

**4<sup>TH</sup> SURANA & SURANA AND ARMY INSTITUTE OF LAW  
NATIONAL FAMILY LAWMOOT COURT COMPETITION 2023  
ARMY INSTITUTE OF LAW, MOHALI, PUNJAB**

---

IN THE LEARNED DISTRICT COURT AT CHANDIGRAH  
CIVIL PETITION UNDER SECTION 19 OF THE HINDU MARRIAGE ACT, 1955

---

CIVIL PETITION NO. XXX/2023

---

IN THE MATTER OF

MR. ANIL

..... PETITIONER

v.

MRS. FATIMA

..... RESPONDENT

UPON SUBMISSION TO THE LEARNED DISTRICT COURT AT CHANDIGARH

*-MEMORIAL ON BEHALF OF THE RESPONDENT-*

**TABLE OF CONTENTS**

INDEX OF AUTHORITIES .....	IV
LIST OF ABBREVIATIONS.....	VIII
STATEMENT OF JURISDICTION .....	IX
STATEMENT OF FACTS .....	X
SUMMARY OF ARGUMENTS.....	XI
STATEMENT OF ISSUES .....	XII
ARGUMENTS ADVANCED .....	1
I.    The Present Suit is not Maintainable in the District Court of Chandigarh.....	1
A.    The marriage is not valid. ....	1
B.    Fatima’s Domicile is not in Chandigarh.....	1
C.    The place of residence was temporary.....	2
II.    The marriage between Anil and Fatema is invalid.....	3
A.    Fatima did not convert to Hinduism.....	3
B.    The marriage between a Hindu and a Muslim is invalid under the HMA.....	6
III.    ANIL IS NOT ENTITLED TO A DECREE OF RESTITUION OF CONJUGAL RIGHTS.....	7
A.    The validity of marriage is an issue.....	7
B.    Fatima was subjected to cruelty.....	8
C.    Grave and Weighty conduct of Anil and noncompliance of his marital obligations.....	9

D. Restitution violates Right to life and personal liberty under Article 21. .... 10

IV. THE APPLICATION FOR A PATERNITY TEST IS NOT JUSTIFIED..... 12

A. Presumption of Section 112, IEA. .... 12

B. It is not in the best interest of the child..... 13

C. Violation of Article 21..... 14

PRAYER FOR RELIEF ..... 16

**INDEX OF AUTHORITIES**

**Cases**

A. Jayachandra v Aneel Kaur, 2005 AIR SC 534.....	8
Alok Kumar v State of NCT of Delhi (2019) 13 SCC 308.....	12
Anmol Gupta v Union of India, (2018) 2 SCC 51 .....	15
Annapurnamma v Appa Rao, AIR 1963 AP 312.....	7
Annie Baron v B.K. Baron AIR 1950 ALL 516 .....	8
Babita v State of Uttar Pradesh, (2019) 7 SCC 633.....	13
Bhabani Prasad Jena v Convenor Secretary, Orissa State Commission for Women (2011) 8 SCC 633;.....	12
Bharat Chandra Ray v State of West Bengal (2015) SCC (Cri) 913;.....	12
Dr. Abdur Rehman Undre v Padma Abdur Rehman Undre, 2 (1982) DMC 156.....	3
Dr. Arun Kumar v Smt. Rupali Rai (2015) 10 SCC 239 .....	13
Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608.....	11
GA Arife v Gopal Dutt Sharma, (2009) SCC OnLine Del 1254 .....	3
Gaurav Nagpal v Sumedha Nagpal (2009) 1 SCC 42.....	13
Gollins v Gollins (1963) 2 All ER 966 .....	8
Goutam Kundu v State of West Bengal (1993) 3 SCC 418.....	13
Gullipilli Sowria Raj v Bandaru Pavani, (2009) 1 SCC 714 .....	6
Husaini Begum v Md Rustan Ali (1097) 29 All 222 .....	9

Jagraj Singh v Birpal Kaur, (2007) 13 SCC 1 .....	12
Joesph Shine v Union of India, (2018) 2 SCC 189.....	11
Jogindra Kaur v Shivcharan Singh, AIR 1965 J&K 95;.....	9
K.S. Puttaswamy v Union of India, (2017) 10 SCC 1 .....	14
Madan Mohan Singh v Rajni Kant, (2010) 9 SCC 209 .....	13
Maneka Gandhi v Union of India (1978) 1 SCC 248 .....	10
Margaret Palai v Savitri Jalai, (2009) SCC OnLine Ori 49 .....	3
Mohd. Shafi v Mohd. Rafiq & Ors., AIR 2012 SC 222 .....	13
Mr. 'X' v Hospital 'Z', (1998) 8 SCC 296.....	15
Nandlal Wasudeo Badwaik v Lata Nandlal Badwaik, AIR 2014 Bom 184 .....	14
Nilesh Narin Rajesh Lal v Kashmira Bhupendrabhai Banker (2009) SCC OnLine Guj 7352..	3
Pallavi Bhardwaj v Pratap Chauhan, 2012 AIR SCW 3805 .....	7
Poonam v Rathi AIR 1967 Ker 178.....	2
Prakash v Phulavati, (2016) 2 SCC 36.....	14
Priyadarshini Mohapatra v Lalmohan Mohapatra AIR 2018 Ori 31 .....	2
Rajender Singh v Smt. Rano, AIR 1983 Del 512 .....	12
Ramanand Yadav v Savitri Devi, AIR 1981 Pat 224; .....	12
Ramesh Kumari v State of NCT of Delhi, (2006) 2 SCC 677.....	12
Revanna v Susselamma, AIR 1967 Mys 165.....	7
Rina Mukherjee v State of West Bengal (2010) 1 SCC 457.....	13

