
4th SURANA & SURANA AND ARMY INSTITUTE OF LAW
NATIONAL FAMILY LAW MOOT COURT COMPETITION, 2023

Before

HON'BLE DISTRICT COURT CHANDIGARH, PUNJAB

PLAINT NUMBER _____ / 2022

Filed under Section 20 of Code of Civil Procedure, 1908 r/w Section 19 of The Hindu
Marriage Act, 1955.

IN THE CASE CONCERNING VALIDITY OF INTER RELIGION MARRIAGE AND RESTITUTION OF
CONJUGAL RIGHTS ALONG WITH PATERNITY TEST OF CHILD

IN THE MATTER BETWEEN:

ANIL..... PLAINTIFF

v

FATIMA.....DEFENDANT

MEMORIAL ON BEHALF OF PLAINTIFF

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INDEX OF ABBREVIATIONS

<u>Abbreviation</u>	<u>Full Form</u>
&	And
¶	Paragraph
A.P.	Andhra Pradesh
AIR	All India Report
All.	Allahabad
Art.	Article
Bom	Bombay
Cal.	Calcutta
CPC	Code of Civil Procedure
Del.	Delhi
FB	Facebook
HC	High Court
HMA	Hindu Marriage Act
Hon'ble	Honourable
i.e.	That is
J&K	Jammu and Kashmir
Mad.	Madras
MP	Madhya Pradesh
No.	Number
Ors.	Others
P&H	Punjab and Haryana
Pg.	Page
Raj	Rajasthan
s	Section
SC	Supreme Court
SCC	Supreme Court Cases

SMA	Special Marriage Act
u/Art	Under Article
u/s	Under Section
UOI	Union of India
UP	Uttar Pradesh
v	Versus
WB	West Bengal

STATEMENT OF JURISDICTION

The plaintiff has invoked the jurisdiction of this Hon'ble District Court of Chandigarh, Punjab u/s 9¹ r/w s 20² r/w s 26³ of Code of Civil Procedure, 1908 r/w s 19⁴ of The Hindu Marriage Act, 1955.

¹ s 9- Courts to try all civil suits unless barred—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

² s 20- Other suits to be instituted where defendants reside or cause of action arises. - Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

- (a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) Any of the defendants, where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) The cause of action, wholly or part, arises.

³ s 26. Institution of suits. — (1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. (2) In every plaint, facts shall be proved by affidavit.

⁴ 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

1. Anil, Fatima and Raza were in same college. Anil and Fatima both started to like each other. Knowing that their family won't accept this relationship both decided to try to convince their family. In 2018, Anil decided to meet Fatima's parents and also convinced them that Fatima would not have to convert to marry him but they were not convinced by Anil.
2. In 2020, Anil and Fatima decided to elope for marrying and both decided to rent an accommodation together. They decided to marry in a Hindu temple on 23rd August 2020. The ceremony involved the exchange of garlands, application of vermilion and ceremony solemnized by a priest. Both changed their Facebook relationship status and uploaded a photo of them.
3. Fatima started spending time with Raza, visited his hotel several times and shared close moments with him. Fatima was very impressed with his status and lifestyle. Fatima used to spend long hours on phone and exchanged several WhatsApp messages. Anil confronted Fatima when he came to know about all these incidents. Both had a fight and Fatima left Anil's house and decided to stay at her parents' home.
4. In December 2021, Fatima discovered that she is pregnant and moved back with anil. Anil's family accepted her. Both decided to stay with Anil's family until the child is born. Fatima tried to convince Anil to moved back as she wanted to live independently. This led to another fight between the two and Fatima again left Anil. He tried calling her but she did not reply. Fatima's parents contacted Raza and she left India and moved to US. Fatima wilfully agreed Raza's marriage proposal. Anil got no response to his calls and messages from Fatima.
5. Fatima's brother misbehaved with Anil when he went to her hometown to meet her. Fatima also changed her number and had no conversation with Anil. He cleared his mains. Fatima did not call Anil at all and was blessed with a baby boy on 5th August 2022. Fatima got the name of parents in hospital record as Father- Raza Ahmed and Mother- Begum Fatima.
6. In October 2022, Anil got to know that Fatima visited India along with Raza and the child. He went to Fatima but she refused to meet him and said that she was happily married to Raza. Anil claimed his child back to which Fatima denied his paternity and warned him to stay away from her child.

ISSUES RAISED

ISSUE 1:

Whether the present suit is maintainable in the District Court Chandigarh?

ISSUE 2:

Whether the marriage between Anil and Fatima is valid?

ISSUE 3:

Whether Anil is entitled for a decree of Restitution of Conjugal Rights?

