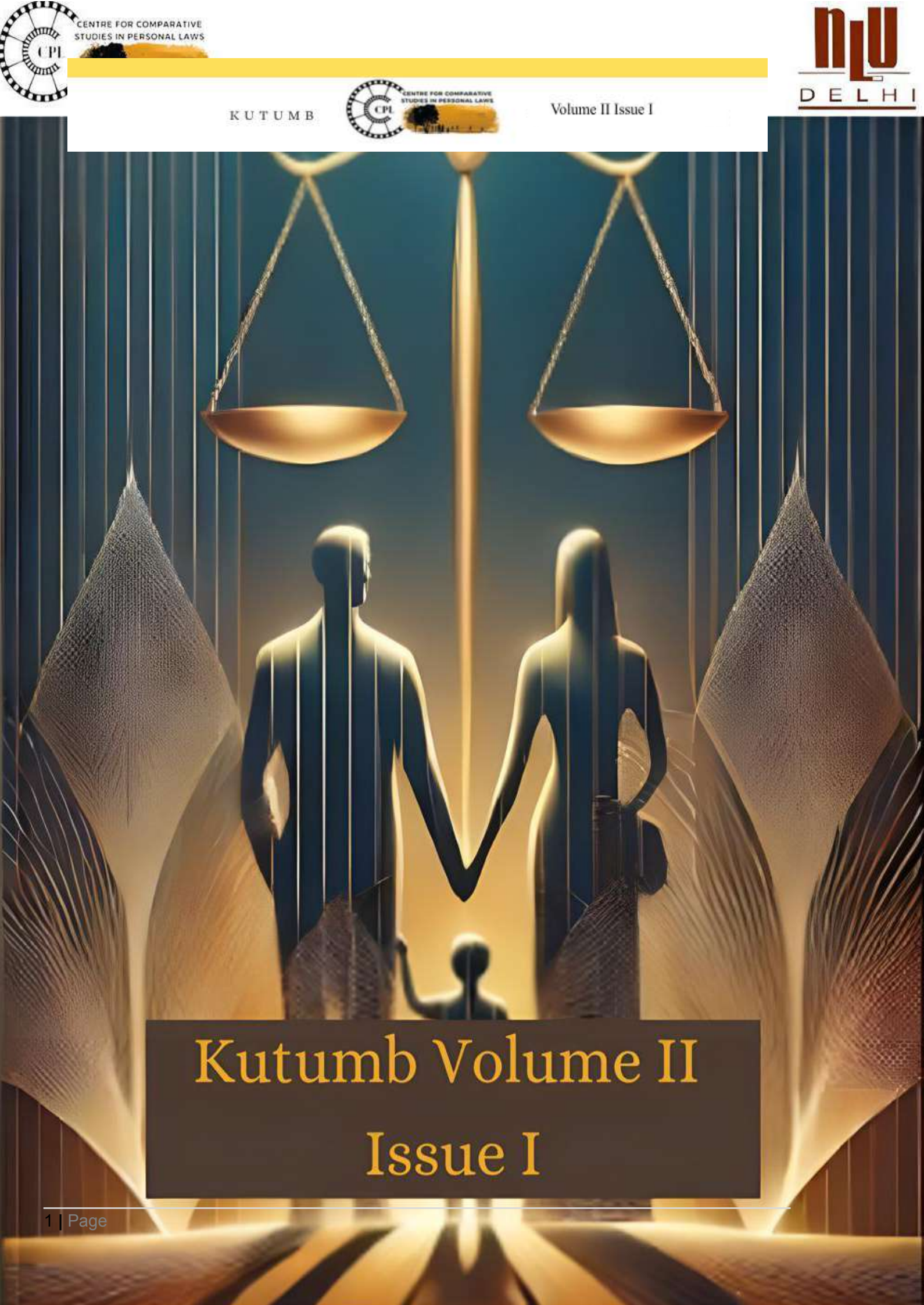




Kutumb Volume II Issue I

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Divorce

Divorce

XXX v. XXX, 2024 LiveLaw (PH) 162

Issue

Whether failure to fulfil basic financial responsibilities by the husband amounts to cruelty?

Facts

The husband filed a divorce petition in the family court on the grounds of cruelty and desertion alleging that the wife has left her matrimonial house along with their child, which amounted to cruelty. However, the court found that it is the husband who had deserted and committed cruelty by failing to maintain her and the child. The husband filed an appeal in the Punjab & Haryana High Court against such judgement of the learned family court.

Ratio

The division bench of the Hon'ble Court held that the *"the failure to fulfill basic financial responsibilities, contributes to the characterization of cruelty and desertion on the part of the appellant"* The court noted that *"Thus, by the common prudence, it can safely be concluded that the appellant-husband by filing the petition for divorce wanted to take the benefit of his own wrongs. Having himself failed to perform his matrimonial obligations, the appellant-husband cannot be allowed to plead that the trial Court ought to have granted him divorce because, the respondent-wife had been proceeded ex-parte,"* The court further observed that it was the husband who treated the wife with cruelty by failing to provide for any maintenance amount to the wife or their minor child. The court upheld the family court's order and observed that the lack of the provision made by the husband for the day to day needs of the wife and the minor child amounts to cruelty. Further, the court clarified that the burden of proof rests entirely on the party that pleads

cruelty and desertion. In the instant case, it was the husband who failed to substantiate the case with cogent and convincing evidence.

Decision of the Court

In the light of the above, the court dismissed the plea by the husband.

XXXX v. XXXX

Issue

Whether a prolonged separation and a ruptured marital bond beyond repair amount to mental cruelty?

Facts

The wife filed for divorce on the grounds of cruelty, alleging that her husband and his family harassed her for dowry since their marriage in 2005. The family court dismissed her plea, finding her allegations general in nature. The couple had been living separately since 2017, and mediation efforts failed. The wife appealed, arguing that the prolonged separation had rendered the marriage unworkable, and reuniting would lead to mental cruelty for both parties.

Ratio

The division bench, led by Justice Sudhir Singh and Justice Jasjit Singh Bedi, held that compelling parties who have been separated for over seven years to live together would create a "fiction supported by a legal tie," disregarding their feelings and emotions, which amounts to mental cruelty. The court observed: "Indisputably, the parties have been living separately since 2017... the bitterness of their relationship speaks volumes, especially as mediation failed, and there has been no resumption of matrimonial obligations." The court asserted that a marriage that has "died for all

purposes" cannot be revived by court mandate. It also noted the husband's lack of efforts for reconciliation, as he did not seek restitution of conjugal rights and displayed resistance during mediation. The court concluded that the husband's actions demonstrated an intent to frustrate his wife's claims and prolong litigation, disregarding the welfare of the wife and their son.

Decision of the Court

In light of the above findings, the High Court allowed the wife's appeal, granting divorce to the couple, emphasizing that prolonged separation and irreparable marital discord constituted mental cruelty.

X v. Y Civil Appeal No. 7210 of 2024

Issue

Whether the respondent's prolonged failure to comply with a restitution of conjugal rights decree and the resulting separation from 2008 amounts to desertion, warranting divorce.

Facts

The marriage was solemnized on March 25, 1999. Marital discord began in 2006, leading to the appellant's filing of a restitution of conjugal rights petition in 2008. Although the Family Court granted the decree in 2013, the respondent-wife did not resume cohabitation. The appellant then sought a divorce on grounds of cruelty and desertion. Despite the Family Court granting the divorce in 2016, the High Court reversed the decree in 2019. During the ongoing litigation, mediation efforts, including those at the Supreme Court level, were unsuccessful.

Ratio

The Supreme Court, through Justice Abhay S. Oka, found that the failure to resume cohabitation after a restitution decree constituted desertion under Section 13(1)(ib) of the Hindu Marriage Act.

The bench observed that the respondent-wife did not attempt to return to the marital home after the Family Court's decree for restitution. The Supreme Court emphasized that the prolonged separation and lack of intent to reconcile marked a breakdown of marriage.

Decision of the court

Desertion in this case is evidenced by the respondent's continuous failure to rejoin the appellant despite the decree. This conduct, lasting over a decade, demonstrates the marriage's irreversible breakdown. Relying on precedent and Section 13(1A)(ii) of the Hindu Marriage Act, the Court underscored that the lack of cohabitation for over a year post-decree confirms desertion. Furthermore, the Court noted the appellant's offer of a lump sum of ₹30 lakhs as a reasonable final settlement, directing that the divorce decree would take effect upon payment.

Decision of the Court

The Supreme Court set aside the High Court's judgment and restored the Family Court's divorce decree on grounds of desertion, effective upon the appellant's payment of ₹30 lakhs to the respondent as alimony.

Trisha Singh v. Anurag Kumar, *Transfer Petition (Civil) No. 1008 of 2023*

Issue

Whether the petitioner-wife's resiling from a mutual settlement agreement after partially receiving the agreed alimony justifies a decree of divorce and enforcement of the remaining settlement terms.

Facts

Trisha Singh (petitioner) sought the transfer of a matrimonial case filed by her husband, Anurag Kumar (respondent), under Section 9 of the Hindu Marriage Act from Varanasi to Pune. After mediation efforts, the couple agreed to a mutual settlement on February 26, 2024, with terms for

permanent alimony totaling ₹1.15 crore. The respondent paid ₹50 lakh as part-payment, agreeing to clear the balance in installments by December 31, 2024. However, after receiving the payment, the petitioner-wife allegedly tried to retract from the settlement without valid reason, prompting the respondent to seek enforcement of the agreement.

Ratio

The Supreme Court, led by Justices B.R. Gavai, S.V.N. Bhatti, and Sandeep Mehta, upheld the enforceability of the mutual settlement under Article 142 of the Constitution, emphasizing that the petitioner's withdrawal after partial compliance constituted recalcitrant behavior and caused undue disadvantage to the respondent, who had acted in good faith by withdrawing his matrimonial case and providing partial alimony. The Court referred to *Ruchi Agarwal v. Amit Kumar Agrawal* (2005) to establish that resiling from mutual settlements after receiving benefits amounts to abuse of the judicial process. The Court found no scope for reconciliation and ruled that enforcing the settlement terms and dissolving the marriage under Article 142 was warranted.

Decision of the Court

The conduct of the petitioner-wife indicates that she has disregarded the terms of the settlement agreement and caused significant disadvantage to the respondent. In such circumstances, enforcing the settlement and granting divorce is just and equitable. The Supreme Court dissolved the marriage under Article 142, ordering the respondent to complete the remaining payments as agreed. The decree of divorce and settlement enforcement were made final, and no costs were imposed on either party.

Prakashchandra Joshi v. Kuntal Prakashchandra Joshi, Civil Appeal No. of 2024

Issue

Whether a prolonged separation without any chance of reconciliation constitutes grounds for divorce on account of irretrievable breakdown of marriage.

Facts

The appellant and respondent were married on January 5, 2004, and blessed a son born in 2010. Following personal and financial setbacks, including the appellant's health issues and job loss in Canada, the family returned to India in 2011. Shortly thereafter, the respondent-wife left for Canada with their child, refusing to rejoin the appellant despite his requests. The appellant's petition for restitution of conjugal rights went uncontested, and after realizing reconciliation was impossible, he filed for divorce on grounds of cruelty and desertion. Both the Family Court and the High Court dismissed his plea. The appellant subsequently approached the Supreme Court, where the respondent once again did not appear.

Ratio

The Supreme Court, with Justices B.R. Gavai and Prashant Kumar Mishra presiding, cited the *Shilpa Sailesh v. Varubn Sreenivasan* case to emphasize that Article 142 of the Constitution allows the Court to dissolve marriages in cases of irretrievable breakdown. The bench noted the lack of cohabitation since 2011 and the respondent's repeated non-compliance with court summons, indicating she had no intention of continuing the marriage. The Court underscored that prolonged separation, particularly without any efforts from the other party to reconcile, signifies a complete failure of the marital relationship. "The respondent's repeated refusal to respond to the appellant's requests and the summons, coupled with a 13-year separation, renders this marriage irreparably broken," the court observed.

Decision of the Court

The Supreme Court allowed the appeal, exercising its powers under Article 142 to dissolve the marriage, holding that continued legal ties would be unjust. A divorce decree was issued based on the marriage's irretrievable breakdown

Vikas Kanaujia v. Sarita, 2024 SCC OnLine SC 1699

Issue

Whether the prolonged separation and evidence of irreconcilable differences between a couple justifies the invocation of Article 142 to dissolve the marriage on the grounds of irretrievable breakdown.

Facts

Dr. Vikas Kanaujia and Dr. Sarita were married on February 20, 2002, under Hindu rites. The relationship quickly deteriorated, with Sarita leaving the marital home within the first month. Limited attempts at reconciliation followed, but both parties soon filed multiple legal actions against each other. Vikas filed for divorce on grounds of cruelty, while Sarita filed criminal complaints, including under Section 498A IPC, leading to the arrest of Vikas's family members, though they were later acquitted. Despite Sarita's opposition, Vikas sought a divorce, arguing that the marriage had become unsustainable due to continued separation, litigation, and lack of cohabitation.

Ratio

The Supreme Court emphasized that a marriage could be dissolved under Article 142 if it showed clear signs of irretrievable breakdown, even if one party opposed the divorce. Drawing on *Shilpa Shailesh v. Varun Sreenivasan*, the Court reasoned that enduring hostility and extended separation

of over 22 years proved that the marital bond could not be restored. The Court noted that further continuation of the marriage would unjustly prolong the conflict and hardship for both parties. "The long separation, coupled with ongoing litigation and the complete erosion of mutual trust, indicates that the marriage has broken down irreparably, justifying dissolution under Article 142." the court observed.

Decision of the Court

The Supreme Court dissolved the marriage under Article 142, concluding that reconciliation was neither feasible nor in the interest of justice. No alimony was awarded, as both parties were professionally qualified and self-sufficient.

Tripti Singh v. Ajat Shatru, First Appeal No. 251 of 2013

Facts

The marriage between the parties took place in 2002, and they have a son together. The wife filed for divorce in 2006, and the husband claimed that the wife left him on 12-02-2006 without any attempt to reconcile. The husband accused the wife of cruelty by filing a false criminal case against him and his family under Sections 498A, 323, 504, and 506 of the Indian Penal Code, 1860, as well as Sections 3 and 4 of the Dowry Prohibition Act, 1961. The husband's parents were arrested but later released on bail.

The first FIR was lodged after six years of marriage, and the second FIR was lodged two months after the divorce suit was instituted. The husband and his parents were acquitted when the wife failed to support the allegations during the trial and turned hostile.

The wife contended that the criminal case was a bona fide reaction to the divorce proceedings and not intended to lead to a dissolution of the marriage. The Family Court dissolved the marriage but

made no provision for permanent alimony. The husband appealed on grounds of cruelty, while the wife contested the lack of alimony.

Issue

Whether the false criminal prosecution by the wife constitutes cruelty, and whether alimony should be granted.

Ratio

First, the Court discussed whether filing a false criminal case against a spouse and their family amounts to cruelty under matrimonial laws. It held that once the arrest of parents occurs due to false allegations, no further proof of cruelty is necessary.

Second, the Court examined the facts of the case, noting that the wife filed the FIR six years after marriage and after the initiation of divorce proceedings. The wife's hostility in court and her failure to substantiate the claims led to the conclusion that the allegations were false.

Third, the Court considered the wife's argument that the FIR was a bona fide reaction to the divorce proceedings. This argument was rejected, as the severity of the consequences—arrest and trial—amounted to cruelty and could not be justified as a mere reaction.

Fourth, the Court held that the husband's loss of reputation, along with the arrest of his parents, led to emotional suffering, which constituted cruelty. Therefore, the decree of divorce on grounds of cruelty required no interference.

Fifth, the Court examined the issue of permanent alimony. Given that the wife was gainfully employed and their son had reached the age of majority, the Court determined a lump sum alimony

of Rs. 10,00,000/- was appropriate, to be paid by 31-12-2024. Failure to pay within the timeline would attract interest at 8%.

X v. Y, 2024 SCC OnLine Ker 3944

Issue:

Should the inability to recall specific instances of abuse undermine the credibility of the wife's claims

Facts:

The case concerns an appeal by the wife challenging a Family Court decision that dismissed her petition for divorce on grounds of cruelty. Married in 1997, the couple has two children. The wife alleged that her husband was a spendthrift and emotionally abusive, particularly after she secured a job following her B.Tech. degree, leading to his feelings of inferiority. She reported enduring both physical and mental harassment, including threats of violence and coerced sexual acts.

The husband denied these allegations and claimed the couple's issues stemmed from her perceived superiority as a government employee. He was ordered to pay Rs. 60,000 as maintenance, but claimed the wife did not provide an account for payment. The Family Court dismissed her cruelty claims, stating her evidence lacked specific instances or dates.

The wife contested this, arguing the Court wrongly disbelieved her oral testimony regarding misappropriation of gold ornaments due to her failure to file a recovery petition.

Ratio

Upon reviewing the case, the Court noted that the wife endured significant emotional and physical abuse, a position supported by her daughter's testimony, despite its initial rejection due to lack of details. The Court emphasized that in abusive relationships, recalling specific incidents can be challenging and should not diminish the validity of a victim's experience.

The Court recognized the ages of the parties, 54 and 62 respectively, highlighting that ongoing conflict precluded a harmonious marital life. Citing *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511, it reiterated that each case of mental cruelty must be evaluated based on its unique facts. The refusal to acknowledge the irretrievable breakdown of the marriage perpetuates emotional suffering and stifles both parties' ability to move on.

