

CONFERENCE ON MATRIMONIAL LAWS (P-1392)

02nd & 03rd March 2024

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Case Law Jurisprudence [Cruelty as a Ground for Divorce] <i>(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)</i>		
1.	Joydeep Majumdar v. Bharti Jaiswal Majumdar , (2021) 3 SCC 742 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - For considering dissolution of marriage on grounds of mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. Degree of tolerance will vary from one couple to another and court will have to bear in mind the background, level of education and status of parties to determine whether cruelty alleged is sufficient to justify dissolution of marriage.</i> <i>Held, complaints against appellant husband which irreparably damage reputation and mental peace of appellant would amount to mental cruelty.</i>	
2.	XX v. XXX , 2021 SCC OnLine Ker 3495 <i>Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty. Mere coldness or lack of affection cannot amount to cruelty. Frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.</i> <i>A husband's licentious disposition disregarding the autonomy of the wife is a marital rape, albeit such conduct cannot be penalised, it falls in the frame of physical and mental cruelty and is a ground for divorce.</i>	
3.	Narasimha Sastry v. Suneela Rani , (2020) 18 SCC 247 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Cruelty - mere lodging of complaint or FIR cannot ipso facto be treated as cruelty, but when a person undergoes a trial in which he is acquitted of allegation of offence under S. 498A IPC levelled by wife against husband, it cannot be accepted that no cruelty has been meted out on husband, particularly when serious allegations were made.</i>	
4.	Mangayakarasi v. M. Yuvaraj , (2020) 3 SCC 786 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Unwarranted and unsubstantiated allegations of dowry demand or such other allegations which expose the husband or his relatives to criminal litigation</i>	

	<i>constitute mental cruelty and furnish ground for divorce.</i>
5.	Beena v. Shino G.Babu 2022 SCC OnLine Ker 778 <i>Due to incompatibility, the marriage failed and one of the spouses was withholding consent for mutual separation, the court can very well treat that conduct itself as cruelty.</i>
6.	X v. Y , Mat.Appeal No. 485 OF 2019 Judgment dated 30.09.2021 <i>The ground for cruelty recognized under the statutory provisions to grant divorce based on the fault of a spouse is on account of the fact that an innocent party can seek remedy of divorce. When both parties are found to be at fault, can the Court decline divorce? In the doctrine of comparative rectitude, we find answers to this. The Courts in common law jurisdiction often resort to this doctrine when both spouses are found to have committed marital misconduct.</i>
7.	Ravinder Kaur v. Manjeet Singh , (2019) 8 SCC 308 <i>Mere allegations of illegitimate relationship, even if due to misunderstandings, did not amount to inflicting mental cruelty. High Court dissolving marriage on pre-conceived notion of irretrievable breakdown of marriage, held, not proper.</i>
8.	Suman Singh v. Sanjay Singh , (2017) 4 SCC 85 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Isolated incidents that have occurred 8-10 years prior to filing of petition cannot furnish subsisting cause of action and would not constitute cruelty to enable claim of divorce Incidents alleged should be recurrent or continuing and proximate to the filing of petition.</i>
9.	Raj Talreja v. Kavita Talreja , (2017) 14 SCC 194 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Filing false cases and making reckless allegations against husband, his family members and his colleagues amounts to act of cruelty. Held, mere filing of complaint is not cruelty if there are justifiable reasons to file complaint. Mere inaction on complaint or acquittal in criminal case may not be ground to treat such accusations made by wife as cruelty. If allegations are patently false then such conduct of the spouse levelling the accusation would be an act of cruelty.</i>
10.	Narendra v. K. Meena , (2016) 9 SCC 455 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Unsubstantiated allegations levelled by the Respondent wife and the threats and attempt to commit suicide by her amounted to mental cruelty and therefore, the marriage deserves to be dissolved by a decree of divorce on the ground stated in Section 13(1)(ia) of the Act.</i>
11.	Ramchander v. Ananta , (2015) 11 SCC 539 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Cruelty is to be taken as a behaviour by one spouse towards the other which causes a reasonable apprehension in the mind of the latter that it is not safe for him/her to continue in the matrimonial relationship. Instances of cruelty are not to be taken in isolation; cumulative effect of the facts and circumstances emerging from the evidence on record to be taken and a fair inference is to be drawn as to whether the plaintiff has been subjected to mental cruelty by the conduct of the other spouse.</i>
12.	Vidhya Viswanathan v. Kartik Balakrishnan , (2014) 15 SCC 21 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Denial of sexual intercourse by wife for long time without sufficient reason amounts to mental cruelty.</i>
13.	Malathi Ravi v. B.V. Ravi , (2014) 7 SCC 640 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Mental cruelty and its effect cannot be stated with arithmetic exactitude. It varies from individual to individual, from society to society and also depends on status of the persons.</i>
14.	K. Srinivas v. K. Sunita , (2014) 16 SCC 34 <i>It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce</i>

