Family Law Cases 2021
Supreme Court & High Courts



As the year 2021 is coming to an end, LiveLaw brings to you an yearly Round-up of important updates in the subject of Family Law from the Supreme Court and various High Courts. This yearly digest includes 100 orders and judgments, divided into 18 different heads.

Orders Pertaining to Marriage, its Registration & its Validity

1. Consent Of Family, Community Or Clan Not Necessary Once Two Adult Individuals Agree To Enter Into Wedlock: Supreme Court

[Case: Laxmibai Chandaragi B v. State of Karnataka; Citation: LL 2021 SC 79]

A bench comprising Justices Sanjay Kishan Kaul and Hrishikesh Roy of the Supreme Court observed that consent of the family or the community or the clan is not necessary once two adult individuals agree to enter into a wedlock.

2. SDM Issuing Notices At Residence Of Couple Seeking Registration Of Marriage Under Special Marriage Act Prima Facie Contempt Of Court: Delhi High Court

[Case: Parveen Bano v. Chandra Shekhar SDM South West]

The Delhi High Court observed that the act of a Sub Divisional Magistrate (SDM) to issue notices at the residence of a couple seeking registration of marriage under the Special Marriage Act is prima facie contempt of court as being in clear violation of its earlier directions issued in

2009 directing all Marriage Officers to not despatch notices to the residence of the applicants, seeking solemnization of their marriage under Chapter II of the Act.

3. Personal Appearance For The Purpose Of Seeking Registration Of Marriage Would Include Video Conferencing: Reiterates Delhi High Court

[Case: Reena Chadha & Anr. v. GNCTD]

The Delhi High Court observed that personal appearance for the purpose of seeking registration of marriage by a couple would include video conferencing mode.

Relying on the settled judgments on the subject, Justice Rekha Palli said that it will allow the petition filed by a NRI couple, seeking exemption from physical appearance for Marriage Registration. The Couple claimed to have been married as long as back on 06.12.2001 and to be residents of USA.

4. Marriage Registration Allowed Through Video Conferencing: Kerala High Court

[Case: Sreelakshmi J.S. v. The Kadukutty Grama Panchayath & Ors]

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Justice P B Suresh Kumar of the Kerala High Court allowed the completion of marriage registration formalities through the medium of video conferencing. The Court directed an authorised representative of the petitioner's husband to file an affidavit before the Local Registrar for Marriages and sign on the marriage register in the presence of the husband through video conferencing. However, the husband is to appear physically before the Registrar within a year and sign in the marriage register, failing which the Registrar is at liberty to revoke the marriage registration.

5. Daughter Has Every Locus To Question Validity Of Father's Second Marriage: Bombay High Court

[Case: Nayana M. Ramani v. Fizzah Navnitlal Shah]

The Bombay High Court authoritatively ruled that a daughter could present a petition challenging the validity of her parent(s)' second marriage. A Division Bench of Justices VG Bisht and RD Dhanuka interpreted clause (b) of the Explanation appended to Section 7 to hold that a daughter has every locus to bring in question the validity of her father's marriage.

It was stated, "Having regard to the Objects and Reasons of the Act vis-a-vis literal construction of Clause (b) under Explanation, in our considered view, the appellant has every locus to bring in question the validity of marriage of her father with the respondent and as also respondent's status."

6. Notaries/Oath Commissioners Not Authorised To Execute Marriage/Divorce Documents: MP High Court Calls For Strict Guidelines

[Case: Mukesh S/o. Mr Lakshman @ Lakshminarayan. v. The state of M.P.]

Coming down heavily on Notaries/Oath Commissioners who are involving themselves in executing the document in respect of the marriage, divorce, etc, the Madhya Pradesh High Court called for strict guidelines, "to be issued to the Notaries and oath commissioners for not executing such type of deed, failing which their license would be terminated."

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The Bench of Justice Vivek Rusia observed, "The job of the Notary is defined under the Notary Act. He is not supposed to perform the marriage by executing documents… Neither the Notary is authorized to perform the marriage nor competent to execute the divorce deed."

7. Muslim Man Can Marry More Than Once Without Divorcing Earlier Wife But Same Doesn't Apply To A Muslim Woman: P&H High Court

[Case: Nahida & Anr. V. State of Haryana & Ors.]

While hearing a protection plea filed by a Muslim couple, the Punjab & Haryana High Court observed that "a Muslim man may get married more than once without divorcing his earlier wife but the same does not apply to a Muslim lady".

The Bench of Justice Alka Sarin noted that the Petitioner No.1, the Muslim lady (who admittedly was married earlier) did not obtain a legally valid divorce from her first husband before marrying Petitioner No. 2, Muslim Man.

In other words, in the instant matter, petitioner No.1 (Muslim Woman) and 2 (Muslim Man) got married without petitioner No.1 (Muslim Woman) obtaining a legally valid divorce from her first husband.

Dissolution of Marriage/ Divorce

1. No Point In Persuading Them To Live Together : Supreme Court Dissolves An 'Emotionally Dead' Marriage Invoking Article 142 Powers

[Case: Subhransu Sarkar v. Indrani Sarkar; Citation: LL 2021 SC 455]

The marriage between the parties is emotionally dead and there is no point in persuading them to live together any more, the Supreme Court has remarked while it dissolved a marriage invoking its powers Article 142 of the Constitution. "The marriage between the parties is emotionally dead and there is no point in persuading them to live together any more. Therefore, this is a fit case for exercise of jurisdiction under Article 142 of the Constitution of India", the bench comprising Justices L. Nageswara Rao and BR Gavai observed while dissolving the marriage.

2. Marriage Had Not Taken Off From The Very Beginning, Living Apart For More Than 19 Years': SC Grants Divorce For Irretrievable Break Down Of Marriage

[Case: Poonam v. Surendra Kumar]

The Supreme Court exercised its powers under Article 142 of the Constitution to grant divorce to a couple on account of irretrievable break down of marriage. The Court noted that the marriage had 'not taken off from the very beginning' and that the couple had been living separately for more than 19 years.

A Bench comprising Justices Sanjay Kishan Kaul and M.M Sundresh observed, "If the parties have not been able to subserve the very objective of marriage of companionship for each other from the very inception and have been living apart for more than 19 years, we are of the view that if this is not an irretrievable break down of marriage then what would be the situation of that kind"

3. Unequal Treatment Of Wives A Valid Ground For Divorce For Muslim Women: Kerala High Court

[Case: Ramla v. Abdul Rahuf]

A Division Bench of Justice A. Muhamed Mustaque and Justice Sophy Thomas of the Kerala High Court ruled that the refusal of a Muslim man to perform his marital obligations with his first wife after a second marriage is a good ground for divorce. It was further held that if there exists a marriage with another lady during the subsistence of the previous marriage, the burden is on the husband to prove that he had treated both wives equitably in accordance with the injunctions of Quran.

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4. Wife's Habit Of Chewing Tobacco Not Sufficient To Grant A Decree Of Divorce: Bombay High Court

[Case: Shankar v. Rina]

Dismissing an appeal filed by a Husband against the Family Court's Judgment and decree dismissing the husband plea for a decree of divorce, the Bombay High Court (Nagpur Bench) ruled that wife's habit of chewing tobacco alone is not sufficient to grant a decree of divorce.

Noting that if the marriage is dissolved, the children would suffer a great loss, the Bench of Justice Pushpa V. Ganediwala and Justice A. S. Chandurkar ruled that no case is made out by the appellant/husband to disturb the well-reasoned findings of the trial Court.

5. Family Courts Constituted Under Secular Law; Cannot Turn Away Parties Seeking Divorce Under Customary Laws: Jharkhand High Court

[Case: Baga Tirkey v. Pinki Linda & Anr.]

The Jharkhand High Court held that Family Courts cannot turn away parties seeking divorce under their customary laws.

A Division Bench comprising of Justices Aparesh Kumar Singh and Anubha Rawat Choudhary has held, "The Family Court fell in error in holding that the suit is not maintainable in absence of codified substantive law as are applicable to the parties...whether the parties are able to plead and prove the custom governing the matters of divorce between them for seeking relief was an issue to be decided on merits after considering the pleadings and evidence on record."

6. 'Panchayati Divorce' Has No Legal Sanctity, Such Customs Ceased To Exist After Formulation Of Hindu Marriage Act: P&H High Court

[Case: Nishan Singh & Anr. v. State of Punjab & Ors.]

While noting that the Hindu Marriage Act, 1955 is a complete Code and provides for the conditions of marriage as well as the procedure for divorce, the Punjab and Haryana High Court clarified that a 'Panchayati' divorce has no recognition in the eyes of law.