In conclusion, the Court allowed the wife's appeal, set aside the Family Court's judgment, and dissolved the marriage, reinforcing the necessity of recognizing the irretrievable breakdown of marital relationships for the well-being of both parties.

P Jayachandran v A Yesuranthinam (Died) and Others 2024 LiveLaw (Mad) 36

Issues

Whether the wife's threats to commit suicide amounted to mental cruelty warranting a divorce.

Facts

The Madras High Court granted divorce to a husband, emphasizing that a wife's threats to commit suicide constituted mental cruelty. Within eight months of their marriage on 16 May 2004, the husband expressed his distress in a letter to his mother, detailing the wife's suicide threats. The court also acknowledged that the wife had filed false dowry harassment claims against the husband and his family, further contributing to the husband's distress.

Ratio

The court noted that the letter written by the husband on 21 February 2005 highlighted his mental agony due to his wife's threats. The court remarked, “the letter clearly indicates the agony of the husband where it states the wife is threatening to commit suicide, hence the same cannot be brushed aside.” This indicated that the wife's actions created an environment of mental cruelty, justifying the husband's plea for divorce.

The bench reiterated that false dowry harassment cases often serve as tools of manipulation and control. The court stated, “repeatedly the Courts have held that the dowry harassment cases are used as a tool and false cases are filed,” and concluded that the wife's use of such allegations to threaten the husband constituted cruelty. This assessment highlighted the damaging impact of false allegations on the husband’s dignity and mental health.

The Hon’ble court considered the husband's claims that the wife restricted his familial interactions and attempted suicide during family events. The court found corroborative evidence, including a hospital discharge summary confirming the suicide attempt. It noted that, although the wife’s counsel argued that a single act of attempting suicide could not constitute cruelty, the evidence suggested a pattern of repeated threats. The court determined that the husband's assertions were credible, supported by the absence of any substantial evidence from the wife regarding dowry demands.

Conclusion

The court concluded that the husband had endured significant suffering due to the wife's behavior and granted his appeal for divorce, allowing him to escape the mental cruelty inflicted upon him.

The judgment underscored the importance of recognizing mental cruelty within the context of marital relationships, particularly in cases involving false allegations and suicide threats.

X v. Y R/FIRST APPEAL NO. 5325 of 2019

Issues

Whether the husband's allegations constituted sufficient grounds for cruelty under Section 13(1)(ia) of the Hindu Marriage Act.

Whether interference from the wife's family can be classified as cruelty in marital relations.

Facts

The couple married in July 2008 in Kolkata and welcomed a daughter in March 2012. They subsequently moved to the USA and then to Canada. The husband alleged that he faced pressure to return to Surat and join the transport agency business arranged by his father-in-law, claiming this interference led to cruelty from his wife. He accused her of using vulgar language against his parents, restricting his access to their daughter, and claimed that his in-laws broke into their home to retrieve documents while he was away. The couple had been living separately since April 2013, and the husband sought a divorce citing irretrievable breakdown due to the alleged cruelty. Conversely, the wife accused him of gambling and domestic abuse, asserting that his demands for money and harassment by his in-laws contributed to their marital strife.

Ratio

The Gujarat High Court dismissed the husband's plea for divorce, finding insufficient evidence to support claims of cruelty by his wife. The court emphasized that familial support from the wife's father, aimed at preserving the marriage, did not amount to interference in their family life. The

decision reaffirmed that mere differences in opinions and conflicts in marital relationships do not constitute cruelty under Section 13(1)(ia) of the Hindu Marriage Act.

First The court found that the husband's claims of cruelty were not substantiated by compelling evidence, emphasizing that familial efforts to support marital welfare do not equate to cruelty. The husband's allegations were deemed insufficient to shock the court's conscience and did not demonstrate conduct amounting to cruelty.

Second The court reiterated that interference by the wife's family, aimed at supporting the couple's marriage, does not constitute wrongful interference. The court stated, "in absence of any evidence to the contrary, it cannot be said that this would amount to interference in the family life of the couple so as to brand it as 'Cruelty'."

Third While the husband cited an irretrievable breakdown of the marriage, the court indicated that this perception alone is not adequate to grant a divorce without substantial evidence of cruel behavior by the wife. The alleged incidents did not demonstrate a level of conduct that warranted legal intervention.

Decision of the court:

The Gujarat High Court upheld the family court's order and dismissed the husband's plea for divorce, concluding that the allegations did not constitute cruelty under the Hindu Marriage Act.

Arshad Khalifa v. Gulzar Khalifa (Second Appeal 29 of 2024)

Issues:

Whether the husband's insistence on the wife living with him in the same house as his paramour constitutes a valid reason for her to stay separately.

Whether the separation can be deemed a 'freely consented' separation under Article 4(8) of the Law of Divorce.

Whether the husband proved claims of cruelty or abandonment to warrant a divorce.

Facts

The husband and wife were married in November 1992, but within a year, the husband claimed that the wife abandoned him and refused to resume their conjugal relationship in May 1993. It was revealed that the husband had been living with another woman prior to and during the marriage, with whom he had two sons. When the wife was pregnant, the husband insisted she live with him in a new matrimonial home, where his paramour also resided. For over two decades, the wife lived separately with her son and the husband's parents. The wife initiated domestic violence proceedings in 2010, and the husband suggested he would have left his paramour if the wife had returned to live with him.

Ratio:

First: The court found that the husband's insistence on the wife residing with him in a home where he lived with another woman was sufficient grounds for her to live separately. Justice Karnik noted, "I find force in the submission of the respondent wife that this was a good enough reason for her to stay separately."

Second: The court determined that such a separation could not be regarded as freely consented. The husband's actions indicated a lack of consideration for the wife's dignity and rights. The evidence suggested that the wife was justified in her refusal to live in a home where her husband resided with another woman, thus rendering any notion of "free consent" invalid.

Third: The judge concluded that the husband failed to demonstrate that the wife subjected him to cruelty or that she had abandoned him willingly. The prolonged separation was not a result of her free choice, thereby nullifying his grounds for divorce.

The Bombay High Court dismissed the husband's second appeal against the orders of the trial court and the first appellate court, affirming that he had not established sufficient grounds for divorce under the Divorce Act.

Decision:

The Bombay High Court ruled that the wife's refusal to live in the same house as her husband and his paramour constituted valid grounds for her separation. The court held that such separation could not be considered as "free consent" on her part to justify the husband's petition for divorce under the Law of Divorce (Divorce Act, 1910).

V.K. Vijaya Raghavan v. Saravanan, 2024 LiveLaw (Mad) 363

Issues

Whether the wife's threats of suicide amounted to mental cruelty.

Whether the false dowry harassment case constituted cruelty towards the husband.

Facts

In a recent ruling, the Madras High Court addressed a divorce case where the husband claimed mental cruelty from his wife, who had repeatedly threatened to commit suicide. Within eight months of their marriage on May 16, 2004, the husband expressed his distress in a letter to his mother dated February 21, 2005, stating that his wife was making these threats. The wife also filed a false dowry harassment case against the husband and his family, tarnishing their reputation. The

husband argued that the wife's actions constituted a pattern of emotional abuse and intimidation, impacting his life significantly.

Ratio

Justice S. Srimathy concluded that the wife's threats to commit suicide indicated a substantial element of mental cruelty. The court noted that repeated threats to take her life, especially those documented in the husband's letter, cannot be dismissed lightly. Additionally, the court emphasized that using false dowry allegations as leverage against the husband further demonstrated a pattern of abusive behavior.

The court stated, "Repeatedly the Courts have held that the dowry harassment cases are used as a tool, and false cases are filed." It determined that the husband's testimony, supported by hospital discharge summaries evidencing the wife's suicide attempts, provided sufficient grounds to conclude that the wife's actions constituted cruelty.

Given the evidence of long-standing abuse and the wife's failure to provide substantial proof of her allegations against the husband, the court ruled in favor of the husband. The court granted the husband's appeal for divorce, emphasizing that the husband had endured significant suffering at the hands of his wife and her family for an extended period.

Decision of the court

The Madras High Court allowed the husband's appeal and granted him a divorce, affirming that the wife's actions amounted to mental cruelty, justifying the divorce.

Arvind Singh Sengar v. Smt. Prabha Singh [FIRST APPEAL No. - 141 of 2014]

Issues:

Whether the separation of the parties due to their jobs constituted desertion.

Whether allegations of cruelty made by both parties were substantiated.

Facts:

In a recent ruling, the Allahabad High Court addressed a divorce case involving a couple married in 1999, who had a child in 2000. The husband was stationed in Jhansi while the wife worked in Auraiya. Due to their separate postings, the husband filed a suit for restitution of conjugal rights, which was granted ex-parte in 2004. However, this order was recalled at the wife's request in 2006. Subsequently, the husband withdrew the proceedings and filed for divorce in 2007, alleging desertion and cruelty.

Ratio:

The division bench, comprising Justice Saumitra Dayal Singh and Justice Donadi Ramesh, held that the mere fact of the parties living separately due to employment obligations does not substantiate a claim of desertion. The court noted that the respondent-wife provided evidence that the husband visited her when she was unwell in June 2003 and applied for medical leave at her school, undermining the husband's claim of desertion.

The court emphasized, “Merely because the parties may have remained separated for reason of their separate jobs with one working at Jhansi and the other at Auraiya, the fact occurrence of desertion

may never be sustained on the strength of such vocational/employment compulsion faced by the parties.”

Although allegations of cruelty were made against the wife, the court found that the evidence presented by the wife regarding the husband's behavior was credible, while the husband failed to substantiate his claims of cruelty.

Decision of the court:

The Allahabad High Court ruled against the husband's claim of desertion and dismissed the divorce proceedings, affirming that job-related separations do not equate to desertion under the law.

Apoorva Gupta v. Vandana Gupta [FIRST APPEAL No. - 11 of 2023]

Issues:

Whether a long period of separation constitutes grounds for divorce.

The implications of mental cruelty arising from long-term emotional distress and separation.

Facts:

The Allahabad High Court recently addressed a divorce case involving a couple married in 2012. The wife refused to reside in Mallawan and preferred to live in Delhi, leading to a separation where the wife eventually moved back to her paternal home with her father. The couple had a daughter in 2014, but following a quarrel, the husband was barred from meeting his daughter, and money orders sent by him were rejected by the wife. The husband alleged cruelty, including threats to his life from the wife's brothers, while the wife countered with allegations of dowry demands and neglect. The Family Court dismissed the husband's divorce petition, claiming that prior events could not be considered due to subsequent cohabitation.

Ratio:

The bench, comprising Justice Rajan Roy Singh and Justice Subhash Vidyarthi, emphasized that a prolonged separation of a decade indicates the matrimonial bond is beyond repair. The court cited the Supreme Court's decision in *Rakesh Raman v. Kavita*, noting, "Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie." The court highlighted that the husband's inability to meet his daughter and the absence of any response from the wife during the proceedings demonstrated mental cruelty and suffering.

Decision of the court:

The court concluded that the wife had effectively abandoned her relationship with the husband, displaying an *animus deserendi*, sufficient to establish desertion.

The Allahabad High Court granted a decree of divorce to the husband, dissolving the marriage, acknowledging the emotional and mental toll experienced by both parties due to the prolonged separation.

XXX v. XXX [FAO-3869-2014 (O & M)]

Issues:

Whether a deceased party's representative can substitute them in a divorce appeal.

The nature of the marriage contract as a personal contract between spouses.

Facts:

The Punjab & Haryana High Court refused to allow a mother to represent her deceased son in a divorce appeal. The husband had filed for divorce in 2011, but his petition was dismissed in 2014. After the husband passed away during the pendency of the appeal in 2022, the mother sought to be substituted as a party in the case. The husband's counsel argued that the substitution application was not maintainable, while the mother's counsel contended that it was maintainable under the relevant provisions.

Ratio:

The Court held that marriage is a personal contract between the spouses, which terminates upon the death of one party. **Second**, the Court stated that the appeal challenging the family court's rejection of the divorce would abate upon the husband's demise. **Third**, the bench emphasized that the mother, not being a party to the marriage contract, lacked the right to seek divorce or substitute her deceased son in the appeal. The Court concluded that the deceased husband had a solitary right to seek annulment of the marital ties, which did not extend to his mother.

Decision of the court:

The Punjab & Haryana High Court dismissed the mother's substitution application, affirming that she had no legal standing in the matter, as the marital contract was personal to the husband and the respondent.

Jatinder Kumar Sapra v. Anupama Sapra, 2024 SCC OnLine SC 796

Issue:

Whether the Supreme Court can grant divorce on the ground of irretrievable breakdown of marriage under Article 142 of the Constitution and what factors need to be considered while exercising such discretion?

Facts:

The appellant and respondent were married on 14.10.1991 as per Hindu rites at Faridabad, Haryana. They had two children born in 1993 and 1996. After 14 years of marriage, their relationship became bitter with mutual allegations - the respondent alleged ill-treatment by appellant, while the appellant alleged cruelty at wife's hands. The Family Court dismissed appellant's divorce petition under Section 13(1)(ia) of Hindu Marriage Act, which was upheld by the High Court. The parties had been living separately since January 2002 (22 years) and despite mediation efforts, were unwilling to reconcile.

Ratio:

The Supreme Court relied on *Shilpa Sailesh v. Varun Sreenivasan* (2023) which held that "grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties."

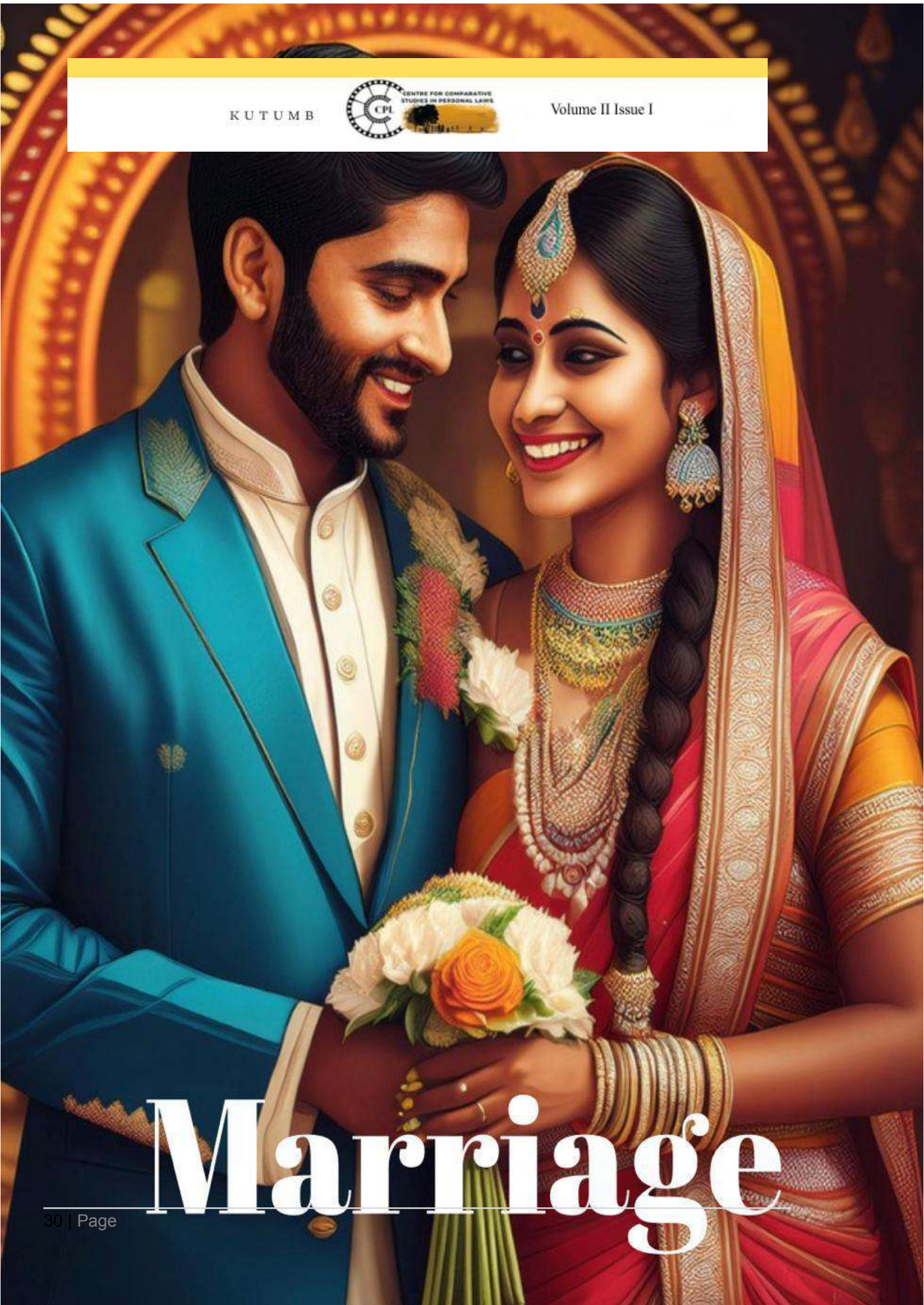
The Court outlined factors to be considered including "the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other... the period of separation should be sufficiently long, and anything above six years or more will be a relevant factor."

The Court noted that "keeping in view the totality of circumstances, we are satisfied that the facts on record establish that the marriage between the parties has broken down and that there is no possibility that the parties would cohabit together in the future."

The Court emphasized that factors like economic status, children's welfare, and provision for alimony must be considered while granting such relief.

Decision of the Court:

The Supreme Court allowed the appeal and granted divorce while directing the appellant to pay Rs. 50 lakhs as permanent alimony to the respondent wife in five equal installments, considering his employment history and current estate. The divorce decree was to be handed over only after proof of full payment.