15.	U. Sree v. U. Srinivas , (2013) 2 SCC 114 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Conduct of wife exhibiting dislike indifference and contempt towards 'sadhna' of husband in music, causing embarrassing situations, making wild allegations against husband and his family to malign reputation amounts to mental cruelty.</i>
16.	K. Srinivas Rao v. D.A. Deepa , (2013) 5 SCC 226 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Cruelty is evident where one spouse treats the other and manifests such feelings in the other so as to cause a reasonable apprehension in the mind of the other that it would be harmful or injurious to reside with the other spouse Mental Cruelty - Staying together under one roof is not a precondition for mental cruelty. Mental Cruelty - False complaint/ criminal proceedings & indecent/defamatory statements made in complaint singly and cumulatively amount to mental cruelty warranting grant of divorce. Making unfounded indecent/defamatory allegations against spouse or his/her relatives, filing repeated false complaints or cases in court, issuing notices or news items which may have adverse impact on job or business prospects are illustrative cases of mental cruelty which would warrant grant of divorce.</i>
17.	Vishwanath Agrawal v. Sarla Vishwanath Agrawal , (2012) 7 SCC 288 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Cruelty has an inseparable nexus with human conduct and is always dependant on social strata or milieu, way of life, relationship, temperaments and emotions which are conditions by social status False allegations against husband, false prosecution cause deep mental pain and suffering and amounts to mental cruelty.</i>
18.	Pankaj Mahajan v. Dimple @ Kajal , (2011) 12 SCC 1 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Repeated threats to commit suicide amount to mental cruelty.</i>
19.	Suman Kapur v. Sudhir Kapur , (2009) 1 SCC 422 <i>Cruelty is a course of conduct of one spouse which adversely affects the other spouse. The cruelty may be mental or physical, intentional or unintentional. If the cruelty is physical, it is a question of degree which is relevant. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it cause reasonable apprehension that it would be harmful or injurious to live with the other is a matter of inference to be drawn taking into account the nature of the conduct and its effect on the complaining spouse. The concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. To establish legal cruelty, it is not necessary that physical violence should be used. Continuous cessation of marital intercourse or total indifference on the part of the husband towards marital obligations would lead to legal cruelty.</i>
20.	Samar Ghosh v. Jaya Ghosh , (2007) 4 SCC 511 <i>Held, no uniform standard can ever be laid down for guidance to determine mental cruelty. Fourteen illustrative (but not exhaustive) instances of human behaviour which may be relevant in dealing with the cases of MENTAL CRUELTY enumerated</i>
21.	Naveen Kohli v. Neelu Kohli , (2006) 4 SCC 558 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Cruelty is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance. Each case has to be decided on its own merits.</i>
22.	Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate , 2003 (6) SCC 334 <i>Levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed.</i>

