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CUSTODY OF CHILD

Primary object of Habeas Corpus petition for child's custody is to determine in whose custody the best interest of the child will be advanced. In the petition seeking writ of habeas corpus in matter relating to custody of child, the Court exercises an inherent jurisdiction, independent of any statute and therein the paramount consideration of the Court is to ascertain what is in the best interest of the child.[1]

RAJESWARI CHANDRASEKAR GANESH

VS.

STATE OF TAMIL NADU & ORS.

[2021 SCC ONLINE SC 3322]

The Supreme Court of India

Coram: A.M. Khanwilkar and J.B. Pardiwala, JJ.

Date of Judgment: 14.07.2022

HELD:

114. In the overall view of the matter, we have reached to the conclusion that the respondent no.2, at the earliest, should be directed to go back to the USA with both the minor children and abide by the shared parenting plan as ordered by the Court at Ohio.

115. We would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult.

[1] Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu & Ors. [2021 SCC OnLine SC 3322].

Child is not a commodity and parent's income & better education prospects is not the sole criteria for deciding custody of a child. It is the ultimate welfare of the child which should be the dominant matter when parents make conflicting demands; both demands are to be justified and cannot be decided on a legalistic basis.[2]

NIMISH S. AGRAWAL

VS.

SMT. RUHI AGRAWAL

[2022 SCC ONLINE CHH 902]

The High Court of Chhattisgarh

Coram: **Goutam Bhaduri & NK Chandravanshi, JJ.**

Date of Judgment: 11.05.2022

HELD:

41. In view of the aforesaid discussion, after taking into the overall facts, we are of the opinion that considering the paramount interest of the child, it would be proper if the mother holds the custody of the child and accordingly, the finding arrived at by the learned Family Court with respect to custody of child to be with the mother, we refrain to interfere with the same.

43. The Supreme Court in case supra further held even after the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child.

45. We feel that apart from the father, the child should also learn the culture of the grandparents. The photographs which are placed would show the affectionate bond between the grandparents and the child. Therefore, the grandparents would also have visitation rights along with father which would, in turn, be beneficial for the development of the child. Accordingly, we deem it appropriate that the grandparents of the child should also be part of the visitation right.

[2] Nimish S. Agrawal vs. Smt. Ruhi Agrawal, [2022 SCC OnLine Chh 902].

- **Cases referred to:** Nil Ratan Kundu v. Abhijit Kundu [(2008) 9 SCC 413]; Githa Hariharan v. Reserve Bank of India [(1999) 2 SCC 228]; Yashita Sahu v. State of Rajasthan [(2020) 3 SCC 67]; Ritika Sharan v. Sujoy Ghosh [2020 SCC OnLine SC 878].

46. In addition to "visitation rights", the court observed that "contact rights" is also important for the development of the child, especially in cases, where both the parents live in different places the concept of contact rights in the modern age would be contacted telephone, e-mail or in fact we feel the best system of contact, if available between the parties should be video calling. (…..) It held that the communication will help in maintaining and improving the bond between the child and the parent who is denied thetody.

In transnational child custody cases, 'Mirror Orders' from foreign courts ensure welfare of minor. When a court allows the shifting of a child to a foreign country, it may impose a condition that the parent in the foreign jurisdiction should also obtain a similar order of custody for the child from a competent court there. Such an order is called a 'mirror order'. This condition is imposed to ensure that the courts of the foreign jurisdiction are also put on notice regarding the matter and to ensure protection of the child.[3]

SMRITI MADAN KANSAGRA

VS.

PERRY KANSAGRA

[MISC. APPL.1167 OF 2021 IN CIVIL APPEAL NO. 3559 OF 2020]

The Supreme Court of India

Coram: UU Lalit, J.

Date of Judgement: 07.10. 2021

HELD:

100. (……) This Court held that the mother has not shown any particular inclination to retain the child in India. The Court came to the conclusion that the welfare of the child will be best served in 21 Civil Appeal No. 3284 of 2020 decided on 23.9.2020 66 US as the child was born in US and was a citizen of US by birth. The father has taken the responsibility for shared parenting when the child was in US. It was further held that the child remained in India for a short period and it would not be contrary to his interest to allow the father to take him back.

109. In the present case, the child has grown up in India in the last 11 years. At this age, the child would be exposed to physical and psychological harm, if he is shifted to Kenya amongst fellow students and teachers but without any friends. He would be taken care of by nannies, and maids, with liberal pampering by the grandparents and the father.

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[3] Smriti Madan Kansagra vs. Perry Kansagra, [Misc. Appl.1167 of 2021 in Civil Appeal No. 3559 of 2020].

- **Cases referred to:** S.P. Chengalvaraya Naidu v. Jagannath' [(1994) 1 SCC 1]; Indian Bank v. Satyam Fibres (India) (P) Ltd., [(1996) 5 SCC 550]; United India Insurance Co. Ltd. v. Rajendra Singh, [(2000) 3 SCC 581]; Ram Chandra Singh v. Savitri Devi, [9 (2003) 8 SCC 319]; Hamza Haji v. State of Kerala, [(2006) 7 SCC 416]; Dagdu Paralkar v. State of Maharashtra, [(2005) 7 SCC 605]; Ashok Nagar Welfare Assn. v. R.K. Sharma [(2002) 1 SCC 749]; K.D. Sharma v. SAIL [(2008) 12 SCC 481]; Meghmala v. G. Narasimha Reddy, [(2010) 8 SCC 383]; Badami v. Bhali [(2012) 11 SCC 574].

110. The High Court vide a separate short order dated 25.2.2020 gave visitation rights to Smriti to talk to the child over audio calls/video calls for at least 10 minutes every day at a mutually agreed time which is least disruptive to the schooling and other activities of the child. It was also ordered that Smriti shall be entitled to freely exchange e-mails, letters and other correspondences with the child without any hindrance by Perry or his family. Smriti was given the right to visit the child during summer and winter vacations on the dates to be mutually agreed upon but she shall not be entitled to take the child out of Nairobi, Kenya.

111. I find that the order of the High Court granting visitation rights for one week is a farce. Perry has been coming to India quite frequently and has unsupervised visitation rights over the child as well. Therefore, instead, it will be in the interest of justice, if Perry is given unsupervised visitation rights in India or abroad for a month during the summer or winter holidays either in parts or consecutively. Unsupervised visitation rights in India or abroad for a month during summer or winter holidays either in parts or consecutively.