Rohtash Singh v Ramendri (2000) 3 SCC 180 .....	12
Rosy Jacob v Jacob A. Chakramakkal, (2011) 2 SCC 583.....	13
Rupali Gupta v Rajat Gupta, (2016) 2 SCC 95.....	15
Russel v Russel (1924) AC 687 .....	8
Sachidanand Pandey v State of West Bengal, AIR 1987 SC 1109.....	15
Sanjeev Kumar v Priti Kumari, AIR 2011 Jha 1 .....	7
Santosh Kumar Pandey v Ananya Pandey, AIR 2013 Chh 95 .....	7
Sapna Jacob, Minor v The State of Kerala & Ors (AIR 1993 Kerala 75) Para 6 .....	3
Satya Pal Anand v State of M.P., (2013) 10 SCC 573 .....	12
Satyabhama Pradhan v Sidhartha Sahoo AIR 2005 Ori 177 .....	7
Selvi & Ors. v State of Karnataka (2010) 7 SCC 263 .....	15
Sharda v Dharmapal (2003) 4 SCC 493 .....	13
Sheoraj Singh Ahlawat v State of Uttar Pradesh, (2013) 3 SCC 789 .....	14
Shyamal Samaddar v Sampa Samaddar, AIR 2012 Cal 220. ....	9
Smt. Padmavathi v Dr. N. Venkata Rao, AIR 1976 AP 265 .....	12
Sumita Singh v Kumar Sanjay and Anr., (2002) 1 SCC 591.....	13
Suresh Kumar v State of Haryana (2015) 6 SCC 758 .....	12
Syal v Syal, AIR 1968 P&H 489 .....	9
T. Sareetha v T. Venkata Subbaiah AIR 1983 AP 356.....	11
Timmins v Timmins, (1953) 2 All ER 187.....	9

**Statutes**

Civil Procedure Code, 1908 S 20.....	1
Hindu Marriage Act, 1955 s 30.....	7
Hindu Marriage Act, 1955 s 9.....	7
Hindu Marriage Act, 1955 S.19.....	1
Hindu Marriage Act, 1955 sec 10(1)(b).....	8
Hindu Marriage Act, 1955 Sec 2 .....	5
Hindu Marriage Act, 1955 Sec 5. ....	6
Hindu Marriage Act, 1955, sec 2 (1) (c .....	2
Indian Evidence Act 112 (1872).....	12

**Treatises**

John D Mayne, A Treatise On Hindu Law And Usage (X edition, Alpha Editions, X year)....	3
Mr. D. Tolstoy, in “The Law and Practice of Divorce and Matrimonial Causes” (1963).....	8
Oxford handbook. Personal laws by Flavia Anges .....	11
Poonam Saxena, Family Law Lectures - Family Law I (2nd edition, Lexis Nexis 2021).....	3

**LIST OF ABBREVIATIONS**

<b>ABBREVIATION</b>	<b>TERM</b>
IEA	Indian Evidence Act, 1872
HMA	Hindu Marriage Act, 1955
RCR	Restitution of Conjugal Rights
CPC	Code of Civil Procedure, 1908



**STATEMENT OF JURISDICTION**

The Respondent has invoked the jurisdiction of the Learned District Court under Section 19 of the Hindu Marriage Act, 1955. Section 19 states:

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
  - a) 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**

### **BACKGROUND AND TIMELINE OF EVENTS.**

Anil and Fatima met in college and soon fell in love, after several ups and downs, they decided to get married in a Hindu Temple on 23<sup>rd</sup> August 2020, fearing persecution from their families. Fatima met Raza, who was her college friend and had come to India on 27 September 2021 and soon after they got close providing Fatima with much needed love and support she needed. In the first week of December 2021, Fatima discovered that she was pregnant and reported the same to Anil.

### **CIRCUMSTANCES LEADING TO THE SCENARIO.**

The parties then moved to Anil's parents' house to stay, after there were skirmishes between the parties, Fatima left Anil on January 10th 2022 to stay with her parents in Ropar. Then, Fatima left for US and to be with Raza on 14th February 2022. She married Raza in US and cut off all contact with Anil. Fatima gave birth to a boy on 5th August 2022. She then, visited India with Raza in October 2022 and that is when Anil tried to contact her again.

### **CURRENT SCENARIO.**

Anil has filed for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955 and an application for the grant of a paternity test. And, in case, restitution is not granted, the custody of the child be given to him.