23.	A. Jayachandra v. Aneel Kaur , (2005) 2 SCC 22 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty has to be considered in the light of the social status of parties, their education, physical and mental conditions, customs and traditions. Court to draw inference and decide on the basis of the probabilities of the case having regard to the effect on the mind of the complainant spouse because of the acts or omissions of the other spouse. To constitute cruelty, the conduct complained of should be grave and weighty whereupon it can be concluded that the spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than ordinary wear and tear of married life. However, where the conduct complained of itself is bad enough and per se unlawful or illegal, the impact or injurious effect on the other spouse need not be considered. In such cases, cruelty will be established if the conduct itself is proved or admitted.</i>
24.	Parveen Mehta v. Inderjit Mehta , (2002) 5 SCC 706 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty is a state of mind and feelings and is therefore necessarily a matter of inference to be drawn from the facts and circumstances of the case. Proper approach requires the assessment of the cumulative effect of the attending facts and circumstances established by the evidence. Individual instances of misbehaviour seen in isolation would not be sufficient to establish mental cruelty. Held, person enjoying normal health being deprived of normal cohabitation by spouse and thus undergoing anguish and frustration could be said to have been subjected to mental cruelty. Repeatedly causing embarrassment in social situations could amount to mental cruelty.</i>
25.	G.V.N. Kameswara Rao v. G. Jabilli , (2002) 2 SCC 296 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty is conduct which causes and is intended to cause suffering to one's spouse and which ultimately makes matrimonial life intolerable. Cruelty does not necessarily involve life-threatening conduct or conduct resulting in bodily injury or damage to health or conduct which gives rise to a reasonable apprehension of danger to life, limb or health. Solitary incidents or occasional outbursts of anger or rudeness would not amount to cruelty. Court is required to consider whether the conduct of respondent is such that it has become intolerable to suffer any longer and to live together has become impossible.</i>
26.	R. Balasubramanian v. Vijayalakshmi Balasubramanian , (1999) 7 SCC 311 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty - Unfounded allegation of adultery against wife is a serious allegation amounting to cruel conduct by the husband and entitles wife to seek relief against him.</i>
27.	S. Hanumantha Rao v. S. Ramani , (1999) 3 SCC 620 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental cruelty means mental pain, agony or suffering caused by either spouse, of such magnitude that it severs the bond between husband and wife and makes it impossible for the party that has suffered to live with the other party.</i>
28.	V. Bhagat v. D. Bhagat , (1994) 1 SCC 337 <i>S.13(1)(i-a) Hindu Marriage Act, 1955- Mental Cruelty must be of such nature that the parties cannot be reasonably expected to live together. It has to be determined in the facts and circumstances of the case.</i>
29.	N.G. Dastane vs. S. Dastane , (1975) 2 SCC 326 <i>Appeal for annulment of marriage or alternatively for judicial separation on ground of cruelty was filed. Court found that respondent was guilty of cruelty but appellant condoned it and subsequent conduct of respondent was not such as to amount to a revival of original cause of action.</i>
Case Law Jurisprudence [Maintenance/ DVA/Divorce] <i>(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)</i>	
30.	Rajnesh v. Neha , (2021) 2 SCC 324 <i>Remedy of maintenance is a measure of social justice as envisaged under the Constitution to prevent wives and children from falling into destitution and vagrancy. Held, there is a need for framing guidelines under Article 142 of the Constitution for ensuring timely disposal of applications seeking maintenance.</i>