113. In view of the above, the appeal is allowed. The orders passed by the Family Court and the High Court are set aside with grant of visitation rights to Perry.

A mother's love must be given unconditionally to establish trust and a firm foundation of emotional intimacy in a child's life.[4]

KM. SANAYA SHARMA (MINOR) AND ANOTHER

VS.

STATE OF U.P. AND 4 OTHERS

[WRIT PETITION NO. - 165 OF 2022]

The High Court of Allahabad

Coram: Rahul Chaturvedi, J.

Date of Judgement: 07.04. 2022

HELD:

Section 6(a) of the said Act, therefore, preserves the right of the father to be the guardian of the property of the minor child but not the guardian of his person, whilst the child is less than five years old. It carves out the exception of interim custody, in distinction of guardianship, and then specifies that custody should be given to the mother so long as the child is below five years of age. The Act immediately provides that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother. In the instant case where there is an unfortunate tussle between the mother, being the natural guardian of the kids on one hand and the grandmother and paternal aunt (Bua) on the other hand, then this Court is of the considered opinion that the mother, being the natural guardian of those kids is standing on a much higher footing than that of the grandmother or their parental aunt (Bua).

Children are not play things of their parents. Their welfare is of paramount importance and they will be well protected when the mother is with them. A child should never feel as if they need to earn a mother's love. This will leave a void in their heart all of their life. A mother's love must be given unconditionally to establish trust and a firm foundation of emotional intimacy in a child's life. If love is withheld, a child will look for it in a million other ways. Sometimes they will search throughout their lifetime unless they come to some sort of peace with their past. The emotional foundation we give our children at home is foundational to their life. We cannot underestimate the value of the home and the power of a mother's love.

[4] Km. Sanaya Sharma (Minor) and Another vs. State of U.P., [Habeas Corpus Writ Petition No. 165 of 2022].

VALIDITY OF MARRIAGE UNDER SECTIONS 5 AND 11 OF THE HINDU MARRIAGE ACT, 1955

Marriage without obtaining any decree of divorce from the previous marriage is considered null and void as per section 11 and section 5 of the Hindu Marriage Act, 1955. [5]

VIJAY KUMAR PANDEY

VS.

CHAMELI BAI AND ANR

[2022 SCC ONLINE CHH 778]

The High Court of Chhattisgarh

Coram: Narendra Kumar, J.

Date of Judgement: 29.04. 2022

HELD:

22. Coming to the facts of the case, it is not in dispute that defendant No.1 is a second wife of Heeralal and at the time of marriage, his first wife Kamla Bai was living, therefore, the second marriage of Heeralal with Chameli Bai will be null and void as per section 5 of the Hindu Marriage Act. Even if, the second marriage of Heeralal was sermonized with Respondent No.1 with the consent of his first wife Kamla Bai cannot be legalized the second marriage and it will be a void marriage as per Section 11 of the Hindu Marriage Act 1955. Thus from the above-stated facts, it is quite vivid that the second marriage of Heeralal with Respondent No.1 is void marriage, therefore, the respondent No.1 is not the legally wedded wife or lawful wife of Heeralal.

26. From perusal of the record, it is quite vivid that defendant No. 1/ Respondent No.1 got married with Heeralal, without obtaining any decree of divorce during the subsistence of his first marriage with Chameli Bai. Thus, the marriage of Heeralal with Respondent No.1/ Chameli Bai is in contravention to section 5 of the Hindu Marriage Act, 1955, it is void marriage as per the provision of section 11 of Hindu Marriage Act and the law laid down by the Hon'ble Supreme Court.

[5] Vijay Kumar Pandey vs. Chameli Bai and Anr, [2022 SCC OnLine Chh 778].

Cases referred to: Yamunabai Anantrao Adhay v. Anantrao Shivram Adhav, [(1988) 1 SCC 530]; Rameshwari Devi v. State of Bihar, [(2000) 2 SCC 431]; Sarita Bai v. Chandra Bai, [AIR 2011 MP 222].

If any spouse is living at the time of the second marriage, that marriage is considered as null and void according to section 5 and section 11 of the Hindu Marriage Act, 1995.[6]

SAKET NISHAD

VS.

SMT. POOJA NISHAD

[AIR 2022 CHH 19]

The High Court of Chhattisgarh

Coram: Goutam Bhaduri and Rajani Dubey, J.

Date of Judgement: 03.01.2022

HELD:

9. The evidence of the appellant Saket Nishad would show that he has stated that on 11.06.2014 when the marriage was performed with the respondent, his earlier wife Uma Nishad was living.

11. The law mandates that if the conditions which are imposed under Section 5 of the Act, 1955 are not fulfilled then the marriage can be declared null and void by a decree of nullity. In the instant case both the parties maintain the stand that on the date of the second marriage on 11.06.2014, the husband was married and the spouse was living along with the husband. When the parties admit to the fact even at the cost which may assassinate their character, then in such case in the facts of this case, the provisions of Section 11 of the Act, 1955 would be attracted. In absence of any rebuttal of the evidence we accept the submission and the pleadings adduced by the parties. Accordingly, it is held that on the date of marriage i.e. on 11.06.2014 of Saket Nishad, the appellant herein, had a living wife namely Uma Nishad as she was married to him at prior point of time on 24.02.2012, as such the second marriage performed on 11.06.2014 would eclipsed by the conditions imposed under Section 5 read with Section 11 of the Hindu Marriage Act, 1955. Accordingly, it is ordered that the marriage in between the appellant and respondent Pooja Nishad dated 11.06.2014 would be a nullity and marriage be dissolved by a decree of nullity. The order of the Court below dated 04.03.2016 is set aside. The decree be accordingly drawn.

[6] Saket Nishad vs. Smt. Pooja Nishad, [AIR 2022 Chh 19].

There cannot be a valid marriage between a Hindu and a Christian under the provisions of the Hindu Marriage Act, 1995. Any marriage taken place under the provisions of the Hindu Marriage Act, 1995, between the parties of Hindu and Christian faith, respectively, is considered as null, void and invalid.[7]

RENCY MATHEW

VS.

