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

Before

HON'BLE DISTRICT AND SESSIONS COURT CHANDIGARH, PUNJAB

PLAINT NUMBER _____ / 2022

Filed under s 9 r/w s 20 r/w s 26 of Code of Civil Procedure, 1908 r/w Sec-31 of The Special
Marriage Act, 1954

IN THE CASE CONCERNING RESTITUTION OF CONJUGAL RIGHTS ALONG WITH VALIDITY OF
PATERNITY TEST

IN THE MATTER BETWEEN:

ANIL..... PLAINTIFF

v

FATIMA.....DEFENDANT

MEMORIAL ON BEHALF OF DEFENDANT

TABLE OF CONTENTS

Table of Contents	1
Index of Abbreviations	3
Index of Authorities	5
Cases Referred	5
Articles Referred.....	8
Books Referred	8
Statutes Referred.....	9
Websites Referred.....	9
Statement of Jurisdiction.....	10
Statement of Facts.....	11
Statement of Issues	12
Summary of Arguments.....	13
Arguments Advanced.....	14
1. The present suit is not maintainable in the District Court Chandigarh.....	14
A. Section 31 of Special Marriage Act is not Applicable.....	14
B. Section 20 of CPC is not Applicable.....	15
C. Family Court Act, bars the District Court to try matters of Family Dispute.	16
2. Whether the marriage between Anil and Fatima is valid?.....	17
A. Personal Laws are not applicable.....	17
B. Marriage was not registered.....	19
C. Fatima's consent was not free.....	21
3. Whether Anil is entitled for a decree of Restitution of Conjugal Rights?.....	21
A. Marriage between parties is not valid	22
B. Reasons to leave anil are valid.....	22
C. Mental Cruelty suffered by Fatima.	22
4. Whether the application for paternity test is justified?.....	24
A. It Infringes the Right to Privacy of the Defendant.....	24
B. It may have an adverse impact on the child.....	27
Prayer for Relief.....	29

INDEX OF ABBREVIATIONS

<u>Abbreviation</u>	<u>Full Form</u>
&	And
¶	Paragraph
AP	Andhra Pradesh
AIR	All India Report
All.	Allahabad
Art.	Article
Bom	Bombay
Cal.	Calcutta
Cl.	Clause
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
MP	Madhya Pradesh
Mad.	Madras
No.	Number
Ors.	Others
P&H	Punjab and Haryana
Pg.	Page
Raj	Rajasthan
SC	Supreme court
SCC	Supreme Court cases

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

INDEX OF AUTHORITIES

CASES REFERRED

1. A. Jayachandra v Aneel Kaur, [2005] 2 SCC 22	22
2. Abdul Kadir v Salima, [1886] ILR 8 All 149	17
3. Abhilash R. Nair v Sreebha P.S. & Ors, [2021] SCC OnLine Ker 5428.....	26
4. Aisha Bi & Ors v Saraswathi Fathima & Ors, [2012] SCC OnLine Mad 1275	17
5. Ambika Ramakant Uniyal v Ramakant Shriram Uniyal [2013] SCC OnLine Bom 1441	29
6. <i>Ammini Antony v District Collector & Ors</i> , [2018] 4 KLJ 551	15
7. Andhra Sugar v State of AP [1968] AIR 599	28
8. Aparna Ajinkya Firodia v Ajinkya Arun Firodia [2021] SCC OnLine Bom 11774....	28
9. Archana Hemant Naik v Urmilaben I. Naik and Another, [2009] SCC OnLine Bom 1286.....	23
10. Ashok Kumar v Raj Gupta & Ors, [2022] 1 SCC 20.....	24
11. <i>AVM Sales Corporation v Anuradha Chemicals (P) Ltd.</i> , [2012] SCC 315.....	14
12. Baban Trimbak Foke and Ors v State of Maharashtra, [2018] SCC OnLine Bom 1474	23
13. <i>Balram Yadav v Fulmaniya Yadav</i> , [2016] SCC OnLine SC 370	15
14. Banarsi Dass v Teeku Dutta, [2005] 4 SCC 449	26
15. Bhabani Prasad Jena v Convenor Secretary & Anr, [2010] 8 SCC 633	11
16. Bhabani Prasad Jenna v Orissa State Commission, [2010] 8 SCC 633.....	27
17. <i>Bhagat Singh v Jagbir Sawhney</i> , AIR [1941] Cal 670	13
18. Biprojit Debbarma v Swapna Debbarma, [2016] SCC Online Tri 177	18
19. Brajendra Singh v State of M.P. & Anr, [2008] 13 SCC 161	20
20. Broja Kishore Ghosh v Krishna Ghosh, AIR [1989] Cal 327	18
21. C. Ravikumar v Narmadha, [2011] Mad 3359	23

22. Chand Patel v Bismillah Begum, [2008] 4 SCC 774.....	17
23. <i>Chandirayan Raman v Velluvakandy Vasumathi</i> , [1973] CriLJ 315.....	13
24. Deivayani v Chidambara, AIR 1954 Mad 657	17, 18
25. Dipanwita Roy v Ronobroto Roy, 6 [2015] 1 SCC 365	27
26. Dr. A.L.M. Abdullah v Rokeya Khatoun, 21 D.L.R. [1969] 213.....	19
27. Dr. A.N. Mukerji v State, AIR [1969] All 489	17, 18
28. Gaya Prasad v Mst. Bhagwati, AIR [1966] MP 212.....	24
29. Goutam Kundu v St. of West Bengal & Anr [1993] 3 SCC 418.....	27
30. Goutam Kundu v St. of West Bengal & Anr [1993] 3 SCC 418.....	11
31. Gurdev Kaur v Sarwan Singh, [1958] SCC OnLine Punj 175	21
32. Hawa Singh & Ors. v Maiperson & Anr., AIR [2017] (NOC 812) 275.....	26
33. Husasaini Begum v Mohd. Rustan Ali Khan, I.L.R. 299 All	17
34. Ihsan Hassan Khan v Panna Lal, AIR [1928] Pat 19.....	17
35. Inayath Ali v State of Telagana & Anr, [2022] SCC OnLine SC 1867.....	24
36. Itwari v Asghari, AIR [1960] All 684.....	24
37. <i>Jeewanti v Kishan Chandra</i> , AIR [1982] SC 3.....	13
38. Juveria Abdul Majid Patni v Atif Iqbal Mansoori and Anr, [2014] 10 SCC 736.....	23
39. Kanti Devi v Poshi Ram Appeal (civil) 3860 of [2001]	28
40. KS Puttaswamy v UOI, [2018] SCC OnLine SC 215	25
41. <i>Kumudnath v Jatendranath</i> , ILR 38 Cal 394.....	13
42. Lily Thomas v Union of India, [2000] 6 SCC 224	16
43. Maheswari Balika Vidyalaya & Ors. v State of W.B., [1988] SCC OnLine Cal 99 ...	18
44. <i>Manoramabai Moreshwar & Ors. v Ibrahim Khan Bismilla Khan</i> , AIR [1969] Bom 366.....	14
45. Mohammed Saleem & Ors. v Shamsudeen & Ors, [2019] 4 SCC 130.....	17
46. <i>Mohan Singh v Lajya Ram</i> , AIR [1956] Punj 188.....	13