31.	Shyju .P.K v. Nadeera , Mat.Appeal No. 173 OF 2015 Judgment dated 05.10.2021 <i>Application for maintenance pendente lite and expense of the proceedings would only lie in a proceeding under the Hindu Marriage Act, 1955. Before striking off the defence for non-compliance of an order of pendente lite maintenance, an opportunity has to be given to show cause why the defence should not be struck off or reasonable time has to be given to clear the arrears of maintenance ordered.</i>
32.	Rana Nahid v. Sahidul Haq Chisti , (2020) 7 SCC 657 <i>Appropriate forum to adjudicate claim of maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986.</i>
33.	Sanjeev Kapoor v. Chandana Kapoor , (2020) 13 SCC 172 <i>Embargo in S. 362 Cr.P.C. prohibiting court to alter or review its judgment or final order disposing of the case is not applicable to an order of maintenance passed under S. 125 Cr.P.C. The legislative scheme delineated by Ss. 125 & 127 Cr.P.C. clearly enumerate the circumstances and incidents provided in Cr.P.C. where the court passing a judgment or final order disposing the case can alter or review the same. S. 125 Cr.P.C. is a social justice legislation & maintenance of wives, children and parents is a continuous obligation enforced thereunder. The interpretation or construction advancing justice and protecting a woman for whose benefit the provisions have been engrafted must be adopted.</i>
34.	Swapan Kumar Banerjee v. State of W.B. , (2020) 19 SCC 342 <i>Delay of 1 year in claim for maintenance - Delay will make no difference because it is for the wife to decide when she wants to file a petition for maintenance. She may have felt comfortable with the earnings she had upto that time or may have not wanted to precipitate matters till she was contesting the divorce petition by filing a claim for maintenance. Mere fact that wife did not file a petition for grant of maintenance during pendency of matrimonial proceedings is no ground to hold that she is not entitled to file such petition later on. Maintenance- sufficiency of income of wife - Held, it is for the husband to lead evidence to show sufficiency of income of wife. In absence of such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.</i>
35.	Rakesh Malhotra v. Krishna Malhotra , (2020) 14 SCC 150 <i>After grant of permanent alimony under S. 25 of the Hindu Marriage Act, 1955, proper forum for seeking modification thereof is under S. 25(2) or S. 24(3) of the HMA. Application cannot be made under S. 125 Cr. P.C. for maintenance over and above what has been granted by the court while exercising power under S. 25 of the HMA. Though an initial adjudication under S. 125 Cr.P.C. followed by a full adjudication under the relevant Act is permissible, the reverse is not.</i>
36.	Kaushalya v. Mukesh Jain , (2020) 17 SCC 822 <i>Interim Maintenance pending computation of income of husband- Case remanded by High Court- Held, appellant wife cannot be left in the lurch without any order of maintenance pending an uncertain future date when remanded proceedings would be decided. Keeping in mind that the application for maintenance remained pending for nearly a decade, there would be serious miscarriage of justice if an order of remand simpliciter is passed without providing any financial security to the appellant. Order of trial court for grant of maintenance shall operate as an ad interim direction and arrears payable to the appellant shall be paid in six monthly instalments.</i>
37.	Lalita Toppo v. State of Jharkhand , (2019) 13 SCC 796 <i>Protection of Women from Domestic Violence Act, 2005 - Act or omission defining domestic violence is broad enough to include all aggrieved persons including a not legally wedded wife and those not entitled to maintenance under S. 125 Cr.P.C. Under PWDVA the victim would be entitled to more relief than what is contemplated under S. 125 Cr.P.C.</i>
38.	Kamala v. M.R. Mohan Kumar , (2019) 11 SCC 491 <i>Long cohabitation between man and women led to presumption of marriage entitling maintenance to the woman and children born to them. Broad and expansive interpretation should be given to term 'wife' under</i>