The Bench of Justice Alka Sarin observed that in view of Section 4 of the Hindu Marriage Act,1955 all customs like 'Panchayati' divorce and related usages ceased to have effect.

7. Exception Of Customary Divorce U/S 29(2) Hindu Marriage Act Not Attracted In Absence Of Declaration From Civil Court Regarding Its Validity: Calcutta High Court

[Case: Krishna Veni v. Union of India & Ors.]

The Calcutta High Court has held that merely obtaining a customary divorce will not attract the exception envisaged under Section 29(2) of the Hindu Marriage Act. A Single Bench of Justice Sabyasachi Bhattacharyya has made it clear that the validity of such a divorce has to be established by a deed of declaration.

"For Section 29(2) of the 1955 Act to be invoked, it has to be established by the party relying on a custom that the right of the party was recognized by custom, to obtain the dissolution of a Hindu marriage," it held.

8. Present Generation Taking Concept Of Marriage Very Lightly, They Apply For Divorce On Unimaginable Trivial Issues: Madras High Court

[Case: Annapoorani v. S. Ritesh]

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The Madras High Court observed that the concept of marriage in the present generation is taken very lightly and even for trivial issues, they file divorce, and marriage is broken.

The Bench of Justice V. Bhavani Subbaroyan specifically remarked, "The Family Courts increase in numbers to cater to the demand of intolerant couple, who are unmindful of the institution of marriage, break the relationship on unimaginable trivial reasons."

Also Read: Plea In Supreme Court Seeks Compulsory Pre-Marital Counselling Before Registration Of Marriage

9. "Why Marriage Not Ended Legitimately?": P&H High Court Questions Man Who Is In Live In Relation After Wife Allegedly Deserts Him

[Case: Nirbhey Singh & Anr. v. State of Punjab & Ors.]

The Punjab & Haryana High Court questioned a man as to why he didn't legitimately end his matrimonial alliance from his wife, after he (and his female live-in partner) filed a protection plea and claimed that he has been compelled to provide motherly care to his children since his wife has deserted him.

The Bench of Justice Arun Monga observed that his inaction to legitimately end his matrimonial alliance from the biological mother of his children, indicated a lack of bona fides on his part. However, in order to avoid any possibility of the female partner being put to any unnecessary perils and/or having been misled by the Man, the Court ordered protection to the female live-in partner (petitioner number 2/a widow).

10. Customary Divorce A Social Evil, Happens On Account Of The Attitude Of Ill-Minded Male Chauvinists: Gujarat High Court

[Case: Bhartiben v. Amitbhai Vitthalbhai Sojitra]

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Underscoring that customary divorce is a social evil, the Gujarat High Court refused to grant a declaration regarding the dissolution of marriage on the basis of a customary divorce of a couple noting that the same was not adequately proved by the wife (who was in an appeal seeking such declaration).

The Bench of Justice JB Pardiwala and VD Nanavati, however, clarified that the parties were at liberty to file an appropriate application under the relevant provision of the Hindu Marriage Act and pray for a decree of divorce with consent, and directed the court to take such application for hearing at the earliest.

Grounds for Divorce

1. Marital Rape A Valid Ground For Divorce: Kerala High Court

[Case: X v. Y]

A Division Bench of Justice A. Muhamed Mustaque and Justice Kauser Edappagath of the Kerala High Court in a significant judgment upheld that marital rape, although not penalised in India, is a good ground to claim divorce although the law does not recognise marital rape under penal provisions. The Court while empathising with the situation of the woman observed that a husband's licentious disposition disregarding the autonomy of the wife is marital rape, albeit such conduct cannot be penalised, it falls in the frame of physical and mental cruelty.

2. Muslim Women Entitled To Invoke Extra-Judicial Divorce: Kerala High Court

[Case: X v. Y and other connected matters]

Overruling a 49-year-old judgment that barred Muslim women from resorting to extrajudicial modes of dissolving marriage, a Bench of Justice A. Muhamed Mustaque and Justice C.S Dias at the Kerala High Court upheld the validity of these modes, finding that the Dissolution of Muslim Marriages Act did not contemplate the undoing of the extra-judicial divorce modes available to women under personal law. The Court also specially instructed Family Courts not to adjudicate upon extra-judicial divorce unless it was called upon to do so in an appropriate manner since the Courts were overburdened with a large number of cases.

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3. When Spouse Refuses Offer To Cohabit Without Reasonable Cause, It Amounts To 'Constructive Desertion': Kerala High Court

[Case: P.C.Kunhinarayanan v. Vijayakumari]

The Kerala High Court has held that when the appellant-husband makes an offer to resume the marital relationship, and the respondent-wife resists without any reasonable cause, failing to resume cohabitation, it would amount to "constructive desertion". While allowing an application for dissolution of marriage, a division bench of Justices A. Muhamed Mustaque and Kauser Edappagath drew from the Supreme Court decision in Savitri Pandey v. Prem Chand Pandey (2002), where it was held that desertion may also be constructive and has to be inferred from the present circumstances.

Section 13(1)(b) of the Hindu Marriage Act, 1955 states that desertion must be for a continuous period of not less than two years immediately preceding the presentation of the petition. In the Explanation to the said provision, the word 'desertion' is defined as the desertion of the petitioner by the other party to the marriage without reasonable cause and the consent or against the wish of such party. It includes the wilful neglect of the petitioner by the other party, and its grammatical variation and cognate expression have to be construed accordingly.

Cruelty as Ground for Divorce

1. Wife Creates Matrimonial Profile : Bombay High Court Grants Husband Divorce On Grounds Of 'Mental Cruelty'

[Case: Premdeep v. Bhavana]

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Relying on instances of high degree of "mental cruelty" meted out by a wife to her 36-year-old husband, the Bombay High Court's Nagpur Bench granted him a divorce.

Justice GA Sanap held that the evidence on record proves that the respondent-wife inflicted upon the appellant-husband mental pain and sufferings which would make it impossible for him to live with her. It has been proved that the mental cruelty is such that it would in all probability cause injury to the health of the appellant, he added.

It was further held that the family court had failed to consider the wife's marriage profiles on two matrimonial websites while rejecting the man's divorce petition last year.

2. Wife Levelling Allegations Affecting Career & Reputation Of Husband Amounts To Mental Cruelty Against Him For Seeking Divorce: Supreme Court

[Case: Joydeep Majumdar v. Bharti Jaiswal Majumdar; Citation: LL 2021 SC 116]

A bench comprising Justices Sanjay Kishan Kaul, Dinesh Maheshwari and Hrishikesh Roy observed that wife levelling allegations which affects career and reputation of husband is mental cruelty against him for the purpose of seeking divorce. "The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party," the bench observed.

3. Repeated Filing Of Cases & Complaints Against Spouse Can Amount To 'Cruelty' For Granting Divorce

[Case: Sivasankaran v. Santhimeenal; Citation: LL 2021 SC 448]

The Supreme Court observed that repeated filing of cases and complaints against a spouse can amount to 'cruelty' for the purpose of granting divorce under Hindu Marriage Act. The bench of Justices Sanjay Kishan Kaul and Hrishikesh Roy, in a case, referred to such conducts, even if they were subsequent to filing of the divorce petition, to grant divorce to a 'husband' on the ground of irretrievable breakdown of marriage and the ground of cruelty.

4. Wife Making Serious Unproved Allegations Of Criminal Conduct Against Husband Constitutes 'Cruelty': Delhi High Court Upholds Divorce Decree

[Case: Neelam v. Jai Singh]

The Delhi High Court observed that a wife making serious allegations of criminal conduct

against her husband and his parents, which she was unable to prove in Trial Court, amounts to an act of "cruelty".

The Division Bench of Justice Vipin Sanghi and Justice Jasmeet Singh thus upheld the divorce decree granted to the husband by a Family Court and dismissed the wife's appeal under Section 19 of the Family Courts Act.

5. Calculated Acts Of One Parent To Alienate Child From Other Parent Amount To "Mental Cruelty" : Kerala High Court

[Case: X v. X]

The Kerala High Court has ruled that any act by a parent that resulted in a denial of a child's love and affection to the other parent by alienating the child amounts to mental cruelty.

Deciding a matrimonial appeal filed by a husband accusing his wife of cruelty, the Justices A Muhamed Mustaque and Dr Kauser Edappagath said, "Nothing can be more painful than experiencing one's children—one's own flesh and blood—rejecting him/her. The above acts of the respondent willfully alienating the child from the appellant, no doubt, constitute mental cruelty..."