47. <i>Mohanakumaran Nair v Vijayakumaran Nair</i> , AIR [2006] Ker 243	13
48. <i>Moonshee Buzlur Raheem v Shumsoonnissa Begum</i> , [1867]ss.....	17
49. <i>Mrs. Nayana M. Ramani v Mrs. Fizzah Navnitlal Shah</i> , [2021] SCC OnLine Bom 385	15
50. <i>Muthusami Mudaliar & Anr v Masilamani & Ors</i> , 5 Ind Cas 42	16
51. <i>Narayan Dutt Tiwari v Rohit Shekhar</i> , [2012] 12 SCC 554.....	28
52. <i>Nawal Kishore Sharma v UOI</i> , AIR [2014] SC 3607.....	14
53. <i>P.S. Subramaniam v Presiding Officer</i> , [1989] 1 LW 304 (Mad).....	15
54. <i>Parveen Mehta v Inderjit Mehta</i> , [2002] 5 SCC 706	22
55. <i>Radindranath v State</i> , AIR [1969] Cal 55.....	17, 18
56. <i>Raghubir v Shammugvadiyar</i> , [1971] Mad 330	18
57. <i>Rajathi v Selliah</i> , [1966] 2 MLJ 40.....	17, 18
58. <i>Rajli v Kapoor Singh Ors</i> , [2013] SCC OnLine P&H 25166.....	24
59. <i>Ramveer Sharma v Neelam Sharma</i> , AIR [1998] MP 283.....	21
60. <i>Ranjan Kumar Behera @ Naik v Domburudhar Behera & Ors</i> AIR [2017] Ori 96....	28
61. <i>Ranvir Kumar Choudhary v Smt. Sushmit Suman</i> , [2016] SCC OnLine Pat 4882.....	13
62. <i>Rishikesh Sharma v Saroj Sharma</i> , [1997] SCC OnLine MP 166.....	21
63. <i>Ritesh Ratilal Jain & Ors v Sandhya</i> , [2013] SCC OnLine Bom 1621	23
64. <i>Rohit Shekhar v Narayan Dutt Tiwari</i> , [2010] SCC OnLine Del 1185.....	26
65. <i>Romesh Chander v Savitri</i> , [1995] 2 SCC 7	23
66. <i>Roshan Mathew & Anr v The Registrar of Marriage</i> , [2009] SCC OnLine Ker 4381 18	
67. <i>S. Balakrishnan Pandiyan v The Superintendent of Police</i> , [2014] SCC OnLine Mad 8815.....	20
68. <i>S. Hanumantha Rao v S. Ramani</i> , [1993] 3 SCC 620.....	23
69. <i>S. v McC</i> , [1970] 3 WLR 366.....	27
70. <i>Sakhar Kharkhana Ltd. v CIT Kolhapur</i> AIR [1968] SC 599	28
71. <i>Sanjay Mishra v Miss Eveline Jobe</i> , AIR [1993] MP 54.....	12

72. Sanjeev Nayan Kumar v Priti Kumari, [2010] SCC OnLine Jhar 726	21
73. Savitri Pandey v Prem Chandra Pandey, [2002] 2 SCC 73	22
74. Sayad Mohiuddin Sayad Nasiruddin v Khatijabi and Anr, AIR [1939] Bom 489	19
75. Seema v Ashwini Kumar, [2008] 7 SCC 509	17, 18
76. Sharda v Dharmpal, AIR [2003] SC 3450	25
77. Shri P. Simachalam v Smt. P. Neelaveni & Another, [2011] SCC OnLine Cal 2088.23	
78. Smt. Rameshwari Bai & Ors v Ishwar Lal Sahu, [2017] SCC OnLine Chh 1619	27
79. Smt. Saroj Rani v Sudarshan Kumar Chadha, [1984] 4 SCC 90	21
80. Smt. Vibha Shrivastava v Dinesh Kumar Shrivastava, AIR [1991] MP 346	24
81. <i>Sulochana Kandi v Diptirekha Kandi & Anr.</i> ,	12
82. <i>Suraj Karan v Sita Ram</i> , AIR [1952] Raj 31 (DB)	13
83. Tapan Ranjan Das v Smt. Jolly Das, AIR [1990] Cal 353	20
84. <i>UOI v Ladulal Jain</i> , AIR [1963] SC 1681	14
85. V Bhagat v D. Bhagat, AIR [1994] SC 710	22
86. Vinita Saxena v Pankaj Pandit, [2006] 3 SCC 778	23

ARTICLES REFERRED

- Brijraj Deora, *Special Marriage Act 1954 as a Precursor of Uniform Civil Code*, 9, CNLULj 234, 237-238 (2020)
- Mohd. Nurul Haq, *Some Legal Aspects of Muslim Marriage in Indian Sub-Continent-A Review*, 2, DULJ 1, 12, [1991]
- Olivier Herrenschmidt, *The Indians' Impossible Civil Code*, 50(2) European Journal of Sociology, 309-347 (2009)

BOOKS REFERRED

- Kumud Desai, *Indian law of Marriage and Divorce*, (12th edition Lexis Nexis, 2022)
- Sir Dinshaw Fardunji Mulla, *The Code of Civil Procedure*, (19th edition, Mulla, 2022)
- Avtar Singh, *Contract and Specific Relief*, (13th edition, EBC, 2022.)
- Prof. G.C.V. Subba Rao, *Family Law in India* (10th edition, Narender Gogia &

Company.)

- Sir Dinshaw Fardunji Mulla, Hindu Law (24th edition, Lexis Nexis, 2022.)
- Sir Dinshaw Fardunji Mulla, Mulla Principles of Mahomedan law (22nd edition, Lexis Nexis, 2022.)

