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BEFORE THE DISTRICT COURT OF CHANDIGARH

SUIT UNDER S 19 OF THE HINDU MARRIAGE ACT, 1955

CASE NUMBER 01/2023

IN THE CASE CONCERNING S 9 OF THE ACT

AND

IN THE MATTER BETWEEN:

MR. ANIL — **APPLICANT**

versus

MRS. BEGUM FATIMA — **RESPONDENT**

MEMORANDUM ON BEHALF OF THE APPLICANT

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STATEMENT OF JURISDICTION

THE APPLICANT HAS APPROACHED THIS COURT UNDER S 19 OF THE HINDU MARRIAGE ACT, 1955 WHICH READS AS UNDER:

s 19 - Court to which petition shall be presented. — Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction: —

(i) the marriage was solemnized, or

(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

STATEMENT OF FACTS

BEFORE THE MARRIAGE

1. Fatima, Anil, and Raza studied together in Chandigarh. Anil belongs to Chandigarh and Fatima is from Ropar. They developed fondness for each other. He belonged to an affluent Hindu family whereas Fatima belonged to a lower middle class Muslim family.
2. They tried to convince their families but to no avail. Anil brought Fatima to the temple and included her in Hindu festivities. He introduced her to his sister who would often meet Fatima and refer to her as Aarti. Fatima ignored hoping that it would enable her to win her heart.
3. Thereafter, she was introduced to Anil's parents as Aarti. She did not like it but remained quiet. Few months later, Fatima moved to Chandigarh for her job and met Anil. Due to feelings, they started to live together and subsequently, married in August 2020 at a temple in a ceremony involving garlands, application of vermillion and solemnization of a priest.

POST MARRIAGE

4. Anil did not earn as he prepared for Civil Services. Fatima felt overburdened due to the responsibilities and found peace in going to the Mosque. She also met Raza and her family where she vented out feelings. She visited them often and followed the Muslim customs.
5. Raza and Fatima shared several close moments. A fight ensued on this and Fatima left the home. However, she returned when she was expecting a child. She went through all Hindu rites in the pooja for child and was introduced as Aarti. Anil decided to shift with his parents however, Fatima agreed only till the birth however, the use of 'Aarti' and Anil's denial to do a job led to a huge fight between the two and she left him. She married Raza in the subsequent month and then, delivered the baby boy in the US with father's name as Raza. Anil has approached the District Court for relief in the instant matter.

STATEMENT OF ISSUES

ISSUE 1

I. WHETHER THE PRESENT SUIT FILED BY ANIL MAINTAINABLE IN THE DISTRICT COURT OF CHANDIGARH?

ISSUE 2

II. WHETHER THE MARRIAGE IN QUESTION BETWEEN THE PARTIES ANIL AND FATIMA VALID IN THE INSTANT CASE?

ISSUE 3

III. WHETHER ANIL IS ENTITLED FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS IN THE INSTANT CASE?

ISSUE 4

IV. WHETHER THE APPLICATION BY ANIL FOR THE GRANT OF PATERNITY TEST JUSTIFIED IN THE INSTANT CASE?

SUMMARY OF ARGUMENTS

1. **WHETHER THE PRESENT SUIT IS MAINTAINABLE IN THE DISTRICT COURT CHANDIGARH?**

   It is submitted that the suit is maintainable as *firstly,* the Hindu Marriage Act provides that the place of solemnization of marriage is the place of jurisdiction which is Chandigarh. *Secondly,* the correct court of jurisdiction shall be District Court as there is no Family Court in Chandigarh, and the subject matters of suit fall within its jurisdiction.

2. **WHETHER THE MARRIAGE BETWEEN ANIL AND FATIMA IS VALID?**

   It is submitted that the marriage between the Applicant and the Respondent is a valid marriage as *firstly,* the Applicant and the Respondent, both were Hindus at the time of the marriage, and *secondly,* all the requisite ceremonies were performed.

3. **WHETHER ANIL IS ENTITLED FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS?**

   The petitioner is entitled for a decree of Restitution of Conjugal Rights in the instant case as *firstly,* there was a valid marriage between the parties. *Secondly,* the Respondent has withdrawn from Anil's society and *thirdly,* such withdrawal was without reasonable excuse as there is no kind of cruelty, the marriage had not broken down irretrievably and there was no privacy infringement. Irrespectively, he is also entitled to the custody rights as *firstly,* he is the natural guardian and *secondly,* the best interests of the child will be met.