A full-page illustration of a smiling Indian wedding couple. The groom, on the left, has a beard and is wearing a bright blue blazer over a white kurta. The bride, on the right, is wearing a red and orange sari with a gold border and is adorned with traditional jewelry, including a large necklace, bangles, and a bindi. She is holding a bouquet of white and orange flowers. The background is a warm, golden-brown with circular patterns.

Marriage

Marriage

Dolly Rani v. Manish Kumar Chanchal, 2024 SCC OnLine SC 754

Issue:

Whether the absence of essential Hindu marriage ceremonies under Section 7 of the Hindu Marriage Act, 1955, invalidates the marital status claimed by a couple who obtained a registration certificate without performing these rites.

Facts:

The petitioner and respondent, trained commercial pilots, claimed to have “solemnized” their marriage on July 7, 2021, acquiring a marriage certificate from the Vadik Jankalyan Samiti and registration under the Uttar Pradesh Marriage Registration Rules, 2017. Disputes arose, and the petitioner subsequently filed charges against the respondent, including dowry harassment under IPC and the Dowry Prohibition Act. In March 2023, the respondent filed for divorce under Section 13(1)(ia) of the Hindu Marriage Act. The petitioner sought to transfer the divorce case, and during proceedings, both parties requested the Supreme Court to declare their marriage null due to the lack of required ceremonies under Section 7.

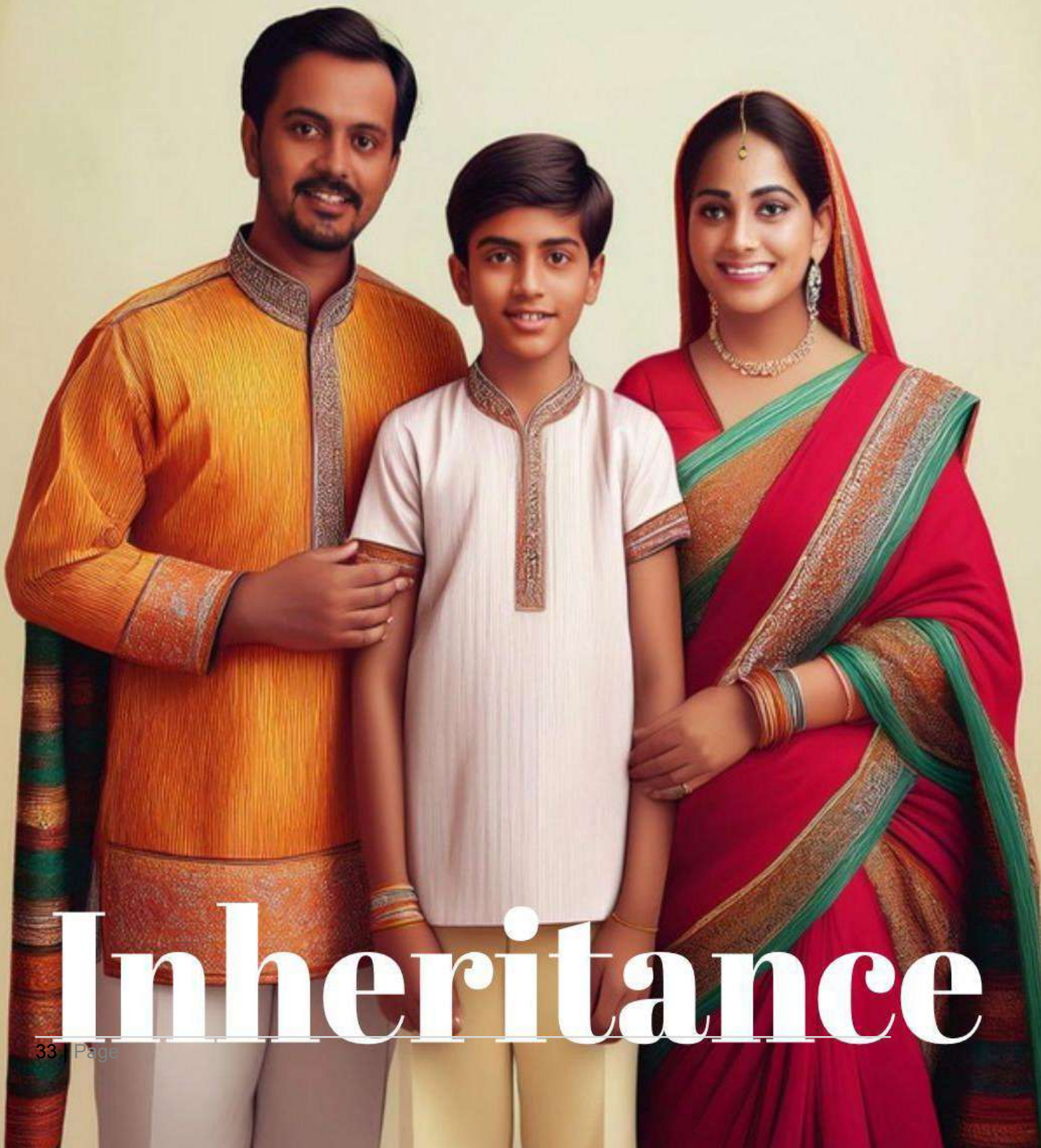
Ratio:

The Supreme Court emphasized that under Section 7 of the Hindu Marriage Act, 1955, a marriage is “solemnized” only when performed with the essential Hindu rites and ceremonies, particularly Saptapadi (seven steps around the sacred fire). A certificate alone, without performing these ceremonies, does not confer a valid marital status under Hindu law. Section 8, which allows marriage registration, is only applicable if a marriage is validly solemnized under Section 7. The court stated that in the absence of these rites, the marriage cannot be recognized as valid. The Court

observed that a certificate issued without the requisite ceremonies performed in accordance with Section 7 would neither confirm marital status nor establish a valid Hindu marriage.

Decision of the Court:

The Supreme Court declared the “marriage” null and void due to non-compliance with Section 7. Consequently, the divorce petition, maintenance case, and FIR filed by the petitioner were dismissed, allowing the parties to pursue independent lives. The application under Article 142 was allowed, and the transfer petition disposed.



Inheritance

Inheritance and Succession

Tarulata Dakua v. Additional Treasury Officer, 2024 SCC OnLine Cal 8774

Issue:

Whether children born out of a void marriage could be considered legitimate for the purpose of inheritance and entitlements under the Hindu Marriage Act, 1955, despite the invalidity of their parents' marriage.

Facts:

Plaintiff no. 1, Tarulata Dakua, claimed to be the legally wedded wife of Harendranath Dakua, with whom she had two children, plaintiffs no. 2 and 3. After Harendranath's death, plaintiff no. 1 applied for his pension and death benefits. However, the authority issued the benefits to defendant no. 3, Angur Bala Dakua, who claimed to be Harendranath's first and lawful wife. Angur Bala alleged that she had married Harendranath in 1982 and had a daughter with him, and her marriage had never been dissolved. The plaintiffs contended that they were the only rightful heirs, but the trial court ruled in their favor, declaring the plaintiffs to be Harendranath's legal heirs. On appeal, the first appellate court found Angur Bala's marriage valid and concluded that plaintiffs no. 2 and 3 were illegitimate children since the marriage between Harendranath and plaintiff no. 1 was void under Section 5 of the Hindu Marriage Act.

Ratio:

The court in this appeal addressed the legitimacy of children born out of a void marriage under Section 16 of the Hindu Marriage Act, 1955. The first appellate court ruled that Harendranath's marriage with plaintiff no. 1 was void due to the subsistence of his prior marriage with Angur Bala. However, Section 16(3) of the Act provides that children born from such void or voidable marriages are deemed legitimate despite the invalidity of the marriage. The appellate court correctly applied

this provision, holding that while plaintiffs no. 2 and 3 were illegitimate under Section 5, their legitimacy with respect to inheritance and entitlements under Section 16 was not affected.

Decision of the court:

Plaintiffs no. 2 and 3 were entitled to share in the death benefits and family pension of Harendranath, equally with Angur Bala, despite the void nature of their parents' marriage.

Manish v. State (NCT of Delhi), 2024 SCC OnLine Del 6607

Issues:

Whether the Will dated 1976 was validly executed and could be relied upon to determine the rights of the parties involved.

Whether the appellant was entitled to a declaration of her share in the property of her deceased husband.

Facts:

In the case of Shanti Devi v. Kashi Nath, the appellant, Shanti Devi, sought to set aside the decree of the trial court that dismissed her petition for the declaration of her right to a half share in the property of her deceased husband, who passed away on 3rd January 1980. The appellant claimed that she was married to Kashi Nath in 1947 and that during the subsistence of their marriage, her husband executed a Will in 1976, bequeathing his entire property to his wife and son. Following her husband's death, the appellant initiated proceedings against the respondents, including the son and other heirs, who contested her claim on the grounds that the Will was not executed in compliance with the necessary legal formalities.

Ratio:

The court held that for a Will to be valid, it must be executed with the requisite formalities as mandated by law. Existing precedents, such as *Hiralal Agarwal v. State of U.P.*, emphasized the importance of attestation by two witnesses to ensure the Will's validity, a principle upheld in numerous judgments across jurisdictions. The court acknowledged that in previous cases, such as *K. K. Verma v. Union of India*, the execution of a Will without proper witnesses had led to its invalidation, underscoring the necessity of adhering to statutory requirements. In the present case, the evidence demonstrated that the Will was executed by Kashi Nath in accordance with these formal requirements, including attestation by two witnesses, which fulfilled the statutory criteria. Furthermore, the court recognized the appellant's right to a share in the property as the lawful wife of the deceased, reinforcing her claim against the other heirs.

Decision of the court:

The decision emphasized that the marital status of the appellant at the time of her husband's death and the validity of the Will were central to resolving the dispute over the property rights.

PRABHAVATHI v. LAKSHMEESHA M.C., SLP(C) No. 28201/2023

Issues:

Whether the husband could benefit from the annulment of the marriage despite being solely responsible for its breakdown.

The impact of the Family Court's repeated decrees against the wife and the implications of cruelty.

Facts:

The Supreme Court expressed dismay over the Family Court's mechanical approach in granting a

divorce decree against the wife without attributing any fault to her. In this case, the husband deserted the wife and their child shortly after the child's birth and subsequently filed a divorce petition citing cruelty. The Family Court initially decreed the divorce, but the High Court set it aside and remanded the matter back to the Family Court. The Family Court later passed another decree based on the irretrievable breakdown of marriage, which was again set aside by the High Court, leading to another remand. Ultimately, the Family Court granted the husband a divorce decree, accompanied by a permanent alimony of ₹25,00,000, which the High Court reduced to ₹20,00,000. The wife appealed to the Supreme Court against this reduction.

Ratio:

The Supreme Court held that the husband could not benefit from seeking an annulment when he was solely responsible for the marital breakdown. Second, the court noted that the husband's actions constituted extreme cruelty against the wife, who had not received any support for her and her child's future. Third, the Court criticized the Family Court for its mechanical handling of the case, suggesting a lack of sensitivity and potential bias against the wife. Despite the parties living separately since 1992, the Supreme Court sustained the divorce decree but directed the husband to pay an additional ₹10,00,000 to the wife and granted her ownership of the property where she and her son reside, prohibiting the husband from interfering with their rights.

Decision of the court:

The Supreme Court upheld the divorce decree while ensuring that the husband provided additional financial support to the wife and recognizing her ownership rights over the property she shares with her son, emphasizing the need for judicial sensitivity and fairness in family law cases.

The background of the cover is a photograph of a man and a woman in a close, intimate setting. The man, on the left, has a beard and is wearing a dark suit. The woman, on the right, has blonde hair and is wearing a mustard-colored blazer. They are both looking at a small object, which appears to be a folded US dollar bill, that the man is holding. The lighting is warm and soft, suggesting an indoor setting with large windows in the background.

Maintenance

Maintenance

Manish v. State (NCT of Delhi), 2024 SCC OnLine Del 6607

Issues:

Whether Respondent No. 2 had sufficient cause for refusing to live with the petitioner.

Whether the quantum of maintenance awarded was appropriate, given the petitioner's income assessment.

Facts:

The present petition challenges the judgment dated 18.11.2022 by the Principal Judge, Family Court, East District, Karkardooma Courts, Delhi, in Mt Case 1217/2018. The Family Court awarded maintenance of Rs. 5,500/- per month to Respondent No. 2 under Section 125 of the Cr.P.C., effective from the date of filing, with a 10% increase every two years due to inflation, along with litigation expenses of Rs. 12,000/-.

Ratio

The Family Court concluded that the petitioner failed to substantiate claims that Respondent No. 2 left without reasonable cause, as evidenced by the lack of supportive evidence. The testimony of Respondent No. 2 regarding harassment and dowry demands was deemed more credible than the petitioner's defense. The court assessed the petitioner's income based on Delhi's minimum wage, not taking into account any claims of dependency by his parents, as no evidence was presented. The court first noted that, the objective of maintenance proceedings is to prevent vagrancy by compelling those capable of support to assist those unable to do so. The Supreme Court emphasized that the term "unable to maintain herself" refers to the wife's previous living standards while with

her husband and does not account for post-separation efforts to survive. Section 125 of the Cr.P.C. outlines situations where a wife may be disqualified from receiving maintenance, including voluntary separation without justification, engaging in adulterous activities, or mutual consent to separate. Respondent No. 2 alleged that the petitioner abused her and demanded dowry. The petitioner countered that she left without justifiable reasons and cited financial hardship as the cause of separation. The Family Court found no substantial evidence supporting the petitioner's claims, confirming the trustworthiness of Respondent No. 2's testimony regarding dowry harassment and physical abuse. Minor discrepancies in her testimony did not warrant overturning the judgment. The Family Court's determination regarding maintenance was upheld, with the petitioner's income assessed without consideration of parental dependency, aligning with the principle of providing necessary support to a spouse.

Decision of the court:

The petitioner's claims were insufficient to overturn the Family Court's judgment, which found sufficient cause for Respondent No. 2's refusal to live with him and deemed the maintenance awarded to be justified.

Siddharth Talwar v. Sarika Talwar, 2024 SCC OnLine Del 6541

Issues:

Whether the interim maintenance awarded to the respondent and the minor daughter is justified given the financial circumstances of both parties.

What are the implications of the husband's prior financial obligations on his ability to pay maintenance

Facts:

This petition challenges the orders dated 29th March 2019 passed by the Additional Sessions Judge in Criminal Appeal No. 143/2018, which upheld the Metropolitan Magistrate's (MM) order from 21st June 2018. The MM had awarded interim maintenance of Rs. 25,000 per month to the respondent/wife and their minor daughter under The Protection of Women from Domestic Violence Act, 2005 (the "DV Act").

The parties were married on 19th April 2007 but have lived separately since June 2017, with their daughter Kyra born on 16th February 2008. Following divorce on 20th December 2022, the petitioner/husband contested the maintenance order. He had previously deposited Rs. 4,75,000 in arrears after being directed to pay 50% of the amount when the matter came before this Court. As of 22nd November 2023, the petitioner agreed to pay Rs. 25,000 monthly maintenance, which he subsequently paid for 10 months.

On 16th May 2024, the Court stayed the impugned order, allowing for an urgent hearing. Both parties presented their arguments regarding interim maintenance.

Ratio:

The right to maintenance under the DV Act is a statutory and fundamental right, ensuring the wife and child can live in dignity. The determination of maintenance must consider the standard of living during the marriage and the dependents' needs, balanced against the husband's financial capacity. This principle is reinforced in *Rajnish v. Neha* (2021) 2 SCC 324, where the Supreme Court emphasized the need to consider the status of both parties.

In applying precedents, *Rohtash Singh v. Ramendri (Smt.)* (2000) 3 SCC 180 established that a party's conduct can influence maintenance entitlement. In contrast, *Sanjay Bhardwaj v. State* (2010) SCC OnLine Del 2912 highlighted the necessity for an equitable approach, especially when both parties possess similar qualifications. Furthermore, *Amit Kumar Kachhap v. Sangeeta Toppo* (2024) SCC OnLine Jhar 155 reaffirmed that the welfare of the minor child is paramount in maintenance matters, necessitating immediate relief for both the wife and child.

Kailash Prasad Yadav v. State of W.B., 2024 SCC OnLine Cal 8672

Issues:

What is the evidentiary standard for determining the status of a claimant as a "wife" under the Cr.P.C.?

How do the precedents regarding the definition of "wife" influence the court's determination in maintenance matters?

Facts:

This case involves CRR No. 2554 of 2019, challenging the order dated 5th April 2019 by the Judicial Magistrate, Bongaon, which directed the petitioner to pay Rs. 4,000 per month as interim maintenance to the opposite party no. 2, who claims to be his wife. Additionally, CRR 326 of 2024 seeks to set aside the order dated 6th January 2024 regarding the execution of the maintenance order.

The petitioner asserts that the opposite party no. 2 is not his legally married wife but was appointed as a maid. He was married to Chinta Devi Yadav in 1979 and has three children from that marriage. He has initiated a civil suit (T.S. No. 116 of 2018) to declare that there is no marital relationship

between him and the opposite party no. 2. The petitioner contends that the court should have recorded evidence before awarding maintenance, arguing that the purported marriage certificate is insufficient, especially with the civil suit pending.

Conversely, the opposite party no. 2 produced a marriage certificate and claims that the petitioner acknowledged their marriage in prior proceedings. She asserts that the petitioner subjected her to abuse and emphasizes her right to maintenance, highlighting his substantial salary as a government employee.