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6. Wife Staying Abroad For Career Not 'Cruelty' To Husband Or 'Desertion Of Spouse': Bombay High Court

[Case: Prakashchandra Joshi vs Kuntal Prakashchandra Joshi and others]

Observing that the wife's decision to remain in Canada, where she settled with the couple son is not "unjustified" or "selfish," the Bombay High Court refused to grant a divorce to a 44-year-old engineer alleging cruelty and desertion following his spouse's refusal to join him in India.

The court reproduced the woman's resume, details of her flourishing career with a pharmaceutical company in Canada to note that the husband could rejoin his wife, especially since it was his idea to settle in Canada for better prospects in the first place.

A division bench of Justices Ujjal Bhuyan and Prithviraj Chavan thus refused to entertain the husband's appeal against a Family Court's order dismissing his petition for divorce under section 13 (1)(ia) (cruelty) and 13(1)(ib) (desertion) of the Hindu Marriage Act 1955.

7. Making Unfounded Allegations/Complaints Against Spouse With A View To Affect His/Her Job Amounts To Causing Mental Cruelty: Bombay High Court

[Case: Thalraj v. Jyoti]

Noting that it appears from the conduct of the husband that in one way or the other he intended to prejudice the service of the wife, the Bombay High Court (Nagpur Bench) upheld the Judgment and Order passed by the Family Court, Nagpur granting decree of divorce in favor of the Wife.

The Bench of Justice A. S. Chandurkar and Justice Pushpa V. Ganediwala specifically observed, "...Making of unfounded allegations against the spouse or his/her relatives in the pleadings or making complaints with a view to affect the job of the spouse amounts to causing mental cruelty to the said spouse."

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8. Making False Accusation Of Impotency By A Spouse In Matrimonial Proceedings Amounts To Cruelty: Kerala High Court

[Case: XXX v. XXX]

The Kerala High Court held that casting aspersions of impotency or erectile dysfunction by one spouse against other in matrimonial proceedings will constitute cruelty.

The appeal was filed by the appellant husband represented by Adv. NK Subramanian, against the order of the Family Court, Thrissur which denied a decree of dissolution of marriage to the appellant. The High Court allowed this appeal and set aside the order of the Family Court to the extent of rejecting the claim for dissolution of marriage on the ground of cruelty.

9. Levelling Accusation Of Unchastity And Perfidiousness Against Wife Amounts To Mental Cruelty: Kerala High Court While Granting Divorce To Couple

[Case: Sabitha Unnikrishnan vs. Vineet Das]

The Kerala High Court while allowing a matrimonial appeal established that that unsubstantiated accusation and character assassination by one spouse against the other would constitute mental cruelty.

A Division Bench comprising Justice A. Muhamed Mustaqu and Justice Kauser Edappagath observed as follows: "The respondent has miserably failed to substantiate the imputation made by him that the appellant has relationship with another person and she is an unchaste woman. Levelling disgusting accusation of unchastity and attributing aspersions of perfidiousness to the wife would undoubtedly amount to worst form of mental cruelty."

10. Compelling A Married Woman To Live In Her Parental Home Amounts To Cruelty: Madhya Pradesh High Court

[Case: Amar Singh v. Vimla]

The Madhya Pradesh High Court observed that compelling a married woman to live in her parental home after marriage amounts to cruelty and that for this reason, it cannot be said that she was living seperately without reasonable reason.

The development came from a single judge bench comprising of Justice GS Ahluwalia who was dealing with a criminal revision petition challenging the Family Court's order directing the

husband to pay Rs.7,000/- per month to wife under sec. 125 CrPC.

11. "Husband Viewed Wife As Cash Cow On Getting Job With Delhi Police": Delhi HC Dissolves Marriage On Ground Of Cruelty

[Case: Sanno Kumari v. Krishan Kumar]

The Delhi High Court has dissolved marriage between a couple by decree of divorce on the ground of cruelty observing that the husband had viewed his wife as a cash cow on getting a job with Delhi Police without any emotional ties.

Justice Vipin Sanghi and Justice Jasmeet Singh was dealing with an appeal filed by a wife challenging the Family Court order after observing neither of the grounds of cruelty or desertion was established by her.

12. Delhi HC Denies Divorce To Husband Saying Wife's Allegation Of Dowry Demand & Alcoholism Didn't Amount To 'Cruelty'

[Case: Harish Kumar v. Sarita]

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The Delhi High Court observed that normal wear and tear in a marital relationship is to be expected, however, it cannot be a reason to end the relationship.

Justice Vipin Sanghi and Justice Jasmeet Singh further observed that the allegations made by the wife against husband demanding dowry and indulging in alcohol consumption, do not tantamount to making serious allegations impinging on his character, to such an extent, that they would be the cause of immense mental agony and cruelty to him.

Bigamy

1. Section 494 IPC: Second Marriage While Divorce Decree Was Stayed; Appeal Dismissed Later; No Offence Of Bigamy: Kerala High Court

[Case: Manoj v. State of Kerala & Ors.]

The Kerala High Court held that if a party enters into a second marriage when the appeal of the decree of divorce of the first marriage is still pending, he/she will not be guilty of the offence of bigamy under Section 494 of the Indian Penal Code if the appeal is subsequently dismissed.

While allowing a petition filed under Section 482 of the Code of Criminal Procedure to quash the complaint alleging bigamy, Justice P. Somarajan ruled that Section 15 of the Hindu Marriage Act does not override Section 28 of the Hindu Marriage Act, which confers a right of appeal.

2. Person Involved In Live-In Relation Without Obtaining Divorce From Spouse May Face Bigamy Charge: P&H High Court

[Case: Harpreet Kaur & Anr. v. State of Punjab & Ors.]

The Punjab & Haryana High Court observed that if a married person is in live-in-relationship, without obtaining a divorce from his/her spouse, then that may amount to an offence under 494 of the Indian Penal Code (Bigamy).

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The Bench of Justice Ashok Kumar Verma observed thus while dealing with a plea filed by a woman, along with her partner, who was in a live-in relationship without obtaining a divorce from her husband.

Divorce By Mutual Consent

1. Can A Single Bench of Supreme Court Pass A Decree Of Divorce By Mutual Consent? Conflicting SC Orders

[Case: Avinash Tiwari v. State of UP & Ors.]

Can a Single Bench of the Supreme Court pass a decree of divorce by mutual consent? A few judges, while sitting singly, have passed such divorce decrees, and some others, observing that they lack such a power, have referred the cases to Division benches.

Recently, a single bench of the Supreme Court invoked Article 142 of the Constitution to grant a decree of divorce by mutual consent.

Recently, another single bench of Justice AS Oka had observed that a single bench cannot pass a decree divorce by mutual consent.

2. Single Bench Hearing Transfer Petition Cannot Invoke Article 142 To Pass A Decree Dissolving Marriage By Mutual Consent: Supreme Court

[Case: Sabita Shashank Singh v. Shashank Shekhar Singh; Citation: LL 2021 SC 157]

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The Supreme Court observed that its single bench while hearing a Transfer Petition cannot invoke power under Article 142 of the Constitution to pass a decree for dissolving a marriage by mutual consent.

In this case, the parties (husband and wife) to a transfer petition before the Supreme Court filed a joint application for divorce by mutual consent of the parties. They requested the court to invoke jurisdiction under Article 142 of the Constitution of India, and to dispense with the compliance of some of the procedural formalities and timeline contemplated in Section 13B of the Hindu Marriage Act. The transfer petition was filed by the wife seeking transfer of the divorce petition filed by the husband from the Family Court, Pune, Maharashtra to the Principal Judge, Family Court, Gautam Budh Nagar, Uttar Pradesh.

3. Single Bench Hearing Transfer Petitions Cannot Pass Mutual Consent Divorce Decree Invoking Article 142

[Case: Neha @ Pooja Alizad v. Vaibhav Kumar @ Chetan Sancheti; Citation: LL 2021 SC 469]

The Supreme Court has observed that a single bench hearing Transfer petition cannot pass a decree divorce by mutual consent under Section under Section 13 B of the Hindu Marriage Act, 1955 read with Article 142 of the Constitution of India. In a recent order, Justice Abhay S. Oka, referring to Supreme Court Rules 2013, said he could not pass a decree of divorce 'sitting singly'. Therefore, the judge directed the registry to place the petition before the Chief Justice for necessary directions.