STATUTES REFERRED

- The Code of Civil Procedure, 1908, No. 34 Acts of Parliament, 1908.
- The Family Courts Act, 1984, No. 66 Acts of Parliament, 1984.
- The Hindu Marriage Act, 1955, No. 25 Acts of Parliament, 1955.
- The Indian Contract Act, 1872, No. 9 Acts of Parliament, 1872.
- The Indian Penal Code, 1860, No. 45 Acts of Parliament, 1860.
- The Prevention of Women from Domestic Violence Act, 2005, No. 43 Acts of Parliament, 2005.
- The Special Marriage Act, 1954, No. 43 Acts of Parliament, 1954.

WEBSITES REFERRED

- <https://www.scconline.com/>
- <https://www.manupatrafast.com/>
- <https://www.westlawasia.com/>
- <https://www.lexisnexis.com/>

STATEMENT OF JURISDICTION

The plaintiff has approached 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 31⁴ of the SMA, 1954.

The defendant has appeared before this Hon'ble Court in the response to the plaint and application filed by the plaintiff.

The defendant humbly submits that the plaintiff has no right to be present before this Hon'ble Court under the said jurisdiction.

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 [(1)] Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. 2 [(2) In every plaint, facts shall be proved by affidavit:] 3 [Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of rule 15A.]

⁴ s 31. Court to which petition should be made. — [(1) Every petition under Chapter V or Chapter VI shall be presented to the district court within the local limits of whose 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 by those who would naturally have heard of him if he were alive.]

(2) Without prejudice to any jurisdiction exercisable by the court under sub-Section (1), the district court may, by virtue of this sub-Section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

STATEMENT OF FACTS

1. Fatima and Raza were Muslims while, Anil was a Hindu. Anil and Fatima started to like each other. In 2018, Anil decided to meet Fatima's parents regarding their marriage, but they refused. Anil tried to make Fatima understand that her parents won't allow them to unite so they have to elope. But Fatima was never convinced.
2. Meanwhile Fatima moved to Chandigarh and considering the financial conditions of Anil, they both decided to live together and to marry on 23rd August, 2020. They underwent a simple ceremony in a temple involving exchange of garlands and application of vermillion. While Fatima wanted to perform a Nikah. There were no family or friends present at time of marriage.
3. Fatima continued her job in an US MNC. The burden of managing expenses alone bothered her which led to fights between two. Because of stressful environment Fatima felt very disturbed and overburdened with her responsibilities and she was not getting enough support from Anil. In 2021, Raza came to Chandigarh, and met Fatima, on his persistence she started to meet her parents.
4. Anil got to know about this and blamed Fatima. They both got into a fight and Fatima left the house and went to her parent's home. In December 2021, she discovered that she is pregnant and moved back with Anil, who had planned to shift with his parents. This led to the huge fight, eventually they moved in with his parents. Fatima was unhappy but still moved in.
5. Everybody started calling her as "Aarti" and she would often be annoyed and fight with Anil over this. All this really bothered Fatima, she felt stuck in Anil's home and wanted to escape. She tried to convince Anil to move back to Chandigarh but he paid no heed to it. She moved in with her family who contacted Raza to make necessary arrangements for her to stay in US. On 14th Feb, 2022. She revealed her Pregnancy to Raza, and he proposed her for marriage for which she willfully agreed.
6. During this time, Anil did not try to visit her parents to know the wellbeing of Fatima. During her pregnancy, Raza took care of Fatima. On August 5th, 2022, Fatima was blessed with a baby boy. In October, 2022, Anil reached out to Fatima when she visited India along with her family but Fatima refused to meet her saying that she was happily married to Raza. Anil got argumentative and claimed his child back, to which Fatima denied his paternity and warned him to stay away from her child.

STATEMENT OF ISSUES

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 submitted to this Hon'ble Court that the present suit is not maintainable before the District Court Chandigarh. S 20 of CPC⁵ and s 31 of the SMA, 1954⁶ is not applicable. The defendant does not reside in Chandigarh rather her job is in US and it is not possible for her to travel from US with a kid of 9 months every time for court hearing.

Whether the marriage between Anil and Fatima is valid?

It is contended to this Hon'ble Court that the marriage between Anil and Fatima is invalid. The basic requirement for a valid marriage is notice and registration which has not been followed by the couple, Fatima's consent was undue influence as she was never consented freely to elope and for marriage as per Hindu rites. Also, there were no witnesses present at the time of solemnization of ceremonies.

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

It is most respectfully contended that Anil is not entitled for the decree of Restitution of Conjugal Rights. The very first requirement for Restitution of Conjugal Rights is the valid marriage and in the present case the marriage is not valid. Fatima was facing mental cruelty; she was not getting financial support from Anil and because of these valid reasons she left him.

Whether the application for paternity test is justified?

It is contended before this Hon'ble Court that the application for paternity test by the plaintiff is not justified as it does not stand on the valid grounds of paternity laid down in Goutam Kundu v St. of West Bengal & Anr.⁷ There was no adultery on the part of Fatima because there was no valid marriage.

⁵ Code of Civil Procedure 1908, s 20.

⁶ Special Marriage Act 1954, s 31, No. 43.

⁷ [1993] 3 SCC 418, *Bhabani Prasad Jena v Convenor Secretary & Anr*, [2010] 8 SCC 633.

ARGUMENTS ADVANCED

1. THE PRESENT SUIT IS NOT MAINTAINABLE IN THE DISTRICT COURT CHANDIGARH.

It is humbly submitted before this Hon'ble Court that the District Court of Chandigarh does not have appropriate jurisdiction to entertain the matter. The Contention is further divided into 3 parts i.e.,

- a) Section 31 Special Marriage Act is not applicable,
- b) Section 20 CPC is not applicable,
- c) Family Court Act 1984 bars the District Court to try matters of family dispute.

A. SECTION 31 OF SPECIAL MARRIAGE ACT IS NOT APPLICABLE.

1. It is humbly submitted before this Hon'ble Court that, in the instant case, the question of solemnization of marriage exists between Anil and Fatima who belongs to two different religion and to address this issue, the Special Marriage Act has been formulated by the Parliament for the governance and registration of such marriages.
2. It is pertinent to note that the first pre-condition required to make a petition under this sec. is that there must be solemnization of marriage, provided in the instant case the marriage had not been solemnized and thus is not valid. The court has laid down that, the registration of marriage postulates a valid marriage.⁸
3. Also, it is to be noted that Section 15(a) of SMA provides for a ceremony of marriage that has been performed between the parties and this performance of marriage was in accordance with Hindu Customary Rites. 'Saptapadi' is one of the essential ceremonies of Hindu marriage. Section 7 of the HMA deals with this aspect of the matter. The marriage becomes complete with the seventh step and in the instant case there is total lack of this ceremony makes the marriage invalid.
4. Chapter II of SMA provides for the solemnization of special marriages under the Act and a certificate of marriage granted u/s 13 is deemed to be conclusive evidence of the fact that the marriage under the Act has been solemnized.⁹ In the instant case, the marriage did not solemnize as per chapter II of the Act and no certificate of marriage was thereby issued.
5. Patna High Court in the Ranvir Kumar Choudhary case¹⁰ has held that it is evident that

⁸ *Sanjay Mishra v Miss Eveline Jobe*, AIR [1993] MP 54.