Ratio:

The Court's determination hinges on the definition of "wife" under Section 125 Cr.P.C., which refers to a legally married woman. The petitioner claims that the opposite party no. 2 is not his wife and that he has a subsisting marriage with Chinta Devi. However, the impugned order from the lower court incorrectly asserted that the marriage was undisputed, contrary to the evidence presented. While Section 125 Cr.P.C. proceedings are summary in nature and aimed at preventing vagrancy, it is essential that a prima facie case of a valid marriage be established before granting maintenance.

In evaluating precedents, the case of *Dharampal v. Bansilal* (2009) 14 SCC 500 provides guidance, emphasizing that the burden of proof lies with the claimant to establish her status as a wife, especially in light of serious disputes regarding marital status. Moreover, *Ramesh Chand v. State of Haryana* (2001) 4 SCC 517 highlights that the court must consider the claims of the parties and the credibility of evidence before making any orders concerning maintenance.

Decision of the court:

In this case, the court concluded that the earlier ruling suffered from a lack of evidentiary foundation regarding the marital relationship. Therefore, the order dated 5th April 2019 was set

aside, and the lower court was instructed to rehear the maintenance application, allowing both parties to present their evidence regarding the disputed marriage.

XXX v. XXX 2024 LiveLaw (PH) 281

Issues:

Whether the provision of maintenance under Section 125 CrPC can be misused by able-bodied wives.

Facts:

The Punjab & Haryana High Court addressed a plea challenging the dismissal of a maintenance petition filed by a wife under Section 125 of the CrPC. The Family Court had denied her request, stating she was not entitled to final or interim maintenance, as she was able-bodied and had deserted her matrimonial home in 2014. The husband was earning ₹12,000 per month as a mason, while the wife claimed to be a villager suffering from domestic violence and alleged that she had filed an FIR against her husband under various IPC sections.

Ratio:

First, the Court emphasized that Section 125 CrPC aims to protect abandoned wives unable to maintain themselves from vagrancy and destitution. Second, the Court noted that it is the wife's duty to maintain herself, especially since she is able-bodied and living at her parental home without responsibilities for minor children. Third, the Court pointed out that the wife had deserted the matrimonial home and had not sought custody of her children, who were in the husband's care. Fourth, the findings of the Family Court established that the husband was earning only ₹6,000-₹7,000 per month and was responsible for supporting his elderly mother and minor children.

Decision of the Court

The Punjab & Haryana High Court dismissed the wife's plea, concluding that the provision under Section 125 CrPC could not be misused by able-bodied wives to avoid self-sufficiency. The Court upheld the Family Court's order, stating no grounds were made for interference.

Kiran Jyot Maini v. Anish Pramod Patel, 2024 SCC OnLine SC 1724

Issue:

What factors should be taken into consideration while determining the permanent?

Whether the wife's earning status affects her entitlement to maintenance?

Facts:

The marriage between the parties was solemnized in 2015 and within one year the wife filed an FIR against the husband under Sections 498A/323/504 of the IPC and Sections 3/4 of the Dowry Prohibition Act, 1961. Thereafter, both started living separately and the legal proceedings were going on against the husband. The case was originally filed in the Gautam Buddha Nagar (Uttar Pradesh) , where the Judicial Magistrate passed an order granting interim maintenance to the wife but was later transferred to Tis Hazari Courts in Delhi on the basis of an application made by the husband. While the case was pending in the Tiz Hazari Court, the wife filed a petition under Article 227 of the Indian Consitution seeking appropriate directions. The High Court accepting the petition passed an order to pay 20% of the total arrears of interim maintenance to the petitioner. The instant petition is against such order of the Delhi High Court.

Ratio:

The Court discussed the possibility of a reunion but during the course of the proceedings observed that there remains no possibility of the parties reuniting and the marriage now only exists on paper. Thus, the court relying on *Hitesh Bhatnagar v. Deepa Bhatnagar*, *Ashok Hurra v Rupa Bipin Zaveri and Shilpa Shailesh v Varun Sreenivasan* which discussed the conditions when a marriage can be dissolved on the grounds of irretrievable breakdown, noted that the marriage between the parties has irretrievably broken down and granted divorce to parties.

The Hon'ble Court after deciding on divorce delved into the issue of maintenance. Relying on *Vinny Paramvir Parmar v. Paramvir Parmar* and *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, held that there cannot be a fixed formula or a straitjacket rubric for fixing the amount of permanent alimony and only broad principles can be laid down. The question of maintenance is subjective to each case and depends on various factors and circumstances as presented in individual cases. This Court in the above judgment stated that the courts shall consider the following broad factors while determining permanent alimony - income and properties of both the parties respectively, conduct of the parties, status, social and financial, of the parties, their respective personal needs, capacity and duty to maintain others dependant on them, husband's own expenses, wife's comfort considering her status and the mode of life she was used to during the subsistence of the marriage, among other supplementary factors.

Furthermore, the court observed that the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income his ability to

earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation.

In addition to the above, the court relying on *Manish Jain v. Akanksha Jain*, *Shailja v. Khobbanna*, and *Sunita Kachwaha v. Anil Kachwaha* observed that the Even if the wife is earning, it does not bar her from receiving maintenance; the Court should assess whether her income suffices to maintain a lifestyle similar to that in the matrimonial home.

Decision of the Court

The Hon'ble court allowing the appeals granted a decree of divorce and order the respondent husband to pay Rs 2 Crores towards permanent alimony to the appellant-wife within the time stipulated above.

Palash Das v. Keya Ganguli, 2024 SCC OnLine Cal 9384

Issues:

Whether a valid marriage exists: Is there sufficient evidence to establish that a valid marriage took place between the petitioner and the opposite party, given the absence of documentary proof or photographs?

Whether the opposite party is entitled to maintenance: Is the opposite party entitled to maintenance under Section 125 of the Code of Criminal Procedure, despite the petitioner's claims of a second marriage?

Whether the appropriate standard of proof is applied: What is the applicable standard of proof for establishing claims of maintenance in proceedings under Section 125 of the CrPC, considering the legal principle of preponderance of probability versus proof beyond a reasonable doubt?

Facts:

The petitioner, Palash Das, was challenged by his wife, Keya Ganguli, who sought maintenance under Section 125 of the Code of Criminal Procedure. They were married on 6 Aswin, 1415, at Tarapith Mandir according to Hindu customs. After their marriage, they lived together at a house in Hetampur, which was gifted to Palash by his grandmother. However, Keya alleged that Palash inflicted physical torture on her, and his family also threatened her, demanding money for his business. Eventually, she was driven out of their home. Keya claimed she could not support herself and was relying on her parents for help, prompting her to file for maintenance. The trial court found that there was sufficient evidence to establish their marriage and cohabitation, ultimately granting Keya a monthly maintenance allowance of Rs. 4000.

Ratio:

The court held that the validity of marriage is not the sole consideration in maintenance applications under Section 125 of the Code of Criminal Procedure. If there is a reasonable presumption of marriage based on evidence of cohabitation, maintenance can be awarded regardless of the formalities of a legal marriage. The court emphasized that in maintenance proceedings, the standard of proof is based on the preponderance of probabilities, not the stringent requirement of proof beyond a reasonable doubt. The right to maintenance is a fundamental right intended to prevent vagrancy and ensure that a spouse does not suffer due to a lack of financial support. Hence, the inability of the opposite party to maintain herself due to her husband's refusal to provide support justifies her claim for maintenance. The court reiterated that maintenance should be granted from

the date of the application, aligning with the principle established in previous judgments regarding the timely support of an aggrieved spouse.

Decision of the Court:

The court upheld the trial court's decision to grant maintenance of ₹4,000 per month affirming that the absence of formal marriage documentation does not preclude maintenance claims based on cohabitation. The court emphasized that the validity of marriage is not the primary concern in such proceedings, and maintenance is warranted to prevent financial hardship. The revision application by Palash Das was dismissed, with maintenance to be effective from the date of the application.

Adoption

Suo Moto v. State of Kerala CRL.MC No. 5136 OF 2023**Issues:**

Whether the courts order DNA testing of adopted children born to rape victims without violating their privacy rights

Does the prosecution need DNA samples of children to prove rape or penetrative sexual assault

Facts:

The Kerala High Court dealt with the issue of whether courts could order DNA tests on children born to rape victims who had been adopted, to support the prosecution's case in rape or POCSO offences. The Victim Rights Centre of the Kerala State Legal Services Authority filed a report highlighting the violation of privacy caused by such orders. The report also referred to Regulation 48 of the Adoption Regulations, 2022, which mandates the confidentiality of adoption records. The High Court, acting suo moto, examined the issue and noted that such DNA testing could emotionally harm the adopted children and infringe on their right to privacy.

Ratio:

The Court laid down guidelines prohibiting DNA tests on adopted children. It relied on *Bhabani Prasad Jena v. Orissa State Commission for Women* (2010), which introduced the 'eminent need' test for ordering DNA tests, and *K.S. Puttaswamy v. Union of India* (2017), which established the right to privacy under Article 21 of the Constitution. Additionally, the Court referenced *Ashok Kumar v. Raj Gupta* (2021) and *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia* (2023), which emphasized that DNA tests should only be ordered in exceptional circumstances. The Court held that in cases of rape or POCSO offences, DNA testing of the child was not necessary to prove the

crime and could violate the right to privacy and cause emotional harm to the child. It stressed that the sanctity of adoption must be preserved under the Juvenile Justice (Care and Protection of Children) Act, 2015.

Decision of the court:

The Court concluded that DNA testing of adopted children born to rape victims should not be entertained as it violates their right to privacy and could emotionally destabilize them. It further held that paternity tests of children were not required to prove offences of rape or penetrative sexual assault under the POCSO Act.

The Court also directed that all adoption records should remain confidential, and such records should not be disclosed on public portals. Additionally, the Child Welfare Committee must collect DNA samples before the adoption process is completed as per Regulation 39 of the Adoption Regulations.

The Court set aside several orders passed by Special Courts for the collection of blood samples of adopted children and posted the matter for further hearing on May 27, 2024.

MUKATLAL v. KAILASH CHAND THROUGH LRS. & ORS. 2024 LiveLaw (SC) 388

Issues:

Whether states and Union Territories (UTs) delay the establishment of Specialised Adoption Agencies despite Supreme Court orders

Whether the Court have the authority to issue guidelines for adoption under the Hindu Adoptions and Maintenance Act, 1956 (HAMA)?

Facts:

The Supreme Court was hearing a Public Interest Litigation (PIL) filed by "The Temple of Healing," a charitable trust, seeking the simplification of adoption procedures in India. The Court expressed concerns over the non-compliance of several states in appointing Specialised Adoption Agencies (SAAs) in every district, as per its previous order, by January 31, 2024. The Ministry of Women & Child Development's report revealed that out of 760 districts, only 390 districts had functional SAAs, leaving 370 districts without agencies. The Court noted that several states like Goa and Kerala had full compliance, but states like Uttar Pradesh and others were lagging behind.

Ratio:

The Court emphasized that compliance with its order to establish SAAs by January 31, 2024, is mandatory. It directed Chief Secretaries of all States and UTs to file compliance affidavits by August 30, 2024, failing which they must appear before the Court on September 2, 2024, for contempt proceedings. States that have achieved full compliance were exempted. The Court stressed that delays in establishing SAAs hinder the adoption process, negatively impacting children in need of homes.

The bench also noted the gap between adoption registrations and completed adoptions, emphasizing the need to upgrade institutional infrastructure to facilitate the adoption process. Referring to Schedule 14 of the 2022 CARA Adoption Regulations, the Court directed States and UTs to file affidavits explaining whether the timelines stipulated in the regulations are being complied with.

Regarding the petitioner's request for guidelines under HAMA, the Court held that since the statute already provides clear conditions for valid adoptions, it would not be appropriate for the judiciary to prescribe additional guidelines.

Decision of the Court

The Supreme Court expressed serious concerns over the non-compliance of states and UTs in appointing Specialized Adoption Agencies, giving them a final deadline of August 30, 2024, to file compliance affidavits. Failure to comply will result in contempt proceedings. The Court also focused on bridging the gap between adoption registrations and actual adoptions, directing that infrastructure must be upgraded to address the issue. However, the Court declined to issue additional guidelines under HAMA, as the statute already contains clear provisions.

V Sakthivel v. The Revenue Divisional Officer 2024 LiveLaw (Mad) 254

Issues:

Whether the biological family of an adopted child retains any legal ties or inheritance rights after the child's adoption?

Whether the legal heirship certificate issued by the Tahsildar can be canceled based on the appeal by the adopted child's biological siblings?

Facts:

The petitioner, Sakthivel, challenged an order by the Revenue Divisional Officer (RDO) that canceled the legal heirship certificate issued by the Tahsildar. The case concerned Kottavel Sethupathi, adopted by Ramasamy and his wife, Sivakami. Upon their passing, Sethupathi inherited their property as their sole legal heir. Sethupathi later died without any first-class legal heirs under the Hindu Succession Act, leading to Varanavasi's and Lakshmiammal's children (class II legal heirs of Ramasamy) applying for a legal heirship certificate, which was issued after due inquiry.

Sethupathi's biological siblings, however, appealed, resulting in the RDO ordering a fresh inquiry and canceling the certificate.

Ratio:

First, the court relied on **Section 12 of the Hindu Adoptions and Maintenance Act, 1956**, which states that upon adoption, all ties between the adopted child and their biological family are severed and replaced by those created by adoption in the adoptive family. Therefore, the biological siblings of Kottavel Sethupathi could not be considered his legal heirs, as all legal relations with his biological family were severed upon adoption.

Second, the court cited the judgment in *M.G. Mamtha v C. Soundarya* (2018 SCC Online Mad 380), where it was held that an adopted child becomes part of the adoptive family for all purposes, with the prefix "adopted" losing significance from the day of adoption. This ruling reinforces the principle that the biological family has no legal claim over the adopted child's inheritance in the adoptive family.

Third, the court observed that the RDO's decision contravened the legal provision in Section 12, as the cancellation of the certificate relied on the biological relationships of Sethupathi, which were legally severed upon adoption. Consequently, the RDO's order was quashed.

Decision of the Court

The court quashed the order of the RDO, reaffirming that upon adoption, the child becomes a full legal member of the adoptive family, severing all ties with the biological family. As a result,

biological siblings or relatives of the adopted child cannot claim rights over property inherited from the adoptive family.

Ashok Kumar v. The Inspector General of Registration & Ors, 2024 LiveLaw (Mad) 247

Issues:

Whether a woman's marital status affects her right to give her child in adoption under the Hindu Adoption and Maintenance Act, 1956.

Whether the absence of the biological father's consent bars the registration of the adoption deed.

Whether the mother of an illegitimate minor child can be considered competent to give the child in adoption without the biological father's consent.

Facts:

The petitioner, Ashok Kumar, challenged the refusal of the Registering Authority to register the adoption deed of a three-year-old boy, "A," who was born to "K." At the time of conception, "K" was a minor and had since decided to give the child up for adoption. The authority denied the registration, citing the absence of the biological father's consent.

Ratio:

The Madras High Court held that a woman's marital status is not relevant for giving her child up for adoption. The proviso to Section 9(2) of the Hindu Adoption and Maintenance Act does not apply if the other parent is absent. Additionally, under the Hindu Minority and Guardianship Act, the mother is considered the natural guardian of an illegitimate minor child.

First, the Court noted that the Hindu Adoption and Maintenance Act allows either parent to give a child in adoption with the consent of the other parent, except where one parent has abandoned the family or is not involved in the child's life. In the present case, the biological father was absent, making it unnecessary to seek his consent.