4. Unilateral Withdrawal Of Consent From Joint Divorce Petition, After Other Party Has Performed Obligations Under Agreement, Cannot Be Permitted : Kerala High Court

[Case: Benny v. Mini]

The Kerala High Court has delivered a notable judgment holding that unilateral withdrawal of consent by a spouse from a joint petition filed for divorce, after the other party has performed his/her obligations under the agreement, is unsustainable in law.

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The Court termed it a "sharp practice, which cannot be permitted or tolerated for a moment as it would shatter the faith of the litigants in the justice delivery system and make a mockery of alternative dispute resolution mechanism". Once the parties agree to file a joint petition pursuant to an agreement or a compromise in pending proceedings, then the parties are estopped from withdrawing from the agreement, the court held categorically.

5. Existence Of Serious Dispute Between Husband And Wife Not A Prerequisite For Grant Of Divorce By Mutual Consent Under Hindu Marriage Act: Chattisgarh HC

[Case: Sandhya Sen v. Sanjay Sen]

The Chattisgarh High Court has observed that existence of a serious dispute between a husband and wife is not a prerequisite for grant of divorce by mutual consent under sec, 13B of the Hindu Marriage Act, 1955. While observing so, the Court also opined that a judicial separation, instead of divorce by mutual consent cannot be granted in a mechanical manner.

A division bench comprising of Justice Prashant Kumar Mishra and Justice NK Chandravanshi observed thus: "The provisions contained in Section 13-B of the Act, 1955 does not provide for existence of a ground like the ones contained in Section 13 for grant of divorce by mutual consent. There need not be a serious dispute between a married couple for seeking a divorce by mutual consent. It may happen in a given case that there is no quarrel or dispute between the couple but yet their actions and behaviour are not compatible with each other for living a happy and peaceful married life, therefore, they may seek divorce by mutual consent."

Waiver of Cooling Off Period

1. Is 'Denial Of Sex' Sufficient Cause To Condone 1Yr Waiting Period For Filing Divorce Under Hindu Marriage Act? Delhi High Court To Examine

[Case: Rishu Aggarwal v. Mohit Goyal]

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The Delhi High Court is set to examine whether denial of sex by married parties to each other itself is sufficient to cause 'exceptional hardship' under Section 14 of the Hindu Marriage Act, 1955, so as to waive off the one year waiting period for filing a divorce petition.

Observing that the issue needs consideration, Justice Vipin Sanghi and Justice Jasmeet Singh appointed Senior Advocate Pritesh Kapur as the Amicus Curiae in the matter.

2. Lower Court's Insistence On 6-Month Wait Uncalled For, Marriage Irretrievably Broken: Punjab & Haryana High Court Waives Off Six Months Period

[Case: Sunita @ Nisha v. Yogesh Kumar]

The Punjab & Haryana High Court observed that approach adopted by the lower Court in insisting the parties to wait for another six months for a second motion hearing, when when the marriage between the parties has irretrievably broken, is totally uncalled for.

The Bench of Justice Arun Monga said: "The marriage between the parties has irretrievably broken and now they have decided to part their ways, so that they both have an opportunity to live their lives in the manner they like and in the given situation, the insistence of the Court below to wait to another six months would result in adding to their woes."

3. 'They Resided Together Only For Two Days': P&H HC Condones Mandatory Period Of 1Yr For Filing Divorce Petition; Dissolves Marriage Of 'Young Couple'

[Case: Shivani Yadav v. Amit Yadav]

The Punjab and Haryana High Court granted a divorce decree to a couple who had stayed together only for two days after they had gotten married.

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A Division Bench of Justice Ritu Bahri and Justice Archana Puri went on to allow the application filed by the couple under Section 14 of the Hindu Marriage Act wherein they had prayed that mandatory period of one year before filing the petition under Section 13-B of the Act for dissolution of marriage be condoned.

Maintenance

1. Supreme Court Disapproves Estranged Wife's Demand That Alternate House Should Have 'Same' Luxuries As Matrimonial Home

In a matrimonial dispute, the Supreme Court disapproved the stand taken by an estranged wife that the alternate accommodation offered to her should have the "same" luxuries as her matrimonial home, where she used to live with her husband.

The Bench of Justices L Nageswara Raoa and BR Gavai also rejected her plea seeking permission to reside in the matrimonial home, after noting that "relations between the parties are so strained that if they are permitted to live in the said house, it would lead to nothing else but further criminal proceedings".

2. Section 125 CrPC- "Obligation Of A Father To Maintain His Son Will Not Come To An End When He Attains Majority": Delhi High Court

[Case: Urvashi Aggarwal & Ors. v. Inderpaul Aggarwal]

The Delhi High Court held that the obligation of a father to maintain his son under sec. 125 of CrPC would not come to an end when the son attains the age of majority after reasoning that the entire burden of his education including other expenses would fall entirely upon the mother.

3. S.125 CrPC- Father Not Absolved From Maintaining Children Merely Because Mother Is Also Earning: Delhi High Court

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[Case: Urvashi Aggarwal & Ors. v. Inderpaul Aggarwal]

The Delhi High Court observed that in households where women are working and are able to sufficiently maintain themselves, it does not automatically absolve the husband of his responsibility to provide sustenance for his children.

The observation was made in connection to revision of maintenance order passed by the High Court under Section 125 of CrPC.

4. Un-Remarried Ex-Wife Incapable Of Maintaining Herself Has Right To Maintenance Beyond Iddat Period: Karnataka High Court

[Case: Ezazur Rehman v. Saira Banu]

The Karnataka High Court has held that a Muslim man is duty-bound to make provision for his ex-wife's maintenance beyond iddat period, despite paying Mehr, if she remains un-remarried and is incapable of maintaining herself.

Justice Krishna S Dixit said, "Marriage amongst Muslims begins with the contract and graduates to the status as it ordinarily does in any other community; this very status gives rise to certain justiciable obligations...such a marriage dissolved by divorce, per se does not annihilate all the duties & obligations of parties by lock, stock & barrel; in law, new obligations too may arise, one of them being the circumstantial duty of a person to provide sustenance to his ex-wife who is destituted by divorce."

5. Maintenance Amount Awarded By Family Court Must Be Realistic & Reasonable; Order Should Be Clear & Reasoned: Delhi High Court

[Case: Sheetal Joshan Roy v. Soumyajit Roy]

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The Delhi High Court observed that maintenance amount awarded by the Family Court must be realistic and reasonable and that the order passer by such Courts must be clear and well reasoned- indicative of the facts, controversy and reasoning of its conclusion.

Justice Vipin Sanghi and Justice Jasmeet Singh also observed that the objective of granting interim or permanent maintenance to a spouse is to ensure that they are not reduced to financial constraints due to the failure of their marriage.

6. 'Legal Loopholes Allow Offenders To Slip Away Unscathed': Delhi High Court On Maintenance Dispute Between Couple Having Living Spouses

[Case: Sunder Lal Saini v. Meena Saini]

Dealing with a peculiar maintenance dispute arising between a married couple having living first spouses, the Delhi High Court expressed it's sympathy with the position of the woman observing that the legal loopholes allow offending parties to slip away unscathed.

The Court observed that ordinarily, even if a woman does not have the legal status of a wife, she is brought within the inclusive definition of "wife" in order to maintain consistency with the object of the statutory provision.

7. Maintenance Order U/S 125 CrPC May Be Enforced In Any Place Where Person Against Whom It Is Made May Be; Residence Not Material: Delhi HC

[Case: Asha Devi & Ors. v. Muneshwar Singh]

The Delhi High Court observed that the presence of a person at preferred jurisdiction at the time of application for maintenance against him under Section 125 of the Code of Criminal Procedure would be a material fact for execution of the said order of maintenance.

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Justice Chandra Dhari Singh added that Section 128 of the Code which contemplates procedure for enforcement of order of maintenance, use the words 'where the person against whom it is made may be' and not where he is residing or where his permanent property is.

8. Wife Being Capable Of Earning No Ground To Deny Her Interim Maintenance, Many Time Wives Sacrifice Their Career Only For Family: Delhi High Court

[Case: Col. Ramnesh Pal Singh v. Sugandhi Aggarwal]

The Delhi High Court observed that the fact that a wife is capable of earning is no ground to deny interim maintenance to her opining that many time wives sacrifice their career only for the family.

Justice Subramonium Prasad also observed that the object of sec. 125 Cr.P.C is to bring down the agony and financial suffering of a women who leave her matrimonial home so that some arrangements could be made to enable her to sustain herself and her child.

9. Father Legally Bound To Provide Maintenance To Child Born Out Of Interfaith Marriage: Kerala High Court

[Case: J.W. Aragadan v. Hashmi N.S & Anr.]