### SUMMARY OF ARGUMENTS

- I.** The marriage is not a valid one, rendering the suit for restitution as not maintainable. Further, grounds under Section 19 of HMA for filing a suit are not satisfied as Fatima resides in the US and the place of last residence for the couple was temporary. Hence the suit is not maintainable.
- II.** The marriage between Anil and Fatima is valid as Fatima has converted to Hinduism and they have undergone a valid Hindu marriage with all the rites and rituals as required. The marriage between Anil and Fatima is valid
- III.** The decree of RCR should not be granted. First of all, the validity of the marriage is uncertain, which disentitles the court to decide on RCR. Further, Anil was cruel to Fatima. Alternatively, the grave and weighty conduct of Anil provides for a reasonable ground to leave. Lastly, RCR violates right to life and personal liberty under Article 21. Hence, a decree of RCR should not be granted.
- IV.** The application of a paternity test is not justified due to presumption under Section 112 of the IEA. Moreover, granting a paternity test would not be in the best interest of the child. Furthermore, granting a paternity test would be in violation of Article 21 of the Indian Constitution.

**STATEMENT OF ISSUES**

- I. Whether the present suit is maintainable in the District Court Chandigarh?
- II. Whether the marriage between Anil and Fatima is valid?
- III. Whether Anil is entitled for a decree of Restitution of Conjugal Rights?
- IV. Whether the application for paternity test is justified?

## ARGUMENTS ADVANCED

### **I. THE PRESENT SUIT IS NOT MAINTAINABLE IN THE DISTRICT COURT OF CHANDIGARH.**

The present suit is not maintainable in the district court of Chandigarh as the marriage is not valid,[A] Fatima's domicile is not in Chandigarh and [B] the place of residence was temporary.[C]

#### A. THE MARRIAGE IS NOT VALID.

1. For a suit for obtaining a decree of restitution to be maintainable, the marriage must be valid.<sup>1</sup> The factum of marriage is essential to be established for a party to apply for a decree of restitution of conjugal rights.<sup>2</sup>
2. Here, the marriage is not valid and isn't governed by the HMA, as argued ahead. Hence, the suit is not maintainable.

#### B. FATIMA'S DOMICILE IS NOT IN CHANDIGARH.

3. The suit for restitution of conjugal rights is to be filed in the place where the respondent-wife resides.<sup>3</sup> Further, Sec 20 of the CPC<sup>4</sup> cannot be relied on to govern the jurisdiction of

---

<sup>1</sup> Ranjana Kejriwal v Vinod Kumar Kejriwal AIR 1997 Bom 380.

<sup>2</sup> Ranveer Sharma v Neelam Sharma AIR 1998 MP 283.

<sup>3</sup> Vinita Himanshu Agarwal v Himanshu Bhanwar Lalji Agarwal AIR 2017 Raj 102.

<sup>4</sup> Code of Civil Procedure, 1908 S 20.

courts, it controls the procedural aspect while Section 19 of HMA<sup>5</sup> governs the substantive aspect.<sup>6</sup> CPC doesn't apply where Section 19 applies.<sup>7</sup>

4. Fatima currently resides in US and not in Chandigarh. Hence, the suit is not maintainable.

C. THE PLACE OF RESIDENCE WAS TEMPORARY.

5. It has been held that there must be an intention of the parties to indefinitely stay at a place for it to be their matrimonial home for 'residence' denotes a permanent stay.<sup>8</sup> If the place of residence is temporary, then the court having territorial jurisdiction over that area won't be competent to hear the matters of disputes.<sup>9</sup>
6. In the present case, the rented accommodation as well as Anil's parents' house were both temporary residences as they ceased to reside at the rented place and also were planning to move out from the parents' house.
7. Hence, the District Court of Chandigarh doesn't have the jurisdiction over this matter of dispute and the suit is not maintainable.

D. OTHER GROUNDS ALSO NOT SATISFIED

8. Other grounds under Section 19 of the HMA is the place of petitioner's residence and the place of marriage solemnisation.

---

<sup>5</sup> Hindu Marriage Act, 1955 S.19.

<sup>6</sup> Upendrakumar v Haripriya 1979 HLR 68.

<sup>7</sup> Vijayalakshmi (G) v Ramachandrasekhara Sastri (G) AIR 1981 SC 1143.

<sup>8</sup> Poonam v Rathi AIR 1967 Ker 178.

<sup>9</sup> Priyadarshini Mohapatra v Lalmohan Mohapatra AIR 2018 Ori 31.

9. In the present case, both these grounds are also not satisfied as there is no mention of the facts which state Anil's residence in Chandigarh at the time of filing the petition. Moreover, the marriage was not solemnised as will be argued ahead.
10. Hence, none of the grounds under Section 19 of HMA for filing a suit are satisfied which renders the suit as not maintainable.

## II. THE MARRIAGE BETWEEN ANIL AND FATEMA IS INVALID.

11. The marriage between Anil and Fatima is invalid since Fatema has not converted to Hinduism [A] and the marriage between a Hindu and a Muslim is invalid under the HMA [B].