ISSUE 4:

Whether the application for paternity test is justified?

SUMMARY OF ARGUMENTS**Whether the present suit is maintainable in the District Court Chandigarh?**

It is humbly contended that the present suit is maintainable before the Hon'ble District Court Chandigarh. The District Court has inherent jurisdiction to try family matters.⁵ Defendant i.e., Fatima lives outside the territory to which the act⁶ extends, so the jurisdiction will lie at the place where the Plaintiff i.e., Anil resides so District Court Chandigarh has appropriate jurisdiction.

Whether the marriage between Anil and Fatima is valid?

It is most respectfully submitted that the marriage between Anil and Fatima is valid. Both parties are capable of being married under SMA, both have given their free consent and performed the ceremonies out of love and affection. Anil and Fatima posted the picture and changed the status of their FB account which led society to believe that they are Husband and Wife.

Whether Anil is entitled for a decree of Restitution of Conjugal Rights?

It is humbly submitted that Anil is entitled for the decree of Restitution of Conjugal Rights. Fatima has left Anil without reasonable excuse, Further, there are no legal grounds to reject the plaint for Restitution of Conjugal Rights. Fatima was married to Anil and agreed to support him in his goals but later she deserted him and went to US where he delivered Anil's baby.

Whether the application for paternity test is justified?

It is most humbly contended that the application filed by plaintiff for Paternity Test is justified as the baby was born within 280 days from the day Fatima left Anil which is a conclusive proof of the child being the son of Anil.⁷ When Anil asked Fatima to give his child back, she denied to his paternity. Anil wants the assurance that whether the child belongs to him or not and hence the Paternity Test is required.

⁵ SMA 1954. s 31.

⁶ SMA 1954.

⁷ Indian Evidence Act 1872, s 112.

ARGUMENTS ADVANCED**1. THE PRESENT SUIT IS MAINTAINABLE BEFORE DISTRICT COURT, CHANDIGARH.**

It is most humbly contended to his Hon'ble bench that the present suit is maintainable before the Hon'ble District Court Chandigarh because:

- a. Section 20 of CPC is applicable.
- b. The family matters are triable by District Courts.

A. SECTION 20 OF CODE OF CIVIL PROCEDURE IS APPLICABLE.

1. It is humbly submitted before this Hon'ble Court that the plaintiff has invoked the jurisdiction of this Court by the virtue of s 20 of CPC,⁸ the section lays down grounds that are required to invoke this section:
 - a) The defendant at the time of the commencement of suit, actually and voluntarily resides with the jurisdiction of the Court.
 - b) The defendant who does not resides in the jurisdiction, leave of the Court is taken.
 - c) The cause of action wholly or in part arises.
2. In Surajkaran v Sitaram,⁹ it was held by supreme court that it is pertinent to note that a court can entertain a suit if all the defendants reside within its jurisdiction even if the cause of action arises outside it.
3. In Prem Chand Vijay Kumar v Yashpal Singh,¹⁰ it was held that in a generic and wide sense "cause of action" means every fact which it is necessary to establish to support a right or obtain a judgment. In the present case the primary cause of action is "marriage" which was solemnized in Chandigarh; hence the District Court Chandigarh has the competent jurisdiction to entertain the present matter.
4. In The Municipal Board of Bareilly v Hafiz Ala Baksh,¹¹ it had been observed that in every case residence was a question of fact and depended upon the particular

⁸ CPC, [1908] s 6.

⁹ [1950] SCC OnLine Raj 60.

¹⁰ [2005] 4 SCC 417.

¹¹ AIR [1924] All. 669.

circumstances and that the general practice was to accept as the person's residence the place where throughout the year one would ordinarily expect him to be found. In the present case the residence of Fatima at the time of commencement of suit is US where the suit cannot be instituted while residence of Anil is Chandigarh.

5. In *Muthia Chettiar v Shanmugham*,¹² it was held that on the date of filing of suit if the defendant was residing within the jurisdiction of court, then the court has jurisdiction to entertain and try the suit though the cause of action has arisen outside India.
6. In the present case, though the secondary cause of action i.e., 'birth of child' arose outside India but the matter is triable by the court as on the date of filing the suit Fatima was residing in Chandigarh which is the jurisdiction of this Hon'ble court.
7. In *Atul Kriato Bose v Lyon & Co.*,¹³ the defendants were residing outside India and never came to India after the date of accrual of cause of action, the Calcutta HC held that it is not the bar to jurisdiction by limitation, and the matter has been tried at Calcutta HC. Hence, on the above grounds the present suit is triable before this Hon'ble court u/sec-20 of CPC.