In a significant decision, a Division Bench comprising Justice A. Muhamed Mustaque and Justice Kauser Edappagath of the Kerala High Court ruled that a father is legally obligated to provide maintenance for his child born out of an inter-faith marriage. It was observed that caste, faith or religion cannot have any rational basis for determining the parental duty of a father. All the children have to be treated alike irrespective of the faith or religion professed by the parents.

10. Man Can't Ignore Responsibility To Maintain Divorced Wife & Daughter On The Ground Of Inadequacy Of Carry Home Pay: Tripura High Court

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[Case: Supriya Bhattacharjee and another v. Debabrata Chakraborty]

While observing that the husband can't be permitted to ignore his responsibility for maintaining his divorced wife & daughter on the ground of inadequacy of carry home pay, the Tripura High Court directed a husband to pay Rs.17,000/- per month to his divorced wife for her maintenance and maintenance of their daughter.

The Bench of Justice S. G. Chattopadhyay was hearing a criminal revision petition, wherein the divorced wife challenged the order of Family Court, Agartala whereby the monthly maintenance

allowance payable to her was enhanced from Rs.5000/- to Rs.8000/- declining her request for enhancing the amount from Rs.5000/- to Rs.23,500/- per month.

11. When A Man Marries A Woman Knowing Fully That She Was Not Legally Divorced From Her Earlier Marriage Can't Plead Invalidity Of Marriage In 125 Proceedings: Chhattisgarh HC

[Case: Teras Dongare v. Avinash Dongare]

The Chhattisgarh High Court has held that a man, who marries a woman knowing fully well that her earlier marriage has not ended in a valid divorce, is estopped from raising plea of invalidity of marriage in maintenance proceedings under Section 125 of CrPC.

The observation was made by a Single Bench of Justice Rajendra Chandra Singh Samant while presiding over a revision filed against the order passed by a Family Court, denying maintenance to the Applicant-wife on the ground that she has not obtained a valid divorce from her first husband and hence, she is not a legally wedded wife of the Respondent (second husband).

12. Wife Entitled To Maintenance Even If She Unilaterally Divorces Her Husband If She Is Unable to Maintain Herself: Calcutta High Court

[Case: Rehena Khatoon v. Jargis Hossain]

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The Calcutta High Court ruled that a divorced wife is entitled to maintenance under Section 125 of the Code of Criminal Procedure (CrPC) even if the divorce had been unilaterally initiated by her.

In the concerned case, the petitioner had challenged an order dated 18th November, 2017 passed by the Additional Sessions Judge, 5th Court, Murshidabad whereby maintenance under Section 125 of the CrPC had been denied to the petitioner.

13. Can Wife Claim Maintenance After Mutual Consent Divorce And Mutually Agreed Payment Of Lumpsum As Final Settlement? Calcutta HC Refers Matter To Larger Bench

[Case: Prasenjit Mukherjee v. State of West Bengal and Ors]

The Calcutta High Court referred to a larger Bench the legal issue as to whether a wife can claim maintenance under Section 125 of the Code of Criminal Procedure (CrPC) after the marriage has been dissolved by a divorce decree on mutual consent under Section 13B of the Hindu Marriage Act and the payment of a lump sum amount has been made to the wife as full and final settlement for past, present and future maintenance.

Justice Tirthankar Ghosh made the reference after noting that there existed conflicting High Court judgments on the issue.

Child Custody/ Visitation

1. Custody Of Child Obtained By Playing Fraud On Court Liable To Be Declared Void Ab Initio

[Case: Smriti Madan Kansangra v. Perry Kansangra; Citation: LL 2021 SC 555]

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The Supreme Court recalled an order granting custody of a child to a Kenyan citizen of Indian origin after finding that he had played fraud on the court and had approached it with "unclean hands" by suppressing material facts. A bench comprising Justices Uday Umesh Lalit, Ajay Rastogi and Hemant Gupta declared its earlier order granting custody to the father who played fraud as "illegal" and "ab initio void". Observing that the party has defied the conditions imposed by the Court for taking the child to Kenya after securing his custody, the Court directed the CBI to initiate proceedings to secure and entrust the custody of the child to his mother. The Court also asked the Centre and the Indian mission in Kenya to help the mother and ordered registration of a suo motu contempt case against Perry Kansagra, the father of the child. The Court has directed Perry Kansagra's physical presence before it on November 16 and asked the registry to pay Rs 25 lakh as litigation cost, from the amount deposited earlier by him with it, to his wife.

2. Child Visitation Rights For Merely 30 Minutes A Month Insufficient: Delhi High Court Prima Facie Opines

[Case: Samrat Singh Rawat v. Poonam Rawat]

The High Court prima facie opined that merely thirty minutes of child visitation rights in a month granted to a parent is insufficient. A Bench of Justices Vipin Sanghi and Jasmeet Singh observed,

"The grievance of the appellant father is that the Family Court has granted only 30 minutes audio-visual access to the appellant per month in respect of the two twin children who are now aged two and a half years each, which is wholly insufficient. Prima facie, we agree with this grievance of the appellant."

3. Child Visitation Rights Of Muslim Man Diminishes On Espousing Second Wife During Subsistence Of First Marriage: Karnataka High Court

[Case: Mohammed Mushtaq G K v. Ayesha Banu]

The Karnataka High Court has held that child visitation rights of a Muslim man diminishes to a great extent, on him having married to another woman during the subsistence of the first marriage.

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Justice Krishna S Dixit said, "Now it has been well settled that the act of a Muslim in espousing a second wife during the subsistence of first marriage per se amounts to cruelty and that not only the first wife can stay away from the matrimonial home but seek divorce too on that ground."

Further it said that, "If the wife can stay away from the matrimonial home on the ground of second marriage, it goes without saying that she can normally retain the exclusive custody of

her minor child. This Court is of a considered view that even the visitation rights of such a father will diminish to a great extent, subject to all just exceptions."

4. Woman Entering Into New Relationship Without Securing Divorce Wouldn't Deprive Her Of Custody Of Minor Child: Allahabad HC

[Case: Anmol Shivhare (Minor) v. State Of U.P. And 4 Others]

The Allahabad High Court observed that the fact that the mother enters into a new relationship allegedly without obtaining divorce from her husband, may be something that the law and the society frown upon, but, this in itself, wouldn't deprive her of the custody of her minor child.

The Bench of Justice J. J. Munir observed that "depriving the minor of his mother's company, might have an adverse impact on his overall development. This, in-turn would derogate from the minor's welfare."

Directions to Family Courts

1. Family Court Cannot Try Criminal Cases Under IPC: Supreme Court Corrects A 'Wrong Order' Passed In Transfer Petition

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[Case: Sunita Manoj Sinh v. State Of Maharashtra & Ors.]

The Family Court cannot deal with a criminal complaint for various offences under the Indian Penal Code, the Supreme Court remarked while modifying an earlier 'wrong' order it had passed in a transfer petition.

The court had, earlier this year, allowed a Transfer Petition 'as prayed for'. But the said prayer sought to transfer criminal case registered under various provisions of the Indian Penal Code (including under Section 498-A IPC) from the Judicial Magistrate Court Thane, Maharashtra, to

the Family Court, Vadodara, Gujarat.

2. Supreme Courts Directs A Family Court In UP To Conduct Trial Through Video Conferencing

[Case: Anjali Brahmawar Chauhan v. Navin Chauhan; Citation: LL 2021 SC 35]

Taking note of the pandemic situation, a bench comprising CJI SA Bobde, L. Nageswara Rao and Vineet Saran directed a Family Court in Uttar Pradesh to conduct the trial through video conferencing.

3. Family Court Does Not Have Plenary Powers To Do Away With Mandatory Procedural Requirements: Supreme Court

[Case: Aman Lohia v. Kiran Lohia; Citation: LL 2021 SC 167]

A bench comprising Justices AM Khanwilkar, BR Gavai and Krishna Murari observed that Family Courts does not have plenary powers to do away with the mandatory procedural requirements.

Family Court is expected to follow procedure known to law, which means insist for a formal pleading to be filed by both sides, then frame issues for determination, record evidence of the parties to prove the facts asserted by the concerned party and only thereafter, to enter upon determination and render decision thereon by recording reasons for such decision, the Court observed.

4. "A Quarter Of A Century Has Passed": Supreme Court Directs Expeditious Trial Of A Partition Suit Pending For 26 Years

[Case: Jimmy Dora Sukhia v. Roshani Farukh Chinoy; Citation: LL 2021 SC 353]

"A quarter of a century has passed in determining whether the licenser is entitled to seek occupation of the portion occupied by her son!", the Supreme Court observed while directing a Court in Pune to expedite the trial of a partition suit which is pending for 26 years. "We can hardly envisage a situation where for 26 years, a suit is pending at the first stage, and we have to decide the appeal and the second appeals which would arise thereafter.", the bench comprising Justices Sanjay Kishan Kaul and Hemant Gupta observed.