### A. FATIMA DID NOT CONVERT TO HINDUISM.

12. Explanation (c) to Section 2 (1)(c) of the HMA legally allows a conversion or re-conversion to Hinduism.<sup>10</sup> A bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention is required as evidence for such conversion.<sup>11</sup> Further, a public declaration of the person clearly, formally and unequivocally renouncing the previous religion<sup>12</sup> and accepting the other should be available.<sup>13</sup> A convert must also embrace Hinduism and follow the cultural system and tradition of the religion and should take the Hindu way of life.<sup>14</sup> A 'Hindu way of life' is not laid down anywhere, but would include observing or celebrating Hindu festivals and

---

<sup>10</sup> Hindu Marriage Act, 1955, s 2(1)(c).

<sup>11</sup> Poonam Saxena, Family Law Lectures - Family Law I (2nd edition, Lexis Nexis 2021) 43 and John D Mayne, A Treatise On Hindu Law And Usage (X edition, Alpha Editions, X year) 195.

<sup>12</sup> Poonam Saxena, Family Law Lectures - Family Law I (2nd edition, Lexis Nexis 2021) 44.

<sup>13</sup> Dr. Abdur Rehman Undre v Padma Abdur Rehman Undre, 2 (1982) DMC 156.

<sup>14</sup> Sapna Jacob, Minor v The State of Kerala & Ors (AIR 1993 Kerala 75) Para 6.

religious days.<sup>15</sup> Interestingly, Continued observance or allegiance to formal religious faith would negate the requirement of adoption of the ‘Hindu way of life’ and would prove fatal to the validity of conversion.<sup>16</sup>

13. Where a Hindu man gets married to a non-Hindu Female in accordance with Shastric ceremonies, the mere fact of solemnization of such marriage does not result in an automatic conversion of the woman into Hindu faith.<sup>17</sup> Furthermore, it cannot be easily inferred that a conversion to Hinduism has taken place when the person concerned denies the factum of conversion.<sup>18</sup>

14. Presently, in order to make Fatima more acceptable to his parents, Anil would often bring Fatima along with him to the temple and would also include her in various Hindu festivities.<sup>19</sup> The rationale underlying Fatima visiting the temple and participating in various Hindu festivities is with an intent to please Anil and his family and not with an intent to convert to Hinduism. This is further corroborated by the fact that she did not protest when Anil’s sister started addressing her as Aarti,<sup>20</sup> or when she was introduced as Aarti to Anil’s parents<sup>21</sup> or when she was introduced as Aarti to all of Anil’s relatives.<sup>22</sup> Fatima’s non-objection to the Anil’s family does not imply a bonafide intention to convert but an intent to please her in-laws. The intention of Fatima to feel accepted and to fit in

---

<sup>15</sup> Poonam Saxena, Family Law Lectures - Family Law I (2nd edition, Lexis Nexis 2021) 43.

<sup>16</sup> Poonam Saxena, Family Law Lectures - Family Law I (2nd edition, Lexis Nexis 2021) 43.

<sup>17</sup> Poonam Saxena, Family Law Lectures - Family Law I (2nd edition, Lexis Nexis 2021) 44, Nilesh Narin Rajesh Lal v Kashmira Bhupendrabhai Banker (2009) SCC OnLine Guj 7352; Margaret Palai v Savitri Jalai, (2009) SCC OnLine Ori 49, GA Arife v Gopal Dutt Sharma, (2009) SCC OnLine Del 1254.

<sup>18</sup> Poonam Saxena, Family Law Lectures - Family Law I (2nd edition, Lexis Nexis 2021) 45.

<sup>19</sup> Moot proposition, paragraph 16.

<sup>20</sup> Moot proposition, paragraph 4.

<sup>21</sup> Moot proposition, paragraph 4.

<sup>22</sup> Moot proposition, paragraph 16.



with her in-laws is also evident when she agrees to go through all the Hindu rites and rituals for the sake of her child.<sup>23</sup>

15. Additionally, the fact that the marriage was performed in a Hindu temple was for ease of the same considering their familial situation,<sup>24</sup> it was in no way an implication of the fact that Fatima had converted to Hinduism.
16. The marriage was further not registered under the **HMA**, though not a compulsory act to be carried out but points towards the intention of the parties that Fatima had in fact not converted to Hinduism.
17. Furthermore, Fatima never adopted to a 'Hindu way of life' She would visit her family during festivals and went to mosque with them, observing all religious customs.<sup>25</sup> She also wanted a nikah which according to her would to be a valid marriage.<sup>26</sup>
18. Fatima time and again voiced her concern to Anil in person regarding the fact that the family refereed to her as Aarti and not by her real name,<sup>27</sup> if Fatima would have converted to Hinduism, she would have no problem in accepting her name to be changed and in addition to that she would unequivocally inform her parents and Raza regarding the same instead of participating in religious festivities with them.<sup>28</sup> Fatima all throughout had no bonafide intention to convert to Hinduism or adopt a Hindu way of life and was true to her faith, that is Islam.

---

<sup>23</sup> Moot proposition, paragraph 14.

<sup>24</sup> Moot proposition, paragraph 7.

<sup>25</sup> Moot proposition, paragraph 11.

<sup>26</sup> Moot proposition, paragraph 10.

<sup>27</sup> Moot proposition, paragraph 16.