	<i>S. 125 Cr.P.C.</i>
39.	Ajay Kumar v. Lata , (2019) 15 SCC 352 <i>Direction for interim maintenance is confirmed in case of shared household in ancestral joint Hindu family property and joint business between brother and deceased husband.</i>
40.	Nutan Gautam v. Prakash Gautam , (2019) 4 SCC 734 <i>Direction of High Court compelling wife to choose only one forum, either under S.125 Cr.P.C. or Ss. 12/19 of Protection of Women from Domestic Violence Act, 2005 to seek maintenance, held to be impermissible.</i>
41.	Shailja v. Khobbanna , (2018) 12 SCC 199 <i>Capability of wife to earn is not a sufficient reason to reduce maintenance awarded. Capable of earning and actually earning are two different requirements</i>
42.	Sanjay Kumar Sinha v. Asha Kumari , (2018) 5 SCC 333 <i>Maintenance granted under S. 24 of the Hindu Marriage Act, 1955 would supercede maintenance granted under S. 125 Cr.P.C.</i>
43.	Kalyan Dey Chowdhury v. Rita Dey Chowdhury nee Nandy , (2017) 14 SCC 200 <i>Power of court to modify or vary discharge permanent alimony or maintenance due to change in circumstances.</i>
44.	Manish Jain v. Akanksha Jain , (2017) 15 SCC 801 <i>Grant of maintenance pendete lite - Discretionary exercise of jurisdiction while granting alimony pendente lite should be judicious and can neither be arbitrary nor capricious but should be guided on sound principles of matrimonial law, and to be exercised within the statutory provisions having regard to the object of the Act. While determining quantum of interim maintenance, Court must have regard to income of the parties, and is conditional on the circumstance that the wife or husband who makes claim has no independent income sufficient to support him/her or to meet necessary expenses. Financial position of wife's parents as well as education of wife who could support herself is inconsequential.</i>
45.	Hiral P. Harsora v. Kusum Narottamdas Harsora , (2016) 10 SCC 165 <i>We, therefore, set aside the impugned judgment of the Bombay High Court and declare that the words "adult male" in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted. We may only add that the impugned judgment has ultimately held, in para 27, that the two complaints of 2010, in which the three female respondents were discharged finally, were purported to be revived, despite there being no prayer in Writ Petition No. 300 of 2013 for the same. When this was pointed out, Ms Meenakshi Arora very fairly stated that she would not be pursuing those complaints, and would be content to have a declaration from this Court as to the constitutional validity of Section 2(q) of the 2005 Act. We, therefore, record the statement of the learned counsel, in which case it becomes clear that nothing survives in the aforesaid complaints of October 2010. With this additional observation, this appeal stands disposed of.</i>
46.	Shamima Farooqui v. Shahid Khan , (2015) 5 SCC 705 <i>Husband cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning</i>
47.	Jaiminiben Hirenghai Vyas v. Hirenghai Rameshchandra Vyas , (2015) 2 SCC 385 <i>Grant of Maintenance - whether from the date of application or from date of order. Held, direction of High Court that maintenance should be paid only from date of order cannot be upheld particularly when the High Court has not given any reason why it has not directed maintenance from the date of application for maintenance.</i> <i>Need for reasoned orders- it is neither appropriate nor desirable that a court simply states that maintenance should be paid from either date of application or date of order without giving proper reasons for the same. Ss. 125 & 354(6) must be read together. As per S. 354(6) Cr.P.C. the court should record reasons in support</i>

	<i>of order passed by it in both eventualities.</i>
48.	Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 <i>Maintenance of second wife - Held, in view of the fact that husband duped the second wife by not revealing the fact of his earlier marriage, the husband cannot deny maintenance to the second wife as he cannot be permitted to take advantage of his own wrong. Giving purposive construction to S. 125 Cr.P.C and applying mischief rule, the woman would be treated as a legally wedded wife for the purpose of maintenance under S. 125 Cr.P.C.</i>
49.	Shamim Bano v. Asraf Khan, (2014) 12 SCC 636 <i>Maintenance under S.125 Cr.P.C. to Muslim women - Application under S. 125 Cr.P.C. not to be restricted to the date of divorce. Filing of application under S. 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 after divorce for grant of mahr and return of gifts would not disentitle the wife to sustain her application under S. 125 Cr.P.C.</i>
50.	Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 <i>Merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.</i>
51.	Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755 Whether the non-maintenance of the appellant in a broken live-in-relationship will amount to domestic violence.
52.	Deoki Panjhiyara v. Shashi Bhushan Narayan Azad, (2013) 2 SCC 137 <i>Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005</i>
53.	Darshan Gupta v. Radhika Gupta, (2013) 9 SCC 1 <i>A perusal of the grounds on which divorce can be sought under Section 13(1) of the Hindu Marriage Act, 1955, would reveal, that the same are grounds based on the 'fault' of the party against whom dissolution of marriage is sought. In matrimonial jurisprudence, such provisions are founded on the 'matrimonial offence theory' or the 'fault theory'. Under this jurisprudential principle, it is only on the ground of an opponent's fault, that a party may approach a Court for seeking annulment of his/her matrimonial alliance. In other words, if either of the parties is guilty of committing a matrimonial offence, the aggrieved party alone is entitled to divorce. The party seeking divorce under the "matrimonial offence theory" / the "fault theory" must be innocent. A party suffering "guilt" or "fault" disentitles himself/herself from consideration</i>
54.	Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade, (2011) 3 SCC 650 <i>The legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under D.V Act, 2005</i>
55.	Pyla Mutyalamma v. Pyla Suri Demudu, (2011) 12 SCC 189 <i>Validity of a marriage cannot be a ground for the refusal of maintenance if the other requirements of S. 125 Cr.P.C. are fulfilled. S. 125 proceeds on the basis of a de facto marriage and not marriage de jure. The nature of proof of marriage required for a proceeding under S. 125 need not be strong or conclusive since the object of S. 125 is to afford a swift remedy.</i>