5. Family Courts Expected To Act With Due Application Of Mind Without Being Hyper- Technical, Should Have Litigant Friendly Approach: Delhi High Court

[Case: Ajay Dubey v. Annapurna]

The Delhi High Court observed that the family courts are expected to act with due application of mind without being hyper technical, having a litigant friendly approach.

Justice Vipin Sanghi and Justice Jasmeet Singh observed thus: "The Family Court is obliged to function so as to relieve the parties of the suffering that they are going through on account of matrimonial disputes. It is expected to act with due application of mind and without being hypertechnical about matters brought before it. The Family Court should have a litigant friendly approach, and function in the spirit of helping parties resolve their disputes – either mutually, or through the Courts determination."

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6. Kerala High Court Issues Guidelines For Family Court To Endorse Divorce Under Muslim Personal Law, Says Detailed Enquiry Not Necessary

[Case: Asbi K.N. v. Hashim M.U]

A Division Bench comprising Justice A. Muhamed Mustaque and Justice Kauser Edappagath formulated guidelines to be followed by the Family Court in a petition filed to endorse an extrajudicial divorce under Muslim Personal Law. It held that the unilateral extrajudicial divorce under Muslim Personal law is complete when either of the spouses pronounces talaq, talaq-e-tafweez or khula, in accordance with Muslim Personal Law and that the Court's seal was not necessary to the validity of any of these modes.

7. Kerala High Court Issues Guidelines To Family Courts For Early Disposal Of Cases

[Case: Shiju Joy A. v. Nisha]

Kerala High Court has issued guidelines to streamline and prescribe a uniform procedure for disposal of cases before Family Courts in the State.

The order has been passed by a Division Bench comprising of Justices A Muhamed Mustaque and CS Dias in a batch of petitions highlighting the hurdles faced by the parties in resolving their matrimonial disputes.

Access full report to read directions

8. Kerala High Court Directs Family Courts To Mask The Name Of Adoptive Parents When Issuing Certified Copies Of Orders

Kerala High Court directed the Registrar (District Judiciary) to issue necessary directions to all family courts in the state to mask the name of adoptive parents while issuing certified copies of orders.

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While hearing a case pertaining to the correctness of a procedure for surrender and adoption, a Division Bench of Justices A Muhamed Mustaque and Dr Kauser Edappagath noted that the certified copy of an order issued by the Family Court disclosed the names of the adoptive parents.

Highlighting that the Adoption Regulations, 2017 under the Juvenile Justice Act (Protection and Care of Children) Act, 2015 required that the confidentiality of adoptive parents had to be maintained in public portal and adoption records, as per Regulation 45.

9. Kerala High Court Issues Directions On How Family Courts Are To Adjudicate Cases Involving Extra Judicial Modes Of Divorce At The Instance Of Wife Under Muslim Law

[Case: X v. X]

While upholding the validity of the extra judicial modes of divorce for women, the Kerala High Court issued directions to Family Courts on the course to follow while adjudicating cases that involved these methods.

Pointing out that the there is no difficulty for the Family Court to endorse an extra-judicial divorce to declare the matrimonial status of a person a bench of Justices A Muhamed Mustaque and CS Dias issued directions on the subject.

The Court directed that in the matter of talaq, khula, mubaraat, talaq-e-tafwiz, the Family Courts shall entertain such applications moved by either of the parties or both parties to declare the marital status of such parties.

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Transfer of Matrimonial Disputes

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1. Wife Having No One In Family To Escort Her To Court A Good Ground For Transfer Of Matrimonial Case: Allahabad HC

[Case: Garima Tripathi v. Suyash Sharma]

While allowing a transfer application filed by a woman seeking to transfer a divorce case proceeding, the Allahabad High Court observed that the applicant-wife having no one in her family to escort her on the journey to court is a good ground for the transfer of a case.

Observing thus, the Bench of Justice Vivek Varma allowed the application of the wife by noting that in matrimonial cases, the convenience of the wife is the dominating factor for justifying the transfer of a matter.

2. Divorce Suit Transfer- "Convenience Of Wife Is To Be Preferred Over The Convenience Of Husband": Rajasthan High Court

[Case: Ekta Dhadhich v. Rajendra Prasad Sharma]

Dealing with a plea of wife seeking transfer of the Divorce case, the Rajasthan High Court (Jaipur Bench) observed that in such matters, courts are required to give more weightage and consideration to the convenience of the female litigants in comparison to the husband's convenience.

"Transfer of legal proceedings from one Court to another should ordinarily be allowed taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships," the Bench of Justice Chandra Kumar Songara further observed.

3. Can't Transfer Matrimonial Case On Husband's Convenience Just Because Of His Posting To A Different Station: Allahabad HC

[Case: Surendra Singh v. Smt. Vineeta Singh]

The Allahabad High Court observed that merely because the husband has now been posted to a different station, a matrimonial dispute case cannot be transferred according to his convenience.

This assertion came from the Bench of Justice J. J. Munir, that was hearing the plea of one Surendra Singh seeking transfer of a divorce case filed by him u/s 13 of the Hindu Marriage Act, 1955 from the court of Principal Judge, Family Court, Hapur to Banda or any other adjoining

district.

Hindu Undivided Family

1. Hindu Undivided Family - No Presumption That Business Run By Karta In Tenented Premise Is Joint Family Asset: Supreme Court

[Case: Kiran Devi v. Bihar State Sunni Wakf Board; Citation: LL 2021 SC 195]

Just because a business was run by a karta of a Hindu Undivided Family in a tenented premise, there is no presumption that it is a joint Hindu family business, held a bench comprising of Justices Ashok Bhushan, S Abdul Nazeer and Hemant Gupta. It observed that even if a male member had taken premises on rent, he is tenant in his individual capacity and not as Karta of Hindu Undivided Family in the absence of any evidence.

2. 'Karta' Of Joint Hindu Family Cannot File Consumer Complaint In Respect Of Deficiency In Service Regarding Treatment Given To His Pregnant Sister-in-law

[Case: Jaganarayan Lal v. Doctor Girija Tiwari; Citation: LL 2021 SC 478]

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The Supreme Court observed that a Karta of a Joint Hindu Family cannot file a consumer complaint in respect of deficiency in service on part of the Hospital/Doctor regarding the treatment given to his pregnant sister-in-law. The concept of Joint Hindu Family does not extend to the treatment of a pregnant sister-in-law, the bench of Justices Hemant Gupta and V. Ramasubramanian observed.

3. Alienation Of Joint Hindu Family Property By 'Karta' For Legal Necessity Or Benefit Of Estate Binding On Other Members: Supreme Court

[Case: Beereddy Dasaratharmi Reddy v. V. Manjunath; Citation: LL 2021 SC 732]

Where a Karta has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows, the Supreme Court observed. The bench comprising Justices MR Shah and Sanjiv Khanna noted that a joint Hindu family is capable of acting through its Karta or adult member of the family in management of the joint Hindu family property.

Family Settlement

1. Consent Decree Based On Admission Recognizing Pre-Existing Rights Under Family Settlement Does Not Require Registration: Supreme Court

[Case: Khushi Ram v. Nawal Singh; Citation: LL 2021 SC 106]

A bench comprising of Justices Ashok Bhushan and Subhash Reddy held that a consent decree based on admission recognising pre-existing rights under Family settlement does not require registration under section 17(1)(b) of the Indian Registration Act.

"We, thus, conclude that in view of the fact that the consent decree dated 19.08.1991 relate to the subject matter of the suit, hence it was not required to be registered under Section 17(2) (vi) and was covered by exclusionary clause. Thus, we, answer question No.1 that the consent decree dated 19.08.1991 was not registrable and Courts below have rightly held that the decree did not require registration," the bench held.

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2. Compromise Decree In Respect Of Land Which Is Not Subject-matter Of Suit But Is Part Of Family Settlement Does Not Require Compulsory Registration

[Case: Ripudaman Singh v. Tikka Maheshwar Chand; Citation: LL 2021 SC 293]

The Supreme Court has observed that a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members does not

require compulsory registration. The Bench comprising Justices Sanjay Kishan Kaul and Hemant Gupta observed that a compromise decree entered into between the parties in respect of land which was not the subject matter of the suit is valid and a legal settlement. The issue in appeal was whether a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members requires compulsory registration in terms of Section 17(2)(vi) of the Registration Act.