<sup>28</sup> Moot proposition, paragraph 11.

19. Therefore, Fatima has not converted to Hinduism.

B. THE MARRIAGE BETWEEN A HINDU AND A MUSLIM IS INVALID UNDER THE HMA

20. The preamble to the **HMA** reads as ‘An act to amend and codify the law relating to marriage among Hindus.’<sup>29</sup> Indicating that the act was enacted to codify the law relating to marriage amongst Hindus. Section 2 of the **HMA** deals with the application of the same and reinforces the abovementioned proposition of law.<sup>30</sup> Section 5 of the **HMA** makes it clear that a marriage may be solemnized between any two Hindus if conditions contained therein are fulfilled.<sup>31</sup> Section 5 is not an optional provision as the usage of the word ‘may’ so indicate. It is not a directory provision and has to be read in positive terms as a mandatory obligation. Section 7 of the **HMA** has to be read with Section 5 of the **HMA** to fulfil the obligations of a valid marriage.<sup>32</sup>

21. Wherein it was admitted and proved by the court that the appellant was a Roman Catholic, the fact that the marriage had been solemnized according to Hindu rites or that the marriage was registered under the **HMA** would not aid in the validity of marriage. The **HMA** only applies to two Hindus as elucidated under Section 2 of the **HMA**.<sup>33</sup>

22. Presently, Fatima is a Muslim and Anil a Hindu at the time of the solemnization of marriage and hence the marriage is invalid under the **HMA**.

---

<sup>29</sup> Hindu Marriage Act, 1955.

<sup>30</sup> Hindu Marriage Act, 1955 s 2.

<sup>31</sup> Hindu Marriage Act, 1955 s 5.

<sup>32</sup> Ibid.

<sup>33</sup> Gullipilli Sowria Raj v Bandaru Pavani, (2009) 1 SCC 714.

### III. ANIL IS NOT ENTITLED TO A DECREE OF RESTITUION OF CONJUGAL RIGHTS.

23. Anil is not entitled to a decree of Restitution of Conjugal Rights because the marriage is invalid, [A] Fatima was subjected to cruelty, [B] Grave and Weighty conduct of Anil and noncompliance of his marital obligations and, [C] Restitution violates Right to life and personal liberty under Article 21. [D]

#### A. THE VALIDITY OF MARRIAGE IS AN ISSUE.

24. Section 9 of the **HMA**, 1955 provides for restitution of conjugal rights in case of a valid marriage. The relief is denied in case the marriage is neither solemnized nor registered.<sup>34</sup> It has been held that this provision doesn't provide scope to include cases where the existence of the marriage itself is in question.<sup>35</sup> If no acceptable evidence is produced to convince the court of a valid marriage, restitution can't be ordered<sup>36</sup> and can be duly rejected.<sup>37</sup>

25. Here, the validity of the marriage is in question and hasn't been decided upon by the competent court of law.

26. Hence, a decree for restitution of conjugal rights cannot be granted.

---

<sup>34</sup> Sanjeev Kumar v Priti Kumari, AIR 2011 Jha 1.

<sup>35</sup> Santosh Kumar Pandey v Ananya Pandey, AIR 2013 Chh 95.

<sup>36</sup> Pallavi Bhardwaj v Pratap Chauhan, 2012 AIR SCW 3805.

<sup>37</sup> Satyabhama Pradhan v Sidhartha Sahoo AIR 2005 Ori 177.

B. FATIMA WAS SUBJECTED TO CRUELTY.

27. A reasonable excuse for leaving under Section 9 would be one which could have been a ground for judicial separation, nullity of marriage or for divorce.<sup>38</sup> Cruelty is a ground for divorce under Section 13<sup>39</sup> and also for judicial separation.<sup>40</sup> The court can refuse to pass a decree against the wife if the husband is guilty of cruelty to an extent that it becomes detrimental for the wife to return to the society of the husband.<sup>41</sup>

28. In the case of, *Russel v. Russel*,<sup>42</sup> the definition of cruelty was laid down as, “There must be danger to life, limb, or health, bodily or mental, or a reasonable apprehension of it, to constitute legal cruelty.” This position was accepted by Indian High Courts.<sup>43</sup> Section 10(1)(b)<sup>44</sup> provides clarity about the nature of cruelty, it states that mere reasonable apprehension about harm (can also be psychological) that can be caused while living with the corresponding spouse constitutes cruelty. To determine whether a conduct will cause harm or not, the mental and physical condition of the spouse must be taken into consideration.<sup>45</sup> The element of malignity in such conduct is not necessary, proving that it resulted in harm will suffice.<sup>46</sup>

---

<sup>38</sup> Annapurnamma v Appa Rao, AIR 1963 AP 312; Revanna v Susselamma, AIR 1967 Mys 165.

<sup>39</sup> Hindu Marriage Act, 1955 s 30.

<sup>40</sup> Hindu Marriage Act, 1955 s 9.

<sup>41</sup> Dular Koer v Dwarka Nath, (1905) 34 Cal 971; Yamunabai v Narayan, (1876) 1 Bom 164; Kondal Rayal v Ranganayaki (1923) 46 Mad 791; Moonshee Buzloor v Shumsoonissa (1867) 11 MIA 551.