4. **WHETHER THE APPLICATION FOR PATERNITY TEST IS JUSTIFIED?**

   It is submitted that the application for paternity test by Anil is justified as *firstly,* the Indian law leans towards legitimacy. *Secondly,* the test is in the best interest and welfare of the child and therefore, is permissible, and *lastly,* there is an 'eminent need' for the DNA test in the present case.

ARGUMENTS ADVANCED

I. WHETHER THE PRESENT SUIT IS MAINTAINABLE IN THE DISTRICT COURT CHANDIGARH?

1. It is humbly submitted that the present suit is maintainable before this Hon'ble Court, i.e. the District Court, Chandigarh, as **(A)** the place of jurisdiction is Chandigarh, and **(B)** the Court of jurisdiction is District Court, Chandigarh.

A. The place of jurisdiction is Chandigarh.

2. Section 19(i) of the Hindu Marriage Act, 1955 (hereinafter "**HMA**") operates on the principle of *lex loci celebrationis*, which entails that a petition relating to any Hindu marriage shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized.[1]

3. Moreover, Section 19(iv) of HMA prescribes that, in a case where the Respondent, at the time of the presentation of the petition, is residing outside the territories to which the Act extends, the petition can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the Applicant is residing at that time.[2] Residence under the language of this Act means the permanent place where an individual lives,[3] and does not include a temporary residence.[4]

4. In the current case, the marriage between the Applicant and the Respondent was solemnized in a temple located in Chandigarh.[5] Additionally, the Respondent is currently residing in the United States of America,[6] which is outside the territories to which HMA extends.[7] Moreover, Respondent's visit to India for the family wedding is merely temporary, and her permanent

[1] The Hindu Marriage Act, 1955 (25 of 1955) s 19(i).
[2] The Hindu Marriage Act, 1955 (25 of 1955) s 19(iv).
[3] *Saraswati v Keshwan* 1961 Ker LJ 1247.
[4] *Janak Dulari v Narain Dass* AIR 1959 Punj 50; *Robey v Robey* AIR 1931 Cal 121.
[5] *Moot Proposition* para 8.
[6] *Moot Proposition* para 17.
[7] The Hindu Marriage Act, 1955 (25 of 1955) s 1(2).

abode is not in India.[8] Therefore, applying the law enshrined in Sections 19(i) and 19(iv) of HMA, the correct place of jurisdiction for the impugned dispute is Chandigarh.

B. The Court of jurisdiction is District Court, Chandigarh.

5. It is the Applicant's submission that the correct Court of jurisdiction shall be District Court, Chandigarh because **(A)** there is no Family Court in Chandigarh and **(B)** the subject matters of the present suit are maintainable in the District Court of Chandigarh.

(A) <u>There is no Family Court in Chandigarh.</u>

6. Under Section 3 of the Family Courts Act, 1984 (hereinafter "**FCA**"), there is a requirement to establish a Family Court for every area where the population exceeds one million.[9] Section 23 of FCA requires the relevant government to frame Family Courts Rules to regulate the working of the Family Courts as and when such Court(s) would be notified, and consequently start functioning.[10] In 2015, the Central Government had notified 16th February 2015 as the date on which Family Courts Act, 1984 shall come into force in Chandigarh.[11]

7. However, till date, not even a single Family Court has been established in Chandigarh.[12] Moreover, the relevant government has not framed or notified any Family Court Rules to regulate the working of Family Courts in Chandigarh.[13] Additionally, the Union Territory's (hereinafter "UT") Home Department itself has acknowledged that the matter regarding creation of posts for setting up of Family Court in UT Chandigarh is under active consideration

[8] *Moot Proposition* para 21.
[9] The Family Courts Act, 1984 (66 of 1984) s 3(a).
[10] The Family Courts Act, 1984 (66 of 1984) s 23.
[11] Department of Justice, Ministry of Law and Justice 'Notification, F. No.12012/3/2014- JUS-II' (12 February 2015).
[12] Home Department, Chandigarh Administration 'Letter No. 10656 – Judicial – 2022/455' (2 February 2023); RTI response no. 1738/PIO/HC/RTI-1 (16 December 2022).
[13] 'Inordinate delay in setting up of family court in Chandigarh-an advocate writes to Chandigarh Administration' *Punjab News Express* (Chandigarh, 5 October 2022) < https://bit.ly/3LGmg0n> accessed 20 March 2023.

of the administration.[14] Therefore, despite the notification for establishment of Family Court in Chandigarh being issued in 2015, it has not been established, and thus, presently, Chandigarh does not have a Family Court.

(B) The subject matters of the present suit are maintainable in the District Court of Chandigarh.