BHARATH KUMAR

[(2021) 3 HLR 248]

The High Court of Karnataka

Coram: B.V. Nagarathna and Ravi V. Hosmani, JJ.

Date of Judgement: 29.06.2020

HELD:

27. The appellant/plaintiff had filed the suit seeking a declaration that her marriage solemnized with the respondent/defendant as per the Hindu rites and customs on 12.12.2005 at Balaji Samudhaya Bhavan Subramanayanagara, Bengaluru and registered on 25.11.2006 before the Registrar of Marriages, Yelahanka vide certificate No.12/06-07 as a void marriage. In substance, the plaintiff has sought a twin declaration that the marriage under the provisions of the Hindu Marriage Act was an invalid marriage and consequently, to declare that the registration of such a marriage under the provisions of the Act was also null and void. That is how the prayers sought for by the plaintiff have to be appreciated and moulded in the instant case.

28. For the aforesaid reasons, we set aside the judgment and decree of the Family Court and allowed this appeal. Consequently, we declare that the marriage solemnized between the appellant/plaintiff and respondent/defendant on 12.12.2005 at Balaji Samudhaya Bhavan, Subramanayanagara, and Bengaluru as invalid and null and void. Consequently, the registration of the said marriage on 25.11.2006 before the Registrar of Marriages, Yelahanka vide certificate No. 12/06-07 is also null and void. In the result, the appeal is allowed. The suit filed by the appellant is decreed in the aforesaid terms.

[7] Rency Mathew vs. Bharath Kumar, [(2021) 3 HLR 248].

- **Cases referred to:** Lagna Bhattacharjee v. Shyamal Bhattacharjee [AIR 1975 Cal 6]; Sanjay Mishra v. Miss Eveline Job [AIR 1993 MP 54].

If members of any specified tribe, voluntarily choose to follow Hindu customs, traditions and rites, they cannot be kept out of the purview of the provisions of the Hindu Marriage Act, 1995.[8]

SATPRAKASH MEENA

VS.

ALKA MEENA

[(2021) 282 DLT 23]

The High Court of Delhi

Coram: Prathiba M. Singh, J.

Date of Judgement: 07.07.2021

HELD:

47. (…..) The manner in which the marriage is conducted in the present case and the customs being followed by the party shows that as in the case of Hindus, the marriage is conducted in front of the fire. The Hindu marriage ceremony involves the ceremony of Saptapadi which has also been performed in the case. The various other ceremonies, as is clear from the marriage invitation are also as per Hindu customs. If members of a tribe, voluntarily choose to follow Hindu customs, traditions and rites, they cannot be kept out of the purview of the provisions of the HMA, 1995. Codified statutes and laws provide for various protection to parties against any unregulated practices from being adopted. In this day and age, relegating parties to customary courts when they themselves admit that they are following Hindu customs and traditions would be antithetical to the purpose behind enacting a statute like the HMA, 1995. The provisions of exclusion for example under section 2(2) are meant to protect customary practices of recognized tribes. However, if parties follow Hindu customs and rites, for the purpose of marriage, this court is incline to follow the judgement of the Supreme Court in Labishwar Manjhi (supra) to hold that parties are Hindus and hence the HMA, 1995 would be

[8] Satprakash Meena vs. Alka Meena, [(2021) 282 DLT 23].

- **Cases referred to:** Labishwar Manjhi v. Pran Manjhi [(2000) 8 SCC 587]; Dr. Surajmani Stella Kujur v. Durga Charan Hansdah, [(2001) 3 SCC 13]; Ram Lal v. Prem Bai; Anom Apang v. Geeta Singh [(2012) 2 GLR 583]; Mohd. Ahmed Khan v. Shah Bano Begum, [(1985) 2 SCC 556]; Ms. Jordon Diengdeh v. S.S. Chopra, [(1985) 3 SCC 62]; Sarla Mudgal v. UOI [(1995) 3 SCC 635]; Lily Thomas [(2000) 6 SCC 224]; John Vallamattom v. Union of India, [(2003) 6 SCC 611]; ABC v. State (NCT of Delhi) [(2015) 10 SCC 1]; Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, [(2019) 20 SCC 85]; Mohd. Ahmed Khan v. Shah Bano Begum, [1985 SCC (Cri) 245].

applicable. Moreover, nothing has been placed before the court to show that the Meena Community Tribe has a specialised court with proper procedures to deal with these issues. In these facts, if the court has to choose between relegating parties to customary courts which may or may not provide for proper procedures and safeguards as against codified statutes envisioning adequate safeguards and procedures, this court is inclined to lean in favour of an interpretation in favour of the latter, especially in view of the binding precedent of the Supreme Court in Labishwar Manjhi (supra) which considered an identical exclusion under the HSA, 1956.

57. The need for a Uniform Civil Code as envisioned under Article 44, has been reiterated from time to time by the Supreme Court. Cases like the one repeatedly highlight the need for such a Code - 'common to all', which would enable uniform principles being applied in respect of aspects such as marriage, divorce, succession etc., so that settled principles, safeguards and procedures can be laid down and citizens are not made to struggle due to the conflicts and contradictions in various personal laws. In modern Indian society which is gradually becoming homogenous, the traditional barriers of religion, community and caste are slowly dissipating. The youth of India belonging to various communities, tribes, castes or religions who solemnise their marriages ought not to be forced to struggle with issues arising due to conflicts in various personal laws, especially in relation to marriage and divorce. The hope expressed in Article 44 of the Constitution that the State shall secure for its citizens Uniform Civil Code ought not to remain a mere hope. The Supreme Court had, in 1985 directed that the judgment in Ms. Jordon Diengdeh (supra) to be placed before the Ministry of Law to take appropriate steps. However, more than three decades have passed since then and it is unclear as to what steps have been taken in this regard till date. Accordingly, let the copy of the present judgment be communicated to the Secretary, Ministry of Law & Justice, Government of India, for necessary action as deemed appropriate.

JUDICIAL SEPARATION UNDER SECTION 10 OF THE HINDU MARRIAGE ACT, 1955

Granting of Judicial Separation to an old couple on humanitarian grounds is appropriate and for a better future. In such case a judicial separation better than divorce.[9]

SMTI. PRAMILA GHOSH (GUHA)

VS.

