to relief under of residence in the shared household under the Act.

Issue: What does the right to residence in a shared household mean?

Held: *Section 12 of the Act* allows the "aggrieved person" [or the Protection Officer or any other person acting on their behalf] to apply to the Magistrate to bring an application to him seeking one or more reliefs under the Act. The "*domestic relationship*" condition is an essential pre-requisite for a person to be classed as an aggrieved person under the Act and so be eligible to obtain remedies under Section 12. However, the Supreme Court stated that it is not required for a domestic relationship to exist at the time an aggrieved individual files an application. The court recognised the importance of interpreting domestic relationships in a broad and flexible manner to include not only current domestic relationships but also former domestic relationships. The court construed *Section 17's* right to shared household to include the ability to enforce residence in the shared home even if the injured individual never really resided in that household, thereby bringing constructive residence into the picture.

In the context of Section 17, the court stated that if a woman in a domestic partnership tries to enforce her right to reside in a shared household, whether she has resided therein at all or not, the right can be enforced under *Sub-Section (1) of Section 17 of the D.V. Act*. The court determined that the phrase "*right to reside in the shared household*" encompassed both actual and constructive residence in the shared household, i.e., the right to reside in the shared household.

18 . Tarun Pandit v. State of U.P. and Another, 2022 SCC OnLine All 38

Facts: The Court was examining a revision case brought by the husband against the Family Court's judgement and order, in which the court granted Rs. 25 lacs as perpetual alimony under *Section 25 of the HMA* while pronouncing the divorce decree in the husband's favour under *Section 13 of the HMA*. The Wife's counsel indicated that she has not accepted the amount of alimony and that it is pending in court, and that accepting the alimony would be equivalent to

accepting the divorce judgement. It was further argued that the Wife never requested or submitted an application for permanent alimony under *Section 25 of the HMA* and that the court granted it at its own discretion.

Issue: Can the wife claim maintenance under multiple statutes?

Held: The court concurred with the reasoning of the wife for rejecting the maintenance amount under HMA. It then referred to the case of *Rajnesh vs. Neha*, in which the Supreme Court set guidelines on the payment of matrimonial maintenance and held that a wife can file a claim for maintenance under various statutes. It then cited the case of *Rohtash Singh vs. Ramendri (2000) 3 SCC 180]*, in which the Supreme Court ruled that if a divorced wife is unable to support herself and has not remarried, she is entitled to maintenance allowance. Using the aforementioned proposition of law on the facts at hand, the court determined that the impugned order is neither defective nor illegal, and so dismissed the Criminal Revision.

CUSTODY AND GUARDIANSHIP

- C. Abdul Aziz And Others V. Chembukandy Saffiya and Ors (2022) 3 KLJ 360

- Sudeep Suhas Kulkarni And Another V. Abbas Bahadur Dhanani 2022 SCC Online Bom 6717

- Anuradha Sharma V. Anuj Sharma, 2022 SCC Online Bom 1489

19. C. Abdul Aziz and Others v. Chembukandy Saffiya and Others, (2022) 3 KLJ 360 or 2022 SCC OnLine Ker 3469

Facts: An appeal was filed against a decree of partition in which one of the parties was a mother who acted as guardian of her son's property. The appellants raised the argument that a woman has been recognized as the guardian of her husband's house as well as his wards. It was argued that there is absolutely nothing in the *Quran & Hadis (Sources of the Muslim Law)* prohibiting a mother from being the guardian. On the contrary, respondents submitted that neither the *Quran* nor the Hadith specifically says that a mother can be a guardian, therefore, one cannot read into the *Quran or Hadith* something which is not there. Specific reference has been made to certain verses in the *Quran and Hadith* to substantiate the argument that a woman has never been given the status of a guardian.

Issue: Whether the *Quran and Hadith* specifically prohibit a woman from becoming a guardian?

Held: The Court found that if succession and matters of secular character have nothing to do with religion, the same would be the position with the case of guardianship also.