56.	Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 <i>While dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.</i>
57.	Shabana Bano v. Imran Khan, (2010) 1 SCC 666 <i>Family Court has exclusive jurisdiction to adjudicate the applications filed under S. 125 Cr.P.C.</i>
58.	Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415 <i>This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution. Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on grounds not provided for in Section 13 and 13-B of the Hindu Marriage Act, 1955. The second proposition is that although the Supreme Court can, in exercise of its extraordinary powers under Article 142 of the Constitution, convert a proceeding under Section 13 of the Hindu Marriage Act, 1955, into one under Section 13-B and pass a decree for mutual divorce, without waiting for the statutory period of six months, none of the other Courts can exercise such powers.</i>
59.	Vishnu Dutt Sharma v. Manju Sharma, (2009) 6 SCC 379 <i>It has been held that irretrievable breakdown of marriage is not a ground for divorce as it is not contemplated under section 13 and granting divorce on this ground alone would amount to adding a clause therein by a judicial verdict which would amount to legislation by Court</i>
60.	Chand Patel v. Bismillah Begum, (2008) 4 SCC 774 <i>Wife and children from irregular (fasid) marriage are entitled to maintenance unless the marriage has been declared void.</i>
61.	S.R. Batra v. Taruna Batra, (2007) 3 SCC 169 Interpretation of the definition of SHARED HOUSEHOLD as appearing in Sec. 2(S) of P.W.D.V Act.
62.	Rohtash Singh v. Ramendri, (2000) 3 SCC 180 <i>A woman after divorce is entitled to claim maintenance from former husband if she cannot provide for herself and remains unmarried. Husband remains under a statutory duty and obligation to provide maintenance to his former wife. The fact that the divorce was based on desertion is no ground to deny maintenance. Though the marital relations came to an end by the divorce, the respondent continues to be a 'wife' within the meaning of S. 125 Cr.P.C. on account of Explanation (b) to sub-section (1).</i>
63.	Danial Latifi v. Union of India, (2001) 7 SCC 740 <i>There is no discrimination where the State provides a scheme for maintenance and prevention of vagrancy for a particular group, and the scheme is equally or more beneficial than that provided in the earlier general then prevailing.</i>
64.	Noor Saba Khatoon v. Mohd. Quasim, (1997) 6 SCC 233 <i>Right of minor child to claim maintenance under S. 125 Cr.P.C. from their muslim father - Held, right not affected by S. 3(1)(b) of Muslim Women (Protection of Rights on Divorce) Act, 1986. Benefit of S. 125 Cr.P.C. is available irrespective of religion and it would be unreasonable, unfair and inequitable to deny this benefit to the children only on the grounds of being born to muslim parents.</i>
65.	Vanamala v. H.M. Ranganatha Bhatta, (1995) 5 SCC 299 <i>The expression 'wife' in S. 125(4) Cr.P.C does not have the extended meaning of including a woman who has been divorced. In case of divorce obtained by mutual consent, Such divorced wife who has not remarried and is entitled to maintenance under Explanation to S. 125 Cr.P.C. cannot be debarred by invoking S.125(4) Cr.P.C. A wife who obtains divorce by mutual consent cannot be denied maintenance by virtue of S. 125(4).</i>