SRI ANUP KUMAR GUHA

[2022 SCC ONLINE TRI 568]

The High Court of Tripura (Agartala)

Coram: T. Amarnath Goud and S.G. Chattopadhyay, JJ.

Date of Judgement: 11.08.2022

HELD:

5. After elaborate arguments on behalf of both sides, both the parties present in court have mutually consented to be away from each other in view of their domestic issues and prays for judicial separation for some period. As the parties are senior citizens and considering their case on special reasons and having humanitarian grounds not to precipitate the litigation and with a hope in future they will have better days this court is of the view that for granting judicial separation which would be appropriate instead of divorce.

6. Accordingly, this court grants the order of judicial separation as prayed by both the parties. For any other relief, if they are so desired, they are at liberty to take up the appropriate steps in accordance with law.

[9] Smti. Pramila Ghosh (Guha) vs. Sri Anup Kumar Guha, [2022 SCC OnLine Tri 568].

Judicial separation is a completely different relief that the aggrieved spouse may seek against the other, under Section 10 of the Hindu Marriage Act and when a decree of judicial separation is passed, the aggrieved spouse is no longer bound to cohabitate with the other, even though, the matrimonial bond continues to subsist.[10]

SHWETA KHURANA

VS.

VINAY KHURANA

[2022 SCC ONLINE DEL 517]

Delhi High Court

Coram: Vipin Sanghi and Jasmeet Singh, JJ.

Date of Judgement: 18.02.2022

HELD:

44. In the present case, the parties lived together only for 3 years, and have been living separately for more than 12 years now. The period of separation has left the relationship between the parties beyond repair. The adamance of the respondent to refuse to cohabitate with the appellant over the last 12 years shows us that there is nothing remaining in this marriage, for either party.

45. On a proper consideration of the facts and circumstances of this case, we are thus of the view that the Family Court erred in not granting the decree of divorce to the appellant and, instead, granting a decree of Judicial Separation to the appellant. We, accordingly, set aside the impugned judgement passed by the Family Court in so far as it grants a decree of Judicial Separation to the appellant-husband. Further, we find the respondent guilty of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.

[10] Shweta Khurana vs. Vinay Khurana, [2022 SCC OnLine Del 517]

- **Cases referred to:** Mangayakarasi v. M. Yuvaraj, [(2020) 3 SCC 786]; Samar Ghosh v. Jaya Ghosh, [(2007) 4 SCC 511]; Srinivas Managaonkar v. Sunanda [(2001) 4 SCC 125]; Naveen Kohli v. Neelu Kohli, [(2006) 4 SCC 558]; Rahul Kesarwani v. Sunita Bhuyan, [MAT APP (F.C) 75/2020]; Sheenu Mahendru v. Sangeeta, [2019 SccOnLine Utt 376].

While considering the transfer of a matrimonial dispute/case at the instance of the wife, the Court is to consider the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important the convenience of the wife.[11]

SMITAPRATIVA SAHOO

VS

RAMAKRISHNA BEHERA

[W.P. (C) NO. 4614 OF 2022]

The High Court of Orissa

Coram: K.R. Mohapatra, J.

Date of Judgement: 19.07.2022

HELD:

3. (………….) In support of his case, he relied upon the decision in the case of Dr. N. Shiva Mohana Reddy Vs. Smt. Aparna Reddy, reported in 2005 (1) ALT 44 (AP),[12] wherein, learned Andhra Pradesh High Court after discussing the scope of the aforesaid provisions of the Act held as under:-

> "7. In case of judicial separation, it offers an opportunity to the parties to reconcile their differences and come together, in case the parties fail to reconcile, then only the law enables under Section 13(1-A) of the Act to pass a decree for dissolution of marriage, though some of the grounds for judicial separation and divorce are one and the same. While granting a decree, different parameters are being followed. For instance under Sections 10 and 13 of the Act, unsoundness of mind is one of the grounds for seeking the respective relief. But in real sense, under Section 10 of the Act unsoundness for relevant period is a ground for seeking judicial separation, whereas for granting a decree for divorce under Section 13 of the Act, it is for the petitioner to plead and establish that such unsoundness of mind is incurable. Under Hindu Law, marriage is considered sacred. After the codification of Hindu Law, and the enactment of the Hindu Marriage Act, 1955, Hindu Marriage, appears to be sacred as well as a contract. By

[11] Smitaprativa Sahoo vs. Ramakrishna Behera, [W.P. (C) No. 4614 of 2022]
[12] Dr. N. Shiva Mohana Reddy vs. Smt. Aparna Reddy, [2005 (1) ALT 44 (AP)].

> virtue of the said enactment, either of the spouses can present a petition for a decree either for judicial separation or for divorce. There is a fundamental difference between a petition for judicial separation and divorce. Under Section 10 of the Act, even after passing a decree for judicial separation on the application filed by either of the spouses. On being satisfied with the truth of the statement made in such petition, the Court can rescind the decree if it considers it just and reasonable to do so. But in the case of decree under Section 13 of the Act, the question of rescinding the decree does not arise, except by filing a petition for review or appeal by way of common law remedy."

5. Taking into consideration the submissions of learned counsel for the parties and in view of the legal position settled in the Dr. N.Shiva Mohana Reddy (supra), this Court has no hesitation to hold that the petition under Section 10 of the Act cannot be converted to a petition under Section 13 of the said Act by way of amendment. Accordingly, the impugned order dated 5th January, 2022 (Annexure-1) passed by learned Judge, Family Court, Kendrapara in CP No.90 of 2019 is not sustainable in the eye of the Law and the same is set aside.

RESTITUTION OF CONJUGAL RIGHTS UNDER SECTION 9 OF THE HINDU MARRIAGE ACT, 1955.

Protection of Women from Domestic Violence Act, 2005 – Wife opposing husband's plea for restitution of conjugal rights does not affect her right of residence. [13]

OM PRAKASH GUPTA & ANR.

VS.

ANJANI GUPTA & ANR.