8. Section 7 of the FCA provides jurisdiction to Family Courts over any District Court or Civil Court to deal with all the suits relating to validity of marriage,[15] restitution of conjugal rights,[16] paternity of father,[17] custody of a child.[18] At the same time, Section 19 of the HMA provides authority to deal with the above-mentioned subject matters to the jurisdictional District Court.[19] Moreover, the jurisdiction of Civil Court is not barred by Section 8 of the FCA.[20]

9. In the current circumstances, since there is no Family Court established in Chandigarh,[21] Section 20 of the FCA has no applicability.[22] Moreover, Section 8 of the FCA also entails exclusion of jurisdiction only where *"a family court has been established for the area,"*[23] and since the same is not established in Chandigarh,[24] Section 19 of the HMA shall have applicability as the subject matters are maintainable under its jurisdiction,[25] and therefore, the correct Court of jurisdiction shall be the District Court, Chandigarh.

[14] Home Department, Chandigarh Administration 'Letter No. 10656 – Judicial – 2022/455' (2 February 2023).
[15] The Family Courts Act, 1984 (66 of 1984) s 7 explanation (b).
[16] The Family Courts Act, 1984 (66 of 1984) s 7 explanation (a).
[17] The Family Courts Act, 1984 (66 of 1984) s 7 explanation (e).
[18] The Family Courts Act, 1984 (66 of 1984) s 7 explanation (g).
[19] The Hindu Marriage Act, 1955 (25 of 1955) s 19.
[20] *Davu Gopal Lunani v Siva Gopal Lunani* AIR 2014 AP 29.
[21] Home Department, Chandigarh Administration 'Letter No. 10656 – Judicial – 2022/455' (2 February 2023).
[22] The Family Courts Act, 1984 (66 of 1984) s 20.
[23] The Family Courts Act, 1984 (66 of 1984) s 8.
[24] Home Department, Chandigarh Administration 'Letter No. 10656 – Judicial – 2022/455' (2 February 2023).
[25] The Hindu Marriage Act, 1955 (25 of 1955) s 19.

II. WHETHER THE MARRIAGE BETWEEN ANIL AND FATIMA IS VALID?

10. It is submitted that the marriage between Anil and Fatima is a valid marriage as **(A)** the Applicant and the Respondent, both were Hindus at the time of the marriage, and **(B)** all the required ceremonies were performed.

A. The Applicant and the Respondent, both were Hindus at the time of the marriage.

11. Preamble and Section 5 of the HMA state that a Hindu marriage under the HMA can take place only between two Hindus,[26] which also includes a person who has converted to Hinduism.[27] Such a conversion may be express or implied,[28] and would be complete when an individual lives a Hindu life, and the community which he/she is ushered in, accepts him/her as a member of that community.[29] Moreover, the acceptance from community overrides the non-fulfilment of some conversion formality.[30]

12. Also, a formal ceremony is not necessary to effectuate conversion, and a *bona fide* intention to convert and true honesty towards the religion is sufficient.[31] A *bona fide* intention is said to be reinforced if the individual worships as a Hindu,[32] presents to the outside world as a Hindu,[33] accepts the marriage as per Hindu customs,[34] or accepts a Hindu name post the marriage.[35] Also, Hinduism believes in multiple Gods, and therefore, it does not consider mere visitation to a Mosque, or following of a few practices of other religion as re-conversion.[36]

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[26] The Hindu Marriage Act, 1955 (25 of 1955) s 5, preamble.
[27] The Hindu Marriage Act, 1955 (25 of 1955) s 2.
[28] *Perumal Nadar v Pannuswami Nadar* AIR 1971 SC 2352.
[29] *Perumal Nadar v Pannuswami Nadar* AIR 1971 SC 2352; *Goona Durgaprasad Rao v Sudarsanaswami* AIR 1940 Mad 653; *Sethalakshmi v Poonuswami* (1966) 2 Mad 374.
[30] *Sethalakshmi v Poonuswami* (1966) 2 Mad 374.
[31] *Arun K.G. v Marriage Registrar Kozhikode Corporation* 2018 SCC OnLine Ker 4911.
[32] *In Re Betsy and Sadanandan* 2009 (4) KLT 631.
[33] *In Re Betsy and Sadanandan* 2009 (4) KLT 631.
[34] *Arun K.G. v Marriage Registrar Kozhikode Corporation* 2018 SCC OnLine Ker 4911.
[35] *Arun K.G. v Marriage Registrar Kozhikode Corporation* 2018 SCC OnLine Ker 4911.
[36] *Chandrashekhar v Kulndaivelu* AIR 1963 SC 185.