B. THE FAMILY MATTERS ARE TRIABLE BY DISTRICT COURTS.

8. HMA defines District Court¹⁴ as the court in any area for which there is a City Civil Court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.
9. In *Monika Das Gupta v Promode Kumar Roy*,¹⁵ the court held that the definition of 'District Court' as given in the Hindu Marriage Act, 1955 is no doubt more explicit than the definition given in the Special Marriage Act, 1954 and the Legislature has now expressed itself more intelligibly in this Act, but this slight difference in language cannot be construed. The Hindu Marriage Act, 1955 clearly conferred exclusive jurisdiction to the City Civil Court and thereby widened the range of jurisdiction of the City Civil Court.

¹² [1969] 1 SCR 444.

¹³ [1887] ILR XIV Cal 457; *Mathukanni v Andappa*, AIR [1955] Mad 96.

¹⁴ 3(b) HMA.

¹⁵ AIR [1960] Cal 577.

10. *Rupali Lamba & Anr. v Sukhwant Singh Lamba*,¹⁶ Delhi HC agreed with the plaintiff's submission that an earlier specific enactment would prevail over a subsequent legislation which is general in nature which was further affirmed recently by the Supreme Court in *Yakub Abdul Razak Memon v State of Maharashtra*.¹⁷ Applying the principle in the present case the Hindu marriage Act gives the power to district court to try and entertain matrimonial matters.
11. The mere fact that the enactment provides another remedy or a summary remedy will not constitute a bar to a suit in a Civil Court. Nor will the jurisdiction of a Civil Court be ousted unless the entire suit, as brought, is barred. The jurisdiction exercised by the High Courts in respect of divorce, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts, it is also a general principle that where two proceedings or two remedies are available under the law, one of them must not be taken as operating in derogation of the other.¹⁸
12. In *Smt. Himarani Roy v Kalyan Kumar Roy*¹⁹ It was observed having regard to the definition of 'District Court' in the Hindu Marriage Act, 1955, the Hindu Marriage Act conferred exclusive jurisdiction in explicit and unambiguous language to the City Civil Court.
13. A harmonious interpretation of Sections 3, 7, 8 and 20 of the Family Courts Act clearly indicates that there is no bar against the parties from approaching other Courts outside the jurisdiction of the Family Court. The exclusion of the jurisdiction of the Courts is confined to the area over which the Family Courts exercise jurisdiction.²⁰
14. In *Y. Narsimha Rao & Ors. v Y. Venkata Lakshmi & Anr*,²¹ it was held by the Supreme Court that Residence does not mean a temporary residence for the purpose of obtaining matrimonial relief but future or habitual residence which is intended to be permanent for future as well.

¹⁶ [2017] SCC OnLine Del 10069.

¹⁷ [2013] 13 SCC 1.

¹⁸ *Smt. Balwant Kunwar & Ors. v Addl. Munsiff, Dehradun & Anr*, AIR [1959] All 7.

¹⁹ Matrimonial Suit No. 12 of [1957].

²⁰ *Smt. P. Jayalakshmi v V Ravichandran*, AIR [1992] AP 190; *D Chenchaiiah v D Mangamma*, [1968] (2) An WR. 98.

²¹ [1991] 3 SCC 451; *Satya v Teja Singh*, [1975] 1 SCC 120.

2. THE MARRIAGE BETWEEN ANIL AND FATIMA IS VALID.

It is humbly submitted to this Hon'ble Court that the marriage between Anil and Fatima is valid because in this case:

- a) Both the parties lived as a husband and wife for a reasonable time.
- b) Fatima converted herself to Hindu before getting married.
- c) All ceremonies and rituals duly followed.

A. BOTH THE PARTIES LIVED AS HUSBAND AND WIFE FOR A REASONABLE TIME.

1. In *Andrahennedige Dinohamy and Anr. v Wijetunge Liyanapatabendige Balahamy and Ors.*,²² the Privy Council laid down the general proposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage. Supreme Court affirmed the same in *Kattukandi Edathil Krishnan v Kattukandi Edathil Valsan*,²³ *Pushpa Devi Bhagat v Rajinder Singh*;²⁴ *R. Rajanna v S.R. Venkataswamy*.²⁵
2. In *Badri Prasad v Dy. Director of Consolidation and Others*²⁶, it was held by the Court that a strong presumption arises in favor of wedlock where two partners have lived together for long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of legal origin, Similar view has been taken by the Court in *Tulsa & Ors. v Durghatiya*²⁷ & Ors; *Challamma v Tilaga & Ors.*;²⁸ *Madan Mohan Singh and Ors v Rajni Kant & Anr.*;²⁹ *Indra Sharma v V.K.V. Sharma*.³⁰
3. In *Mohabbat Ali Khan v Mohd. Ibrahim Khan*,³¹ once again it was laid down by the Privy Council that the law presumes in favour of marriage, when a man and a woman

²² AIR [1927] PC 185.