3. Family Settlement Document Which Merely Records Past Transaction Does Not Require Compulsory Registration

[Case: Korukonda Chalapathi Rao & Ors v. Korukonda Annapurna Sampath Kumar; Citation: LL 2021 SC 530]

The Supreme Court held that a family settlement document which merely sets out the existing arrangement and past transaction will not be compulsorily registrable under Section 17(1)(b) of the Registration Act, 1908, if it doesn't by itself creates, declares, limits or extinguishes rights in the immovable properties. Therefore, such a document will not be hit by the bar under Section 49 of the Registration Act. "If we apply the test as to whether the Khararunama in this case by itself 'affects', i.e., by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create, declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Section 49(1)(a) of the Registration Act," a bench of Justices KM Joseph and SR Bhat observed.

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Will

1. Is It Mandatory To Seek Probate Or Letters Of Administration For Establishing A Right As Executor Or Legatee Under A Will? Supreme Court Explains

[Case: Ravinder Nath Agarwal v. Yogender Nath Agarwal; Citation: LL 2021 SC 85]

A Single Bench of Justice V. Ramasubramanian observed that the mandatory requirement to seek probate or letters of administration for establishing a right as executor or legatee under a Will, is applicable only to Wills made by a Hindu, Buddhist, Sikh or Jaina within the local limits of the ordinary original civil jurisdiction of certain High Courts and to Wills made outside those territories, to the extent they cover immovable property situate within those territories.

2. Mechanical Compliance Of Stipulations U/Sec 63 Indian Succession Act Does Not Prove Execution Of Will

[Case: State of Haryana v. Harnam Singh (D); Citation: LL 2021 SC 683]

The Supreme Court observed that mechanical compliance of stipulations under Section 63 of the Indian Succession Act, 1925, does not prove the execution of a Will. Evidence of meeting the requirement of the said provision must be reliable, the bench of Justices L. Nageswara Rao and Aniruddha Bose said.

Domestic Violence

1. Domestic Violence Act Cannot Be Used As A Ploy By Son To Claim Father's Property On The Strength Of Wife's Right Of Residence: Delhi HC

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[Case: Aarti Sharma & Anr. v. Ganga Saran]

The Delhi High Court held that the provisions of Domestic Violence Act, being a social welfare legislation, cannot be used by a son as a ploy to either claim a right in his father's property or to retain possession of the same on the strength of his wife's right of residence.

Justice Pratibha Singh observed thus: "The provisions of the DV Act cannot be used as a ploy by the son, to either claim a right in his father's property or continue to retain possession of the father's property, on the strength of his wife's right of residence."

2. Civil Appeal May Be Filed Against Family Court's Order Under Domestic Violence Act: Bombay High Court

[Case: Dr. Sandip Mrinmoy Chakrabarty v. Reshita Sandip Chakrabarty]

The Bombay High Court has held that the reliefs canvased under Sections 19 to 22 of the Domestic Violence Act are predominantly of the civil nature and there is no infirmity in filing a civil appeal against an order passed under the said provisions.

The observation was made with respect to a case whereby two separate proceedings filed by a wife, one for divorce under the Special Marriage Act and another against restrain order under the Domestic Violence, were clubbed, and heard and decided by a Family Court.

3. "Normal Wear And Tear In Family Cannot Amount To Torture To An Extent That Bride Committed Suicide": Delhi Court Acquits Husband And Family Members

[Case: State v. Vijay etc.]

A Delhi Court acquitted husband and in laws of a deceased wife, who committed suicide within one month of marriage, of the charges of cruelty, dowry death and abetment to suicide after observing that "normal wear and tear in the family in an initial period of marriage cannot amount that the woman was tortured to an extent that she was compelled to commit suicide."

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Additional Sessions Judge Charu Agarwal also went ahead to observe that "If a bride/girl commits suicide in unnatural circumstances within few days or month of her marriage, the law raises presumption against boy's family but doesn't it also show hyper sensitivity of a girl who did not give time to this pious relationship."

4. Recovery Proceeding Under Domestic Violence Act Only An Ancillary Proceeding, Not A Bar To Subsequent Adjudication By Family Court: Kerala High Court

[Case: Mahin Kutty v. Anshida]

Kerala High Court has held that recovery proceedings instituted under Section 20 of the Domestic Violence Act would not operate as a bar on a Family Court adjudication of the matter.

The bench of Justices A Muhamed Mustaque and Dr Kauser Edappagath ruled that proceedings under the Domestic Violence Act were ancillary to the main inquiry of whether the woman faced domestic violence in the home.

5. 'Connected Questions Would Arise': Bombay HC Says Domestic Violence Case Can Be Transferred To Family Court To Be Heard With Divorce Case

[Case: Anirudh Ajaykumar Garg v. State of Maharashtra]

The Bombay High Court has allowed a husband's application to transfer the Domestic Violence case filed against him by his wife from a Metropolitan court to the Family court, saying that both the cases would essentially give rise to "common and connected questions."

Justice CV Bhadang also rejected various other contentions raised by the wife – including that her case against the husband and in-laws for not honouring the Metropolitan court's order in the DV case needed to be heard by the same court which was hearing the DV case.

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6. Divorced Wife Not Entitled To Right Of Residence Under Section 17 Domestic Violence Act: Kerala High Court

[Case: Ramachandra Warrior v. Jayasree]

A divorced wife would not be entitled to the right of residence conferred under Section 17 of the Protection of Women from Domestic Violence Act, the Kerala High Court has held.

The Division Bench comprising Justices K. Vinod Chandran and MR Anitha held that the said right is available only to a woman in a domestic relationship. However, the court observed that a divorced wife occupying a shared household can be evicted only in accordance with law.

7. 'Second Marriage After Divorce Not Domestic Violence': Bombay High Court Admonishes Wife For Abuse Of Process Of Law

[Case Title Redacted]

The Nagpur bench of the Bombay High Court ruled that a man entering into a second marriage after divorce will not amount to cruelty or an act of domestic violence under the provisions of the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act) while quashing proceedings initiated by the ex-wife.

Justice Manish Pitale observed that the contention that second marriage after the grant of a divorce decree amounts to domestic violence cannot be accepted and accordingly remarked, "Merely because the applicant No.1 performing a second marriage cannot come within the definition of domestic violence under Section 3 of the D.V. Act".

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Guardians & Wards Act

1. Are Orders U/S 12 Of Guardians & Wards Act Appealable U/S 19 Of Family Courts Act? Delhi HC Refers Question To Larger Bench

[Case: Dr. Geetanjali Aggarwal v. Dr. Manoj Aggarwal]

The Delhi High Court referred to the larger bench the question as to whether an order passed under Section 12 of the Guardians and Wards Act, or any order dealing with aspects of visitation and custody during the pendency of proceedings, would be appealable under Section 19(1) of the Family Courts Act.

Justice Vipin Sanghi and Justice Jasmeet Singh was of the view that the decision of the coordinate bench in Colonel Ramesh Pal Singh v. Sugandhi Aggarwal, holding that an order under Section 12 of GWA is an interlocutory order an hence non-appealable, requires re-consideration.

2. 'Redefine Jurisdiction Of Family Courts Under Guardianship And Wards Act To Protect Interests Of Children Of Transnational Marriages': Madras High Court

[Case: J.Beula Sima Saral v. W.Issac Robinson]

The Court observed that the jurisdiction of Family Courts as stipulated under the Guardians and Wards Act, 1890 must be redefined so as to adequately protect the rights and interests of children whose parents have entered into transnational marriages.

Opining on the need to enact a revised legislation, Justice J. Nisha Banu observed, "Guardians and Wards Act, 1890, was of the year 1890 where inter-country marriages or foreign marriages were not even in contemplation. As on date, those kind of marriages are innumerable happening each and every day. The law should take a lien matching the changes happening in the society. If the law is lacking behind, the rights of the parties will also lack behind. Therefore, it is the time for the Legislature to take note of the above types of marriages and taking into account the interest of the children, may redefine the jurisdiction of the Family Court, so that neither the children nor the person interested in the welfare of the children shall suffer"

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Adoption

1. Christian Couple Wrongly Adopts Under Hindu Adoption Act; Delhi High Court Declares Them 'Adoptive Parents' As They Took Good Care Of Child

[JS & Anr. v. CARA]

The Delhi High Court gave relief to a Christian couple who had looked after a child for six years from her birth, although they had not followed the legal route for adoption.