> *"It is no doubt true that in this modern age, women have scaled heights and have slowly but steadily stormed several male bastions. As pointed out, many Islamic countries or Muslim-dominated countries have women as their heads of State. Women have been part of expeditions to the space too."*

However, since there were categoric Supreme Court decisions laying down that women cannot be the guardian of their minor child's person or property except for movable property, the Bench opined that its hands were tied from ruling otherwise. In *Shayara Bano v Union of India (2017) 9 SCC 1*, it was held that the practices of the Muslim personal law cannot be required to satisfy the provisions contained in Part-III of the Constitution of India, applicable to state actions, in terms of *Article 13 of the Constitution*. Similarly, there are several decisions of the Apex Court which hold that Muslim mothers cannot be guardians of the person and property of their minor children, the Court held that it is bound by the decisions in those cases as provided under Article 141 of the Constitution. Further, in Shayara Bano, it has been held that Qur'an is the "*first source of law*". However, for matters included in *Section 2 of the Shariat Act*, the only law applicable would be the Muslim personal law and guardianship is referred to in the said section. Therefore, the Court drew the conclusion that the law that is applicable in the case of guardianship can only be the Shariat law.

The court thereby allowed the appeal and held that the partition deed executed in favour of the minor children is invalid.

20. Sudeep Suhas Kulkarni and Another v. Abbas Bahadur Dhanani, 2022 SCC OnLine Bom 6717

Facts: Petitioner no. 2 and the respondent married each other according to Muslim Personal Law in 2005. The child was born out of the illicit sexual relationship of petitioners no. 1 and 2, during the subsistence of marriage of petitioner no. 2 and the respondent. The petitioners are facing difficulties raising the child as her birth certificate mentions that the respondent is her father. It was the petitioners' case that they are living with the child and the DNA report shows that they are her biological parents. Therefore, they claimed that they are fit to be appointed as guardians of the minor child. The respondent in his affidavit has specifically stated that he has no problems with the petitioners being appointed as the guardians of the girl child.

Issue: Whether the *Guardians and Wards Act* prevail over personal law?

Held: In the Commentary on Muslim Law authored by *Manzar Saeed in the Second Edition of 2015*, it is stated that *nasab* or *descent* under Muslim Law is established by valid marriage or by the semblance thereof and it is not established by illicit intercourse (*zina*). It is also stated in the Commentary that when a man commits *zina* with a woman, the descent of the child is not established from the man but it is established only from the woman by its birth. In the *Principles of Mohammedan Law by Mulla,* it is clearly stated that the descent of a child is traced by marriage only. The Supreme Court in the case of *Athar Hussain v. Syed Siraj Ahmed*, (2010) 2 SCC 654, held that if there is a conflict between the provisions of personal law and the provisions of the *Guardians and Wards Act, 1890*, by keeping the interest of the minor child as the paramount consideration, the Court can proceed on the basis that the provisions of the Guardians and Wards Act, 1890 would prevail over the personal law.

In this case, if the secular law does not prevail the child would be deprived of her basic rights of inheritance, additionally, it is to be noted that the respondent has abandoned her and it is all the more important that the petitioners are appointed as her guardians for her safe and prosperous future. This judgment encapsulates the spirit of guardianship and custody laws in India. These laws are made for the welfare of the child and hence while applying these laws, the interest of the

child is more important than the principles of personal laws. Therefore, the current case should be dealt with by the G&W Act and the descent of the child should be identified by the petitioners.