⁹ *Sulochana Kandi v Diptirekha Kandi & Anr.*, 98 [2004] CLT 182.

¹⁰ *Ranvir Kumar Choudhary v Smt. Sushmit Suman*, [2016] SCC OnLine Pat 4882.

the moment a certificate of marriage is finally entered in the Marriage Certificate Book the deeming fiction of law takes effect and the said marriage is deemed to be a marriage solemnized under the said Act and other consequences follow. Registration of marriage u/s 15 of the Act is thus, an essential condition for a valid marriage under SMA.

6. In the instant case, there has been no registration of marriage and the ceremonies to the marriage have not been completed. Therefore, the provisions of this Act have not been complied with. Thus, s 31 is not applicable.

B. SECTION 20 OF CPC IS NOT APPLICABLE.

7. 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. However, an occasional residence is not sufficient to give jurisdiction.¹¹ Residence may be legal and technical or actual and physical.¹²
8. In the case of *Mohanakumaran Nair v Vijayakumaran Nair*,¹³ the Court laid that residence has to be distinguished from mere stay or presence. The expression 'residence' carries with it the concept of continuity. A person resides at such a place where he eats, drinks, sleeps and lives.¹⁴
9. Residence must be more or less of a permanent character, and of such a nature that the court in which the respondent is sued, is his natural forum.¹⁵ At a place where the defendant actually and voluntarily or works would be easy for the defendant to conduct his defense without undue trouble and that appears to be the rationale underlying s 20.
10. If the family of a person lives in one place and the defendant lives for the greater part of the time at another place, he has legal residence where his family resides and actual residence where he resides.¹⁶ In the instant case, the defendant's actual residence is the US as she is married and has a job there.
11. It has also been laid down by the Court that if some of the defendants reside beyond the jurisdiction of a Court, and if before the institution of such a suit, leave is necessary to be obtained and the suit is filed without such leave being obtained, the objection of the defendants are staying beyond the jurisdiction of the Court, and therefore, the Court has

¹¹ *Suraj Karan v Sita Ram*, AIR [1952] Raj 31 (DB).

¹² *Chandirayan Raman v Velluvakandy Vasumathi*, [1973] CriLJ 315.

¹³ AIR [2006] Ker 243.

¹⁴ *Bhagat Singh v Jagbir Sawhney*, AIR [1941] Cal 670, *Kumudnath v Jatendranath*, ILR 38 Cal 394.

¹⁵ *Jeewanti v Kishan Chandra*, AIR [1982] SC 3.

¹⁶ *Mohan Singh v Lajya Ram*, AIR [1956] Punj 188.

no jurisdiction.¹⁷

12. Section 20 is designed to secure justice as near as possible to man's heart stone and the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself. The principle behind s 20 (a) and (b) is that the suit to be instituted at a place where the defendant is able to defend the suit without undue trouble.¹⁸
13. It is also important to note that cause of action is a bundle of facts which is necessary for the plaintiff to prove his case so that he can succeed.¹⁹ It is the facts which is relevant for the determination of between parties.²⁰ In the facts only, it is evident that the solemnization of marriage was not valid in the instant case as all the formalities have not been fulfilled by the parties to the marriage and thus, no cause of action arises.
14. In the instant case, none of the grounds has been fulfilled, as the defendant who is Fatima resides beyond the territorial jurisdiction of this Court and no prior leave has been obtained by the plaintiff as prescribed by s 20 (b) and the cause of action i.e., the solemnization of marriage between Anil and Fatma is not valid and the other cause of action is birth of child, has not taken place in the territory of India.

C. FAMILY COURT ACT, BARS THE DISTRICT COURT TO TRY MATTERS OF FAMILY DISPUTE.

15. It is humbly submitted before this Hon'ble Court that the Family Court Act provides for the settlement of Family Court in every district to try all the matters relating to family dispute.
16. The Courts have laid down that it is a settled law that u/s 7 of the Family Court Act, a suit or proceedings for any of the grounds mentioned is within the exclusive jurisdiction of the family court since u/s 8 all those jurisdictions covered u/s 7 are excluded from the purview of the jurisdiction of Civil Court.²¹ The present case involves the issue of determining the matrimonial status of the persons thus this matter falls exclusively within the jurisdiction of the family Court.
17. Court has held that, it should be borne in mind that the preamble of the Family Courts

¹⁷ *Manoramabai Moreshwar & Ors. v Ibrahim Khan Bismilla Khan*, AIR [1969] Bom 366.

¹⁸ *UOI v Ladulal Jain*, AIR [1963] SC 1681.

¹⁹ *Nawal Kishore Sharma v UOI*, AIR [2014] SC 3607.

²⁰ *AVM Sales Corporation v Anuradha Chemicals (P) Ltd.*, [2012] SCC 315.

²¹ *Mrs. Nayana M. Ramani v Mrs. Fizzah Navnitlal Shah*, [2021] SCC OnLine Bom 385, *P.S. Subramaniam v Presiding Officer*, [1989] 1 LW 304 (Mad).

Act, 1984, framed by the Parliament makes it clear that it is an enactment to provide for the establishment of family courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and matters connected therewith.²²

18. Also, Hon'ble Apex Court in the *Balram Yadav v Fulmaniya Yadav*²³ has laid down that, "*U/s 7(1), explanation (b) of the Family Courts Act, 1984, a Suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under s 8 of the said Act, all those jurisdictions covered under s 7 are excluded from the purview of the jurisdiction of the Civil Courts.*"
19. Thus, in the present case Family Court enjoys original jurisdiction to deal with the case of matrimonial dispute and the instant case is wholly a suit of matrimonial nature as it involves the question of the validity of marriage, matrimonial status of the parties to the marriage and custody of the child.
20. Therefore, the counsel on behalf of the defendants most humbly submits before this Hon'ble Court that the District Court of Chandigarh has no jurisdiction to try the instant case.

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

It is humbly submitted that to this Hon'ble Court that marriage between Anil and Fatima is not valid because in the present case:

- a) Personal laws are not applicable.
- b) Marriage was not registered.
- c) Fatima's consent to marriage was not free.