66.	Capt. Ramesh Chander Kaushal v. Veena Kaushal , (1978) 4 SCC 70 <i>Maintenance fixed by civil court under S. 24 of the Hindu Marriage Act pending divorce proceedings by wife has no relevance for fixation of maintenance under S. 125 Cr.P.C.</i>
Case Law Jurisprudence [Matrimonial Property] <i>(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)</i>	
67.	Jaidev Rajnikant Shroff v. Poonam Jaidev Shroff , (2022) 1 SCC 683 <i>If wife decides to shift to any property falling within the parameters of being “similar” to accommodation of husband, or otherwise, husband directed to pay rent of said premises. Held, “similar” does not mean “identical”.</i>
68.	Krishna Bhattacharjee v. Sarathi Chowdhury , (2016) 2 SCC 705 <i>Entrustment of Stridhan to husband - Held, stridhana property is the exclusive property is the exclusive property of the wife. On proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or any other member of the family. It is always a question of fact in each case as to how the property came to be entrusted to the husband or family member. The concept on continuing offence gets attracted from the date of deprivation of stridhan. Neither the husband nor the other family members can have any right over the stridhan, they remain the custodians.</i>
Case Law Jurisprudence [Section 498A] <i>(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)</i>	
69.	K.V. Prakash Babu v. State of Karnataka , (2017) 11 SCC 176 <i>Mental cruelty in Section 498-A Expln (a) has nothing to do with demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and is dependent on the conduct of the person concerned, the milieu and strata from which the persons come.</i>
70.	Vinod Kumar Subbiah v. Saraswathi Palaniappan , (2015) 8 SCC 336 <i>Making it impossible for any close relative to visit or reside in the matrimonial home would also indubitably result in CRUELTY to the other spouse</i>
71.	Bhaskar Lal Sharma v. Monica , (2014) 3 SCC 383 <i>Cruelty under S. 498A has a twofold meaning. While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle.</i>
72.	Arnesh Kumar Vs. State of Bihar , 2014 (8) SCC 273 <i>All state governments directed to instruct its police officers not to automatically arrest when a case under S. 498A IPC is registered, but to satisfy themselves about the necessity for arrest under the parameters flowing from S. 41 CrPC.</i>
73.	Pinakin Mahipatray Rawal v. State of Gujarat , (2013) 10 SCC 48 <i>Cruelty under S. 498A IPC includes both physical and mental cruelty. Mental cruelty varies from person to person, depending upon the intensity and degree of endurance. The mere fact that the husband has developed intimacy with another woman during the marriage and failed to discharge his marital obligations as such would not amount to cruelty under the Explanation to Section 498A IPC.</i>
74.	Kantilal Martaji Pandor v. State of Gujarat , (2013) 8 SCC 781 <i>Proof of Cruelty under S.498A (a) IPC- Evidence when not admissible due to finality of finding on charge under S. 306- Letter written by deceased to police station complaining of ill-treatment and mental cruelty would be relevant only under S. 32(1), Indian Evidence Act, 1872. Evidence admissible under S. 32(1) cannot be admitted to prove offence under S. 498A.</i>

75.	Preeti Gupta v. State of Jharkhand , (2010) 7 SCC 667 <i>Allegations of harassment by husband's close relations who had been living in different cities and rarely or never visited the place of residence of the complainant wife are required to be scrutinised with great care and circumspection.</i>
76.	Neelu Chopra v. Bharti , AIR 2009 SC(Supp) 2950 <i>For lodging a proper complaint mere mentioning of relevant sections and language of those sections is not sufficient. Particulars of offence committed by each accused and role played by them in committing that offence need to be stated.</i>
77.	Mohd. Hoshan v. State of A.P. , (2002) 7 SCC 414 <i>Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual, social backgrounds, environment, education etc. Mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. Each case has to be decided on its own facts to decide whether cruelty has been established or not.</i>