13. Here, it is undisputed that the Applicant is a Hindu by religion.[37] With respect to the Respondent's alleged conversion to Hinduism, it is to be noted that, before their marriage, the Respondent participated in various Hindu festivities;[38] visited temple along with the Applicant on several occasions;[39] accepted to be addressed as Aarti (*a Hindu name)*[40] by the Applicant's family and their community;[41] accepted her marriage in a temple performed under the Hindu ceremonies,[42] and welcomed the marriage concluded by performing Hindu ceremonies through her Facebook post.[43] She even visited temple and participated in religious ceremonies,[44] Hindu pooja, and went through all the Hindu rites and rituals post her marriage as well.[45]

14. Additionally, the Respondent's occasional visit to mosque[46] does not question her honesty towards the Hindu religion, as neither are such actions prohibited under the Hindu law,[47] nor do they result into re-conversion.[48] Therefore, the Applicant submits that the Respondent had converted to Hindu religion at the time of her marriage to the Applicant, and thus, both the parties were Hindus at the time of the marriage.

B. All the required ceremonies were performed.

15. Section 5 of the HMA provides for conditions of marriage which contain prohibitory grounds that invalidates a marriage.[49] Additionally, Section 7 of the HMA entails that a Hindu marriage

[37] *Moot Proposition* para 1.
[38] *Moot Proposition* para 4.
[39] *Moot Proposition* para 4.
[40] 'What is Aarti/Harati in Hinduism?' *Hindus Info* <https://bit.ly/3Z3BOy7> accessed 20 March 2023.
[41] *Moot Proposition* paras 4, 14, 16.
[42] *Moot Proposition* para 8.
[43] *Moot Proposition* para 8.
[44] *Moot Proposition* para 16.
[45] *Moot Proposition* para 14.
[46] *Moot Proposition* para 10.
[47] *Mohandas v Devaswom Board* 1975 KLT 55.
[48] *Chandrashekhar v Kulndaivelu* AIR 1963 SC 185.
[49] The Hindu Marriage Act, 1955 (25 of 1955) s 5.

may be solemnized in accordance with the customary rites and ceremonies.[50] It is not essential to perform Saptapadi[51] or any special ceremonies,[52] and mere fulfilment of essential ceremonies will effectuate the marriage.[53]

16. Additionally, the Applicant submits that law presumes in favour of validity of marriage when a man and woman co-habits after the conclusion of marriage.[54] Moreover, if the community in which spouses live consider them as husband and wife, there marriage is presumed to be valid.[55] The burden of proof to prove otherwise falls on the individual claiming the invalidity of the marriage.[56]

17. In the instant case, the marriage ceremony between the Applicant and the Respondent that took place in a temple in Chandigarh involved exchange of garlands and application of vermillion.[57] Moreover, the ceremony was solemnized by a priest as well,[58] which means Saptapadi was performed and thus all essential marriage ceremonies were concluded.[59] Even if it is presumed that Saptapadi was not performed, it will still not render the marriage invalid.[60] In addition to this, post the marriage, the Applicant and the Respondent also cohabited for a few years.[61]

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[50] The Hindu Marriage Act, 1955 (25 of 1955) s 7; *Bhaurao Shnakar v State of Maharasthra* (1965) 2 SCR 837; *Kanwal Ram v HP Administration* AIR 1966 SC 614.
[51] *Neelavva Somnath Tarapur v Divisional Controller, KSRTC Bijapur* AIR 2002 Kant 347.
[52] *Sohan Singh v Kabla Singh* AIR 1929 Lah 706; *Charan Singh v Gurdial Singh* AIR 1961 Punj 301.
[53] *Shanta Devi v Ramlal Agarwal* AIR 1998 AP 286; *Rampiayar v Deva Rama* AIR 1923 Rang 202.
[54] *Mohabbat Ali Khan v Muhammad Ibrahim Khan and Ors.* AIR 1929 PC 135; *Gokal Chand v Parvin Kumari* AIR 1952 SC 231; *Badri Prasad v Dy. Director of Consolidation and Ors.* (1978) 3 SCC 527; *Chanmuniya v Chanmuniya Virendra Kumar Singh Kushwaha & Ors.* MANU/SC/0807/2010.
[55] *SPS Balasubramanyam v Suruttayan* AIR 1994 SC 133.
[56] *Anandi v Onkar* AIR 1960 Raj 251.
[57] *Moot Proposition* para 8.
[58] *Moot Proposition* para 8.
[59] *Devani v Chindavaram* AIR 1954 Mad 657.
[60] *Neelavva Somnath Tarapur v Divisional Controller, KSRTC Bijapur* AIR 2002 Kant 347.
[61] *Moot Proposition* paras 9-16.