A. PERSONAL LAWS ARE NOT APPLICABLE.

22. According to Hindu Marriage Act, both parties (bride & bridegroom) must be Hindus or must fall under the ambit of Hindu²⁴ in order to get married. In the present case, they both (Anil and Fatima) belonged to a very different religion.²⁵ So, the first and very important condition of the Hindu marriage act has not followed.

²² *Ammini Antony v District Collector & Ors*, [2018] 4 KLJ 551.

²³ *Balram Yadav v Fulmaniya Yadav*, [2016] SCC OnLine SC 370.

²⁴ Hindu Marriage Act 1955, s 2.

²⁵ Moot Proposition, ¶ 1.

23. A Muslim girl should convert to Hinduism to solemnize the marriage according to Hindu rites, which will bring it within the purview of the Hindu Marriage Act. But Fatima did not convert to Hinduism. Therefore, there is no valid marriage between Anil and Fatima according to Hindu Marriage Act.
24. Also, in case of *Muthusami Mudaliar & Anr v Masilamani & Ors*²⁶ it was held by the Madras HC that the marriage contracted according to Hindu rites by a Hindu with a Christian woman, who before marriage is converted to Hinduism, is valid, though the marriage was not in strict accordance with the Hindu system of law. Such a marriage is still common among and recognized as valid by the custom of the caste to which the man belongs. In the present case, Fatima did not convert to Hinduism before marriage, therefore their marriage is not valid.
25. In the case of *Lily Thomas v Union of India*,²⁷ the Supreme Court held that a Christian woman who married a Hindu man and subsequently converted to Hinduism was not bound by the Christian personal law in matters related to marriage and divorce. The court held that the woman had voluntarily given up her Christian religion and was, therefore, not subject to its personal laws. In the present case the parties are from different religion and hence their respective personal laws are not applicable.
26. In *Dr. A.N. Mukerji v State* the question came before the Allahabad High Court in a very interesting manner, where the court held that the performance of mock ceremonies of marriage does not constitute a valid solemnization of marriage.²⁸ In *Deivayani v Chidambara*,²⁹ the marriage was held void on the ground that no valid ceremonies were performed.
27. In the case of *Abdul Kadir v Salima*,³⁰ it was held that Muslim marriage is a contract and not a sacrament, further it was held that marriage is contracted that is to say, is affected and legally confirmed by means of declaration and consent, both expressed in the preterite.
28. In *Mohammed Saleem & Ors. v Shamsudeen & Ors.*³¹ it was held by Supreme Court that marriage between a Muslim and a Hindu is Irregular Marriage (Fasid). Further In

²⁶ 5 Ind Cas 42.

²⁷ [2000] 6 SCC 224, *Muthusami Mudaliar & Anr v Masilamani & Ors*, 5 Ind Cas 42..

²⁸ AIR [1969] All 489.

²⁹ AIR [1954] Mad 657, *Rajathi v Selliah*, [1966] 2 MLJ 40, *Radindranath v State*, AIR [1969] Cal 55.

³⁰ [1886] ILR 8 All 149.

³¹ [2019] 4 SCC 130. See also *Chand Patel v Bismillah Begum*, [2008] 4 SCC 774, *Aisha Bi & Ors v Saraswathi Fathima & Ors*, [2012] SCC OnLine Mad 1275, *Ihsan Hassan Khan v Panna Lal*, AIR [1928] Pat 19.

Moonshee Buzlur Raheem v Shumsoonnissa Begum³² the court held that there is no space for Restitution. Only the dissolution of marriage will take place under Muslim law, so Muslim law is also not applicable.

B. MARRIAGE WAS NOT REGISTERED.

29. Inter-caste marriages are those marriages where bride and groom, both are from different caste and religion. For the acceptance of such marriage, our parliament enacted a proper legislation i.e., SMA. It gave a condition and requirement for the special marriage. In *Seema v Ashwini Kumar*,³³ Supreme Court held that it is compulsory for every Indian irrespective of their religion to register their marriage.
30. According to Section 5 of SMA if the marriage is to be solemnized under the said act the parties must file with the District's Marriage Registrar a notice stating their intention to marry each other in which at least one of the parties to the marriage has lived for at least 30 days prior to the date on which such notice is filed.
31. As per Section 14 of the Act,³⁴ if the marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by s 5, the notice and all other proceedings arising therefrom shall be deemed to have lapsed.³⁵
32. In *Seema v Ashwini Kumar*,³⁶ Supreme Court held that it is compulsory for every Indian irrespective of their religion to register their marriage.
33. A mere execution of a document by the spouses that they have become husband and wife will amount to a declaration in the presence of friends and other persons, and will confer the status of husband and wife on the parties.³⁷ In the present case we can observe that there was no registration done by the parties and neither a notice was given by both the parties which is a must requirement for solemnization of marriage under SMA, 1954. In the present case the marriage was not registered.³⁸
34. In the case of *Biprojit Debbarma v Swapna Debbarma*,³⁹ Tripura HC affirmed the judgement of Family Court and said the learned Family Court also went on to hold that if

³² [1867], *Husasaini Begum v Mohd. Rustan Ali Khan*, I.L.R. 299 All.

³³ [2008] 7 SCC 509.

³⁴ Special Marriage Act, s 14.

³⁵ *Roshan Mathew & Anr v The Registrar of Marriage*, [2009] SCC OnLine Ker 4381.

³⁶ [2008] 7 SCC 509.

³⁷ *Raghubir v Shammugvadiyar*, [1971] Mad 330.

³⁸ Moot Proposition ¶ 8.

³⁹ [2016] SCC Online Tri 177.

the petition itself was not maintainable. It was rightly held by the learned Family Court that for a petition to be maintainable under the SMA, it must be first established that the marriage has been either performed under the provisions of the SMA or registered under the provisions of the SMA.