[AIR 2022 DEL 68]

The High Court of Delhi

Coram: Hon'ble Mr. Justice Chandra Dhari Singh

Date of Judgement: 08.03.2022

HELD:

26. The Respondent had been living at the premises in question, that is, A-41, Swasthya Vihar, Delhi-110092, since she got married to the son of the Petitioner. It is also undisputed that the said house is co-owned by the husband of the Respondent and the judgment of *SR Batra* (Supra) provides the necessary protection to a wife to live at the house entitling her to claim a right to residence in a shared household, which would mean a house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. Hence, the observation of the learned Metropolitan Magistrate was in consonance with the findings of the Hon'ble Supreme Court as well as the fact that the Respondent had an emotional attachment to the house given that she had lived there for over 20 years of her married life and even the Appellate Court was right in upholding the same while passing the impugned Order.

27. Further, this Court does not find any force in the argument of the Petitioner that since the Respondent did not wish to live with her husband and refused to join him she could not have claimed a right to residence in her matrimonial home. The right of residence under the DV Act is exclusive to and isolated from any right that may arise under Section 9 of the Hindu Marriage Act, 1955 and thereby, the learned Appellate Court's observation in this regard has also been correctly made.

[13] Om Prakash Gupta & Anr. vs. Anjani Gupta & Anr., [AIR 2022 Del 68]

- **Cases referred to:** SR Batra v. Tarun Batra, (2007) 3 SCC 169

28. The Appellate Court rightly appreciated that the Respondent has a right to live at her husband's co-owned property, that there was a real apprehension that the Petitioners would have removed the Respondent from the house and that the fact of the likelihood of filing of cases against the Petitioners could not have affected the Respondent's right to live at her matrimonial house and, therefore, there is no ground to interfere with the Order dated 5th December, 2013 passed by learned Additional Sessions Judge.

The petitioner was not entitled to any maintenance allowance under section 125 Cr.P.C from her husband in view of her refusal to restore a conjugal relationship with her husband pursuant to the judgment and decree passed by the District Judge for restitution of conjugal rights.[14]

SANJITA ROY (DAS) AND ANOTHER

VS.

SWAPAN CH. DAS AND ANOTHER

[2022 AIR CC 986]

The High Court of Tripura (Agartala)

Coram: S.G. Chattopadhyay, J.

Date of Judgement: 02.02.2022

HELD:

13. Situated thus, the question falling for consideration of this court is whether maintenance granted to the wife under section 125 Cr.P.C. can be cancelled by the court in exercise of the power under section 127 Cr.P.C. in view of the husband's obtaining a decree for restitution of conjugal rights and wife's refusal to restore conjugal relationship pursuant to such decree.

16. After the ex-parte decree for restitution of conjugal rights was passed in favour of the husband, he did not call upon his wife to resume conjugal life through the process of executing the decree. As a result, it could not be ascertained as to whether the husband was genuinely willing to take back his wife since the matter proceeded ex parte. Moreover, the wife also did not have any opportunity to offer any explanation as to why she refused to resume conjugal life. However, after the husband applied to the court for cancellation of the maintenance order payable to his wife in view of his having obtained a decree for restitution of conjugal rights, the wife appeared and contested the claim of her husband contending that after marriage she was not happy even for a single day. She claimed that her husband never supported her as a result of which she had to file case after case to enforce her right to maintenance. The Family Court, however, rejected her plea and allowed the petition of her husband by cancelling the

[14] Sanjita Roy (Das) and Another vs. Swapan Ch. Das and Another, [2022 AIR CC 986].

Cases referred to: Sanjay Chopra Vs. Shyama, [1999 SCC OnLine P&H 12].

maintenance order granted to her simply on the ground that she did not challenge the decree of restitution of conjugal rights passed in T.S. (R.C.R) 8 of 2015.

17. The learned Family Court did not consider the fact that the decree was passed ex-parte and her husband did not come out with an offer to her to return to the conjugal life through the process of execution of the decree. As a result, the wife could not come forward with her explanation as to why she was declining to return to her husband. Moreover, the Family Court did not also take into consideration the explanation offered by the wife in the proceedings under section 127 Cr.P.C. for her refusal to return to her matrimonial life. The learned Additional Judge, Family Court seems to have mechanically rejected the maintenance allowance granted to her pursuant to the decree for restitution of conjugal rights without discussing the effect of such ex-parte decree on the wife's claim to maintenance. Moreover, the Family Court did not also take into consideration the fact that the maintenance allowance granted in favour of the wife (petitioner herein) also included the allowance of her son because she was representing her minor son in the proceeding under section 125 Cr.P.C. But, while denying maintenance allowance to the wife by the impugned order pursuant to the decree for restitution of conjugal rights, the Additional Judge, Family Court also denied maintenance allowance to her son which was incorrect.

18. In these facts and circumstances of the case, the impugned order cannot be sustained. Resultantly, the impugned order passed by the Additional Judge, Family Court, Agartala in Cr. Misc. 316 of 2019 arising out of Misc. 140 of 2013 is set aside. Consequently, the order with regard to payment of maintenance allowance to the wife and son of the petitioner is restored. It appears from record that by an order dated 16.08.2019 passed in Misc.294 of 2019, petitioner was directed to pay maintenance allowance of Rs. 8,000/- at the enhanced rate to his wife and son. The Family Court, Agartala shall enforce payment of such maintenance allowance to the wife and son of the petitioner in accordance with the law.

19. In terms of the above, the criminal revision petition stands disposed of. Send back the LC record along with a copy of the order to the Additional Judge, Family Court, Agartala for compliance. Copy of the order may also be supplied to the parties through their counsel.

DIVORCE UNDER SECTION 13 OF THE HINDU MARRIAGE ACT, 1955

The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence.[15]

DEBANANDA TAMULI

VS.

SMTI KAKUMONI KATAKY

[(2022) 5 SUPREME COURT CASES 459]

The Supreme Court of India

Coram: Ajay Rastogi, Abhay S. Oka, JJ.

Date of Judgement: 15.02.2022

HELD:

12. Thus, in our considered view, the ground of desertion under clause (ib) of sub-section (1) of Section 13 of HM Act has been made out as the desertion for a continuous period of more than two years before the institution of the petition was established in the facts of the case. But, after having carefully perused the evidence on record, we find that no case is made out to disturb the findings recorded by the Courts on the issue of cruelty.

14. Hence, the impugned judgments are set aside. The Civil Appeal is allowed in part. The marriage solemnized between the parties on 17th June 2009 shall stand dissolved by a decree of divorce under clause (ib) of sub-section (1) of Section 13 of the Hindu Marriage Act, 1955.
15. We direct the appellant-husband to deposit a sum of Rs.15, 00,000/- (Rupees fifteen lakh only) in this Court within a period of 8 weeks from today.