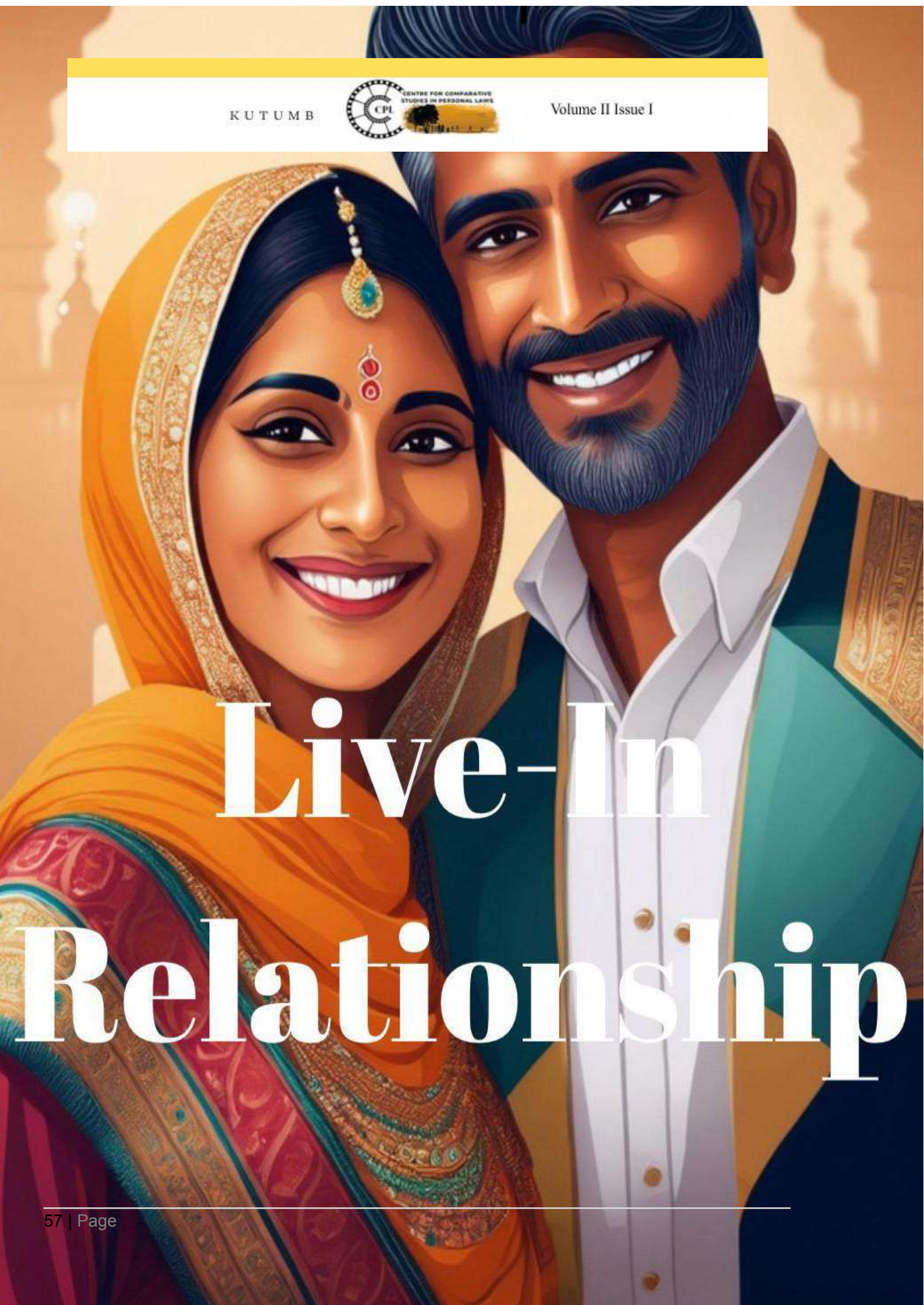
Second, the Court referred to Section 6(b) of the Hindu Minority and Guardianship Act, which designates the mother as the natural guardian of an illegitimate minor child. Thus, "K" was legally competent to proceed with the adoption without needing the father's consent.

Third, relying on the Supreme Court's decision in *Githa Hariharan v. RBI*, the Court interpreted the term "after" in Section 6(a) to include situations where the father is absent from the child's care. In this case, the father had shown complete indifference, thus constituting "absence" as per legal interpretation.

Fourth, the Court emphasized that requiring "K" to obtain the father's consent would be inappropriate, given his lack of involvement in the child's life.

Decision of the Court

The High Court set aside the Registering Authority's decision and directed it to register the adoption deed upon re-presentation, subject to fulfilling other formalities.

A vibrant, stylized illustration of a man and a woman. The woman, on the left, is wearing a yellow and orange sari with a red border and a gold jewelry set including a bindi and a large earring. The man, on the right, has a beard and is wearing a white shirt under a green vest. They are both smiling warmly at the viewer. The background is a soft, warm orange with faint silhouettes of buildings.

Live-In Relationship

Live-in Relationship

Dr. Aswin V. Nair v. State of Kerala & Anr., CrI.M.C. No. 2654 of 2024 (Ker. HC)

Issues:

Whether a man in a live-in relationship be prosecuted under Section 498(A) IPC, which deals with cruelty by a husband or his relatives

Facts:

The petitioner, a man who was in a live-in relationship with the complainant, was accused of mentally and physically harassing her during their relationship, which lasted from March 13, 2023, to August 20, 2023. The case was registered as Crime No. 939/2023 by Quilandy Police Station under Section 498(A) IPC, and the Judicial First Class Magistrate, Quilandy, had taken cognizance of the matter.

Ratio:

First, the court examined the statutory wording of Section 498(A) IPC, which specifically applies to a "husband or relative of a husband" who subjects a woman to cruelty. The term "husband" legally implies a married man who is a woman's partner in marriage.

Second, Justice A Badharudeen highlighted that for Section 498(A) to apply, there must be a valid marital relationship. The court clarified that the concept of "husband" as used in the IPC refers to a man married to the woman under the law. Therefore, in the absence of a legal marriage, a live-in partner does not attain the status of a "husband" and thus cannot be prosecuted under this section.

Third, relying on precedents such as *Shivcharan Lal Verma v. State of Madhya Pradesh* and decisions from the Kerala High Court, the court reiterated that Section 498(A) IPC does not extend to relationships outside the legal framework of marriage.

Decision of the Court

The Kerala High Court quashed the criminal proceedings against the petitioner, ruling that since the man was not the legally wedded husband of the complainant, the allegations under Section 498(A) IPC were not sustainable. The court emphasized that live-in relationships do not grant the status of "husband" as required by this provision.

Raksha v. State of U.P., 2024 SCC OnLine All 650

Issues:

Whether the live-in relationship of someone else's legally wedded wife, can be protected under the law without dissolving her existing marriage?

Can the Court grant protection to a relationship that contravenes the established provisions of Hindu law?

Facts:

Petitioner 1, a legally wedded wife of Respondent 4, sought police protection for her live-in relationship with Petitioner 2. Petitioner 1 claimed her marriage was invalid as it was solemnized when she was a minor at the age of 13, and she voluntarily entered a live-in relationship with Petitioner 2. Despite reaching the age of majority, she had not sought a formal declaration of invalidity of the marriage or divorce from a court of competent jurisdiction.

Petitioners contended that Petitioner 1's parents were against the live-in relationship and were interfering in their peaceful living. They sought a writ of mandamus directing police protection and non-interference from Respondent 4 and his family.

Ratio:

First, the Court emphasized that Petitioner 1 was still the legally wedded wife of Respondent 4, as no application for divorce or declaration of nullity had been moved after she reached the age of majority. According to Hindu law, a person cannot engage in a live-in relationship while having a living spouse without contravening the legal framework.

Second, the Court noted that granting protection to such relationships would amount to an indirect endorsement of illicit relationships, which would disrupt the social fabric of the country.

Third, while clarifying that it was not against live-in relationships in general, the Court held that relationships which contravene the provisions of law cannot be supported. Any form of judicial support for such relationships would create social chaos and undermine the sanctity of marriage under Hindu law.

Decision of the Court

The Court refused to grant police protection to the petitioners, holding that a live-in relationship involving a legally married individual without obtaining a divorce or annulment could not be supported by law. The petition was dismissed, with the Court stating that live-in relationships are acceptable only when they conform to legal norms.

P Jayachandran v. A Yesuranthinam and Others- 2024 LiveLaw (Mad) 248

Issues:

Whether the live-in relationship could be recognized as a relationship in the nature of marriage

Facts:

Jayachandran, a married man with five children, entered into a live-in relationship with Margarette Arulmozhi while still legally married to his wife, Stella. Jayachandran had executed a settlement deed in favor of Margarette, which he later canceled following her death. The legal dispute arose over the possession of a property that Margarette had settled in her name. The trial court ruled in favor of Margarette's father, Yesuranthinam, finding that Jayachandran and Margarette's relationship did not constitute a legal marriage. Jayachandran appealed this decision, contending that he had customarily divorced his wife Stella and that Margarette had named him her beneficiary in service records.

Ratio:

First, The court held that for a relationship to be deemed in the nature of marriage, the couple must present themselves as spouses, cohabit voluntarily, be of legal age, and be otherwise qualified for marriage. Since Jayachandran's marriage to Stella was still valid, the relationship with Margarette could not be classified as one in the nature of marriage.

Second, The court stated, "Where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and hence, the relationship between the appellant and Arulmozhi (now deceased) was not a relationship in the nature of a marriage and the status of the said person is that of a concubine." The court clarified that a concubine could not maintain a relationship in the nature of marriage due to the lack of exclusivity and monogamy, reinforcing that Jayachandran's live-in relationship was illegal under the current laws.

Third, Furthermore, the court noted that the Indian Christian Marriage Act recognizes monogamy and that Jayachandran's first marriage remained valid, rendering his relationship with Margarette void in legal terms. The court determined that Jayachandran's argument about being a nominee for Margarette's pension benefits did not equate to legal heir status, as such a nomination was merely a self-declaration and did not confer any legal rights.

Decision of the Court

The court upheld the trial court's decision, reinforcing that live-in partners do not have succession or inheritance rights in the absence of codified law, and dismissed Jayachandran's appeal.

X v. State of Kerala, 2024 LiveLaw (Ker) 429.

Issues:

Whether a live-in relationship can be considered a valid marital relationship for the purpose of Section 498(A) of the IPC.

Whether the Magistrate was justified in taking cognizance of the offence under Section 498(A) of the IPC in this case.

Facts:

The petitioner, the sole accused in C.C. No. 1471/2023 before the Judicial First Class Magistrate Court, Quilandy, filed a Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the proceedings stemming from the Final Report in Crime No. 939/2023 of Quilandy Police Station. The prosecution alleges that the accused, while in a live-in relationship with the defacto complainant from 13.03.2023 to 20.08.2023, mentally and physically harassed her, constituting an offence under Section 498(A) of the Indian Penal Code (IPC).

Ratio:

First, the legal framework under Section 498(A) of the IPC requires a valid marital relationship to attract its application. Section 498(A) penalizes "husband or relative of the husband" for subjecting a woman to cruelty. The term "husband" implies a legally recognized marital relationship, and without such a valid marriage, an individual cannot be considered a "husband" under this provision. Thus, for Section 498(A) to apply, the accused must be the legally wedded husband of the complainant.

Second, the Supreme Court in *Shivcharan Lal Verma and Another v. State of Madhya Pradesh* [2002 (2) Crimes 177 SC: JT 2002 (2) SC 641] clarified that a valid marital relationship is essential for prosecution under Section 498(A). In that case, the court held that a conviction under Section 498(A) could not be sustained where the marriage was void ab initio, such as in cases involving a second wife whose marriage to the accused was not legally valid.

Third, the Kerala High Court has consistently followed the view that Section 498(A) requires a legally valid marriage. In *Unnikrishnan @ Chandu v. State of Kerala* [2017 (4) KHC 356] and *Narayanan v. State of Kerala* [2023 (6) KHC 427], the Court quashed proceedings under Section 498(A) in cases involving relationships that did not constitute legal marriages, emphasizing that the provision applies only to legally wedded husbands.

Decision of the Court

Hence, the Court concluded that since the petitioner and the defacto complainant were in a live-in relationship without a legal marriage, the proceedings under Section 498(A) were not maintainable. Consequently, the Court quashed the proceedings as being without legal basis, reiterating the requirement of a valid marital relationship for applying Section 498(A) of the IPC.

Jayachandran v. Yesuranthinam, A.S.No. 340 of 2016

Issues

Whether a live-in relationship between a married man and an unmarried woman can be considered "in the nature of marriage" for legal rights such as inheritance or succession.

Whether customary divorce practices can be recognized under the Indian Christian Marriage Act.

Whether nomination of a live-in partner as a beneficiary in service records establishes legal rights akin to those of a spouse.

Ratio

The court observed that a live-in relationship involving a married man and an unmarried woman could not be considered as "in the nature of marriage" since the legal requirements of monogamy and societal recognition akin to marriage were not met. As a result, the relationship did not confer any legal rights regarding succession or inheritance of the partner's property.

First, The court held that for a relationship to be considered "in the nature of marriage," certain criteria must be met: the couple must cohabit voluntarily, present themselves to society as spouses, be of legal age to marry, and not have any legal impediments to marriage. Since Jayachandran was still legally married to Stella, his relationship with Margarete could not meet these criteria and was therefore not deemed to be in the nature of marriage. The court characterized the relationship as a concubinage rather than a marriage, emphasizing that it lacked exclusivity and monogamy.

Second, The court rejected Jayachandran's argument of customary divorce, noting that the Indian Christian Marriage Act does not recognize customary divorce practices. Without statutory

recognition or positive evidence of a formal divorce, Jayachandran's marriage to Stella was deemed to continue legally, thereby invalidating any claims of a legitimate marriage with Margarete.

Third, the court ruled that being nominated as a beneficiary in service records does not confer the status of a legally wedded spouse. Such nominations are self-declarations and do not establish any legal right to inherit or succeed to the property. Consequently, Margarete's designation of Jayachandran in her service records did not make him her legal heir.

Decision of the Court

The court concluded by upholding the trial court's decision, dismissing Jayachandran's appeal, and affirming that in the absence of codified law, a live-in partner has no legal right to succession or inheritance in India.

X v. Y, 2024:AHC:152463-DB

Issues:

Whether multiple maintenance proceedings under different statutes coexist when a higher maintenance amount is already being paid under one statute

Facts:

The Allahabad High Court addressed a plea by an army personnel whose salary was subject to direct deductions for maintenance payments under an Army Order. Despite these deductions, his wife sought additional maintenance under the Hindu Marriage Act and the Domestic Violence Act, leading to multiple orders for maintenance from the Family Court. The appellant contended that the higher maintenance being deducted under the Army Order rendered the Family Court's awards unnecessary, causing confusion and financial strain.

Ratio:

First, the court referred to the Supreme Court's ruling in *Rajnesh v. Neha & Anr. (2021)*, which firmly establishes a rule against multiple deductions for interim or final maintenance. The High Court reiterated that if an award of maintenance is made under one law (such as service law), it should satisfy the recovery of maintenance for equal or lesser amounts awarded under other laws (like the Hindu Marriage Act). The court emphasized that no additional recovery could occur when a higher amount was already being paid, aligning with the principles established in *Rajnesh*.

Second, the bench ruled that courts should prioritize claims for maintenance based on the amount sought. It was highlighted that if multiple applications for maintenance arise, the court must first resolve the application claiming the highest amount. This approach is pragmatic and aims to avoid duplicative litigation and unnecessary financial burden on the paying spouse.

Third, the court underscored the importance of ensuring that maintenance awards are "wholesome, adequate, and reasonable." It noted that an adequate interim or final maintenance allowance could lead to a peaceful resolution of matrimonial disputes, thus preventing escalation into broader conflicts. The court highlighted the need for judicial efficiency in addressing maintenance applications and ensuring that financially vulnerable spouses receive adequate support.

Fourth, the High Court directed that the Family Courts in Uttar Pradesh must strictly adhere to the principles laid down in *Rajnesh v. Neha & Anr.* and should not issue separate maintenance orders that would conflict with existing obligations. The court also called for appropriate guidelines to be framed by the government for maintenance payments to estranged spouses.

Decision of the Court

In conclusion, the Allahabad High Court's decision reflects a commitment to ensuring that

maintenance claims are handled fairly and efficiently, minimizing the potential for abuse of the legal process while safeguarding the financial well-being of dependent spouses.



Custody and Guardianship

XXXX v. XXXX, 2024 LiveLaw (PH) 231

Issues:

Whether an application for guardianship should be filed in the district where the child is physically residing or where the mother resides under the presumption of Section 6(a) of the Hindu Minority and Guardianship Act, 1956

Whether the interpretation of Section 6(a) makes it mandatory for a child below five years to be considered residing with the mother for jurisdictional purposes

Facts:

The husband challenged an order passed by the Family Court in Kaithal, which dismissed his application seeking rejection of the plaint filed by the mother under Section 25 read with Section 12 of the Guardians and Wards Act, 1890. The mother had sought custody of their 3.5-year-old son. The Family Court ruled that, despite the minor not residing with the mother, the mother was still deemed the natural guardian, and therefore, the application was correctly filed in the district where the mother resided. The husband argued that, under Section 9 of the Guardians and Wards Act, the application should be filed in the district where the minor ordinarily resided, i.e., Panchkula, where the child was residing with him.

Ratio:

The Punjab and Haryana High Court clarified that an application for guardianship of a minor, especially a child below five years of age, should be filed in the district where the child is actually and physically residing. The Court emphasized that merely because Section 6(a) of the Hindu

Minority and Guardianship Act, 1956 states that custody of a child under five "shall ordinarily be with the mother," it does not mean that the child is always residing with the mother. The welfare of the child remains the primary consideration in determining jurisdiction for guardianship applications.

First, the Court held that the language in Section 6(a) of the Hindu Minority and Guardianship Act, 1956, which states that custody "shall ordinarily be with the mother," is not mandatory. The term "ordinarily" implies a general rule that is subject to exceptions based on the child's welfare. The welfare of the child, rather than an automatic presumption of residence with the mother, is the guiding principle.

Second, the Court found that Section 9 of the Guardians and Wards Act, 1890 should be interpreted independently of the presumption in Section 6(a). The statutory intention behind Section 9 is to ensure that the application for guardianship is made in the district where the minor is "actually and physically residing." Therefore, the Family Court's presumption that jurisdiction lies where the mother resides was incorrect.

Third, the Court declared previous decisions that equated the child's ordinary residence with the mother's residence for jurisdictional purposes as per-incuriam, meaning they were wrongly decided. The expression "ordinarily resides" in Section 9 of the Guardians and Wards Act should be determined based on the actual place where the child physically resides, not where the mother lives, even if the child is under five years of age.

Fourth, the Court highlighted the Supreme Court's observations in *Rosi Jacob v. Jacob A. Chakramakkal* [1973], which emphasized that the welfare of the minor is paramount in guardianship matters. The statutory language should be liberally interpreted to ensure the child's

welfare, which may involve determining the child's residence based on actual physical location rather than presumptive guardianship norms.

Fifth, the Court also referred to *Kuldip Nayar & Ors. v. Union of India & Ors.* (2006), where the Supreme Court defined "ordinary residence" as depending on a person's intention to make a particular place their regular abode. Applying this principle to the present case, the Court opined that the minor's physical and actual residence should dictate jurisdiction for guardianship applications.