35. Admittedly, no marriage was solemnized in accordance with the provisions of Section 12 of the SMA.⁴⁰ It is also not disputed that the marriage was not registered in terms of Section 15 of the SMA. In The question came before the Allahabad High Court in a very interesting manner, where the court held that the performance of mock ceremonies of marriage does not constitute a valid solemnization of marriage.⁴¹
36. In *Deivayani v Chidambara*,⁴² the marriage was held void on the ground that no valid ceremonies were performed. SMA also prescribes for essential registration of a marriage solemnized as per this act, which is not the necessary requirement of other legislation like Hindu Marriage Act.⁴³ Therefore, all marriage solemnized under this Act requires compulsory registration whereas it is optional in most personal laws.⁴⁴
37. In *Dr. A.L.M. Abdullah v Rokeya Khatoon*,⁴⁵ while determining the effect of registration of marriage the court held that non-registration of marriage shows that there was no valid solemnization of marriage.⁴⁶ Under the SMA, 1954, it is mandatory for the parties to an inter-religious marriage to register their marriage.⁴⁷
38. Registration of interfaith marriage under this Act requires the marriage officer to first issue a 30-day public notice. The couple has pleaded that such notices, at times, become a reason for life threats for interfaith couples. They have said that this procedure is discriminatory in nature, intended to discourage interfaith marriages like theirs.
40. For whatever the case may be, for a marriage to get solemnized in the marriage registrar's office, the couple has to have three court marriage witnesses. These can be family members, family friends, friends or even colleagues. In the present case there are no witnesses present

⁴⁰ Special Marriage Act, s 12.

⁴¹ *Dr. A.N. Mukerji v State*, AIR [1969] All 489.

⁴² AIR [1954] Mad 657, *Rajathi v Selliah*, [1966] 2 MLJ 40, *Radindranath v State*, AIR [1969] Cal 55.

⁴³ *Broja Kishore Ghosh v Krishna Ghosh*, AIR [1989] Cal 327, *Maheswari Balika Vidyalaya & Ors. v State of WB*, [1988] SCC OnLine Cal 99.

⁴⁴ Brijraj Deora, *Special Marriage Act 1954 as a Precursor of Uniform Civil Code*, 9, CNLULj 234, 237-238 [2020], Olivier Herrenschildt, *The Indians' Impossible Civil Code*, 50(2) European Journal of Sociology, 309-347 [2009].

⁴⁵ 21 D.L.R. [1969] 213.

⁴⁶ Mohd. Nurul Haq, *Some Legal Aspects of Muslim Marriage in Indian Sub-Continent-A Review*, 2, DULJ 1, 12, [1991].

⁴⁷ Special Marriage Act 1954, s 15.

at the time of solemnization of ceremonies.

C. FATIMA'S CONSENT WAS NOT FREE.

-
41. The fundamental requirement under the SMA for a valid marriage is the consent of both parties to the marriage. The Consent should be given freely given by the parties.⁴⁸ If both parties to the marriage are willing to marry each other, that's enough; caste, religion, race, etc. do not act as a barrier to their union here.
42. In the case of Sayad Mohiuddin Sayad Nasiruddin v Khatijabi and Anr,⁴⁹ Bombay HC held a marriage of Shafei girl void as marriage was contracted to marriage by her father against her will and consent. Further The Bombay High Court declared the court held that marriage void. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.
43. Both the parties should have free consent⁵⁰ to the marriage. In Tapan Ranjan Das v Smt. Jolly Das⁵¹ while determining the concept of sham marriage,⁵² it was held that if the consent of either party is obtained by fraud, coercion undue influence then the marriage in question is voidable as per Section 25(iii) of SMA, 1954.
44. In the present case there are many instances⁵³ which shows that Fatima's consent was not free for marriage.
45. By the circumstances above it is clear and unambiguous that Fatima's consent for marriage was never a free consent rather, it is undue influence which violates s 25(iii) of SMA, 1954 and hence the marriage is void.

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

It is most humbly submitted that Anil is not entitled for a decree of Restitution of Conjugal Rights as in the present case:

- a) Parties to the suit are not husband and wife.

⁴⁸ Indian Contract Act 1872, s 14.

⁴⁹ AIR [1939] Bom 489.

⁵⁰ Indian Contract Act 1872, s 14.

⁵¹ AIR [1990] Cal 353, *Brajendra Singh v State of MP & Anr*, [2008] 13 SCC 161.

⁵² *S. Balakrishnan Pandiyan v The Superintendent of Police*, [2014] SCC OnLine Mad 8815.

⁵³ Moot Proposition ¶ 3, 4, 16, 6, 7, 8, 15.

- b) Fatima has valid reasons to leave Anil.
- c) Fatima was suffering with mental cruelty.

A. MARRIAGE BETWEEN PARTIES IS NOT VALID

- 45. In the case of Sanjeev Nayan Kumar v Priti Kumari,⁵⁴ the court held that the defendant appeared in the matrimonial suit and as per the defendant, no marriage ever took place between the plaintiff and the defendant either as per the Hindu custom in any temple or under the Special Marriage Act, and as such, no question of Restitution of Conjugal Right can be claimed.
- 46. In the case of Ramveer Sharma v Neelam Sharma,⁵⁵ it was held that when the factum of marriage is not established, even prima facie, there would be no occasion to grant interim injunction for any matrimonial relief.

B. REASONS TO LEAVE ANIL ARE VALID.

- 47. Section 22 of the SMA, 1954,⁵⁶ sets out the conditions under which a petition for Restitution of Conjugal Rights would be based. In Gurdev Kaur v Sarwan Singh,⁵⁷ it was decided that each case's specific facts would determine how to apply the standard of what is reasonable under the Section.
- 48. In the case of Rishikesh Sharma v Saroj Sharma,⁵⁸ it was observed that it will not be possible for the parties to live together and therefore there is no purpose in compelling both the parties to live together. Therefore, the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties can live peacefully for remaining part of their life.
- 49. In the case of Smt. Saroj Rani v Sudarshan Kumar Chadha,⁵⁹ the court held that the remedy of Restitution of Conjugal Rights is a discretionary remedy, and the court can refuse to grant such a decree if it is satisfied that there are reasonable grounds for the respondent to refuse to live with the petitioner.

C. MENTAL CRUELTY SUFFERED BY FATIMA.

⁵⁴ [2010] SCC OnLine Jhar 726.

⁵⁵ AIR [1998] MP 283.

⁵⁶ Special Marriage Act 1954, s 22.

⁵⁷ [1958] SCC OnLine Punj 175.

⁵⁸ [1997] SCC OnLine MP 166.

⁵⁹ [1984] 4 SCC 90.