<sup>42</sup> Russel v Russel (1924) AC 687.

<sup>43</sup> Annie Baron v B.K. Baron AIR 1950 ALL 516.

<sup>44</sup> Hindu Marriage Act, 1955 s 10(1)(b) .

<sup>45</sup> Mr. D. Tolstoy, in “The Law and Practice of Divorce and Matrimonial Causes” (1963); A. Jayachandra v Aneel Kaur, 2005 AIR SC 534.

<sup>46</sup> Gollins v Gollins (1963) 2 All ER 966.

29. In the present case, there have been multiple instances where Fatema was referred to as Aarti which she did not like.<sup>47</sup> In Anil's parents' house, she was forced to take part in certain activities.<sup>48</sup> All of this was to the extent that she felt suffocated and wanted to escape.<sup>49</sup> This conduct constitutes as mental harm as it reduced the scope of her liberty and also posed a question on her individual identity. There was a reasonable apprehension that if she continued to stay, her mental health would be affected very badly from this continued conduct.

30. Hence, a decree for restitution of conjugal rights cannot be granted.

C. GRAVE AND WEIGHTY CONDUCT OF ANIL AND NONCOMPLIANCE OF HIS MARITAL OBLIGATIONS.

31. Even if the husband is not liable for cruelty, his grave and weighty conduct will post a hindrance in obtaining a restitution decree.<sup>50</sup> Further, it has also been held that, for negating the plea of restitution, it is not necessary to establish actual cruelty, mere continued noncompliance with the marital obligations will suffice.<sup>51</sup> Where a spouse is not sincere regarding the matrimonial duties, the court can refuse to grant the decree.<sup>52</sup>

32. Presently, Anil blatantly refused to listen to Fatema's concerns at various instances. She had been constantly requesting for them to move out of his parents' house as she felt

---

<sup>47</sup> Moot proposition, Paragraph 4,16.

<sup>48</sup> Moot proposition, Paragraph 16.

<sup>49</sup> Moot proposition, Paragraph 16.

<sup>50</sup> *Timmins v Timmins*, (1953) 2 All ER 187.

<sup>51</sup> *Husaini Begum v Md Rustan Ali* (1097) 29 All 222.

<sup>52</sup> *Syal v Syal*, AIR 1968 P&H 489; *Jogindra Kaur v Shivcharan Singh*, AIR 1965 J&K 95; *Shyamal Samaddar v Sampa Samaddar*, AIR 2012 Cal 220.

suffocated there.<sup>53</sup> She wanted Anil to take up a job and share the financial burden of their own household.<sup>54</sup> He denied moving out every time and didn't make a definite promise as to when he will start working and sharing the expenses.

33. They decided that Anil would clear the Civil Service examination in 2 years' time<sup>55</sup> but it was way past that time and he was still struggling to pass the examination. Fatima had cooperated with him during this time and only reacted the way she did when she could not handle it anymore. It was Anil's duty to adhere to her concerns and act in accordance with her desires as well. He failed to fulfill this obligation. Moreover, this noncompliance was continued and not a single instance. He even stopped contacting Fatima regarding her and child's well-being,<sup>56</sup> which substantiates the ignorant nature of his conduct.

34. *Hence, all of this conduct and his denial of marital obligations is grave and weighty enough for the court to decline the plea of restitution.*

D. RESTITUTION VIOLATES RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21.

35. The scope of personal liberty under Article 21<sup>57</sup> has been expanded to include a variety of fundamental rights,<sup>58</sup> so the choice of a person whether to stay in their matrimonial home or not should also come under the ambit of the Article. This is because no one can be a better judge of the favorable situation or environment for a person than himself.

---

<sup>53</sup> Moot proposition, Paragraph 16.

<sup>54</sup> Moot proposition, Paragraph 16.

<sup>55</sup> Moot proposition, Paragraph 9.

<sup>56</sup> Moot proposition, Paragraph 17.

<sup>57</sup> Constitution of India. Art 21

<sup>58</sup> Maneka Gandhi v Union of India (1978) 1 SCC 248.

36. Presently, Fatema left Anil's parents' house because she was in an environment not fit for her mental health to an extent that it all became unbearable for her. Apart from her, no other entity is capable to assess such a situation to determine whether it will be detrimental for her to continue staying or not. Thus, this must be her own choice to make for which she has a right under Article 21.
37. Right to Life with Human Dignity<sup>59</sup> along with right to privacy<sup>60</sup> has also been held as an intrinsic part of Article 21. Individual dignity is the right of an individual to be respected and valued for their personality. It is a human frame which one desires to live in.<sup>61</sup> Subordinating a person's interests and rights over another amounts to violation of Human Dignity.
38. In a patriarchal society, such a provision becomes a tool to drive women to fulfill the procreational needs of other humans because of their inherent low power status. State intervention in intimate matters violates right to privacy.
39. Marriage is a private affair over which the spouses have control to govern the related matters. Judiciary getting involved to direct one of the spouses to act a certain way which otherwise would have been his/her own choice amounts to invasion of that private space. Justice PA Chaudhary in the case of *T. Sareetha v T. Venkata Subbaiah*<sup>62</sup> observed that the social context with the application of Section 9 results in violation of right to dignity and privacy.<sup>63</sup>

---

<sup>59</sup> Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608.