SXXXX v. VXXXXX 2024 LiveLaw (PH) 258

Issues:

Whether a mother's alleged adultery can serve as grounds for denying her custody of minor childre

Whether the custodial rights of a mother can be restricted on the basis of moral character, particularly when she is alleged to be in a live-in relationship

Facts:

The mother filed an appeal against the Family Court's 2020 order, which denied her custody of her two minor children (aged 6 and 3 years) under the Hindu Minority and Guardianship Act, granting only visitation rights. The couple, married in 2009, had been living apart since 2016, with the children residing with the father and grandparents. The mother alleged that the children were not properly cared for at the grandparents' home and disputed allegations of adultery, challenging the evidence presented under Section 65-B of the Indian Evidence Act.

Ratio:

The Punjab & Haryana High Court held that allegations of adultery cannot be a sole reason to deny a mother the custody of her minor children, as the capacity for providing motherly love and care remains unaffected by such accusations. The Court emphasized that the moral character of the mother should not influence custody decisions, and directed that child psychologists be involved in the mediation process to ensure the children's best interests are met.

First, the Court stated that allegations of adultery do not affect a mother's inherent ability to provide care and affection to her children. The mere fact of being in a live-in relationship cannot be used to curtail the biological need for motherly love, which is integral to a child's well-being.

Second, the Court referred to the case of *Mandeep Kaur v. State of Punjab* [2021], emphasizing that allegations of moral character against women, particularly regarding adultery, are often unfounded and cannot automatically disqualify a mother from being a suitable custodian for her children.

Third, the Court highlighted the need for both parents' affection in the upbringing of a minor child. It opined that even if a mother is in a live-in relationship, this does not reduce her ability to endow the child with the necessary care, affection, and motherly guidance, which remains an essential biological connection.

Fourth, the Court remarked that the question of adultery was not appropriate for consideration in the current custody proceeding, as such matters are typically addressed in divorce cases. The focus should be on the welfare of the children, rather than allegations against either parent.

Fifth, the Court remanded the matter back to the Family Court, directing that the case be referred to child psychologists and counselors for thorough assessment, especially to check for signs of Parental Alienation Syndrome. Additionally, the Court ordered the appointment of child

psychologists at mediation centers across Punjab, Haryana, and Chandigarh to assist in family matters.

Decision of the Court

The High Court set aside the Family Court's previous order, directed the father to return custody of the children to the mother, and mandated regular appointments of child psychologists to support the mediation process.

Smt Preeti Arora v. Subhash Chandra Arora & Another 2024 LiveLaw (AB) 172

Issues:

Whether the court's permission is necessary for disposing of a minor's undivided interest in joint family property under the Hindu Minority and Guardianship Act, 1956; and whether a natural guardian is required for managing undivided interests in joint family property.

Facts:

The appellant's husband passed away, leaving behind three daughters and his mother. The deceased held a $\frac{1}{2}$ share in the disputed property, with the other half belonging to his father. After the husband's death, the father-in-law executed a gift deed in favor of the appellant, transferring his $\frac{1}{2}$ share, while the mother-in-law gifted her 10% share to the appellant. Consequently, the appellant owned 70% of the property, with the remaining 30% belonging to her minor daughters.

The appellant sought permission under Section 8 of the Hindu Minority and Guardianship Act to sell the house. However, the Additional District Judge, Saharanpur, rejected her application, citing a lack of detail regarding the property she intended to purchase in Punjab and the valuation of the

property for sale. The court argued that the property, being in a VIP area, could generate rental income for the benefit of the minor children..

Ratio:

The Allahabad High Court determined that permission from the court is not required for the adult head of a Hindu family to dispose of a minor's undivided interest in joint family property. This is due to the lack of necessity for a natural guardian for such interests under the Act.

First, the Court clarified that Section 6 of the Act identifies the father as the natural guardian of a Hindu minor, with the mother as the subsequent guardian. However, this does not extend to undivided interests in joint family property, as specified in Section 12.

Second, the Court observed that Section 8(1) allows a natural guardian to perform acts in the best interest of the minor but mandates court permission for disposals involving immovable property. Conversely, Section 12 indicates that no guardian is needed for a minor's undivided interest in joint family property managed by an adult family member.

Third, the Court emphasized that any adult member of the Hindu joint family could deal with the minor's undivided interest without being a karta or male member, thus expanding the scope of who could manage such interests.

Fourth, the Court noted that while it has the power to appoint guardians, the specific provisions of the Hindu Minority and Guardianship Act do not necessitate a guardian's involvement for disposing of joint family property.

Decision of the Court

The High Court concluded that Section 8 of the Act is not applicable in this case. Consequently, the appeal filed by the mother to sell the property was allowed.

Aashifa Begum v. Khader Beevi and Another, 2024 LiveLaw (Mad) 109

Issues:

whether the grandparents should be granted visitation rights despite allegations made by the daughter-in-law; and the role of the court in ensuring the welfare of the child in custody and guardianship matters.

Facts:

The court, presided over by Justice R Mahadevan and Justice Mohammed Shaffiq, addressed a plea from a woman challenging a single judge's order that granted her in-laws visitation rights to meet their granddaughter twice a month. The daughter-in-law claimed that after her husband's death when their daughter was one year old, her in-laws treated her poorly, blaming her for their son's death and labeling her as inauspicious. She recounted instances of cruelty during her husband's 7th-day ceremony and alleged that her in-laws locked themselves in a room with the child when her parents attempted to take them home. Additionally, she contended that she was coerced into signing a mediation agreement granting visitation rights.

The in-laws, on the other hand, argued that they were deeply affected by their son's death and claimed that the daughter-in-law's family could not provide adequate care for the child. They asserted that they were in a better financial position to look after the child and that living with them would instill discipline and values.

Ratio:

The Madras High Court emphasized that the child's welfare is of paramount importance in custody and guardianship matters and that the courts should not deny reasonable visitation rights to grandparents.

First, the court acknowledged that in custody and guardianship cases, the welfare of the minor child must be the primary consideration. The judges highlighted the necessity of safeguarding the family system, which is deteriorating, to ensure the child's overall development in a proper environment.

Second, the court noted that while it would investigate the truthfulness of the allegations from both parties at trial based on evidence, the current petition was not the appropriate forum to adjudicate these claims.

Third, the court held that while the mother retains custody of the child, denying the grandparents visitation rights would be detrimental to the child's growth and development.

Decision of the Court

The High Court modified the single judge's order, granting the grandparents visitation rights once a month at the Child Care Centre attached to the Family Court in Chennai, recognizing that such contact would be beneficial for the child's overall development.

XYZ v. The State of Maharashtra & Anr, Writ Petition No 13753 of 2024 (Bombay High Court, 2024).

Issues:

Whether the exclusion of unmarried women from eligibility under the MTP Act is justified.

Facts:

A division bench of Justices Sarang Kotwal and Dr. Neela Gokhale heard the case of a petitioner who sought to terminate her pregnancy at 20 weeks and 6 days. The state argued that she could not benefit from the MTP Act since she was unmarried and did not fit into the categories outlined in the Act, which included criteria such as being a widow or a divorcee. The petitioner was denied the opportunity to fill the mandatory Form E at the JJ Hospital, which is required for women seeking to terminate pregnancies between 20 to 24 weeks.

Ratio:

The Bombay High Court emphasized that the interpretation of the MTP Act should not exclude unmarried women from availing of the benefits intended by the legislation. *First*, the bench questioned the rationale behind the government's argument, highlighting the absurdity of expecting an unmarried woman to be a widow or a divorcee. The judges stated, "How can an unmarried woman become a widow or a divorcee? What kind of an argument is this?" *Second*, the bench referred to a Supreme Court decision in *X vs The Principal Secretary Health and Family Welfare Department*, which stated that distinguishing between married and unmarried women does not align with the MTP Act's objectives. *Third*, the court ruled that the petitioner satisfied all other conditions for terminating her pregnancy, thus she should not be denied this right based solely on her marital status.

Decision of the Court

The court permitted the petitioner to undergo the MTP procedure as per law. Furthermore, it ordered both the Union and State governments to consider revising the Form E format to ensure that unmarried women are not unjustly deprived of the benefits of the MTP Act. The bench emphasized

that the current format and procedures should be aligned with the observations made by the Supreme Court to protect the rights of unmarried women seeking medical termination of pregnancy.



Partition

Partition

Ram v. Sheshrao Baburao Neharkar, (2024) 7 SCC 512

Issue:

Whether the burden of proof lies on the plaintiff to establish the factum of marriage and legitimacy in a partition suit based on alleged paternity?

Facts:

The appellant filed a suit for partition and separate possession of property claiming he was born from the marriage between Padminibai and respondent no. 1. The Trial Court granted him 1/5th share accepting his contention about the marriage and his birth from that wedlock. The First Appellate Court upheld this decision. However, in challenge by respondents, the High Court reversed both lower courts' judgments and dismissed the suit. The appellant approached Supreme Court against High Court's judgment.

Ratio:

The Supreme Court held that "very heavy burden was on the appellant/plaintiff to prove this fact, when the factum of marriage was denied by the respondent no. 1/defendant no. 1." The court noted that "From the perusal of the judgment of the High Court, it is evident that the relevant facts to establish the factum of marriage of mother of appellant/plaintiff with respondent no. 1/defendant no. 1 were not considered by the Trial Court as well as the First Appellate Court. There were large scale discrepancies in the evidence led." The court observed that the appellant failed to produce Padminibai, the material witness who allegedly married respondent no. 1, to support his case. The marriage was sought to be established only through oral evidence. The court further noted that the

suit was filed nearly 16-17 years after the appellant attained majority, and prior to that, he never raised any claim against respondent no. 1 if he was indeed his father. The court also emphasized that Padminibai had remarried, claiming it was after abandonment by respondent no. 1, but nothing was pleaded about whether there was any divorce before the remarriage.

Decision of the Court:

In light of the above, the Supreme Court dismissed the appeal, finding no merit in it, with no order as to costs.

Surrogacy

Surrogacy cases

Shailja Nitin Mishra v. Nitin Kumar Mishra, 2024 SCC OnLine Bom 2602

Issue:

Whether an egg donor claim parental rights over children born through surrogacy, despite a surrogacy agreement naming intending parents under Surrogacy (Regulation) Act, 2021

Facts:

The petitioner and Respondent 1, a legally married couple, pursued surrogacy with the petitioner's sister as the egg donor. Twin daughters were born through surrogacy in 2018. Following the successful IVF procedure, the petitioner's sister suffered a personal tragedy, losing her husband and daughter in an accident., and the petitioner, Respondent 1, and their daughters started living together. In 2021, Respondent 1 relocated with the daughters, with the petitioner's sister acting as their caregiver. The petitioner sought custody under the Guardians and Wards Act, but her interim application for visitation rights was denied.

Ratio:

The *ratio decidendi* in this case is that an egg donor, under the Surrogacy (Regulation) Act, 2021, and the Assisted Reproductive Technology (Regulation) Act, 2021, does not acquire parental rights or status over children born through surrogacy. Parental rights belong solely to the intending parents recognized in the surrogacy agreement.

1. The court reaffirmed that the petitioner and Respondent 1, who signed the surrogacy agreement, are the legal parents under the applicable surrogacy laws. The surrogacy agreement and ART guidelines treat children born through such arrangements as legitimate offspring of the intending couple, granting them full parental rights and responsibilities.

2. The petitioner's sister, who contributed her eggs, is legally classified as a genetic or biological donor with no parental claims. Under the ART guidelines, donors cannot be recognized as legal parents and hold no custodial or visitation rights.

3. The surrogacy agreement was executed with the understanding that the petitioner and Respondent 1 would assume full parental roles. Allowing a donor to claim parental rights would conflict with the agreement's purpose and the legal framework governing surrogacy arrangements.

The court, therefore, concluded that the petitioner's sister had no legal grounds to assert parental rights over the children, affirming the exclusive rights of the petitioner and Respondent 1 as the legal parents.

Decision of the Court:

The court granted the petitioner interim visitation rights, affirming her and Respondent 1's exclusive parental status per the surrogacy agreement and applicable laws. The petitioner's sister, as an egg donor, was denied parental claims. The trial court was instructed to expedite the custody decision within six months.

Gurvinder Singh v. Govt. of NCT of Delhi, 2024 SCC OnLine Del 6902

Issue:

Whether the parents of the deceased son have the right to access and utilize his preserved semen sample for posthumous reproduction, given the absence of explicit legal guidelines addressing such situations.

Whether the semen sample constitutes "property" or part of the deceased's estate, thus entitling the parents to claim it as Class I heirs under the Hindu Succession Act.

Facts:

The petitioners, parents of a deceased son diagnosed with cancer, sought the release of his preserved semen sample stored at Sir Ganga Ram Hospital, where he had it frozen before chemotherapy to avoid infertility. After his death on September 1, 2020, the hospital refused their request, citing the absence of legal guidelines for posthumous semen release. The petitioners filed a writ petition under Article 226, arguing their rights as heirs. The court acknowledged a legal vacuum in existing laws regarding posthumous reproduction and directed the hospital to release the semen sample, affirming the parents' status as Class I heirs under the Hindu Succession Act.

Ratio:

The court affirmed that the preserved semen sample of a deceased individual is part of his estate and can be claimed by his legal heirs under the Hindu Succession Act. The parents, as Class I heirs, have the right to seek the release of their deceased son's semen sample for the purpose of posthumous reproduction. The court clarified that there is no prohibition under Indian law regarding posthumous reproduction if there is express or implied consent from the deceased regarding the use of his genetic material. In this case, the consent was deemed express as the deceased had explicitly preserved his semen for potential use. The court recognized a legal vacuum regarding guidelines for posthumous reproduction and directed the Ministry of Health and Family Welfare to consider establishing regulations to address these issues comprehensively.

Decision of the Court

The court directed Sir Ganga Ram Hospital to release the preserved semen sample of the deceased son to his parents, recognizing their rights as Class I heirs under the Hindu Succession Act. It acknowledged the absence of explicit legal guidelines for posthumous reproduction and emphasized that there was no prohibition against such reproduction with the deceased's consent. Additionally,

the court urged the Ministry of Health and Family Welfare to consider establishing regulations for posthumous reproduction and postmortem sperm retrieval.

XYZ v. Union of India, 2024 SCC OnLine Bom 486

Facts:

The petitioners, a married couple, are unable to conceive due to the wife's medical condition, Von Hippel-Lindau Syndrome, a genetic disorder that could pass defects to their child. Seeking parenthood, they opted for surrogacy, but their plans were obstructed by a recent amendment to the Surrogacy (Regulation) Rules, 2022, which prohibits the use of donor gametes. The petitioners argue this amendment violates their rights under Articles 14 and 21 of the Indian Constitution and defeats the purpose of the Surrogacy Act.

Issues:

Whether the amended rules under the Surrogacy (Regulation) Act, 2021, prohibiting the use of donor gametes, are constitutionally valid.

Ratio:

The Act and Rule 14 are woman-centric, meaning that the requirement for gestational surrogacy is linked to a woman's medical inability to conceive or carry a child. Therefore, in cases where the woman cannot produce her own oocytes, the use of donor oocytes is permissible as per Rule 14. The amendment in Paragraph 1(d) contradicts Rule 14(a), as it mandates that the surrogate child must be genetically related to the intending couple without accounting for scenarios where the woman cannot provide viable oocytes. The court held that the genetic relationship requirement should be read flexibly to accommodate medical conditions that necessitate the use of donor oocytes. Interim Relief and Pre-Amendment Procedures: The court provided relief by allowing the

petitioners to proceed with surrogacy under the pre-amendment regulations, considering they had initiated the process before the amendment and fulfilled the Act's other conditions.

Decision of the court:

The court decided that the notification dated 14 March 2023, which restricts the use of donor gametes in surrogacy, should not apply to the petitioners. It allowed them to proceed with surrogacy under the previous regulations, provided they meet other conditions in the Surrogacy Act, 2021. The challenge to the notification itself remains open, pending a Supreme Court decision.

Bratin Kumar Jha v. Union of India, 2024 SCC OnLine Cal 2457

Issues:

Whether the amendment to Rule 1(d) of the 2022 Rules, which requires both gametes to come from the intending couple, can be waived if a medical condition justifying the use of donor gametes is certified by the District Medical Board.

Facts:

The petitioners sought permission to use donor gametes for surrogacy to have a child. However, an amendment to the Surrogacy (Regulation) Rules, 2022 restricted surrogacy to cases where both gametes come from the intending couple, except if a medical condition, certified by the District Medical Board, necessitates donor gametes. The petitioners were certified twice by the Board, confirming their medical need for donor gametes. Additionally, the clinic holding their embryo, respondent no. 3, decided to surrender its registration. The court directed the clinic to hand over the embryo, allowing the petitioners to proceed with surrogacy using donor gametes.

Ratio:

The ratio decidendi of the case is that under the amended Surrogacy (Regulation) Rules, 2022, intending couples can use a donor gamete for surrogacy if one partner has a certified medical condition necessitating such use, provided that at least one gamete must come from the intending couple. In this case, the petitioners were medically certified as needing a donor gamete, and therefore, they are entitled to proceed with surrogacy under the amended rules. The court directed the surrogacy clinic (respondent no. 3) to release the embryo to the petitioners or their chosen facility to facilitate the surrogacy process.

Decision of the Court:

The court directed respondent no. 3 to hand over the embryo to the petitioners or a designated facility within a week. It allowed the petitioners to proceed with surrogacy using a donor gamete, following the amended Surrogacy (Regulation) Rules, 2022. The case was disposed of without any costs ordered.