²³ [2006] 9 SCC 166.

²⁴ [2006] 5 SCC 566.

²⁵ AIR [2015] SC 706.

²⁶ [1978] AIR 1557; *Gokul Chand v Parvin Kumari* AIR [1952] 231; *S.P.S. Balasubramanyam v Suruttayan*, [1994] SCC [1] 460.

²⁷ [2008] 4 SCC 520.

²⁸ [2009] (9) SCC 299.

²⁹ [2010] 9 SCC 209; See also: *Lata Singh v State of U.P.*, [2006] 5 SCC 475; *Ranganath Parmeshwar Panditrao Mali v Eknath Gajanan Kulkarni*, [1996] 7 SCC 681; *Sobha Hymavathi Devi v Setti Gangadhara Swamy*, [2005] 2 SCC 244.

³⁰ [2013] 15 SCC 755; *S Khushboo v Kannimmal*, [2010] 5 SCC 600.

³¹ [1929] SCC OnLine PC 21.

have cohabited continuously for a number of years. In the present case according to the S.C. judgements cited above it can be concluded that Anil and Fatima should be presumed as Husband and Wife by this Hon'ble Court, as Anil and Fatima lived together under a roof for almost two years i.e., from 20th December 2019 to 10th January 2022.

B. FATIMA CONVERTED HERSELF TO HINDU BEFORE GETTING MARRIED.

4. In *Valsamma Paul v Cochin University*³², it was held by Supreme Court that Recognition by family or community is not a precondition for married status, since marriage is a personal right of the spouses. Inter-caste marriages do not give a right to claim protective discrimination guaranteed under the constitution.
5. In *Perumal Nadar v Ponnuswamia*,³³ it was held that bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expression that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion.
6. In the case of *Madhavi Ramesh Dudani v Ramesh K. Dudani*,³⁴ wife has gone all over India along with her husband and participated in pooja, havan and various religious ceremonies. It was held that, it is immaterial that she could not recite a mantra or shloka when in witness box. The fact of having lived with her husband for reasonable time in a Hindu family clearly goes to support that she had been accepted in a Hindu family as a Hindu.
7. In this case Anil and Fatima agreed to marry as per Hindu rites and rituals. Their consent to marriage and to live together is free. They even both decided to rent an accommodation together as they both wanted to give their relationship a chance.³⁵ Her acts of going to temple marrying by Hindu rituals and rites. Even for Anil, Fatima fought with her family and chose to live with him.³⁶ All these actions of Fatima indicates that she also wanted to marry Anil and also shows her intention to Hindu

³²AIR [1996] SC 2010.

³³[1970] 1 SCC 605; *Muthuswami Mudaliar v Masilamani Mudaliar*, ILR 33 Mad 342; *Goona Durgaprasada Rao v Goona Sudarasanawami*, ILR (1940) Mad 653; *Chilukuri Venkateswarlu v Chilukuri Venkatanarayana*, [1954] SCR 425; *Karapaya v Mayandi*, ILR 12 Ran 243; *Ammathavee v Kumaresain*, [1967] 1 SCR 353.

³⁴[2005] SCC OnLine Bom 1547; *Trojan & Co. v Nagappa*, AIR [1953] SC 235; *Rajgopal v Kishan Gopal*, [2003] 10 SCC 353; *Bondar Singh v Nihal Singh*, [2003] 4 SCC 161; *Kashi Nath v Jaganath*, [2003] 8 SCC 740.

³⁵ Moot Proposition ¶ 7.

³⁶ Moot Proposition ¶ 9

religion. It shows her affirmation to convert her religion.