51. In the case *Savitri Pandey v Prem Chandra Pandey*,⁶⁰ it was observed that Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party.
52. *Moonshee Buzlur Raheem v Shumsoonnissa Begum*, the absoluteness of this right was curtailed. In the relevant part of the judgment, it was held that "If there be cruelty to a degree rendering it unsafe for the wife to return to her husband's dominion, the Court will refuse to send her back to his House; so also, if there be a gross failure by the Husband of the performance of obligations which the marriage contract imposes on him for the benefit of the wife, it affords sufficient ground for refusing him relief in such a suit."
53. The interpretation of the term Mental Cruelty was given in the case of *A. Jayachandra v Aneel Kaur*.⁶¹ It was said that if from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty.
54. In *V Bhagat v D. Bhagat*,⁶² the Apex court observed that mental cruelty can broadly be defined as that conduct which inflicts upon the party such mental pain and suffering as would make it not possible for that party to live with the other.
55. In *Parveen Mehta v Inderjit Mehta*,⁶³ Mental Cruelty was defined as "Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case."
56. In the case of *S. Hanumantha Rao v S. Ramani*,⁶⁴ Andhra Pradesh High Court stated that Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party.
57. Section 3 (Protection of Women from Domestic Violence Act) then lays down definition of domestic violence to include physical abuse, sexual abuse, verbal and emotional abuse and

⁶⁰ [2002] 2 SCC 73.

⁶¹ [2005] 2 SCC 22.

⁶² *V Bhagat v D. Bhagat*, AIR [1994] SC 710.

⁶³ *Parveen Mehta v Inderjit Mehta*, [2002] 5 SCC 706, *Vinita Saxena v Pankaj Pandit* [2006] 3 SCC 778.

⁶⁴ [1993] 3 SCC 620.

economic abuse. In the case of *Ritesh Ratilal Jain & Ors v Sandhya*,⁶⁵ it was held that verbal and emotional abuse includes: insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child.

58. In the case of *C. Ravikumar v Narmadha*,⁶⁶ Madras High Court observed that 'Mental Cruelty' ought to be of such a kind that the parties cannot be expected to live jointly. In the present case, the circumstances which lead to many fights between Anil and Fatima⁶⁷ clearly shows how Fatima was unhappy with Anil. He never tried to understand her. Instead, he blamed her for every fight between them which unfortunately led to stressful atmosphere.
59. Anil's family was constantly calling her by different name which built a stress on her mind. Fatima has suffered mental pain and agony because of Anil's behavior and as a result of which their married life has broken down and she is not expected to live with her husband. Therefore, in order to protect emotional wellbeing, Fatima does not want live with Anil.
60. In the case of *Itwari v Asghari*,⁶⁸ the petition filed against his first Muslim wife for the Restitution of Conjugal Rights. The court held that the husband cannot compel the wife to live with him in his house because compulsion is also a cruelty. Therefore, the Allahabad High Court has refused to provide the decree for the Restitution of Conjugal Rights against the wife.
61. In *Smt. Vibha Shrivastava v Dinesh Kumar Shrivastava*,⁶⁹ it was held that the wife leaving husband because of her financial insecurity is not liable for any matrimonial offences like desertion rather she is justified in doing so as it is a basic security to get a financial help from husband.

4. WHETHER THE APPLICATION FOR PATERNITY TEST IS JUSTIFIED?

It is humbly submitted before this Hon'ble Court that the application for a paternity test by the plaintiff is not justified as it violates the Right to privacy of the defendant which is guaranteed u/art. 21 of the constitution and it may have an adverse impact the child.

A. IT INFRINGES THE RIGHT TO PRIVACY OF THE DEFENDANT.

⁶⁵ [2013] SCC OnLine Bom 1621, *Baban Trimbak Foke and Ors v State of Maharashtra* [2018] SCC OnLine Bom 1474, *Archana Hemant Naik v Urmilaben I. Naik and Another* [2009] SCC OnLine Bom 1286, *Shri P. Simachalam v Smt. P. Neelaveni & Another* [2011] SCC OnLine Cal 2088, *Juveria Abdul Majid Patni v Atif Iqbal Mansoori and Anr*, [2014] 10 SCC 736.

⁶⁶ [2011] Mad 3359.

⁶⁷ Moot Proposition ¶ 9, 13, 15.

⁶⁸ AIR [1960] All 684.

⁶⁹ AIR [1991] MP 346, *Gaya Prasad v Mst. Bhagwati*, AIR [1966] MP 212.

64. It is humbly submitted before this Hon'ble Court that the application infringes the Right to Privacy of the defendant which has been guaranteed u/art 21 of the Constitution. The Courts have explicitly laid down that these tests impinge upon the Right to Privacy of the individual and can also have major societal repercussions.⁷⁰
65. DNA is the fundamental building block of a person's entire genetic make-up. DNA is found in all human cells and is the same in every cell of the same person. Genetic identity is unique.⁷¹ Courts have held that DNA is unique to an individual and can be used to identify a person's identity, trace familial linkages, or even reveal sensitive health information, and thus a person cannot be compelled to go for these scientific tests.
66. It is to be noted that merely because something is permissible in law does not mean that it could be directed as a matter of course especially when the effect would be invasive to the physical autonomy of a person.⁷²
67. The Hon'ble SC reiterated that when a person refuses to take a DNA test, compelling them to do so would violate their personal liberty and right to privacy. Further, the court stated that if other evidence is available to determine the relationship, DNA tests should not be ordered because they have significant privacy and societal consequences.
68. In the instant case, the DNA test did not constitute important evidence as there are other material facts by the virtue of which it can be established that the child is not related to the plaintiff. The most important fact is the timeline, it is crucial to note that in the first week of December 2021,⁷³ the defendant got to know about her pregnancy and in the month of November only the husband of the defendant went back to the US. Another relevant fact is, the defendant used to meet her husband in the hotel room and she shared close moments with him. This makes it evident that the child is of Fatima and Raza i.e., the defendant and the husband of the defendant.
69. It is pertinent to note that the Hon'ble Apex Court has laid down that in order to conduct paternity test, the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Therefore, order for DNA test can be given by the court only if a strong prima facie case is made out for such a course.⁷⁴
70. In the instant case there no instance which can prove that the plaintiff and defendant were

⁷⁰ *Ashok Kumar v Raj Gupta & Ors*, [2022] 1 SCC 20.

⁷¹ *Rajli v Kapoor Singh Ors*, [2013] SCC OnLine P&H 25166.

⁷² *Inayath Ali v State of Telagana & Anr*, [2022] SCC OnLine SC 1867.

⁷³ ¶14 of Moot Proposition.

⁷⁴ *Sharda v Dharmpal*, AIR [2003] SC 3450.

in intimate relation with each other and thus, there is no requirement of paternity test to be conducted. The Court has laid down a proportionality test in a case⁷⁵ and in order to conduct paternity test or DNA test this test must be applied to harmoniously construct right to privacy with other rights.