18. Considering that the essential ceremonies were performed in their marriage, and a presumption is also created in favour of a valid marriage, the marriage between the Applicant and the Respondent is a valid marriage, and the burden to prove otherwise falls on the Respondent.

III. WHETHER ANIL IS ENTITLED FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS?

19. It is humbly submitted that Anil is entitled for a decree of Restitution of Conjugal Rights. Under Section 9 of the Hindu Marriage Act, when either of the spouse has withdrawn from the society of the other without a reasonable excuse, the aggrieved party may apply through a petition for restitution of conjugal rights.[62] The provision further clarifies the discretionary nature of the remedy and states that, the Court, after being satisfied with the truth of the statements made in the petition, and on finding no legal ground as to why the application should not be granted, may decree restitution of conjugal rights accordingly. Explanation to the provision further states that the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

20. In the instant case, Anil is entitled for a decree of Restitution of Conjugal Rights as **(A)** there was a valid marriage between the parties; **(B)** the Respondent has withdrawn from Anil's society and **(C)** such withdrawal was without reasonable excuse. **(D)** In any case, conjugal rights are inherent in the very institution of marriage itself and hence, should be preserved. *Additionally,* **(E)** the Applicant has the right to custody of the minor child**.**

A. The marriage between the parties was valid.

21. It is submitted that for a decree of Restitution of Conjugal Rights, there is a prerequisite of the existence of a valid marriage, i.e., the Court has to determine in case of dispute whether the

[62] The Hindu Marriage Act, 1955 (25 of 1955) s 9.

relationship of husband and wife exists between the parties, and then to proceed to find out if the case is fit for granting a decree for restitution of conjugal rights.[63] In the instant case, there is a valid and subsisting marriage between the parties.[64] Hence, the pre-requisite for the grant of decree of Restitution of Conjugal Rights is met.

B. The Respondent has withdrawn from Anil's society.

22. In an application under Section 9 of the Hindu Marriage Act, the Applicant has to establish that the respondent has withdrawn from the society of himself/herself and that such withdrawal was without reasonable excuse.[65] Section 9 is based on the premise that under one of the primary rights of matrimonial law, one spouse is entitled to the society and comfort of the other spouse, and that he/she should not withdraw from the society of the other and refuse to discharge his/her marital obligation.[66] In the present case, due to minor inconveniences caused to Fatima, which resulted in arguments between the parties, Fatima abandoned Anil and left for the parent's house while she was pregnant.[67] She even left India to the US[68] and did not return Anil's messages and calls.[69] She even changed her number[70] and did not call Anil at all.[71] Clearly, she had withdrawn from Anil's society.

C. Such withdrawal by the Respondent was without reasonable excuse.

23. It is submitted that what constitutes 'reasonable excuse' is question of fact, where each case is to be considered independently with reference to the facts and circumstances of that case.[72]

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[63] *Gurdial Kaur v Mukand Singh* MANU/PH/0118/1966.
[64] *Applicant Memorial* issue II.
[65] *Dipti Mohanty v Surya Prakash Mohanty* MANU/OR/0371/2014; *Rita Prajapati v Sanjay Kumar* MANU/JH/1779/2016.
[66] *Praveen Etta v Savithri Etta* MANU/KA/0676/2017.
[67] *Moot Proposition* para 16.
[68] *Moot Proposition* para 17.
[69] *Moot Proposition* para 18.
[70] *Moot Proposition* para 19.
[71] *Moot Proposition* para 20.
[72] *Dipti Mohanty v Surya Prakash Mohanty* MANU/OR/0371/2014.

However, such an excuse ought to be something more than a mere whim, fad or brain-wave of the Respondent.[73]

24. Furthermore, while the excuse has to be determined with reference to the respondent's state of mind in the particular circumstances of each case, it ought to be 'with justification'.[74] In the present case, there is no reasonable excuse on the part of the Respondent to withdraw from the society of Anil as **(A)** there is no cruelty on the part of Anil or his family members, and **(B)** the marriage has not been irretrievable broken down.