C. ALL CEREMONIES AND RITUALS DULY FOLLOWED.

8. In *Dolgonti Raghava Reddi & Anr. v Unknown*,³⁷ the judge said, “I do not find any difficulty in holding that it was not necessary to constitute a valid marriage between A-1 and A-2 that they should have performed the ceremonies of Homam and saptapadi.” Where A-1 and A-2 were the parties.
9. In *Samit Subhash Agarwal v Kamlesh Laltaprasad Gupta*,³⁸ the other evidence (such as photographs amongst other things) which clearly show that Sindoor was put by the appellant on the respondent and he had garlanded her, it can be held that all the requirements of a marriage as contemplated under Hindu Marriage Act, 1955 were duly complied with.
10. In *S. Nagalingam v Sivagami*,³⁹ SC observed that “Saptapadi was held to be an essential ceremony for a valid marriage only in cases it was admitted by the parties that as per the form of marriage applicable to them that was an essential ceremony. The appellant in the instant case, however, had no such case that Saptapadi was an essential ceremony for a valid marriage as per the personal law applicable whereas the provisions contained in Section 7-A are applicable to the parties. In any view of the matter, there was a valid marriage even on non-performance of Saptapadi.”
11. In *K Mathialagan v Mala Devi Srinivasaa*,⁴⁰ it was held that it is sufficient if there is tying of thali or exchange of garlands. If in a case, it is proved that there was tying of thali and exchange of garlands, there can be no question that there is a valid marriage. It is not necessary for the parties in that case to prove that any other ceremony or rite was performed.
12. In the present case, the couple have performed the ceremonies as per the rites and rituals of Hindu and from the above judgement we can say that the marriage cannot be held invalid only on the ground that there is no saptapadi performed. All the other rituals are

³⁷ AIR [1968] AP 117.

³⁸ [2018] SCC OnLine Bom 890.

³⁹ [2001] 7 SCC 487.

⁴⁰ [1988] SCC OnLine Mad 161; *Adhikesavalu Chettiar v Ramanujam*, [2012] SCC OnLine Mad 2575; *Gokalchand v Parvin Kumari*, AIR [1932] Cal. 231; *Deivanai Achi v Chidambaram Chettiar*, [1953] SCC OnLine Mad 253; *Bhaurao v State of Maharashtra* AIR [1965] S.C 1564; *Kanwalram v HP, Administration*, AIR [1966] S.C 614; *Priyabala v Sureschandra*, AIR. [1971] S.C 1153; *Saroja Rani v Sundareshan Kumar*, [2019] SCC OnLine Mad 21157.

duly performed and hence the marriage between Anil and Fatima should be held valid.

3. ANIL IS ENTITLED FOR THE DECREE OF RESTITUTION OF CONJUGAL RIGHTS.

It is humbly submitted that Anil is entitled for Restitution of Conjugal Rights:

1. In *Shanti Devi v Balbir Singh & Anr.*,⁴¹ the court laid down certain conditions for granting the decree of Restitution of Conjugal Rights: (1) one party must have withdrawn from the society of the other; (2) the withdrawal must be without any reasonable reason.
2. In *Gurdev Kaur v Sarwan Singh*,⁴² it was decided that each case's specific facts would determine how to apply the standard of what is reasonable under the Section. Further, in *Shakila Banu v Gulam Mustafa*,⁴³ the court held that the court should be satisfied that the statement is true and the fact is based on unreasonable ground.
3. In *Hardeep Singh v Dalip Kaur*,⁴⁴ where the husband does not agree to live separately from his parents and wife's insistence for a separate house persists as a result she chooses to be away from the husband. The court decreed the petition of Restitution of Conjugal Right filed by the husband holding that there is no reasonable excuse for the wife to live separately on the alleged grounds.
4. In *R. Natarajan v Sujatha Vasudevan*,⁴⁵ court held that if a wife is asking to live separately from husband's aged parents is not a reasonable withdrawn and Restitution of Conjugal Rights can be granted. In the present case there is no reasonable ground on the part of Fatima to leave Anil.
5. Andhra Pradesh High Court in the case of *T. Sareetha v Venkata Subbaiah*,⁴⁶ observed that the remedy of Restitution of Conjugal Rights provided for by Section 9 of the said Act was a savage and barbarous remedy violating the right to privacy and human dignity guaranteed by Art. 21 of the Constitution. Hence, according to the learned judge, Section 9 was constitutionally void.
6. Delhi High Court in the case of *Smt. Harvinder Kaur v Harmander Singh Choudhry*⁴⁷ expressed the view that Section 9 of the said Act was not violative of Art. 14 and 21 of

⁴¹ [2014] SCC OnLine P&H 10725; *Jogindra Kaur v Shivcharan Singh*, AIR [1965] J&K 95.

⁴² AIR [1959] P&H 162.

⁴³ AIR [1971] Bom 166.

⁴⁴ AIR [1970] P&H 284.

⁴⁵ [2011] SCC OnLine Mad 1298.

⁴⁶ AIR [1983] AP 356.

⁴⁷ AIR [1984] Del 66.

the Constitution. The learned judge noted that the object of restitution decree was to bring about cohabitation between the estranged parties so that they could live together in the matrimonial home in amity.