11. (…….) the intention on the part of the respondent to resume cohabitation is not established. Thus, in the facts of the case, the factum of separation has been proved. From the evidence on record, an inference can be drawn that there was animus deserendi on the part of the respondent. She has not pleaded and established any reasonable cause for remaining away from her matrimonial home.

[15] Debananda Tamuli vs. Smti Kakumoni Kataky, [(2022) 5 Supreme Court Cases 459].

- **Cases referred to:** Lachman Utamchand Kirpalani v. Meena [(1964) 4 SCR 331]; Darshan Gupta v. Radhika Gupta [(2013) 9 SCC 1].

The period mentioned in Section 13B (2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. [16]

AMIT KUMAR

VS.

SUMAN BENIWAL

[2021 SCC ONLINE 1270]

Supreme Court of India

Coram: Ms. Banerjee, J.K. Maheshwari, JJ.

Date of Judgement: 11.12.2021

HELD:

28. In this Case, as observed above, the parties are both well educated and highly placed government officers. They have been married for about 15 months. The marriage was a non-starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of separation, the parties still want to go ahead with the divorce. No useful purpose would be served by making the parties wait, except to prolong their agony.

30. In the facts and circumstances of this case, this Court deems it appropriate to exercise its power under Article 142 of the Constitution of India, to grant the Appellant and the Respondent a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955, waiving the statutory waiting period of six months under Section 13(B) (2) of the said Act.

31. There will accordingly be a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955 dissolving the marriage of the Appellant and the Respondent.

[16] Amit Kumar vs. Suman Beniwal, [2021 SCC Online 1270].

- **Cases referred to:** Amardeep Singh v. Harveen Kaur, [(2017) 8 SCC 746]; Devinder Singh Narula v. Meenakshi Nangia, [(2012) 8 SCC 580]; Soni Kumari v. Deepak Kumar [(2016) 16 SCC 346]; Anil Kumar Jain v. Maya Jain, [(2009) 10 SCC 415].

The moot point is that the marriage has not taken off from its inception. There can hardly be any 'wear and tear of marriage' where parties have not been living together for a long period of time. The parties, undisputedly, never lived together even for a day. This is one case where both the ground of irretrievable breakdown of marriage and the ground of cruelty on account of subsequent facts would favour the grant of decree of divorce in favour of the appellant.[17]

SIVASANKARAN

VS.

SANTHIMEENAL

[2021 SCC ONLINE SC 702]

Supreme Court of India

Bench: Sanjay Kishan Kaul, M.M. Sundresh

Date of Judgement: 13.09.2021

HELD:

17. There are episodes of further harassment by the respondent even at the workplace of the appellant including insulting the appellant in front of students and professors, as is apparent from the judgment of the Trial Court. She is stated to have threatened the appellant with physical harm in front of his colleagues as per the testimony of PW.3 and complained to the appellant's employer threatening to file a criminal complaint against him (PW.3). The first appellate court somehow brushed aside these incidents as having not been fully established on a perception of wear and tear of marriage. The moot point is that the marriage has not taken off from its inception. There can hardly be any 'wear and tear of marriage' where parties have not been living together for a long period of time. The parties, undisputedly, never lived together even for a day.

18. We are, thus, faced with a marriage which never took off from the first day. The marriage was never consummated and the parties have been living separately from the date of marriage

[17] Sivasankaran vs. Santhimeenal, [2021 SCC OnLine SC 702].

- **Cases referred to:** R. Srinivas Kumar v. R. Shametha, [(2019) 9 SCC 409]; Munish Kakkar v. Nidhi Kakkar, [(2020) 14 SCC 657]; Hitesh Bhatnagar v. Deepa Bhatnagar [(2011) 5 SCC 234]; Naveen Kohli v. Neelu Kohli, [(2006) 4 SCC 558]; Samar Ghosh v. Jaya Ghosh, [(2007) 4 SCC 511]; Sukhendu Das v. Rita Mukherjee, [(2017) 9 SCC 632].

for almost 20 years. The appellant remarried after 6 years of the marriage, 5 years of which were spent in Trial Court proceedings. The marriage took place soon after the decree of divorce was granted. All mediation efforts have failed.

19. In view of the legal position which we have referred to aforesaid, these continuing acts of the respondent would amount to cruelty even if the same had not arisen as a cause prior to the institution of the petition, as was found by the Trial Court. This conduct shows the disintegration of marital unity and thus the disintegration of the marriage. In fact, there was no initial integration itself which would allow disintegration afterwards. The fact that there have been continued allegations and litigation proceedings and that can amount to cruelty is an aspect taken note of by this court. The marriage had not taken off from its inception and 5 years having been spent in the Trial Court, it is difficult to accept that the marriage soon after the decree of divorce, within 6 years after the initial inception of marriage, amounts to conduct which can be held against the appellant.

21. We are, thus, of the view that a decree of divorce dissolving the marriage between the parties be passed not only in exercise of powers under Article 142 of the Constitution of India on account of irretrievable breakdown of marriage but also on account of cruelty under Section 13(1) (ia) of the Act.

The petitioner in the connected petition who is the husband submitted that he has no objection for these cases to be disposed of by granting divorce by mutual consent between the parties. The marriage between the parties may be dissolved by granting divorce by mutual consent under Section 13-B of the Act read with Article 142 of the Constitution.[18]

POOJA BHUNESHWAR PRASAD SHARMA

VS.

ASHISH VINAYBHAI MISHRA

[2022 SCC ONLINE SC 602]

Supreme Court of India

Coram: B.V. Nagarathna

Date of Judgement: 09.05.2022

HELD:

11. It is noted that though the settlement agreement has been arrived at between the parties for seeking dissolution of their marriage by a decree of divorce by mutual consent is dated 13th December, 2021, nevertheless, the parties have been at loggerheads and the petitions have been filed by them, inter se, seeking inter- alia, restitution of conjugal rights, maintenance and also a criminal proceeding is pending. It is also noted that the parties are living separately and there is no possibility of the parties reconciling their disputes and co-habiting together.