The couple, who were childless, had adopted the child through an adoption deed executed under the Hindu Adoption and Maintenance Act, despite the fact the said Act is not applicable to Christians. They said that they executed the adoption deed under a "wrong legal advice".

2. Inter-Country Adoptions: Delhi High Court Asks Centre To Submit its Report On A Permanent Mechanism To Deal With Inter-Country Adoptions

[Rajwinder Kaur v. CARA]

The Delhi High Court directed the Secretary, Ministry of Women and Child Development, Government of India to file a report before it regarding the manner and mode of creating a permanent mechanism to deal with inter-country adoptions under Hindu Adoptions & Maintenance Act, both direct and indirect, within a period of two months.

In order to ensure the welfare of the adopted children and to provide a timely mechanism for the biological/adoptive parents as also the child, in view of the experience of Central Adoption Resource Authority(CARA) in dealing with inter country adoptions, the court directed CARA to act as the Authority for the purposes of enabling inter country adoptions under HAMA.

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Also Read: Will Consider Permitting Advocates To Appear As 'Authorized Representatives' To Facilitate Formalities In Inter-Country Adoptions: CARA Tells Delhi HC

Other Important Decisions

1. Relief Against Third-Party Can't Be Claimed In Proceedings Between Husband & Wife Under Hindu Marriage Act

[Case: Nitaben Dinesh Patel v. Dinesh Dahyabhai Patel; Citation: LL 2021 SC 570]

The Supreme Court held that in a proceeding under the Hindu Marriage Act between a husband and a wife, a relief against a third party cannot be claimed. The Court held so while rejecting a wife's plea to seek a declaration that the alleged marriage between her husband and another woman was void. "Under the provisions of the Hindu Marriage Act, the relief of divorce, judicial separation etc. can be between the husband and the wife only and cannot extend to the third party. Therefore, by virtue of Section 23A of the Hindu Marriage Act, it is not open for the appellant herein – original defendant to seek declaration to the effect that the marriage between the respondent – original plaintiff and the third party is void. No relief can be prayed by way of counter claim even against the son born out of the alleged wedlock between the respondent – original plaintiff and the third party", a Bench comprising Justices MR Shah and AS Bopanna stated.

With respect to the permissibility of counter-claim under Order VIII Rule 6A of the CPC, the Bench observes that the core question which requires consideration is whether the appellant-wife could have claimed the relief sought qua para 37 by way of counter-claim in a marriage petition filed by the respondent-husband for dissolution of the marriage? Answering the question in negative, the Bench held that as per S.23A of the Hindu Marriage Act, by way of counter-claim the appellant-wife can pray for reliefs only those which can be prayed or granted under HMA namely- Restitution of Conjugal Rights (S.9); Judicial Separation (S.10); Declaration of marriage between petitioner and respondent void (S.12) and divorce (S.13). Crucially, the Bench holds that no relief can be prayed qua third party.

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2. A Daughter Expecting Father To Support Her Education Will Also Have To Play Role As A Daughter: Supreme Court

[Case: Ajay Kumar Rathee V. Seema Rathee]

While hearing a matrimonial dispute, the Supreme Court of India observed that a daughter must understand that if she is expecting the father to support her education, she will also have to play a role as a daughter. A Bench comprising Justice SK Kaul and Justice MM Sundresh made the observations after it was informed that the daughter has refused to meet the father or speak to him on call.

"The daughter must also appreciate that if she is expecting the father/appellant to support her education, she will also have to play a role as a daughter", the Court observed.

3. French Civil Code Continues To Apply To Descendants Of 'Renouncants' In Pondicherry In Marriage, Divorce Matters : Karnataka High Court

[Case: Leo John v. Eugenia Preethi]

The Karnataka High Court granted divorce to a couple under the French Civil Code as they were descendants of inhabitants of Pondicherry(now called Puducherry) who were governed by the French Civil Code.

A division bench of Justice B V Nagarathna and Justice M G Uma said "Neither the Special Marriage Act, 1954 nor the Indian Christian Marriage Act, 1872 would apply to renouncants."

It added "French Civil Code would continue to apply to those persons who are known as renouncants, including the descendants of renouncants irrespective of where they presently reside and other Personal Laws are not applicable to them."

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4. "Live Your Own Life As Per Your Own Wish": Gujarat High Court Reunites Inter-Caste Couple Who Were Earlier Forced To Divorce

[Case: Hitendrakumar Ranchhodji Thakore v. State of Gujarat]

The Gujarat High Court reunited an inter-caste couple who was forced into a divorce in the year 2017, within two weeks of marriage, as the family of the woman didn't approve of the relationship.

The bench of Justice R. M. Chhaya and Justice Nirzar Desai was hearing the habeas corpus plea of Hitendrakumar Ranchhodji Thakore, a doctor by profession who sought production of Rinkuben, 26 years old nurse.

5. Secular Law For Marriage And Divorce is The Need Of The Hour: Kerala High Court

[Case: XXX v. XXX]

The Kerala High Court while dealing with a matrimonial appeal examining the validity of marital rape as a ground for divorce, remarked that marriage and divorce must be brought under the secular law.

A Division Bench of Justice A. Muhamed Mustaque and Justice Kauser Edappagath while dismissing the appeal, observed as such: "Individuals are free to perform their marriage in accordance with personal law, but they cannot be absolved from compulsory solemnization of the marriage under secular law. Marriage and divorce must be under the secular law; that is the need of the hour. Time has come to revamp the marriage law in our country."

6. Wedding Gifts From Parents For Daughter's Welfare Not Dowry

[Case: Vishnu R. v. State of Kerala & Ors.]

Justice M.R. Anitha ruled that presents given to the bride by her parents at the time of her marriage for her welfare will not count as dowry under the ambit of the Dowry Prohibition Act, 1961 if no demand was made on that behalf. It was also elucidated that such gifts should also have been entered in a list maintained in accordance with rules made under this Act to not come within the purview of Section 3(1) of the Act which prohibits giving or taking of dowry.

7. Son-In-Law Has No Legal Right In Father-In-Law's Property

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[Case: Davis Raphel v. Hendry Thomas]

While dismissing a second appeal with costs, Justice N. Anil Kumar ruled that a son in law cannot have any legal right in his father in law's property and building, even if he has spent an amount for the construction of the building. The Court went to the extent of observing that when the father-in-law is in possession of the property, the son-in-law cannot plead that he had been adopted as a member of the family. It was reiterated that the residence of son-in-law, if any, in the building is only permissive in nature.

8. "Will Lead To Anarchy If Permitted": Delhi HC Sentences Man For Three Months For Wilful Disobedience Of Repeated Court Directions In Matrimonial Dispute

[Case: Sonali Bhatia v. Abhivansh Narang]

The Delhi High Court sentenced a man to simple imprisonment for a period of three months including imposition of a fine of Rs. 2000 for wilful disobedience of repeated Court directions in a matrimonial dispute requiring him to pay maintenance to his wife.

Observing that the actions or omissions of the husband in choosing to show complete disregard to the orders of the Court cannot be countenanced, Justice Vipin Sanghi and Justice Jasmeet Singh said that if such action is permitted, it will lead to anarchy and the Rule of Law would become a casualty and that the orders of the Courts would be taken lightly and breached at the own sweet will of the individual concerned.

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9. Mother In Law Being Owner Not Barred From Claiming Eviction Against Daughter In Law Where Residence Is A Shared Household: Delhi High Court

[Case: Madalsa Sood v. Maunicka Makkar & Anr.]

In the facts of a case for possession of property, the High Court has observed that the mother in law being the owner of the property is not barred from claiming eviction against her daughter in

law where the residence is a shared household. "Where a residence is clearly a shared household, it does not bar the owner, the plaintiff herein, from claiming eviction against her daughter-in-law, if the circumstances call for it," Justice Asha Menon observed. The Bench thus granted a decree of possession in favour of a mother in law and against the daughter in law and her mother, while granting them three months' time to vacate the premises.

10. Husband, Family Members Can't Treat Woman Like Slave Just Because She Is A Psychiatric Patient: Orissa High Court

[Case: Dipak Bhutia v. State of Odisha]

While denying Regular Bail to a Husband booked for allegedly subjecting her wife (complainant-victim) to cruelty, the Orissa High Court observed that a woman can't be treated like "slave bereft of any mercy and human compassion" just because she is allegedly a Psychiatric patient.

The Bench of Justice S. K. Panigrahi specifically observed, "Even the allegation of psychological illness of the complainant-victim does not give the petitioner and his family members the handle to treat her like slave bereft of any mercy and human compassion."

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