7. In the case of *Saroj Rani v Sudarshan Kumar*,⁴⁸ the Court observed that the Restitution of Conjugal Rights does not violate Arts 13,14, and 21 of the Constitution of India by stating that Restitution of Conjugal Rights is to bring cohabitation between them that parties may live peacefully and happily with proper understanding and does not limit to a sexual relationship only but also draw mutual understandings towards each other so they can live happily at their matrimonial home. Therefore, asking for conjugal rights by one party does not violate the fundamental rights of other party.
8. Therefore, from the line of SC judgements the conclusion can be drawn that Restitution of Conjugal Rights is not violative of Fundamental rights of any human being.
9. In *Tirath Kaur v Kartar Singh*,⁴⁹ it was held that marriage imposes an obligation on both spouses to cohabit with each other. The Indian judiciary had maintained a tremendously archaic and platitudinous approach by holding that a wife's first duty to her husband is to submit herself obediently to his authority and to remain under his roof and protection.
10. In *Tikait v Basant*,⁵⁰ the Court held that marriage under Hindu law was a sacrament, an indissoluble union of flesh with flesh, bone with a bone to be continued even in the next world.
11. In *Bipin Chandra Jaisinghbhai Shah v Prabhavati*,⁵¹ it was held that for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end. In this case Fatima has left Anil which follows the condition of factum of separation and her shifting to US with no communication to Anil shows that she wanted to bring cohabitation to end therefore she has committed desertion.
12. In the present case, Fatima has withdrawn from Anil's society without any reasonable excuse. She deserted him just for a better lifestyle and status which Raza has. Deserting a partner just for money and status is not valid ground to withdraw from the marriage. Anil was unemployed and he cleared this before marriage that he wants time to prepare

⁴⁸AIR [1984] SC 1562.

⁴⁹AIR [1964] P&H 28; *Gaya Prasad v Bhagwati*, AIR [1966] MP 212; *Smt. Kailash Wati v Ayodhia Prakash*, [1977] 79 PLR 216 [FB]; *Surjit Kaur v Ujjal Singh*, [1978] SCC OnLine P&H 137; *Deepa Suyal v Dinesh Suyal*, AIR [1993] All 244.

⁵⁰ILR 28 Cal 758.

⁵¹AIR 1957 SC 176; *Lachman Utamchand Kirpalani v Meena*, AIR [1964] SC 40.

for the exam. Fatima still married Anil by saying that she will take care of the household expenses. There was not any concealment of fact before marriage. Therefore, there is not any valid reason as to leave Anil.

13. In *Dastane v Dastane*⁵² the enquiry has to be whether the conduct charged as cruelty is of such character as to cause in the mind of the petitioner, a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.” In *Keshaorao v Nisha*,⁵³ it was derived that the ‘cruelty’ contemplated is a conduct of such type that the affected party cannot be reasonably expected to live with the other party. In *Indira Gangele v Shailendra Kumar Gangele*,⁵⁴ held that the unruly temper or whimsical nature of a spouse is not sufficient to establish cruelty.
14. In *Savitri Pandey v Prem Chandra Pandey*,⁵⁵ it was held that, there is a difference between cruelty & the ordinary wear and tear of married life. Petty quarrels and troubles, caused by differences in the temperament of the parties cannot be cruelty. Further in *J.L. Nanda v Veena Nanda*,⁵⁶ the Hon’ble Apex Court held that it is not cruelty if petty quarrels result because the temperament of spouses is not conducive to each other, even if these quarrels might result in physical or mental ailments.
15. In *Bharti v Anil*,⁵⁷ the wife did not behave properly with the husband right from the inception of the marriage. After a time, the wife left the matrimonial home. It is pleaded that despite the best efforts of the husband, the wife did not return to the matrimonial home. It was held that the husband had made sufficient efforts to ensure that the wife returns to the matrimonial home but there was no positive response from the wife. The Family Court, therefore, rightly held that there was no just or reasonable excuse for the wife to leave the company of the husband.
16. In *Narendra v K. Meena*,⁵⁸ it was held that if the wife forces and exerts pressure on the husband to live separate from his old aged parents or from the joint family without any reasonable excuse/ground, the same would amount to cruelty.
17. In the present case Anil never treated Fatima badly it was always Fatima who used to start fights over petty issues, she never understood that in every relationship those small things happen rather she always used to compel him to stay away from his parents due

⁵² AIR [1975] SC 1534.

⁵³ AIR [1984] Bom 413.

⁵⁴ AIR [1993] MP 59.

⁵⁵ [2002] 2 SCC 73.

⁵⁶ AIR [1988] SC 407.

⁵⁷ [2017] SCC OnLine Bom 10010.