12. Learned counsel for the respective parties also submitted that the stipulation of six months' period indicated in Sub-section (2) of Section 13-B of the Act may also be dispensed with and in this regard, they placed reliance on a judgment of this Court in the Case of "*Amardeep Singh* v. *Harveen Kaur*" - [(2017) 8 SCC 746].[19] Having regard to the aforesaid judgment, stipulation of six months as stated Sub-section 2 of Section 13-B of the Act is dispensed with.

13. On perusal of the terms of settlement, I find that they are lawful and there is no reason as to why the same cannot be accepted.

14. In the circumstances, by exercising jurisdiction under Article 142 of the Constitution, the marriage solemnized between the parties on 24.11.2017 in Bharuch is dissolved by a decree of mutual consent in terms of Section 13-B of the Act.

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[18] Pooja Bhuneshwar Prasad Sharma vs. Ashish Vinaybhai Mishra, [2022 SCC OnLine SC 602].
[19] Amardeep Singh v. Harveen Kaur, [(2017) 8 SCC 746].

The connection between 'cruelty' and 'abetment to suicide', despite being independent offences, must be assessed in conjunction with each other for determination of dowry death.[20]

AJAYAKUMAR & ANR.

VS.

STATE OF KERALA

[(2022) 2 DMC 695]

The High Court of Kerela

Coram: A. Badharudeen, J.

Date of Judgment: 02.08.2022

HELD:

18. Thus the ingredients to constitute an offence under Section 304B are:

a) there was an unnatural death of a woman;

b) that woman had been married within 7 years preceding her aforesaid unnatural death, and

c) soon before her death she was subjected to cruelty or harassment.

Again

(i) such cruelty or harassment had been caused to her by her husband or husband's other relative;

(ii) that such cruelty or harassment was for or in connection with any demand for dowry.

In all dowry death cases the standard of appreciation of evidence has to be in the light of the provisions contained in Section 113A of the Evidence Act.

20. Section 113B of the Evidence Act in the later part mandates drawing of presumptions that the husband or relative of the husband of the victim girl have caused her death and this presumption of dowry death corresponds to presumption as to dowry death envisaged in Section 113B of the Evidence Act, 1872. Section 304B(1) of the I.P.C, 1860 has 2 limbs. First limb defines dowry death and the second limb deals with the legal consequence of occurrence of dowry death namely, that the husband or such other relative of the husband who soon before

[20] Ajayakumar & Anr. vs. State of Kerala, [(2022) 2 DMC 695].

the death of the lady was found to have subjected the lady to cruelty or harassment shall conclusively be held to be guilty of the offence of dowry death. In the decision reported in [2015 (8) Scale 270: AIR 2015 SC 3043: 2015 Crl.J 4021 (SC)], V.K. Mishra v. State of Uttarakhand,[21] a 3 Judge Bench of the Apex Court while dealing with Section 304B of IPC and 113B of the Evidence Act, inter alia, held, after referring another decision reported in [AIR 2015 SC 980], Shersing alias Partapa v. State of Haryana[22] that the word `shown' instead of `proved' in Section 304B of I.P.C indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, `shown' would have to be read upon to mean `proved', but only to the extent of preponderance of probability. It was held further that in a case of demand for dowry, independent and direct evidence with regard to the occurrence is ordinarily not available. That is why the legislature introduced Section 113A and 113B in the Evidence Act by permitting presumptions to be raised in certain circumstances.

31. Once the prosecution succeeded in establishing that the death of the lady was the outcome of cruelty or harassment by her husband or any relative of her husband soon before her death within a period of 7 years of her marriage, if the accused wants protection from the said catch, the burden is on him to disprove and if he fails to rebut the presumption under Section 113B of the Evidence Act, the court is bound to act on it. To put it differently, Section 113B of the Evidence Act, casts a reverse burden on the accused to disprove the prosecution case. Then the question is; what is the standard of proof in cases involving reverse burden? The Apex Court considered the same in the decision reported in [(2008) 16 SCC 417: 2008 KHC 5054], Noor Aga v. State of Punjab & Anr.,[23] while interpreting the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein also a reverse burden is cast upon the accused. In this judgment, the Apex Court considered the draconian provisions in the NDPS Act and it was held that though the Act contains draconian provisions, it must, however, be borne in mind that the Act was enacted having regard to the mandate contained in international conventions on narcotic drugs and psychotropic substances. Only because the burden of proof under certain circumstances is placed on the accused, the same, by itself, would not render the impugned provisions unconstitutional. It was concluded in the said judgment that Sections 35 and 54 are not ultra-vires the Constitution of India and ultimately it has been held that the constitutionality of a penal provision placing burden of proof on the accused must be tested on the anvil of the

[21] V.K. Mishra v. State of Uttarakhand, [AIR 2015 SC 3043].
[22] Shersing alias Partapa v. State of Haryana, [AIR 2015 SC 980].
[23] Noor Aga v. State of Punjab & anr, [(2008) 16 SCC 417].

State's responsibility to protect innocent citizens. Even then, an initial burden exists upon the prosecution and only when it stands satisfied, the reverse burden would arise and the standard of proof required to prove the guilt of the accused on the prosecution is `beyond all reasonable doubt'. But it is `preponderance of probabilities' on the accused. Thus the law is clear on the point that proof of reverse burden shall be discharged on the basis of `preponderance of probabilities'.

36. Coming to Section 306, wherein also presumption of abetment is embodied under Section 113A of the Evidence Act, 1872.

37. In the decision reported in [2014 CrLJ 2425: AIR 2014 SC 1782], Mangat Ram v. State of Haryana,[24] the Apex Court held that a woman may attempt to commit suicide due to various reasons, such as depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment.

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[24] Mangat Ram v. State of Haryana, [AIR 2014 SC 1782].

DOMESTIC VIOLENCE

Guidelines issued to prevent misuse of Section 498A, particularly with regard to effectuating the 'Cooling- Off Period' and subsequently referring the matter to the Family Welfare Committee.[25]

MUKESH BANSAL

VS.

STATE OF U.P.

[CRIMINAL REVISION NO. 1126 OF 2022]

The High Court of Madhya Pradesh

Coram: Anil Verma, J.