21. Anuradha Sharma v. Anuj Sharma, 2022 SCC OnLine Bom 1489

Facts: According to the petitioner, the respondent (husband) and his family have always been cruel to her. As she was made to perform numerous domestic tasks, she accused her mother-in-law of harassing her. The petitioner, an engineer who was working at the time, alleged that her poor work performance was caused by her being overworked at home. She filed a case for divorce before the Pune Family Court, in accordance with *Sections 13(1)(i) and (i-a) of the Hindu Marriage Act*. She claimed that, despite previously living with the respondent, she had now returned to her matrimonial home in Pune due to the harassment faced by her. *Using Sections 7 and 8 of the Guardian and Wards Act, 1890,* the petitioner filed a petition for sole custody of the minor child, claiming that she had raised the daughter alone since her birth without any help from the respondent or his family and that when she was forced to leave the matrimonial home, her parents had been there to support and help her. The respondent disputed this petition by sporadically filing different affidavits, which are currently before the Family Court for decision. During the above proceedings, the petitioner seeks permission to relocate and travel to Krakow, Poland along with the minor daughter since she had received a great career opportunity there. The petitioner claimed that it is not just a great opportunity for her career advancement but it will also provide her daughter with an excellent opportunity and will ensure improvement in the standard of their living. The respondent contended that it was just a tactic to separate his daughter from him. The family court dismissed the petition and the wife filed an appeal in front of the Bombay HC.

Issue: Whether the custody of the child be given to the father when the mother raised her?

Held: The HC held that considering the daughter's tender age and the fact that she had been raised by her mother, she should be allowed to travel with her to Poland. The period of two years cannot be held to be too long to dissociate the child from the father. The court held that a woman cannot be made to choose between her career and her child. However, the petitioner was directed to allow overnight virtual access of the daughter to the father and also return to India during the child's vacations to allow physical access to her father. Via this judgement, the court has tried to balance the welfare of the child and the woman.

SUCCESSION

- Arunachala Gounder V. Ponnuswamy (2022) 11 SCC 520
- Smt. Mekala Chamanthi V. Lingala Srinivas LNIND 2022 TS 2156
- Gitabai Maruti Raut (Dead) Through Lr. & Others V. Pandurang Maruti Raut (Dead) Through LRs. & Ors 2022 SCC OnLine SC 1009

22. *Arunachala Gounder v. Ponnuswamy (2022) 11 SCC 520*

Facts: The case before the Supreme Court involved a Hindu man named Marappa Gounder who had bought land on his own. Marappa Gounder died, leaving a daughter, Kupayee Ammal, behind. Marappa Gounder had a younger brother, Ramasamy Gounder, who had died before him. The land was later obtained by the five heirs of her uncle (Ramasamy Gounder) in a portion of 1/5th each when the daughter, Kupayee Ammal, died issueless. Guranatha Gounder (son of Ramasamy Gounder) and his four heirs were among the five heirs (Defendant Nos. 1-4 herein). Thangammal (Appellant), one of Gunanatha Gounder's heirs, brought a suit for division of the suit property before the Ld. Trial Court. The Ld. Trial Court determined that Marappa Gounder died on 15 April 1949, so the suit property would pass to Ramasamy Gounder's only son by survivorship, and the Appellant had no authority to file the partition suit. As a result, the claim was dismissed by the Ld. Trial Court. The High Court of Judicature in Madras upheld the findings of the Ld. Trial Court in the first appeal on Marappa Gounder's death date. The High Court thus upheld the decision dismissing the partition claim, concluding that the property would indeed devolve through survivorship. Dissatisfied with the dismissal of the partition claim, the Appellant petitioned the Supreme Court.

Issues: The following issues were framed by the Supreme Court:

i. What is the nature of the property, and what is the succession plan if it is a distinct property rather than an undivided property?

ii. Is it possible for a sole daughter to receive her father's separate property if he dies intestate? And, if so, what is the sequence of succession following the death of such a daughter?