<sup>60</sup> K.S. Puttaswamy v Union of India (2017) 10 SCC 1

<sup>61</sup> Joesph Shine v Union of India, (2018) 2 SCC 189.

<sup>62</sup> T. Sareetha v T. Venkata Subbaiah AIR 1983 AP 356.

<sup>63</sup> Oxford handbook. Personal laws by FlaviaANGES.

40. Hence, a decree of restitution for conjugal rights cannot be granted.

#### **IV. THE APPLICATION FOR A PATERNITY TEST IS NOT JUSTIFIED.**

41. The application for a paternity test is not justified due to the presumption present in Section 112 of the **IEA**, [A] it is not in the welfare of the child and, [B] it violates Article 21 [C].

##### **A. PRESUMPTION OF SECTION 112, IEA.**

42. Section 112 of the **IEA** states that when a child is born to a married couple, the child is presumed to be the legitimate child of the couple, and the husband is presumed to be the father of the child unless there is evidence to the contrary.<sup>64</sup>

43. With regards to Section 112, for the presumption to apply in this case, the child is born out of wedlock.<sup>65</sup> The word born means born and conceived.<sup>66</sup> In this case, alternatively, in a relationship akin to marriage,<sup>67</sup> where an opportunity to have sexual intercourse is there.<sup>68</sup> The child not being born more than 280 days after non-access.<sup>69</sup> Presumption under Section 112 can be rebutted in the case of impotency,<sup>70</sup> infidelity<sup>71</sup> and non-access.<sup>72</sup>

44. Presently, there is presumption on the side of Raza because of the child being born during a wedlock and being conceived in a relationship akin to marriage. Raza and Fatima spend

---

<sup>64</sup> Indian Evidence Act 112 (1872).

<sup>65</sup> Goutam Kundu v State of West Bengal, (1993) 3 SCC 418; Ramesh Kumari v State of NCT of Delhi, (2006) 2 SCC 677; Satya Pal Anand v State of M.P., (2013) 10 SCC 573.

<sup>66</sup> Ibid.

<sup>67</sup> Jagraj Singh v Birpal Kaur, (2007) 13 SCC 1; Alok Kumar v State of NCT of Delhi (2019) 13 SCC 308.

<sup>68</sup> Ibid.

<sup>69</sup> Rajender Singh v Smt. Rano, AIR 1983 Del 512; Ramanand Yadav v Savitri Devi, AIR 1981 Pat 224; Smt. Padmavathi v Dr. N. Venkata Rao, AIR 1976 AP 265.

<sup>70</sup> Bharat Chandra Ray v State of West Bengal (2015) SCC (Cri) 913; Bhabani Prasad Jena v Convenor Secretary, Orissa State Commission for Women (2011) 8 SCC 633; Rohtash Singh v Ramendri (2000) 3 SCC 180.

<sup>71</sup> Suresh Kumar v State of Haryana (2015) 6 SCC 758; Kamti Devi v Poshi Ram (2001) 4 SCC 759.

<sup>72</sup> Ibid.



close moments in hotel rooms, Fatima likes the company of Raza, the child being born when they were married and willing to be together. Presently in the absence of contrary evidence like impotence, infidelity and non-access, the presumption under Section 112 of the IEA cannot be displaced.

45. Therefore, if the presumption under Section 112 of the IEA is not dislodged, then there cannot be the question of paternity test because Raza is presumed the father of the child.

46. Thus, the application for a paternity test is not justified.

B. IT IS NOT IN THE BEST INTEREST OF THE CHILD.

47. In regards to paternity test the welfare of the child is paramount.<sup>73</sup> Firstly, the newly born child should stay with mother.<sup>74</sup> Secondly, the relationship of the person seeking the test with the mother.<sup>75</sup> Thirdly, the child's educational needs.<sup>76</sup> Fourthly, the economic condition of the person seeking a paternity test.<sup>77</sup> Fifthly, granting paternity test in the presence of will lead to the bastardization of the child,<sup>78</sup> and that will surround the child with social stigma and discrimination<sup>79</sup> that will not be in the best interest of the child.<sup>80</sup> Sixthly that will lead to negative psychological well-being,<sup>81</sup> for instance, such tests can

---

<sup>73</sup> Goutam Kundu v State of West Bengal (1993) 3 SCC 418; Sharda v Dharmapal (2003) 4 SCC 493; Gaurav Nagpal v Sumedha Nagpal (2009) 1 SCC 42; Rina Mukherjee v State of West Bengal (2010) 1 SCC 457; Dr. Arun Kumar v Smt. Rupali Rai (2015) 10 SCC 239.

<sup>74</sup> Rosy Jacob v Jacob A. Chakramakkal, (2011) 2 SCC 583.

<sup>75</sup> Madan Mohan Singh v Rajni Kant, (2010) 9 SCC 209.