Child Custody

Child Custody

Nirmala v. Kulwant Singh and Others 2024 SCC OnLine SC 758

Issue:

Whether the High Court erred in entertaining a habeas corpus petition under Article 226 of the Constitution of India for the custody of a minor child, given that the custody had been voluntarily placed with the maternal grandmother by the father, considering the child's welfare, which typically fall under the jurisdiction of the Guardians and Wards Act, 1890.

Facts:

The case revolves around the custody dispute of a minor child, Garvit, after the disappearance and subsequent death of his mother, Sangeeta. The child's father, Dr. Kulwant Singh, had initially entrusted custody to the child's maternal grandmother following Sangeeta's death in 2019. However, the father later sought custody, alleging that the grandmother took the child by deceit. The Child Welfare Committee (CWC) initially awarded custody to the father, but this decision was overturned by an appellate court. The father subsequently filed a habeas corpus petition, leading to a High Court ruling in his favor, which was later contested by the grandmother.

Ratio:

The court held that the remedy of habeas corpus is not applicable in custody disputes involving minors where the custody of the child has been voluntarily surrendered to a third party (in this case, the maternal grandmother) by the natural guardian (the father). The High Court's exercise of jurisdiction under Article 226 of the Constitution of India in such cases is inappropriate, as it does

not consider the intricate factual and legal issues related to the child's welfare, which require a thorough examination of evidence and are better suited to be adjudicated under the Guardians and Wards Act, 1890. The court emphasized that habeas corpus proceedings are not meant for resolving custody disputes, particularly when a natural guardian voluntarily places the child in the custody of another person. The ruling underscores the paramount importance of the child's welfare in custody matters, which requires detailed inquiry and is better addressed through the appropriate statutory framework rather than through extraordinary writ jurisdiction. The decision clarifies that while the High Court has broad powers under Article 226, it should exercise caution and refrain from intervening in custody issues that necessitate comprehensive examination and factual determination.

Decision of the Court:

The Supreme Court allowed the appeal filed by the appellant grandmother, quashing the Punjab and Haryana High Court's order. The Court held that a detailed inquiry into the welfare of the child was necessary, which could only occur under the Guardians and Wards Act, 1890. The Court emphasized that uprooting the child from his grandparents' custody could cause psychological harm and dismissed the writ petition filed by the father.

Somprabha Rana & Ors. v. State of MP & Ors. 2024 SCC OnLine SC 2415

Issues:

Whether the High Court was justified in disturbing the custody of the minor child through a writ of habeas corpus, given the established custody by the maternal relatives and the implications for the child's welfare

Whether the High Court properly exercised its discretion to issue a writ of habeas corpus based on the allegations of illegal custody by the maternal relatives, despite the absence of a formal custody petition under the Guardians and Wards Act.

Whether the rights of the biological father, as a natural guardian, should take precedence over the established caregivers, particularly in light of the child's longterm attachment and wellbeing.

Facts:

The parties of the case the child (aged two years and seven months), her father (4th respondent), her paternal grandparents (2nd and 3rd respondents), her maternal grandparents (4th and 5th appellants), and her mother's sisters (1st to 3rd appellants) appeal for the the custody of the child following her mother's unnatural death on December 27, 2022. The dispute arises under the jurisdiction of the Madhya Pradesh High Court, where the paternal grandparents sought a writ of habeas corpus, alleging that the maternal relatives unlawfully took the child. The legal concerns center on custody rights under the Guardians and Wards Act, 1890, amidst accusations of wrongful removal during the father's absence due to his legal troubles.

Ratio:

The court emphasized that a writ of habeas corpus is an extraordinary and discretionary remedy, and its issuance depends on the specific facts of each case. The High Court must consider whether exercising its jurisdiction serves the welfare of the minor child involved.

The paramount consideration in custody matters is the welfare of the child. The court established that the rights of the parties cannot override the best interests of the child, especially in cases involving minors. The High Court's decision to disturb the custody of the child, based solely on the

biological father's rights as a natural guardian, was found to be improper. The court noted that the child had been in the custody of her maternal relatives since the age of 11 months, and a sudden change could have adverse effects on her wellbeing.

The court clarified that custody matters should be handled by the appropriate forum, specifically under the Guardians and Wards Act, where a comprehensive evaluation of the child's needs can be conducted, rather than through a writ of habeas corpus, which may not allow for such indepth consideration. The court recognized the importance of maintaining a relationship between the child and her biological father and paternal grandparents, allowing for supervised access while emphasizing that any decision on custody should be made by a competent court based on the child's welfare.

Decision of the Court:

The court set aside the High Court's order directing the transfer of custody of the minor child to her biological father and paternal grandparents. It emphasized that custody matters should be addressed under the Guardians and Wards Act, focusing on the child's welfare. The court permitted supervised access for the father and grandparents while directing the appellants to file for guardianship and custody in the appropriate court.

Gaurav Gupta v. State of W.B., 2024 SCC OnLine Cal 8138 [Sep 2024]

Issue:

Whether a writ petition for habeas corpus is maintainable when it seeks custody of minor children, traditionally a matter for family courts under the Guardians and Wards Act, 1890, and whether such claims can be addressed under habeas corpus jurisdiction due to alleged wrongful detention

Whether the custody of the children by respondent No. 4 (mother) is illegal or wrongful, requiring the court to assess if the mother's custody is unlawful and if a change in custody is warranted in light of the children's welfare.

Facts:

The writ petitioner, father of two minor children, seeks a habeas corpus writ against his wife (respondent No. 4), alleging wrongful removal of their children from Kolkata to Bhopal. The petitioner claims that custody of the children with the respondent is illegal, as she denied him access and virtual visitation, alleging Paternal Alienation Syndrome and prioritizing the children's welfare. The respondent asserts that she moved to Bhopal due to alleged abuse by the petitioner. Multiple legal proceedings, including divorce, conjugal rights, and custody, are ongoing between the parties, with several cases transferred to Nagpur for resolution.

Ratio:

Scope and Limits of Habeas Corpus in Child Custody Matters: A writ of habeas corpus in child custody cases is primarily available only when there is illegal or unlawful detention of a minor by a person who is not legally entitled to custody. If a parent holds lawful custody, habeas corpus jurisdiction is restricted and cannot serve merely as a tool to bypass or enforce custody orders from foreign courts. Instead, any decision must prioritize the child's welfare.

Welfare of the Child as Paramount: Even when a habeas corpus petition is maintainable, the court's primary consideration remains the welfare of the child. This means that the best interests of the child are paramount, above any foreign court orders, when evaluating a custody dispute. **Preference for Civil Courts in Detailed Custody Evaluations:** If detailed inquiries and fact-finding are required, the habeas corpus jurisdiction is considered summary in nature and inadequate for thorough custody assessments. Thus, the court may direct parties to pursue remedies under specific statutes like the

Guardians and Wards Act, 1890, or the Hindu Minority and Guardianship Act, 1956, where detailed hearings are more suitable. Jurisdictional Prerequisites for Habeas Corpus: For habeas corpus to apply in custody disputes, the petitioner must prove that no effective alternative remedy exists or that existing proceedings are inadequate to address the child's welfare. If such proceedings are pending, the writ court will generally defer to them unless special circumstances justify intervention.

Decision of the court:

The court decided to dismiss the writ of habeas corpus petition concerning the custody of the children, directing the parties to continue their dispute in the pending civil proceedings under the Guardians and Wards Act, 1890, and the Hindu Minority and Guardianship Act, 1956.

The court emphasized that the welfare of the children is paramount and that the detailed allegations and counter-allegations between the parties were best resolved through the procedural safeguards of the civil court, which allows for a full hearing. Additionally, the court vacated all interim orders previously issued and made it clear that it had not made any determination on custody or visitation rights, leaving these matters to the discretion of the civil court to decide according to the best interests of the children.

Sweta Tiwari v. State (NCT of Delhi), 2024 SCC OnLine Del 1143

Issue:

Whether a habeas corpus petition is maintainable under Article 226 of the Constitution of India for the custody of a minor child, especially when there is an ongoing marital dispute between the parents; and whether the custody of the child by respondent No. 4 is lawful or constitutes illegal detention as per habeas corpus principles, given the child's age and dependency on the mother.

Facts:

The petitioner, married to respondent No. 4 in 2021, filed a habeas corpus petition seeking custody of their 7-month-old son. Due to marital discord, she returned to her mother's residence. The respondent later sent a legal notice urging her to return. They temporarily reconciled but separated again in February 2024, with the petitioner alleging abuse and denial of custody of their son. Following unsuccessful attempts to resolve the issue with authorities, she filed the petition. In court, respondent No. 4, without prejudice, agreed to hand over the child's custody to the petitioner, leaving final custody decisions to the appropriate legal forum.

Ratio:

The ratio of the case is that in child custody matters, a habeas corpus petition under Article 226 of the Constitution is maintainable, not to justify the legality of custody per se, but to address the welfare of the child, which is the paramount consideration. The court emphasized that, in such cases, the writ of habeas corpus can be issued if a minor child is detained by a person who does not hold the legal right to custody. Further, the welfare and best interests of the child take precedence over the parents' legal rights to custody, particularly where the child is an infant needing the mother's care. Therefore, the court exercised its discretion to grant temporary custody to the mother, while leaving the ultimate decision on permanent custody to the appropriate lower courts.

Decision of the court:

The court decided to grant temporary custody of the child to the petitioner (mother), emphasizing that the child's welfare is paramount. Respondent No. 4 (the father) agreed to hand over the child in the interest of the child's growth and well-being, particularly given that the child was only seven months old and required maternal care. The court disposed of the habeas corpus petition, clarifying that the question of permanent custody would be determined by the appropriate court without being influenced by this order.

Nienke Leida Hulshof v. State of Maharashtra, 2024 SCC OnLine Bom 447

Issues:

Whether the petitioner, a Dutch national, is entitled to a writ of habeas corpus for the return of her daughter, child 'N', who is alleged to be in the illegal custody of the respondents in India; and whether the jurisdiction of the Dutch courts, as established in their prior rulings regarding child custody and the requirement for the return of child 'N' to the Netherlands, is valid and enforceable under Indian law.

Facts:

The case involves a Writ Petition for habeas corpus concerning Ms. 'N', a minor daughter of the Petitioner, a Dutch national. The Respondent No. 2, her Indian ex-husband, allegedly illegally detained the child in India, violating a Dutch court order mandating her return to the Netherlands. The Petitioner seeks the child's custody and compliance with the Hague Court's decision, asserting that the child's welfare and best interests are at stake. The Respondent contests the Petition, arguing that the child's upbringing in India is more beneficial, citing emotional ties and alleged mistreatment by the Petitioner's family in the Netherlands.

Ratio:

Custody and Residence of the Child: The court determined that the main residence of child 'N' should be with the Petitioner (mother) based on the principles governing child custody. The court considered the child's best interests, including the stability and nurturing environment that the mother could provide in the Netherlands, where the child had been primarily raised. **Compliance with Court Orders:** The Respondent No. 2 (father) was found to have violated prior court orders from the Dutch courts by not returning child 'N' to the Netherlands as mandated. The court emphasized the importance of adhering to international custody agreements and the decisions of

foreign courts. Racial Discrimination Defense: The court rejected the Respondent No. 2's claims of racial discrimination as a reason for retaining custody of the child in India. The court found these claims to be unsubstantiated and raised only after the Respondent faced legal pressure to return child 'N' to the Netherlands. Parental Alienation Syndrome: The court expressed concern about the potential psychological harm to the child if she were to be raised in an environment where negative perceptions of her mother were fostered, which could lead to long-term emotional issues. Best Interests of the Child: Ultimately, the court ruled that returning child 'N' to the Netherlands to reside with the Petitioner was in her best interest, considering her nationality, her established life in the Netherlands, and the ability of the Petitioner to provide a loving and stable home.

Decision of the Court:

The court granted custody of child 'N' to the mother, ordering the child's return to the Netherlands. It found the father had violated previous court orders and dismissed his claims of racial discrimination. The decision emphasized the child's best interests, ensuring a stable environment with the mother.

Sushil Kumar Rai v. Monika Chauhan, 2024 SCC OnLine Del 194

Issues:

Whether the Indian court has jurisdiction to challenge a foreign custody order issued by the District Court of Montgomery County, Virginia.

Facts:

The case involves a petitioner and respondent No. 1, married on June 7, 2011, with a son, Reyansh, born on June 29, 2016. The respondent fled to the USA with Reyansh on January 13, 2019, without the father's consent and later filed for divorce in Delhi. On July 8, 2020, a Virginia court granted her custody of the child. The petitioner challenged this order in India, citing exceptions under Section

13 of the CPC. However, the Indian court dismissed the petition, stating it lacked jurisdiction to review foreign custody decisions and advised seeking appropriate remedies in the relevant forum.

Ratio:

Writ Jurisdiction Limitations: The court emphasized that the remedy of habeas corpus is not suitable for adjudicating custody disputes where the legality of custody has been determined by a foreign court. The High Court's jurisdiction in such matters is limited to ensuring that a minor's detention is lawful and not to review custody decisions. **Recognition of Foreign Judgments:** The court underscored that a foreign court's order is presumed to be made by a court of competent jurisdiction unless proven otherwise. Therefore, if a party challenges a foreign custody order, they must do so before the appropriate foreign forum rather than through writ proceedings in India.

Jurisdictional Surrender: The petitioner, by appealing the foreign custody order in a U.S. court, effectively acknowledged the jurisdiction of that court, which weakened his position to challenge it in an Indian court.

Decision of the court:

The court dismissed the petition, concluding that the petitioner could not challenge the custody order issued by the District Court of Montgomery County, Virginia, through a writ of habeas corpus in India. The court held that the foreign judgment is presumed to be valid unless proven otherwise, and the petitioner had already acknowledged the U.S. court's jurisdiction by appealing the custody order there. The court emphasized that the appropriate legal recourse for custody disputes lies within the jurisdiction where the judgment was rendered, allowing parties to seek remedies in the relevant competent court as per law.

Adoption

Adoption Cases

Amit Ashok kumar Bajaj v. Sunil Lakhmichand Talreja, 2024 SCC OnLine Bom 3331

Issue:

whether the adoption of plaintiff No. 2 by the defendants satisfies the criteria outlined in Section 11 of the Hindu Adoptions and Maintenance Act (HAMA), raising the issue of the validity of the adoption; and whether the adoption can be challenged or annulled by any party, despite being validly executed, in relation to the irrevocability principle set forth in Section 15 of HAMA.

Facts:

The present respondent No.1 i.e. the original plaintiff No.1 had executed an Adoption Deed for giving his daughter Ridhima i.e. present respondent No.2 in adoption to the present appellants who are her maternal uncle and aunt. After two years of said adoption, respondent No.1 filed suit seeking cancellation of the aforesaid adoption deed dated 06.09.2012 alleging that it was executed from him under pressure and threats. The appellants/defendants resisted the said suit on the ground that the said Adoption Deed was willingly executed by respondent No.1/plaintiff by performing all the necessary ceremonies and in compliance with section 11 of The Hindu Adoptions and Maintenance Act, 1956. The learned trial Court dismissed the suit. However, the learned First Appellate Court set aside the said dismissal and remanded the matter back to the learned trial Court by framing additional issue with direction to the learned trial Court to decide the matter afresh on all the issues including the additional issue. Hence, this Appeal from Order.

Ratio:

The court opined that the age of defendant No. 1, the adoptive father, was 28 years, while plaintiff No. 2, the adopted daughter, was only 2 years old, indicating a significant age difference of 26 years between them. It was concluded that plaintiff No. 2 was intentionally given in adoption by her

biological parents to the defendants, thereby transferring her from her birth family to her adoptive family. The adoption was found to fulfill the criteria for validity as outlined in Section 11 of the Hindu Adoptions and Maintenance Act (HAMA). Furthermore, the court referenced Section 15 of HAMA, which states that a valid adoption cannot be canceled by the adoptive parents or any other party, nor can the adopted child renounce their status and return to their birth family. A close reading of Section 12, along with Section 11(6), clarifies that the effect of adoption severs all ties with the child's birth family, replacing them with those of the adoptive family. The appellants/defendants were found to have met all the criteria for a valid adoption under Section 11 of HAMA. Thus, considering these aspects, the court concluded that sufficient evidence was presented to resolve the controversy between the parties, making a remand unnecessary.

Decision of the Court:

The court quashed and set aside the judgment and order which had remanded the matter and allowed the parties to amend their pleadings. The court found this decision to be perverse and undesirable, as it unnecessarily prolonged litigation. The learned First Appellate Court was directed to decide the appeal based on the existing evidence on record, expeditiously, and within six months from the date of communication of the order.

Leelendra Deju Shetty v. State of Maharashtra, 2024 SCC OnLine Bom 2363

Issue:

Whether the informal adoption arrangements, without compliance with the Hindu Adoptions and Maintenance Act, 1956, or the Juvenile Justice Act, 2015, can be legally recognized.

Whether the Child Welfare Committee's removal of the children from the custody of the petitioners and placement in institutional care constitutes illegal detention.

Whether the petitioners are entitled to a writ of habeas corpus to regain custody of the children in light of the informal adoption claims.

Facts:

The case concerns alleged illegal child trafficking and unauthorized adoptions. An FIR was filed by Vikhroli Police Station on 27/04/2024 under IPC Section 370, Section 34, and the Juvenile Justice Act, 2015, based on information that Kanta Pednekar sold her son illegally to Sanjay and Savita Pawar, facilitated by intermediaries. Following this, several children were removed from their adoptive families and placed in institutional care by the Child Welfare Committee due to suspected illegal adoption practices. Three petitions were filed by adoptive guardians seeking habeas corpus, arguing their custody was legal and challenging the children's detention in institutional care.