⁵⁸ [2016] 9 SCC 455.

to which Anil was always in stress which amounts to mental cruelty which Fatima did to Anil and not Anil to Fatima.

18. This time also it is Anil who wants to give their relationship a chance and came before the court asking for decree of Restitution of Conjugal Rights. Anil is entitled for this decree.

4. WHETHER THE APPLICATION FOR PATERNITY TEST IS JUSTIFIED?

It is humbly contended that the application for paternity test is justified in the eyes of law as:

- a) It is right to party to undergo DNA test with no effect of violation of fundamental rights.
- b) There is adultery been committed from the side of Fatima.
- c) For the assurance of Anil.
- d) For the custody of the child.

A. RIGHT OF THE PARTY TO UNDERGO DNA TEST WITH NO EFFECT IN VIOLATION OF FUNDAMENTAL RIGHTS.

1. It is humbly submitted before the Hon'ble court that in case of disputed paternity of a child DNA test should be done to know the biological relationship between the father and the child. Mere comparison of DNA obtained from the body fluid or body tissues of the child with his father can offer infallible evidence of biological parentage.
2. In the case of *Kanchan Bedi & Ors. v Gurpreet Singh Bedi*,⁵⁹ the Hon'ble Delhi High Court held that "It appears to be difficult to resist that the law, as it presently stands, does not contemplate any impediment or violation of rights in directing persons to submit themselves for DNA test, especially where the parentage of a child is in controversy".
3. In *Seema Sharma v Amar Sharma*,⁶⁰ it was observed that law as it presently stands do not contemplate any impediment or violation of rights in directing a person to submit to DNA test. The court has the power to order a person to undergo medical test and such an order would not be in violation of the right to personal liberty under Art 21 of the Constitution.

⁵⁹ [2003] RLR 229.

⁶⁰ [2006] SCC OnLine MP 118.

4. The Apex court in *Bhabani Prasad Jena v Convenor Secretary*,⁶¹ Orissa State Commission for Women and another held that, “In a matter where paternity of a child is in issue before the court and when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. When there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed.”
5. In *Goutam Kundu v State of West Bengal*,⁶² wherein it was observed that the Indian law leans towards legitimacy and that a direction for DNA test should be passed only after balancing the interests of the parties, including the rights of the child, and if such a test is eminently needed.
6. In *Kharak Singh v State of UP*,⁶³ the Supreme Court held that Right to Privacy is not a guaranteed right under our Constitution. It is clear from various decisions which have been delivered by the Supreme Court from time to time that the right to life and personal liberty which has been guaranteed under our Indian Constitution is not an absolute one and it can be subject to some restrictions. Also, it is on this basis that the constitutionality of the laws affecting right to life and personal liberty are upheld by the Supreme Court which includes medical examination. It is on this basis that various courts in the Country have allowed for DNA test to be used in the investigation and in producing evidence.
7. In *Savitabai v Chandraban*,⁶⁴ it is stated that the right of privacy under Art 21 is not absolute and such a direction could be given looking to the conclusiveness of the DNA test and its scientific accuracy. In the present case it is a question of fact before the Hon’ble court that who is the real and biological father of the child.

⁶¹ [2010] 8 SCC 633.

⁶² [2011] SCC OnLine Cal 5279.

⁶³ [2013] SCC OnLine All 1500.

⁶⁴ AIR [2006] MP 135.

B. ADULTERY FROM THE SIDE OF FATIMA.

8. It is humbly submitted before the Hon'ble court that the offence of Adultery has also been committed from the side of wife, as Anil discovered the chats between Fatima and Raza and meeting of Fatima with Raza amounted to an adulterous relationship.
9. The DNA Testing is the most legitimate and scientifically perfect means that the husband could use, to establish his assertion of Adultery. In the case of *Sharda v Dharmpal*,⁶⁵ it was held that an order passed by a court to undergo DNA test would not be violative of right of personal liberty, therefore, the reluctance and hesitation of the respondent to allow the DNA test corroborates the allegations of adultery against her and brings forth the need to conduct the said DNA Test.
10. In *Dipanwita Roy v Ronobroto Roy*,⁶⁶ the SC has held that DNA testing is the "most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity."
11. In the case of *Badri Prasad Jharia v Vatsalya Jharia*,⁶⁷ the Madhya Pradesh High Court has held that for proving adultery, the DNA test will definitely be useful as per the established law. If the wife is refusing for DNA test, then her refusal may be considered as a ground for drawing adverse inference against her.