<sup>76</sup> Sumita Singh v Kumar Sanjay and Anr., (2002) 1 SCC 591.

<sup>77</sup> Ramesh Chandra Agrawal v Regency Hospital Limited & Ors., (2009) 9 SCC 709.

<sup>78</sup> Mohd. Shafi v Mohd. Rafiq & Ors., AIR 2012 SC 222.

<sup>79</sup> Sumit Kumar v State of NCT of Delhi, (2017) 243 DLT 637.

<sup>80</sup> Babita v State of Uttar Pradesh, (2019) 7 SCC 633.

<sup>81</sup> Sheoraj Singh Ahlawat v State of Uttar Pradesh, (2013) 3 SCC 789.

create a long-lasting impact on a child who is at such a tender age.<sup>82</sup> Lastly, Child's relation with the alleged father.<sup>83</sup>

48. Presently, the child is newly born<sup>84</sup> it is in his best interest of him to stay with the mother. Pursuant to this Anil's relation with Fatima is not on good lines.<sup>85</sup> Further, Raza has taken care of care Fatima<sup>86</sup> unlike Anil who stopped contacting due his exam.<sup>87</sup> Additionally, Anil is unemployed<sup>88</sup> he cannot take care of the child. Additionally this test will lead to bastardization of the child.

49. Therefore, granting paternity test is not within the best interest and welfare of the child.

50. *Thus, the application for a paternity test is not justified.*

#### C. VIOLATION OF ARTICLE 21.

51. Article 21 of the Indian Constitution guarantees the right to life and personal liberty,<sup>89</sup> and the right to privacy as an integral part of this fundamental right.<sup>90</sup>

52. If a paternity test is conducted without the consent of the parties involved, it will be considered a violation of their right to privacy under Article 21 of the Indian Constitution.<sup>91</sup>

Paternity testing involves the disclosure of sensitive medical information, which can be

---

<sup>82</sup> Nandlal Wasudeo Badwaik v Lata Nandlal Badwaik, AIR 2014 Bom 184.

<sup>83</sup> Prakash v Phulavati, (2016) 2 SCC 36.

<sup>84</sup> Moot Proposition, Paragraph 18.

<sup>85</sup> Moot Proposition, Paragraph 16.

<sup>86</sup> Moot proposition, Paragraph 18.

<sup>87</sup> Moot proposition, Paragraph 16.

<sup>88</sup> Moot proposition, Paragraph 17.

<sup>89</sup> Constitution of India, art. 21 (1950).

<sup>90</sup> K.S. Puttaswamy v Union of India, (2017) 10 SCC 1.

<sup>91</sup> Mr. 'X' v Hospital 'Z', (1998) 8 SCC 296; Dinesh Kumar v State of Rajasthan, (2018) 12 SCC 125;

damaging to the parties involved, particularly the child.<sup>92</sup> A minor child does not have the legal capacity to give consent for a paternity test on their own behalf.<sup>93</sup> In case he is able to understand the consequences, his opinion may be taken into consideration.<sup>94</sup> Child and the mother not consenting to the test is considered to be a violation of **Article 21** of the Indian Constitution<sup>95</sup>. The right to privacy is not absolute<sup>96</sup>, can be allowed if necessary to the trial.<sup>97</sup>

53. Presently, the child is newly born<sup>98</sup> and will not be able to give his. In the absence of child consent, any test would be in violation of the child's right to privacy. Furthermore, the test is unnecessary as the presumption under Section 112 of the **IEA** is present.

54. Therefore, the paternity test would violate the right to privacy of the child and would be ultra-virus to the Constitution of India.

55. *Thus, the application for a paternity test is not justified.*

---

<sup>92</sup> Anmol Gupta v Union of India, (2018) 2 SCC 51; Sharda v Dharmpal, (2003) 4 SCC 493; Sachidanand Pandey v State of West Bengal, AIR 1987 SC 1109; Rupali Gupta v Rajat Gupta, (2016) 2 SCC 95.

<sup>93</sup> Ibid. at 16.

<sup>94</sup> Gaurav Nagpal v Sumedha Nagpal is (2009) 1 SCC 42.

<sup>95</sup> Selvi & Ors. v State of Karnataka (2010) 7 SCC 263.

<sup>96</sup> Sharda v Dharmpal (2003) 4 SCC 493.

<sup>97</sup> Ibid.

<sup>98</sup> Moot Proposition, Paragraph 18.

**PRAYER FOR RELIEF**

Wherefore in light of the facts stated, issues raised, arguments advanced and authorities cited, The Defendant most humbly and respectfully request the Learned District Court to adjudge and declare that:

- I. The present suit is not maintainable in the District Court Chandigarh.
- II. The marriage between the petitioner and defendant invalid.
- III. The Petitioner is not entitled for a decree of restitution of conjugal rights.
- IV. The application for paternity test is not justified.

And pass any other order in the favour of the respondent, that the court may deem fit in the ends of justice and good conscience.

*All of which is most humbly and respectfully submitted before this Court.*

Date: 21<sup>st</sup> March, 2023

Counsel No.:

TC-30

Place: Chandigarh

(Counsel for the

Defendant)