Held: The Supreme Court noted that the suit property was admittedly the self-acquired property of Marappa Gounder despite the family being in a state of jointness upon his death intestate. Therefore, Kupayee Ammal, his sole surviving daughter, would inherit the same by inheritance. Inheritance by succession is recognised by the *Mitakashara* school of law, but such inheritance by succession is limited to the property separately owned by an individual, male or female and includes females as heirs to such property. Before the enactment of the *Hindu Law of Inheritance*

(Amendment) Act, 1929 (1929 Act), Bengal, Benares and Mithila sub-schools of *Mitakshara* recognised only five female relations as being entitled to inherit. The heritable capacity of female heirs is also recognised by the Bombay and Madras subschools of the *Mitakshara* System. The Supreme Court also pondered upon the legislative change ushered in by the enactment of the 1956 Act. It observed that the legislative intent behind enacting *Section 14(I) of the 1956 Act* was to address the limitation imposed on a Hindu woman, who was not previously permitted in law to claim an absolute interest in the properties that were inherited by her. The Supreme Court observed that the order of succession after the death of Kupayyi Ammal will be in accordance with the 1956 Act as she died in 1967, much after the enactment of the 1956 Act.

23. *Smt. Mekala Chamanthi v. Lingala Srinivas: LNIND 2022 TS 2156*

Facts: The dispute was over the property that was inherited by defendant No. 1 from his father. He sold the said property. Plaintiffs, in this case, pleaded they have a share in the property and that their father, the Karta had no right to alienate the coparcenary property.

Issue: Can non-consenting Coparcener file an injunction to prevent alienation?

Held: The court observed that the Karta may alienate the joint family property in only 3 cases namely (i) legal necessity (ii) for the benefit of the estate and (iii) with the consent of other coparceners of the family. If the alienation is not done with the consent of all the coparceners, it is voidable at the instance of those coparceners whose consent was not obtained. The non-consenting coparcener can challenge the validity of the alienation on the ground that it was not meant for legal necessity. The scope of legal necessity is mentioned in the commentary Mulla on Hindu Law which enumerates the following within the meaning of necessity: (i) payment of government revenue and debt (ii) Maintenance of member so of the family (iii) marriage expenses of coparceners and their daughters (iv) performance of funeral or family ceremonies (v) costs of necessary litigation in preserving or recovering the estate (vi) cost of defending any member of the joint family against a serious criminal charge (vii)

Payment of debts incurred on the family business or other necessary purpose. The legal necessity requirement in its broadest sense requires a benefit to the estate by selling the estate to protect it from damage, hostile litigation, flood/ drought etc. However, the transaction for benefit need not be protective in character, all that the court needs to be satisfied with is that the transaction was

intended for the benefit of the family. Thus, the court allows Karta the freedom to manage the family property and even alienate it for the benefit of the family. The intention to preserve the power of Karta is also reflected in the discussion on the prospect of preventing a Karta from alienating the joint family property.

24. *Gitabai Maruti Raut (Dead) Through Lr. & Others v. Pandurang Maruti Raut (Dead) Through Lrs. & Others 2022 SCC OnLine SC 1009*

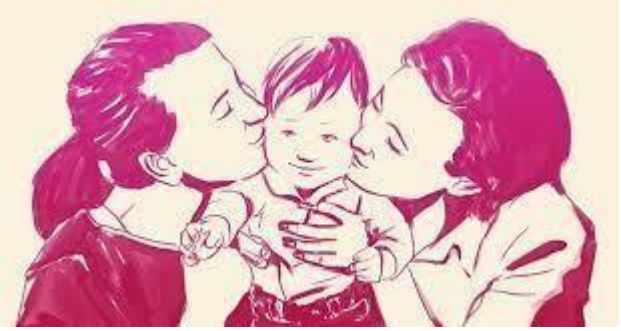
Facts: Balaji was the common ancestor of the joint family in this case. He died leaving behind 4 sons. Of the 4 sons Maruti married twice, his second wife sued for the partition of property claiming that it was ancestral property. The High Court came to the finding that the property in question was purchased by the uncle of the defendant and gifted to him. The burden of proof to show that the property was ancestral property fell on the plaintiff according to the High Court. It was observed that in the absence of any evidence that the property in the hands of the uncle was a joint family property, the court could not rely on the memo of partition. The court held that the property was not a gift by the uncle of the defendant. Rather, the name of the defendant came in respect of the share of his father in property which was partitioned among his uncles and father. He held the property as the Karta of the joint family as he was the eldest male member of the family after the death of his father. The court in its observations puts the burden of proof on the defendant to prove that the property was obtained by his uncle. According to the court, evidence needs to be brought which would show that the person claiming the joint family property had the capacity to purchase his out of his own income this ruling takes into account the context of a joint family. Many times one of the members using the daily income purchases the property. If that member wishes to deprive other members of the family of the enjoyment of the property, he has to bring evidence on record to prove that he could purchase the property. This ensures that unscrupulous members are not able to easily dupe the illiterate members of the joint family from their rights.