71. “The Court should therefore examine the proportionality of the legitimate aims being pursued, i.e., whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test.”
72. In the instant case, the application for paternity test is arbitrary in nature and discriminatory and it encroaches the right to privacy of the defendant as the plaintiff and defendant were never in the relation of marriage and the ceremony that they conducted for their marriage was void-ab-initio as they did not comply the rules illustrated in the Special Marriage Act and thus the plaintiff holds no ground to file for paternity test of the child.
73. Also, Section 112 of the Evidence Act presumes the legitimacy of a child born during a valid marriage.⁷⁶ To revoke this presumption there must be a strong prima facie case of the plaintiff. In the instant case, the child is born during the valid marriage of Fatima and Raza and thus, holds the presumption and the plaintiff does not have any strong evidence to show that the child is of Anil. It is also crucial to note that on all official documents, Raza is the father of the child as acknowledged by the defendant.⁷⁷
74. It has been held by the Court that mandatory testing upon the unwilling person would entail an element of violence and intrusion of person’s physical person⁷⁸ and may leave irreparable scars is unwarranted and impermissible u/art 21 of the Constitution.⁷⁹
75. In a case, Hon’ble HC has laid down that the Trial Court being a testamentary Court, the parties should be left to prove their respective cases on the basis of evidence produced during trial, rather than creating evidence by directing DNA test or paternity test.⁸⁰ The Courts themselves should not create evidence rather they should rely on the evidence adduced by the parties.
76. It has been laid down in a plethora of cases that paternity test should not be allowed by the Court in a routine manner but only for deserving cases. The Court has to consider the aspects

⁷⁵ *KS Puttaswamy v UOI*, [2018] SCC OnLine SC 215.

⁷⁶ *Hawa Singh & Ors. v Maiperson & Anr.*, AIR [2017] (NOC 812) 275

⁷⁷ Moot Proposition ¶ 18.

⁷⁸ *Kanti Devi v Poshi Ram Appeal (civil)* 3860 of [2001].

⁷⁹ *Rohit Shekhar v Narayan Dutt Tiwari*, [2010] SCC OnLine Del 1185.

⁸⁰ *Banarsi Dass v Teeku Dutta*, [2005] 4 SCC 449.

having regard to the presumption u/s 112 of the Evidence Act, and also the pros and cons of such order and the test of 'eminent need' whether it is not possible for the court to reach the truth without the use of such test.⁸¹

77. It has been laid down by the Court that in the determination of paternity, the evidence of the mother is important and when the mother is successful in establishing the paternity no question or test can arise.⁸² Also, in many cases, this would cast a doubt on the chastity of the mother of a child when no such doubt could arise. As a result, the reputation and dignity of a mother of a child would be jeopardized in society.
78. Therefore, allowing paternity test in the instant case will infringe upon the Right to Privacy of the defendant.

B. IT MAY HAVE AN ADVERSE IMPACT ON THE CHILD.

79. It is humbly submitted before this Hon'ble Court that the application for paternity will have an adverse impact on the child. In a matter where the paternity of a child is in issue before the court, the use of DNA test is an extremely delicate and sensitive aspect.⁸³ The courts must not allow paternity test on a regular basis.
80. The court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such a scientific test may bastardize an innocent child even though his mother and her spouse were living together during the time of conception.⁸⁴
81. The interests of justice in the abstract are best served by the ascertainment of the truth and there must be few cases where the interests of children can be shown to be best served by the suppression of truth.⁸⁵ In the instant case, for the betterment of the child and for his protection, paternity test should not be allowed by the court.
82. It was further held that the Court must carefully examine as to what would be the consequence of ordering the blood test and there must have sufficient materials before it to enable it to exercise its discretion.⁸⁶ In the instant case, the plaintiff has failed to produce any material fact as the marriage between the plaintiff and defendant was also not valid, and

⁸¹ *Abhilash R. Nair v Sreebha P.S. & Ors*, [2021] SCC OnLine Ker 5428.

⁸² *Ambika Ramakant Uniyal v Ramakant Shriram Uniyal* [2013] SCC OnLine Bom 1441.

⁸³ *Dipanwita Roy v Ronobroto Roy*, 6 [2015] 1 SCC 365.

⁸⁴ *Bhabani Prasad Jenna v Orissa State Commission*, [2010] 8 SCC 633.

⁸⁵ *Smt. Rameshwari Bai & Ors v Ishwar Lal Sahu*, [2017] SCC OnLine Chh 1619.

⁸⁶ *Goutam Kundu v St. of West Bengal & Anr* [1993] 3 SCC 418.

also the child was born after the valid marriage of the defendant which makes the child a legitimate child of Raza who is husband of defendant.

83. A DNA test should be done sparingly and in exceptional cases where the court is of the considered opinion that no other material to find out the truth is available record.⁸⁷ It has been laid that the Courts can allow paternity test when the court feels it as eminent need.⁸⁸ There must be material facts put forward by the plaintiff to prima facie establish his case, upon satisfaction of the evidence adduced the court may allow the test.⁸⁹
84. The Court in number of cases has laid that it is undeniable that a finding as to illegitimacy, if revealed in a DNA test, would, at the very least adversely affect the child psychologically.⁹⁰ It has been explicitly laid down by the Hon'ble Apex Court that, "No woman, particularly, who is married can be exposed to an enquiry on the paternity of a child she has given birth to in the face of Section 112 of the Evidence Act subject to the presumption being rebutted by strong and cogent evidence."
85. The Courts has laid that, what is of utmost importance for a lady who is the mother of a child is to protect her chastity as well as her dignity and reputation, in that, she would also preserve the dignity of her child. Allowing this test without there being any cogent reason for the same would violate the rights of the child and mother.
86. Therefore, the Counsel on behalf of Defendant most humbly submits before this Hon'ble Court that the application for paternity test should not be allowed by this Court as it is violative to the right to privacy of the parties and the test can have adverse impact on the psychological wellbeing of the child which should be given outmost priority by the Courts.

⁸⁷ *Ranjan Kumar Behera @ Naik v Domburudhar Behera & Ors* AIR [2017] Ori 96.

⁸⁸ *Narayan Dutt Tiwari v Rohit Shekhar*, [2012] 12 SCC 554.

⁸⁹ *Sakhar Kharkhana Ltd. v CIT Kolhapur* AIR [1968] SC 599, *Andhra Sugar v State of AP* [1968] AIR 599.

⁹⁰ *Aparna Ajinkya Firodia v Ajinkya Arun Firodia* [2021] SCC OnLine Bom 11774.

P R A Y E R F O R R E L I E F

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

1. The present suit is not maintainable before this Hon'ble District Court Chandigarh.
2. The marriage between Anil and Fatima is invalid.
3. Anil is not entitled for a decree of Restitution of Conjugal Rights.
4. The application for paternity test is not justified and hence is ultra vires.

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 DEFENDANT