Date of Judgement: 13.06.2022

HELD:

35. Thus, It is directed that:-

(i) No arrest or police action to nab the named accused persons shall be made after lodging of the FIR or complaints without concluding the "Cooling-Period" which is two months from the lodging of the FIR or the complaint. During this "Cooling-Period", the matter would be immediately referred to Family Welfare Committee (hereinafter referred to as FWC) in the each district.

(ii) Only those cases which would be transmitted to FWC in which Section 498-A IPC along with, no injury 307 and other sections of the IPC in which the imprisonment is less than 10 years.

(iii) After lodging of the complaint or the FIR, no action should take place without concluding the "Cooling-Period" of two months. During this "Cooling-Period", the matter may be referred to Family Welfare Committee in each districts.

(iv) Every district shall have at least one or more FWC (depending upon the geographical size and population of that district constituted under the District Legal Aid Services Authority) comprising of at least THREE MEMBERS. Its constitution and function shall be reviewed

[25] Mukesh Bansal vs. State of U.P., [Criminal Revision No. 1126 of 2022].

periodically by the District & Sessions Judge/Principal Judge, Family Court of that District, who shall be the Chairperson or Co-chairperson of that district at Legal Service Authority.

(v) The said FWC shall comprise the following members:-

(a) a young mediator from the Mediation Centre of the district or young advocate having the practices up to five years or senior most student of Vth year, Government Law College or the State University or N.L.Us. having a good academic track record and is a public-spirited young man, OR;

(b) well acclaimed and recognized social worker of that district having clean antecedent, OR;

(c) retired judicial officers residing in or nearby district, who can devote time for the object of the proceeding OR;

(d) educated wives of senior judicial or administrative officers of the district.

(vi) The member of the FWC shall never be called as a witness.

(vii) Every complaint or application under Section 498A IPC and other allied sections mentioned above, be immediately referred to Family Welfare Committee by the concerned Magistrate. After receiving the said complaint or FIR, the Committee shall summon the contesting parties along with their four senior elderly persons to have personal interaction and would try to settle down the issue/misgivings between them within a period of two months from its lodging. The contesting parties are obliged to appear before the Committee with their four elderly persons (maximum) to have a serious deliberation between them with the aid of members of the Committee.

(viii) The Committee after having proper deliberations, would prepare a vivid report and would refer to the concerned Magistrate/police authorities to whom such complaints are being lodged after the expiry of two months by inserting all factual aspects and their opinion in the matter.

(ix) Continue deliberation before the Committee, the police officers shall themselves to avoid any arrest or any coercive action pursuant to the applications or complaint against the named accused persons. However, the Investigating Officer shall continue to have a peripheral investigation into the matter namely preparing a medical report, injury report, the statements of witnesses.

(x) The said report given by the Committee shall be under the consideration of I.O. or the Magistrate on its own merit and thereafter suitable action should be taken by them as per the provision of the Code of Criminal Procedure after the expiry of the "Cooling-Period" of two months.

(xi) Legal Services Aid Committee shall impart such basic training as may be considered necessary to the members of the Family Welfare Committee from time to time (not more than one week).

(xii) Since, this is noble work to cure abrasions in a society where tempos of the contesting parties are very high that they would mellow down the heat between them and try to resolve the misgivings and misunderstandings between them. Since this is a job for public at large, social work, they are acting on a pro bono basis or basic minimum honorarium as fixed by the District & Sessions Judge of every district.

(xiii) The investigation of such FIRs or complaints containing Section 498A IPC and other allied sections as mentioned above, shall be investigated by dynamic Investigating Officers whose integrity is certified after specialized training not less than one week to handle and investigate such matrimonial cases with utmost sincerity and transparency.

(xiv) When settlement is reached between the parties, it would be open for the District & Sessions Judge and other senior judicial officers nominated by him in the district to dispose of the proceedings including closing of the criminal case.

Economic support is essential for a victim of domestic violence and must be granted by a person who is in domestic relations with her. [26]

PAWAN SHARMA

VS.

AARTI SHARMA

[2022 SCC ONLINE DIS CRT (DEL) 17]

District Court, Delhi

Coram: Ramesh Kumar, J.

Date of Judgment: 10.05.2022

HELD:

12. It is a well-settled principle of law that it is a legal duty of every able-bodied person to maintain his wife and children and provide them with the basic amenities of life, as per his financial status. While deciding, the quantum of maintenance, the court should take into account the earnings of the husband as well as his other liabilities and due regard should also be given to the standard of living of the husband as well as the inflation rates and high costs of living.

14. In this background, it is pertinent to rely on the judgment titled as *Annurita Vohra* v. *Sandeep Vohra*, (2004) 74 DRJ 99, passed by the Hon'ble High Court of Delhi, wherein it was held as under:

> *"It would be extremely loath to restrict the maintenance to 1/5th of the husband's income where this would be insufficient for the wife to live in a manner commensurate with her husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resources Cake in two portions for the husband, since he has to incur extra expenses in the course of making his earnings, and one share each to the other members".*[27]

16. It is pertinent to note that the appellant, being the husband of the respondent, and father of a minor child, has social as well as moral duty to provide maintenance to the respondent. It is settled law that the appellant, being the husband of the respondent, cannot escape from his

[26] Pawan Sharma v. Aarti Sharma, [2022 SCC OnLine Dis Crt (Del) 17]
[27] Annurita Vohra v. Sandeep Vohra, (2004) 74 DRJ 99

moral duty of providing maintenance to his wife as well as a minor child. The Domestic Violence Act, 2005, is aimed at strengthening the economic independence of a woman. Therefore, the ld. Trial Court, has rightly observed that the aspect of financial deprivation of women, is included in the category of economic abuse. It is pertinent to mention that an aggrieved woman needs economic support, in view of the domestic violence, perpetrated upon her, by a person, who is in a domestic relationship with her.

17. Keeping in view the aforesaid facts and circumstances of the case, and the fact that it is settled law that every able-bodied person is bound to maintain his wife and children and cannot run away from this responsibility, it is held that the impugned judgment, dated 06.09.2021, was passed, after correct appreciation of facts and material on record. The Ld. Trial Court, considered all relevant issues and facts, at the time of passing of the impugned judgment, which is well-reasoned. Therefore, there is no infirmity or illegality in the impugned judgment, dated 06.09.2021. There is no merit in the appeal and the impugned judgment, dated 06.9.2021, does not call for any interference.