Issue: Whether the properties at villages Pirangut and Nande are joint family ancestral properties in the hands of Maruti, the deceased son of Balaji, the predecessor of the parties in appeal?

Held: The Supreme Court stated that because the material on record, including the written agreement of settlement and the mutation, demonstrated that Pirangut was a shared family

property, the term "partition" was used. There was no indication that Raghunath, Balaji's eldest son, had given Pandurang the land in Village Pirangut. There was no indication that Raghunath was the only owner or that the property was purchased with his earnings. Geetabai, the complainant, said categorically that her father-in-law owned the land in Pirangut. Sopan had also resigned to the same effect. He was investigated as Balaji's surviving son. The conclusions recorded by the High Court could not be upheld in the absence of any proof that Raghunath had the ability to acquire the property as documentary evidence in respect of the division of the land located in Village Pirangut.

The court concluded that the plaintiff and defendants, including Maruti's daughters, have an equal part in the Pirangut and Lavale properties. Thus, Geetabai, the plaintiff, Pandurang, Krishnakant, Ramchandra, and Muktabai, defendants 1–4, and Chandrakant, Ramesh, Uma, Shailaja, and Sumitra, defendants 5–9, would each receive a one-tenth part. Geetabai's portion would be distributed following the applicable succession legislation. The purchaser should be entitled to the same interest in the property that the vendor had under the preceding order.



SURROGACY

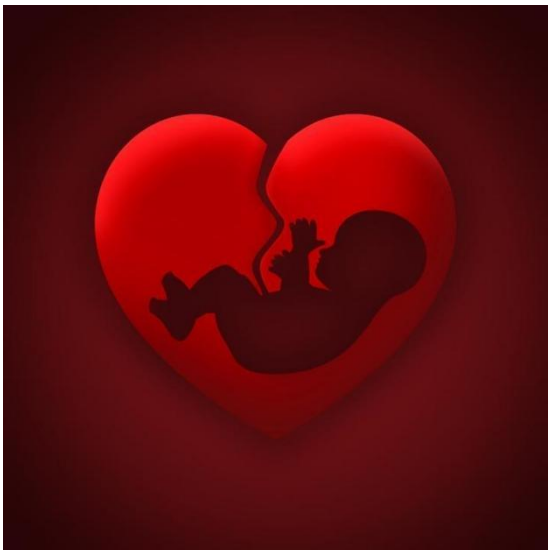
- Rakhi Bose V. UOI 2022 SCC Online Ker 3250

25. Rakhi Bose v. UOI, 2022 SCC OnLine Ker 3250

Facts: The petitioners were married in 2007 and have been trying to procreate for fifteen years, but have been unsuccessful. The couple made the decision to visit the Craft Hospital and Research Centre for treatment of their infertility. On February 9, 2014, the process' first petitioner underwent an Oocytes Retrieval operation. After being collected and then injected, four of the six eggs were fertilised. The treatment was stopped in 2016 due to medical complications and the couple wanted to resume the treatment at Sabine Hospital later on. The doctors at Sabine Hospital asked the Couple to request a transfer of the frozen embryos from the Craft Hospital. The *Assisted Reproductive Technology (Regulation) Act, 2021*, which placed constraints on issues relating to assisted reproduction, went into effect on January 20, 2022, during the interim. As a result, the Craft Hospital declined to transfer the embryos, claiming that it is now against the law due to the passage of the Act.