(A) *There is no cruelty on the part of Anil, or his family members.*

25. While the term mental cruelty has not been defined in HMA,[75] it is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other.[76] It is submitted that cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of one of the party, and has to be adjudged on the basis of the conduct which would, in general, be dangerous for a spouse to live with the other.[77] Moreover, it is settled that trivial issues cannot be considered as cruelty.[78]

26. Additionally, the married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty.[79] The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that, because of the acts and behaviour of a spouse, wronged party finds its extremely difficult to live with the other party any longer.[80]

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[73] *Dipti Mohanty v Surya Prakash Mohanty* MANU/OR/0371/2014*; Rita Prajapati v Sanjay Kumar* MANU/JH/1779/2016.
[74] *Praveen Etta v Savithri Etta* MANU/KA/0676/2017.
[75] *Nakul Saxena v Shivani Saxena* MANU/PH/1391/2021.
[76] *Savitri Pandey v Prem Chandra Panadey* [2002] 1 SCR 50.
[77] *Savitri Pandey v Prem Chandra Panadey* [2002] 1 SCR 50.
[78] *Nakul Saxena v Shivani Saxena* MANU/PH/1391/2021.
[79] *Samar Ghosh v Jaya Ghosh* (2007) 4 SCC 511.
[80] *Samar Ghosh v Jaya Ghosh* (2007) 4 SCC 511.

27. In the instant case, the couple amicable settled their initial fights.[81] Even when Anil was noticing a change in Fatima's behaviour which led to a fight, Fatima left the house.[82] However later, on discovering that she is expecting a child, she moved back with Anil, who took all pains to reconcile with his family for the benefit of the child and Fatima's acceptance into his family.[83] While all these seemed natural in the course of family life to Anil, Fatima felt it unbearable that her parents did not accept Anil.[84] She could neither leave Anil, nor her family. Fatima was wavering, and hence, there seems to be no cruelty in the instant case.

(B) *The marriage has not been irretrievable broken down.*

28. It is submitted that the institution of marriage occupies an important place and role to play in the society.[85] Therefore, "irretrievable breakdown of marriage" ought not be applied as a straightjacket formula for grant of relief in a matrimonial proceeding, and this aspect has to be considered in the background of the other facts and circumstances of the case.[86]

29. In the given set of facts, the major fight was owing to the financial condition of Anil, and he almost having cleared UPSC, he would soon be able to support Fatima and the child. Though she left Anil's home, it was not the first time and even earlier, she had reconnected with Anil as soon as she knew of her pregnancy.[87] Since Anil's family had accepted Fatima, there is every possibility that her family would accept Anil when they know of Anil's child. Hence, their marriage cannot be said to be irretrievably broken down.

[81] *Moot Proposition* para 9.
[82] *Moot Proposition* para 13.
[83] *Moot Proposition* para 14.
[84] *Moot Proposition* para 10.
[85] *Chetan Dass v Kamla Devi* [2001] 3 SCR 20.
[86] *Chetan Dass v Kamla Devi* [2001] 3 SCR 20.
[87] *Moot Proposition* para 14.

D. Conjugal rights are inherent in the very institution of marriage itself and hence, should be preserved.

30. The Applicant submits that in India, conjugal rights is inherent in the very institution of marriage itself.[88] Moreover, the essence of marriage is a sharing of common life, a sharing of all the happiness and misery in life, an experience of the joy that comes from enjoying, in common things of the matter and of the spirit and from showering love and affection on one's offspring.[89] Therefore, such an inherent right ought to be preserved.

E. In any case, the Applicant has the right to custody of the minor child.

31. It is submitted that the Applicant has the right to custody of the minor child as **(A)** the father is the natural guardian of the minor child, and **(B)** even the best interest and welfare of the child warrant his custody to be given to the Applicant.

(A) *Father is the natural guardian of the child.*

32. It is submitted that Section 6(a) of the Hindu Minority and Guardianship Act, 1956 (hereinafter, "HMGA") provides that in case of a minor boy or unmarried minor girl, the natural guardian is the father, and "after" him, the mother; and only states that the custody of a minor who has not completed the age of five years shall "ordinarily" be with the mother[90]. Thus, father is the natural guardian of a minor son.[91] Further, considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian.[92] Hence, Applicant is the natural guardian of the child.

[88] *Smt. Saroj Rani v Sudarshan Kumar Chadha* [1985] 1 SCR 303.
[89] *Miten and Ors. v Union of India (UOI)* MANU/MH/0792/2008.
[90] The Hindu Minority and Guardianship Act, 1956 (32 of 1956) s 6(a).
[91] *In Surinder Kaur Sandhu (Smt.) v Harbax Singh Sandhu* (1984) 3 SCC 698.
[92] *Rosy Jacob v Jacob A. Chakramakkal* (1973) 1 SCC 840.