C. REASSURANCE OF ANIL

12. In *Nandlal Wasudeo Badwaik v Lata Nandlal Badwaik*,⁶⁸ it was held to hold that Section 112 of the Evidence Act was enacted at a time when scientific advancement in the field of DNA test was not as sophisticated. That although Section 112 raises a presumption of conclusive proof on the satisfaction of the conditions enumerated therein, the same is rebuttable. That where the truth of a fact is known, there is no need or room for any presumption. Thus, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.
13. In *Ammathayee v Kumaresan*,⁶⁹ the Court held that the conclusive presumption under Section 112 of the Indian Evidence Act can only be displaced if it is shown that the

⁶⁵ [2003] 4 SCC 493.

⁶⁶ [2015] 1 SCC 365.

⁶⁷ [2020] SCC OnLine MP 3816.

⁶⁸ [2014] 2 SCC 576.

⁶⁹ AIR [1967] SC 569.

parties to the marriage had no access at any time when the child could have been begotten.

14. In *Sham Lal v Sanjeev Kumar*,⁷⁰ it was held since Section 112 creates a presumption of legitimacy that a child born during the subsistence of a marriage is deemed to be legitimate, a burden is cast on the person who questions the legitimacy of the child. So, to burden to prove legitimacy is on Anil therefore DNA test needs to be done.
15. In the present case Anil wants to know whether the child belongs to him or not as Fatima denied his paternity so for Anil's assurance paternity test is required and hence the application is justified.

D. CUSTODY OF CHILD

16. In *Dr. Snehlata Mathur v Mahendra Narain*⁷¹ the Rajasthan High Court held that while interpreting the provisions contained in Section 10 of the Guardians and Wards Act, 1890, propounded that father is the natural guardian of minor after he attains the age of five years, unless the father is shown to be unfit and incapable of providing all facilities to minor, he cannot be denied guardianship of minor.
17. In *Prakash Chandra Jain v Smt. Chandrawati Jain*,⁷² the Division Bench of the Rajasthan High Court indicated that the Court is mainly concerned with the welfare of the child and not with the rights of parents. The decision for the custody of the child to a particular person, requires a judicial investigation in order to ascertain; (i) with whom the child will be happy, (ii) by whom the health and comforts of the child will be better looked after and to contribute its well Being; (iii) who can bring up the child and give education in a manner in which he deserves to be brought up; (iv) in whose company the child grow up in normal balanced manner to be the useful member of the society; (v) the age and sex of the child; and (vi) the character and capacity of the father or mother. From the facts we contend that Fatima should not be entitled to the custody of the child as she is not able to take proper care of the child, she left her in laws house at the time of pregnancy when there was need of proper care, she even travelled from US to India knowing that the child is just begotten few months back, this shows the level of carelessness towards the child.

⁷⁰ [2009] 12 SCC 454.

⁷¹ AIR [1980] Raj 64.

⁷² AIR [1996] Raj 162.

18. The Rajasthan High court in the case of Kamlesh Kumari v Laxmi Kant,⁷³ dismissed the appeal filed by the appellant and agreed with the decision of the district court of directing the wife to deliver the custody of minor child Pooja to the husband Laxmi Kant as Kamlesh Kumari was found to be living in Adultery.
19. In the Supreme Court case of Sheila B. Das v P.R. Sugasree,⁷⁴ the court stated that the respondent appears to be financially stable and is not also disqualified in any way from being the guardian of the minor child so the court feel that the interest of the minor will be best served if she remains with the respondent.
20. The Madras High Court in the case of Sivashanmugaraja v S. Narmathai,⁷⁵ it is indicated that which empowers the Court to make an order as to guardianship, taking into account the welfare of minor child, I am of the view that the appellant-father would be preferable to the respondent-mother with regard to the guardianship of the child. Accordingly, the respondent-mother is directed to restore the custody of the minor son to the appellant-father. Therefore, Anil is entitled for the custody of the child.

⁷³ [1997] SCC OnLine Raj 913.

⁷⁴ [2006] 3 SCC 62.

⁷⁵ [2006] SCC OnLine Mad 1031.

PRAYER FOR RELIEF

Wherefore in light of issues raised, authorities cited, arguments advanced, plaintiff humbly prays that this Hon'ble Court may be pleased to adjudge and declare that:

1. The present suit is maintainable before this Hon'ble District Court Chandigarh.
2. The marriage between Anil and Fatima is valid.
3. Anil is entitled for a decree of Restitution of Conjugal Rights.
4. The application for paternity test is justified in the eyes of law.

And pass any other order which this court may deem fit in the interest of

JUSTICE, EQUITY AND GOOD CONSCIENCE.

All of which is humbly prayed.

PLACE: Chandigarh

SD/- _____

DATE: ___/___/___

COUNSEL FOR PLAINTIFF