Issue: *Section 29 of the Act* forbids the sale, transfer, or use of gametes, zygotes, and embryos, or any portion of them, or information relating to them, to any party inside or outside of India, and not the transfer of one's own gametes and embryos for one's own use with the National Board's approval.

Held: The Court stated that the aim of the Act, 2021 is to restrict the sale, etc. of human gametes, zygotes, and embryos and that there is no such transfer in the instance at hand because no donor or third party is involved, and the embryos are the commissioning couples. Hence, the Court found that S.29 did not exclude such a transfer. The Court determined that the petitioners would face excessive harm and unhappiness if the transfer was not approved because the maximum period for which embryos can be maintained is ten years and eight years had already passed. As a result, the Court concluded that the Petitioners should pay the amounts due to the Craft Hospital for preserving the embryos from 02-09-2014 onwards and that if such payment is affected, the hospital should immediately permit the transfer of the embryos to the Sabine Hospital. The Sabine Hospital would then take the embryos and transfer them to its *Assisted Reproductive Technology Bank*, where they would be preserved with care.



ADOPTION

- X V. Health and Family Welfare Department
  2022 SCC Online SC 905

26. X v. Health and Family Welfare Department, 2022 SCC Online SC 1321

Facts: This case concerns the abortion plea of an unmarried woman who had become pregnant. *Section 3(2)(b) of the Medical Termination of Pregnancy (MTP) Act*, as amended by the *Medical Termination of Pregnancy (Amendment) Act of 2021*, contains the legal provision that applies to her. According to *Section 3(2)(b) of the MTP Act*, if a woman meets the requirements for the case under the act's rules and the pregnancy is between 20 and 24 weeks long, at least two registered medical professionals must be of the opinion that either the mother's life or her physical or mental health would be in grave danger if the pregnancy continued, or that there is a significant risk that the child would be born with a serious mental or physical disability. According to *Rule 3B*, seven categories of women are eligible for termination of pregnancy under *Section 3(2)(b) of the act*. These are first, survivors of sexual assault, rape or incest; second, minors; third, women whose marital status changes during the ongoing pregnancy through widowhood or divorce; fourth, women with physical disabilities; fifth, mentally ill women, including mental retardation; sixth, women, whose foetus has a malformation that has a substantial risk of being incompatible with life, or if the child is born, it may suffer from physical or mental abnormalities and will be seriously handicapped; and finally, women with pregnancy in humanitarian settings or disaster or emergency situations. The Delhi HC observed that the woman, in this case, does not fall into any of the seven categories and thus dismissed her plea.

Issues: Whether the woman in the case at hand has a right to a safe abortion in any of the categories mentioned under *Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (MTP Rules)?*

Held: The SC held that the literal interpretation of Rule 3B by the Delhi HC was incorrect. The SC notes that according to the statement of objects and reasons of the MTP Act as well as its provisions, the tenor of the act is to provide access to safe and legal medical abortions to women. The Court relying on *Bombay Anand Bhavan Restaurant v ESI Corporation (2009) 9 SCC 61* held that beneficial legislation must be interpreted in favour of the beneficiaries when it is possible to take two views of a legal provision. The Supreme Court emphasised that Rule 3B intended to address the issue of women being denied access to abortions after 20 weeks of pregnancy even if their lives underwent major changes that had an impact on their physical and mental health. According to the Supreme Court, each group of women covered by Rule 3B shares the trait of being in a special situation due to her physical, mental, social, or economic situation. It recognised

the possibility that, for reasons other than those listed in Rule 3B, some categories of women may find themselves in the same situation as women in other categories (socially, emotionally, financially, or even physically). This can entail her losing her work and becoming vulnerable or having her financial situation change. The petitioner is the eldest of five siblings and wants to undergo an abortion as her parents have refused to marry her at the last moment. She does not want to undergo the mental trauma and the social stigma of being a mother of an illegitimate child. Hence, Rule 3B would apply to her as she has undergone a material change in circumstances. The Court also held that a substantial reliance has to be placed on the women's own estimation while determining if the pregnancy would cause harm to her mental or physical health. This ruling is in line with the landmark judgment of *K.S. Puttaswamy V UOI (2017) 10 SCC 1* which upholds women's bodily autonomy and independence to decide whether she wants to rear a child or not.