(B) *The best interests and welfare of the child warrant his custody to be given to the Applicant.*

33. The principle of welfare of the child is of paramount importance.[93] It is not measured by money or by physical comfort alone, and must be taken in its widest sense.[94] The moral and religious welfare must be considered, and ties of affection cannot be disregarded.[95]

34. Furthermore, the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships, that are essential for the full development of the child's own character, personality and talents are prioritised over material considerations.[96] In the present case, Anil wanted to shift with his parents for the well-being of their child[97] despite preparing for UPSC in Chandigarh. He even tried to improve things with his family for the child.[98] Fatima, on the other hand, was reluctant to make the move fearing hinderance to her independence.[99] She even abandoned Anil,[100] without thinking of the consequence.

35. Lastly, it is our submission that if the welfare of the child is not in peril in the hands of the father, he can be the guardian.[101] In the instant case, since Anil has placed paramount importance to the child's welfare ever since it was conceived, he has the right to custody of the minor child.

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[93] *Sarita Sharma v Sushil Sharma* (2000) 3 SCC 14; *Bimla v Anita* 2015 SCC OnLine P&H 2469; *Shilpa Aggarwal v Aviral Mittal* (2010) 1 SCC 591; *Surya Vadanan v State of T.N.* (2015) 5 SCC 450; *Nil Ratan Kundu v Abhijit Kundu* (2008) 9 SCC 413.
[94] *Bimla v Anita* 2015 SCC OnLine P&H 2469.
[95] *McGrath (infants) Re* (1893) 1 Ch 143.
[96] *Walker v Walker & Harrison* 1981 New Ze Recent Law 257; *Ravi Chandran (Dr.) v Union of India* (2010) 1 SCC 174.
[97] *Moot Proposition* para 15.
[98] *Moot Proposition* para 15.
[99] *Moot Proposition* para 15.
[100] *Moot Proposition* para 16.
[101] *Ravi Chandran (Dr.) v Union of India* (2010) 1 SCC 174.

IV. WHETHER THE APPLICATION FOR PATERNITY TEST IS JUSTIFIED?

36. It is submitted that the application for paternity test by Anil is justified as **(A)** Indian law leans towards legitimacy; **(B)** the test is in the best interest of the child; **(C)** such a test is permissible, and **(D)** there is an eminent need for the DNA test in the present case.

A. Indian law leans towards legitimacy.

37. The Applicant submits that a special protection is given by the law to the status of legitimacy in India.[102] During the subsistence of marriage between the parties under Section 112 of the Indian Evidence Act, a presumption of conclusive proof is raised that child is from the subsisting relationship of that marriage.[103]

38. The object of this provision is to attach unimpeachable legitimacy to children born out of a valid marriage.[104] The Courts must hence be inclined towards upholding the legitimacy of the child.[105] In the instant case, the child was conceived during the subsistence of their marriage, and despite this, since Fatima denied Anil's paternity,[106] Anil has sought for the test to uphold the child's legitimacy and hence, the test ought to be granted.

B. The test is in the best interest of the child.

39. The Applicant further submits that a blood test can be directed if it serves the best interest of the child.[107] Further, where prayers for the custody of the child had been made by the father, the interest of the child would not be jeopardized in allowing the DNA test.[108] Here, Anil

[102] *Vasu v Santha* (1975) KLT 533.
[103] The Indian Evidence Act, 1872 (1 of 1872) s 112; *Rajli v Kapoor Singh* MANU/PH/4266/2013; *Babu Remyalayam Veettil v Vidya* MANU/KE/2382/2014.
[104] Sudipto Sarkar, *Sarkar on Law of Evidence* (20th edn, Lexis Nexis) 2020; *Aparna Ajinkya Firodia v Ajinkya Arun Firodia* MANU/SC/0148/2023.
[105] *Dukhtar Jahan v Mohammed Farooq* (1987) 1 SCC 624.
[106] *Moot Proposition* para 21.
[107] *In Re L.* (1968) 1 All ER 20; *B. (B.R.) v B.(J.)* (1968) 2 All ER 1023.
[108] *Aparna Ajinkya Firodia v Ajinkya Arun Firodia* MANU/SC/0148/2023.

pleads for custody of the child.[109] Even earlier, Anil wanted to shift with his parents for the well-being of their child.[110] Thus, Anil always prioritised the well-being of the child.