Ratio:

The ratio decidendi in this case centers on the legal requirement for compliance with statutory adoption procedures, specifically under the Hindu Adoptions and Maintenance Act, 1956, and the Juvenile Justice Act, 2015. The court emphasized that informal or private adoptions, even if involving biological parents, lack legal recognition unless conducted in accordance with these statutes. Furthermore, the court held that while a writ of habeas corpus can be invoked in matters involving the custody of minors, it is only maintainable when the detention of a minor is illegal and violates statutory guardianship or custodial rights, prioritizing the welfare of the child.

Decision of the court:

The court decided that the custody of the children should remain with the Child Welfare Committee (CWC) and Baal Asha Trust, as the Petitioners did not follow the legal procedures required for adoption under the Hindu Adoptions and Maintenance Act, 1956, or the Juvenile Justice Act, 2015.

The court held that habeas corpus could not be granted since the children's detention by the CWC was lawful and aligned with the paramount principle of child welfare. The Petitioners were advised to pursue proper legal channels to seek custody if they wished to adopt the children legally.

Fulchand v. State of Maharashtra, 2024 SCC OnLine Bom 2108

Issues:

Whether the adoption of the petitioner, who was 10 years old at the time of adoption, complies with the provisions of the Hindu Adoption and Maintenance Act, 1956, particularly regarding the age limit for adoption.

Whether the Tahsildar has the authority to revoke the Earthquake Affected Person Certificate based on the adoption deed and the compromise decree, which confirmed the petitioner's status as an adopted son.

Facts:

The petitioner, biological son of Shri Shankar Ramu Pawar and Sau. Gunbai Shankar Pawar, was adopted by Shri Lalu Shivram Jadhav and Sau. Narsabai Lalu Jadhav on April 18, 2022. Following the adoption, he sought recognition as an adopted son through a civil suit, leading to a compromise decree. He obtained a certificate as an Earthquake Affected Person, allowing him to apply for a reserved police constable position. However, the Tahsildar revoked this certificate after questioning its validity, prompting the petitioner to challenge the revocation, arguing the legality of the adoption and the certificate should not be questioned by the Tahsildar.

Ratio:

The adoption deed states that the petitioner was adopted when he was 10 years old, but by the time of the adoption deed's execution in 2022, he was already 27 years old. According to Section 10 of the Hindu Adoption and Maintenance Act, 1956, a person above the age of 15 cannot be legally adopted unless specific customs allow such adoption. The lack of any custom permitting this in the petitioner's case raises questions about the legality of the adoption.

Decision of the court:

The court upheld the cancellation of the Petitioner's Earthquake Affected Person certificate due to manipulation and non-compliance with adoption laws. It confirmed that the adoption was invalid as the Petitioner was over the age of 15 at the time. The court found no illegality in the authorities' actions, thereby rejecting the Petitioner's claims.

Uttam Bhimashankar Sulakhe v. State of Maharashtra, 2024 SCC OnLine Bom 2741

Issue :

Whether the failure to prove essential ceremonies of adoption under Section 10 of the Hindu Adoptions and Maintenance Act, 1956, invalidates the adoption claim based solely on an unregistered adoption deed for purposes of determining share in land acquisition compensation.

Facts :

Two pieces of property (houses and agricultural land) in Fulsangvi village were acquired by the State, for which compensation of Rs. 5,25,582 for houses and Rs. 2,16,000 for land was determined. A dispute arose regarding the apportionment of this compensation between Party No. 1 (Dinkar and Madhukar) and Party No. 2 (Uttam). Party No. 1 claimed they were entitled to 1/3rd share each based on inheritance from their father Sakharam. Party No. 2 claimed he was entitled to 1/2 share, asserting he was adopted by Bhimashankar (Sakharam's brother) through an unregistered adoption deed dated 01.06.1957. The sale deed of 1962 showed Uttam was 26 years old, meaning he was 21

at the time of alleged adoption, exceeding the 15-year age limit under the Hindu Adoptions and Maintenance Act.

Ratio :

The High Court emphasized that under Section 10 of the Hindu Adoptions and Maintenance Act, 1956, an adoption is valid only when the adoptee is under 15 years of age at the time of adoption, and the essential ceremonies of adoption must be strictly proved. A mere adoption deed, even if it exists, does not by itself establish a valid adoption under Hindu law. The court stated that in the absence of proof of essential ceremonies and compliance with the age requirement, the adoption cannot be recognized as valid for determining property rights. The Court observed that documentary evidence in the form of mutation entries and revenue records, without proof of valid adoption, would neither confirm adoption status nor establish rights to property compensation.

Decision of the court :

The High Court dismissed the appeals and upheld the Reference Court's decision, finding Party No. 2 (Uttam) had failed to prove his adoption and consequent entitlement to half share in the compensation amount. Party No. 2's claim was rejected on two grounds: failure to prove essential ceremonies of adoption and violation of the age requirement under Section 10 of the Hindu Adoptions and Maintenance Act (being 21 years old at time of alleged adoption). The Court confirmed the original apportionment giving one-third share each to the parties, dismissing all pending civil applications. The Court held that revenue/mutation entries relied upon by Party No. 2 did not confer title, and no jurisdictional error was found in the Reference Court's judgment.

Housabai v. Bhagirthibai, 2024 SCC OnLine Bom 790

Issue :

Whether the doctrine of 'Relation Back' under Hindu law divests an adoptive mother of her property rights after adoption, and whether her heirs can inherit her share after death.

Facts :

In 1934, Housabai's husband died, leaving behind her and a daughter. She adopted Eknath, her stepbrother's son, in 1946. They lived jointly and possessed the suit lands. After the adoption, Housabai sold some land, which Eknath contested and recovered through a lawsuit. Due to harassment from Eknath, Housabai moved to live with her daughter for 8-10 years. In 1975, Eknath died, predeceasing Housabai. Before his death, he had sold some lands to defendants 6-12. In 1978, Housabai filed a suit claiming her half share in the property and challenging these sales. During the pendency of the case, Housabai died in 1982, followed by her daughter Sulochana in 2003. The trial court and first appellate court dismissed the suit, leading to this second appeal by Sulochana's legal heirs.

Ratio :

The ratio decidendi of this case highlights that under Hindu law, adoption carries the principle of "Relation Back," meaning it takes effect from the moment of adoption. As a result, once a child is adopted, the adoptive mother effectively loses her property rights, as the adopted child is treated as if they were always part of the family. This means that after the adoptive mother passes away, her heirs cannot inherit her property, since she is considered to have no rights to it post-adoption. This ruling underscores how adoption not only transforms family dynamics but also significantly impacts property rights in a legal context.

Decision of the court :

The Bombay High Court ruled in favor of Bhagirthibai and her heirs, holding that the doctrine of "Relation Back" under Hindu law applies in this case. The court determined that once Housabai

adopted Bhagirthibai's son, she lost her property rights, and therefore, her heirs were not entitled to inherit her share upon her death. The court emphasized that the adopted child assumes the legal status of a biological child, which eliminates the adoptive mother's property claims. This decision reinforces the legal principle that adoption fundamentally alters inheritance rights under Hindu law, ensuring that adopted children are treated equally to biological children in terms of inheritance.

National Bank for Agriculture & Rural Development v. UOI, 2024 SCC OnLine Bom 1869

Issue :

Whether the use of a "sealed cover" procedure by NABARD to defer a promotion pending disciplinary proceedings is legally valid, especially given the Industrial Tribunal's determination that the governing internal circular was invalid, impacting the employee's entitlement to promotion and related benefits.

Facts :

The case involves an employee of NABARD who was not promoted due to the application of a "sealed cover" procedure, which allows deferring promotions during ongoing disciplinary proceedings. The employee challenged this decision, arguing that the internal circular governing the procedure was invalid. The Industrial Tribunal ruled in favor of the employee, stating that NABARD failed to provide adequate justification for the deferral of the promotion. Consequently, the Tribunal ordered NABARD to grant the promotion with back wages and other benefits. NABARD contested this decision, prompting further legal scrutiny regarding the validity of the procedure and its implications on the employee's rights and entitlements.

Ratio :

The ratio decidendi established in this case is that the use of the "sealed cover" procedure by an employer, such as NABARD, must be accompanied by clear and lawful justification. If an employer

defers an employee's promotion based solely on pending disciplinary proceedings, it must demonstrate that such action is not arbitrary and is in line with procedural fairness. This principle protects employees' rights to timely promotions unless compelling reasons for deferment are provided.

Decision of the court :

The court decided to uphold the order of the Tribunal, which directed NABARD to promote the employee with back wages and benefits. The decision emphasized that the promotion should not have been deferred based on the "sealed cover" procedure without sufficient justification.

Manju Anil Aggarwal v. Rajeev Lalchand Goyal, 2024 SCC OnLine Bom 1610

Issue :

Whether a brief one or more substantial adoption claim can be established by the petitioner, considering the respondent's denial of any valid adoption, and whether the Letters of Administration were obtained through fraudulent means, particularly in light of the claims of delay and laches, the admissibility of evidence, and the application of Section 263 of the Succession Act regarding revocation.

Facts :

The petitioner filed a suit for letters of administration regarding the estate of the deceased, alleging a valid adoption made by the deceased. The petitioner claimed that the deceased had adopted him in accordance with Hindu law, which the respondent disputed, asserting that no such adoption took place. The respondent further alleged that the petitioner was not a legitimate heir, contending that he had fraudulently obtained letters of administration. The case was complicated by claims of delay and laches, raising questions about the timely presentation of evidence and the validity of the adoption, leading to an examination of the circumstances surrounding the deceased's estate.

Ratio :

In this case, the key takeaway is that for an adoption to be legally recognized under Hindu law, it must be backed by clear evidence showing that it followed the required rituals and customs. The court underscored the importance of proving the adoption to secure the legal status of the adopted child as an heir. Additionally, the court pointed out the significance of timely action, stating that individuals must pursue their rights within a reasonable timeframe. Ultimately, the petitioner couldn't provide enough proof of the adoption, which affected his claim for letters of administration, highlighting the necessity of solid evidence in matters of inheritance.

Decision of the court :

The court dismissed the petition for letters of administration filed by the petitioner, ruling that he failed to provide sufficient evidence of the adoption of the deceased by him. The court emphasized the necessity of proving the adoption as per the established customs and rituals under Hindu law. It concluded that the lack of credible evidence regarding the adoption process meant that the petitioner could not be recognized as an heir to the deceased's estate. Consequently, the court denied the petitioner's claim, reinforcing the principle that clear and conclusive proof is essential for claims related to inheritance and legal status of adopted children.

Bigamy

Bigamy

Baba Natarajan Prasad v. M. Revathi, (2024) 7 SCC 531

Issues:

Whether the sentence of imprisonment until the rising of the court with a fine of Rs. 20,000 each aligns with the principle of proportionality given the seriousness of the offence under Sections 494 and 495 IPC.

Whether the principle of proportionality in sentencing was adequately applied to ensure that the punishment matched the gravity of the offence, thereby reflecting its impact on the victim and society.

Whether leniency in sentencing could undermine public confidence in the legal system and potentially encourage criminal behavior by imposing a punishment that may be perceived as too mild for the offence committed.

Whether the sentencing court properly balanced aggravating and mitigating factors by considering all relevant aspects such as the nature of the crime, the method of its execution, the motives behind it, and its consequences, to ensure a just and appropriate punishment.

Facts:

The appellant, the husband of the first respondent, filed a complaint under Section 200 of the CrPC against his wife (Accused 1) and her second husband (Accused 2) for bigamy under Section 494 IPC. He alleged that while divorce proceedings were ongoing, Accused 1 married Accused 2 and had a child. The trial court convicted Accused 1 and 2, sentencing them to one year of rigorous

imprisonment and a fine. Appeals were filed by both the appellant and the accused. The Additional District and Sessions Judge acquitted Accused 1 and 2 and dismissed the appellant's appeals, prompting further appeals from the appellant.

Ratio:

The ratio of the case centers on the principle of proportionality in sentencing for the offence of bigamy under Sections 494 and 495 of the Indian Penal Code (IPC). The court held that while sentencing, the punishment must be proportionate to the seriousness of the offence to ensure justice is served for both the victim and society. It emphasized that a lenient sentence, such as imprisonment until the rising of the court with a small fine, may not adequately reflect the gravity of bigamy, as it risks undermining public confidence in the justice system and could encourage further criminal behavior. Therefore, the court modified the sentence to six months of simple imprisonment, emphasizing that the punishment should be stern enough to deter future offences while promoting societal order.

Decision of the Court:

The court ruled that the sentence initially imposed—imprisonment until the rising of the court and a fine—was too lenient for the offence of bigamy under Sections 494 and 495 of the IPC. To reflect the gravity of the crime and uphold the principle of proportionality, the court modified the sentence to six months of simple imprisonment. The fine was reduced from ₹20,000 to ₹2,000 for each accused.

S. Nitheen v. State of Kerala, (2024) 8 SCC 706

Issues:

Whether the second marriage contracted by Accused 1 (L) while her first marriage with the complainant (R) was still valid constitutes the offence of bigamy under Section 494 IPC. This

requires determining if both marriages were conducted according to the personal laws applicable to the parties involved.

Whether the relatives and friends of Accused 1 and Accused 2 can be held liable for the offense of bigamy under Section 494 IPC with the aid of Section 34, based on their alleged common intention to commit the crime.

Facts:

The complainant Mr Reynar Lopez (Respondent 2 herein) married Ms Lumina (A1) as per the Christian ceremonies in St. Theresa's Lisieux Church at Vellayambalam, Thiruvananthapuram, Kerala on 16/4/2007. It is alleged that on 13/8/2010, Ms Lumina (A1) contracted marriage with Saneesh (A2) under the Special Marriage Act, 1954 before the Marriage Officer, Nemom. It is alleged that the appellants herein (A3, A4, A5, A6 and A7) are relatives and friends of Saneesh (A2) and Ms Lumina (A1) and thus they too are responsible for the offence of bigamy committed by Ms Lumina (A1) as they had the common intention to commit such offence.

Ratio:

Essential Ingredients of Bigamy: The Supreme Court reiterated that the essential ingredients for establishing an offense under Section 494 IPC are:

1. The accused must have contracted a first marriage.
2. The accused must have entered into a second marriage while the first marriage was subsisting.
3. Both marriages must be valid, with the necessary ceremonies performed according to the personal law governing the parties.

For relatives and friends to be held liable under Section 494 IPC through the principle of common intention (Section 34), there must be evidence of their active involvement or knowledge of the first marriage when witnessing the second marriage. Mere presence or witnessing the marriage does not suffice to establish liability without evidence of knowledge of the existing marriage. The proceedings against the relatives and friends (Accused 37) were quashed due to a lack of evidence supporting their involvement or common intention to commit bigamy. Allowing the proceedings to continue against them, without sufficient evidence, was deemed a gross illegality and an abuse of the court process.

Decision of the court:

The court quashed the proceedings against the relatives and friends of Accused 1 and 2 due to insufficient evidence of their involvement or knowledge of the existing marriage at the time of the second marriage. It emphasized that mere presence as witnesses does not imply liability under Section 494 IPC. However, the trial against Accused 1 and 2 for bigamy was allowed to continue.

Manisha v. State (NCT of Delhi), 2024 SCC OnLine Del 6839

Issues:

Whether there was sufficient evidence to establish that Respondent No. 2 (Rohit Matil) had entered into a second marriage with Respondent No. 3 (Durgesh Kumawat) while still married to the petitioner (Anisha).

Whether the complaint was filed under Section 200 Cr.P.C. adequately demonstrated the necessary elements to warrant the registration of an FIR under Section 494 IPC for bigamy.

Whether the allegations made by the petitioner were sufficiently substantiated to overturn the dismissal of her complaint by the Metropolitan Magistrate.

Whether the High Court correctly upheld the dismissal of the petition on the grounds of lack of prima facie evidence for bigamy.

Facts:

Manisha was married to Rohit Matil in 2008, with whom she has a son. After Rohit's transfer to Jaipur in 2013, Anisha discovered questionable communications with Durgesh Kumawat, leading to marital strain. Rohit left for work on May 1, 2016, and was later reported missing. Anisha found evidence suggesting Rohit had married Durgesh while still married to her. She filed a complaint under Section 200 Cr.P.C. for bigamy, but the Metropolitan Magistrate dismissed it due to lack of evidence. The High Court upheld the dismissal, stating no prima facie case for bigamy existed.

Ratio:

Burden of Proof for Bigamy: To establish an offence under Section 494 IPC (bigamy), there must be sufficient evidence showing that the accused contracted a second marriage while the first marriage was still valid. The absence of any document or credible evidence proving the existence of a second marriage negates the charge of bigamy. **Evidence Requirements:** Mere suspicion or conjecture is insufficient for a complaint to proceed. Concrete evidence, such as marriage documents or testimony establishing the second marriage according to the relevant personal law, is necessary. **Judicial Discretion in Dismissal:** The dismissal of a complaint under Section 200 Cr.P.C. by a Magistrate, upheld by a higher court, indicates that if no prima facie case is established, the courts will refrain from summoning the accused.

Decision of the Court;

The court dismissed the petition upholding the lower courts' decisions to reject her complaint under Section 200 Cr.P.C. for the registration of an FIR against her husband for bigamy. The court found no substantial evidence proving that the husband had contracted a second marriage while the first marriage was still valid. Consequently, it was determined that the allegations were speculative and insufficient to support a charge under Section 494 IPC.