LIVE IN RELATIONSHIP

- Smt. Kahkashan And Ors. V. Umesh Kumar Gupta @ Abbas Husain, 2022 Crl (Rev.) Petition No. 670/2016

- Snehpal Khinda V. State of Haryana, Cr.W.P-11142/2022

- Deepika Rajpurohit V. State of Rajasthan,
  2022 SCC OnLine Raj 2476

27. Smt. Kahkashan And Ors. v. Umesh Kumar Gupta @ Abbas Husain 2022 Crl (Rev.) Petition no. 670/2016

Facts: Kahkashan, the Revisionist No. 1 along with her three minor daughters filed an application under *Section 125 of the Cr.P.C.* on 3 August 2009 claiming maintenance from the respondent. After the wedding, the applicant started living in the Respondent's home and three daughters were born out of wedlock. Initially, the Respondent took good care of the applicant and her children but later on started neglecting them as three daughters were born to her one after another and he wanted a son. Due to financial difficulties, she had to change schools of her daughters even when the respondent was in a good financial position and earning well. He was a staunch Hindu and got married some 18 years ago. His first wife was living at the time of the alleged marriage. The trial court observed that the applicant could not prove that she had started living as the wife of the respondent in the matrimonial house. She further could not prove that they were recognized as husband and wife in society and that the three children were born out of wedlock. It was observed that the marriage was void as the Supreme Court in cases like *Sarla Mudgal v. Union of India* (1995) 3 SCC 35 and *Lily Thomas v. Union of India* (2000) 6 SCC 24 has clearly laid that the second marriage of a Hindu male during the subsistence of the first marriage is void ab initio. Even though the Supreme Court in *Chanmuniya v. Virendra Kumar Singh Kushwaha* (2011) 1 SCC 141 and *Badshah v. Urmila Badshah Godse* (2014) 1 SCC 188 held that there would be a presumption of marriage drawn by long cohabitation between the parties the same would not apply in this case.

Issue: Was the relationship in this case 'relationship in nature of marriage'?

Held: The court observed that the factum of the first marriage was not concealed from the respondent in this case. The court noted that the proofs presented do not establish that the two were recognized as husband and wife in society. Thus, even though the relationship may be called a live-in relationship, the status of the applicant was not that of a de-facto wife but that of a concubine.

28. Snehpal Khinda v. State of Haryana, CRWP-11142/2022

Facts: The petitioners were in a live-in relationship and the girl was not of marriageable age. The petitioners requested protection orders as they were apprehending dangers to their life and liberty at the hands of the respondents.

Issue: Whether the court can provide protection to a couple living in a live-in relationship?

Held: Without commenting as regards the veracity of the averments made in the petition, the court disposed of with a direction to respondent No.2 i.e. Senior Superintendent of Police, Ferozepur to look into the matter and to dispose of the representation dated 05.10.2022 in accordance with the law. In case, it is found that there is a genuine threat to the lives and liberty of the petitioners, then the S.P. was directed to take necessary steps warranted under law be taken thereupon at the earliest so as to ensure that no harm is caused to the petitioners.

29. Deepika Rajpurohit v. State of Rajasthan, 2022 SCC OnLine Raj 2476

Facts: The petitioners have filed a criminal writ petition under Article 226 of the Indian Constitution seeking the issuance of necessary directions to the official respondents to provide adequate security and protection to the petitioners on the grounds that they face grave threats to their life and liberty at the hands of private respondents.

Issues: It was contended that Article 21 of the Indian Constitution recognises the right to life and personal liberty as fundamental rights, and any danger to these rights constitutes a violation of those rights.