40. Moreover, under Article 5 of the United Nations Convention on the Rights of the Child (hereinafter "CRC"),[111] if a parent can demonstrate that an interference with a child's bodily integrity is intended to benefit the child, the interference will be justified. Further, if there is no reasonable alternative which would have minimized the interference with the child's right, the interference with the right to privacy or bodily integrity of a child could be justified.[112]

41. In the instant case, the child was conceived during the subsistence of their marriage and despite this, Fatima denied his paternity, and warned him to stay away from her child.[113] Fatima also entered the name of the father of the child as Raza Ahmed despite moving back with Anil during her pregnancy,[114] and abandoning him shortly thereafter.[115] Since there is no other alternative for Anil in the present case, the DNA test should be permitted.

C. DNA test is permissible.

42. It is submitted that Section 112 of the Evidence Act would not would not come in the way of the Courts directing DNA tests to be conducted in deserving cases[116] where strong prima facie case is made out for such a course.[117] Moreover, a proof based on scientific advancement accepted by the world must prevail over a conclusive proof envisaged under law.[118]

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[109] *Moot Proposition* para 22.
[110] *Moot Proposition* para 15.
[111] The United Nations Convention on the Rights of the Child (20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 5.
[112] *Aparna Ajinkya Firodia v Ajinkya Arun Firodia* MANU/SC/0148/2023.
[113] *Moot Proposition* para 21.
[114] *Moot Proposition* para 14.
[115] *Moot Proposition* para 16.
[116] *Dipanwita Roy v Ronobroto Roy* (2015) 1 SCC 365; *Banarsi Dass v Teeku Dutta* 2005 (4) SCC 449.
[117] *Bhabani Prasad Jena v Convenor Secretary, Orissa State Commission for Women and Anr.* (2010) 8 SCC 633; *Goutam Kundu v State of West Bengal* (1993) 3 SCC 418; *Sharda v Dharmpal* (2003) 4 SCC 493.
[118] *Nandlal Wasudeo Badwaik v Lata Nandlal Badwaik* (2014) 2 SCC 576.

43. Furthermore, the direction to a person to undergo medical tests by a matrimonial court, which has the power to do so, would not amount to a violation of the personal liberty guaranteed under Article 21 of the Constitution of India.[119] Hence, the test ought is not impermissible.

D. There is an eminent need for the DNA test.

44. It is submitted that a direction for DNA test should be passed only if such a test is eminently needed.[120] In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy can the Court direct such test.[121]

45. Here, the test is not sought to dispel the presumption arising under Section 112 of the Evidence Act, but to further the same. Moreover, the consequence of ordering the blood test in the present case is not to brand the child as a bastard or the mother as an unchaste woman, but to establish or concretize the rights of the child, as it is the Respondent who denies paternity.

46. Further, while Anil has stuck to her throughout, and has also demonstrated his intention to settle for the benefit of their family by clearing UPSC Mains, Fatima was unsure between Raza and Anil. Despite moving back with Anil after getting to know her pregnancy,[122] Fatima wilfully agreed to be married to Raza[123] and abandoned Anil.[124] Considering that Anil is also from an affluent family[125] and had also cleared UPSC mains,[126] the child could be taken care of by Anil, and as established in issue IV(B), the test is in the best interest of the child. Owing to the aforesaid considerations, the application for paternity test is justified.

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[119] *Sharda v Dharmpal* (2003) 4 SCC 493.
[120] *Goutam Kundu v State of West Bengal* (1993) 3 SCC 418; *Sharda v Dharmpal* (2003) 4 SCC 493.
[121] *Aparna Ajinkya Firodia v Ajinkya Arun Firodia* MANU/SC/0148/2023.
[122] *Moot Proposition* para 14.
[123] *Moot Proposition* para 17.
[124] *Moot Proposition* para 16.
[125] *Moot Proposition* para 1.
[126] *Moot Proposition* para 19.

PRAYER

*W*HEREFORE, IN LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS HUMBLY PRAYED THAT THIS COMMISSION MAY BE PLEASED TO:

I. ***HOLD*** **THAT THE PRESENT SUIT FILED BY ANIL MAINTAINABLE IN THE DISTRICT COURT OF CHANDIGARH.**

II. ***HOLD*** **THAT THE MARRIAGE IN QUESTION BETWEEN THE PARTIES ANIL AND FATIMA VALID IN THE INSTANT CASE.**

III. ***HOLD*** **THAT ANIL IS ENTITLED FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS IN THE INSTANT CASE.**

IV. ***HOLD*** **THAT THE APPLICATION BY ANIL FOR THE GRANT OF PATERNITY TEST JUSTIFIED IN THE INSTANT CASE.**

*A*ND PASS ANY OTHER ORDER THAT THIS COURT MAY DEEM FIT IN THE INTERESTS OF JUSTICE, EQUITY AND GOOD CONSCIENCE.