Held: The court relied on *Leela v. the State of Rajasthan SBCWP No.300/2022*, wherein it was observed:

> *"It is sufficiently clear to this Court that the Hon'ble Apex Court's standpoint is that there exists a duty of the State to protect and safeguard all fundamental rights unless taken away by due process of law. Even if any illegality or wrongfulness has been committed, the duty to punish vests solely with the State, that too in attune with due process of law. In no circumstance can the State bypass due process, permit or condone any acts of moral policing or mob mentality.*

When the Right to life and liberty is even guaranteed to convicted criminals of serious offences, there can be no reasonable nexus to not grant the same protection to those in "legal/illegal relationships".

Had there been a question before this Court with regard the morality/legality of live-in relationships and matters connected thereto, then perhaps the answer would have required more deliberation along those lines. However, in the context of the limited question this Court is posed with pertaining to the application of Article 21 of the Constitution of India and it is clear that the right to claim protection under this Article is a constitutional mandate upon the State and can be availed by all persons alike. There arises no question of this right to be waived off even if the person seeking protection is guilty of an immoral, unlawful or illegal act, as per the precedent law cited of the Hon'ble Apex Court. However, in this case, this Court does not wish to delve into the sanctity of relationships.

This Court finds itself firmly tied down to the principle of individual autonomy, which cannot be hampered by societal expectations in a vibrant democracy. The State's respect for the individual independent choices has to be held high. This Court fully values the principle that at all junctures constitutional morality has to have an overriding impact upon societal morality. This Court cannot sit back and watch the transgression or dereliction in the sphere of fundamental rights, which are basic human rights. The public morality cannot be allowed to overshadow the constitutional morality, particularly when the legal tenability of the right to protection is paramount. This Court is duty bound to act as a protector of the rights of the individuals, which are under siege with the clear intention of obstructing the vision of Constitution."

Therefore, the court ordered courts to take action for the protection of Article 21.

MATERNITY LAW

- Deepika Singh V. Central Administrative Services, 2022 SCC Online SC 1088

30. Deepika Singh v. Central Administrative Tribunal, 2022 SCC OnLine SC 1088

Facts: A maternity leave request by a woman working as a Nursing Officer at the Post Graduate Institute of Medical Education and Research in Chandigarh was denied on the grounds that she had two surviving children from her spouse's first marriage and had previously taken childcare leave for one of them, making her first biological child her third child. The appellant's husband's first wife, with whom he had two children, had died. As a result, the maternity leave request was denied under *Rule 43 of the Central Civil Services (Leave) Rules 1972*. As a result, leave was cumulatively classified as earned leave, medical leave, half-pay leave, and extraordinary leave. The P&H High Court upheld this verdict.

Issue: Were the women entitled to enjoy maternity leave on the birth of their third child?

Held: The Supreme Court, on the other hand, noted that in the case at issue, the appellant's family structure changed when she assumed parental responsibility for her spouse's biological children from his previous marriage. When presented with such scenarios, judges tried to give effect to the aim of the legislation at hand rather than to prevent its application. As a result, it was noticed that unless a purposive interpretation was taken in the current situation, the intention and intent of granting maternity leave would be undermined. It was emphasised that the provision of maternity leave under the Rules of 1972 is meant to help women stay in the workforce. On the topic of leave for child care, the Court determined that *Rule 43(1) of the Rules of 1972* allows for the grant of maternity leave for a duration of 180 days. In addition to maternity leave, a woman is entitled to child care leave for caring for her two eldest surviving children, whether for upbringing or any other reason, such as education, sickness, or the like. Child care leaves under *Rule 43-C* are available not only at the time of birth but also at any subsequent time, as evidenced by the illustrative causes mentioned in the rules. Both are distinct entitlements. As a result, the Court determined that the appellant was entitled to maternity leave and ordered that the benefits be paid to her within two months of the order's date.

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