SESSION 2
Confluence of Anti-Conversion Legislations and Matrimonial Laws

1.	Manish, Evaluating India's New Anti-Conversion Laws , 6(2) CALJ (2022) 32	99
2.	Pallvi Hooda, Validity of Reverse Onus Clauses in the Anti-Conversion Laws of Uttar Pradesh, Madhya Pradesh and Uttarakhand , 13 RMLNLUJ (2021) 185	116
3.	Suleman, Saadiya, Freedom of Religion and Anti Conversion Laws in India: An Overview (February 1, 2010). ILI Law Review, Vol. 1, No. 1, p. 106, 2010, Available at SSRN: https://ssrn.com/abstract=1597854	132
4.	Sachin Mandlik & Apoorvaa Paranjpe, Anti-Conversion Legislation In India and the Constitution , (2015) PL October 55.	155
5.	V.N. Muralidharan, Women's Religious Rights After Inter-Religious Marriages , 2018 SCC OnLine Blog OpEd 6	167
6.	Raushan Tara Jaswal, Are anti-conversion laws antithetical to the Constitution of India? , August 16, 2023, Available at: https://theleaflet.in/are-anti-conversion-laws-antithetical-to-the-constitution-of-india/	173

Case Law Jurisprudence

(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)

1.	XXXX v. XXXXX , RP NO. 936 of 2021 Judgment dated 28.10.2022 <i>The right to terminate the marriage at the instance of a Muslim wife is an absolute right, conferred on her by the holy Quran and is not subject to the acceptance or the will of her husband.</i>
2.	Shafin Jahan v. Asokan K. M. (2018) 16 SCC 408 <i>Held, The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. The exercise of parens patriae jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves. Neither the state nor society can intrude into that domain. The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Courts as upholders of constitutional freedoms must safeguard these freedoms.</i>
3.	Mayra v. State of U.P. , 2021 SCC OnLine All 805 <i>Personal liberty, choice and privacy is a facet of basic Human Rights, a fundamental right conferred upon individuals. Choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded</i>

	<p><i>on individual choice that is recognized in Constitution under Article 19. Consent of family or community or clan is not necessary once two adult individuals agree to enter into a wedlock, it is a manifestation of their choice which is recognized under Articles 19 and 21 of Constitution. In protecting consensual intimacies, Constitution adopts a simple principle: State has no business to intrude into these personal matters. Right to privacy is implicit in right to life and liberty guaranteed to citizens of this country by Article 21. A citizen has a right to safeguard privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. Duty of court is to uphold right and not to abridge sphere of right unless there is a valid authority of law. Choice of a partner, whether within or outside marriage, lies within exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. Absolute right of an individual to choose a life partner is not in least affected by matters of faith. Unlawful Conversion Act, 2021, per se, does not prohibit interfaith marriage. Marriage Registrar/Officer, however, lacks power to withhold registration of marriage, merely for reason that parties have not obtained necessary approval of conversion from district authority. Such an approval is directory and not mandatory. If interpreted otherwise Act would not satisfy test of reasonableness and fairness and would fail to pass muster of Article 14 and Article 21.</i></p>
4.	<p>Goolrokh M. Gupta v. Burjor Pardiwala, (2020) 2 SCC 705</p> <p><i>Right of Zoroastrian/Parsi women married to non-Zoroastrian/Parsi to enter inside Zoroastrian prayer hall/ fire temple – Petitioner permitted on compassionate grounds to attend funeral prayers and death ceremonies pf parents inside prayer hall as per memorandum of agreement between petitioner and respondents.</i></p>
5.	<p>Goolrokh M. Gupta v. Burjor Pardiwala, 2012 SCC OnLine Guj 2058</p> <p><i>Whether, the petitioner-a born Parsi woman, by virtue of contracting a civil marriage with a non-parsi man under the Special Marriage Act, ceases to be a Parsi?</i></p> <p><i>Held, A Parsi woman by contracting a civil marriage with a non-Parsi under the Special Marriage Act would cease to be Parsi and would be deemed and presumed to</i></p> <p><i>have acquired the religious status of her husband unless declaration is made by the competent court for continuation of her status of Parsi Zoroastrian after her marriage.</i></p> <p>Dissenting Opinion</p> <p><i>Held, the petitioner was well within her right to retain her religious identity, continue to follow the Parsi Zoroastrian religion and to be recognised as Parsi Zoroastrian even after the marriage. Held, a woman who is born Parsi Zoroastrian does not cease to be so merely by virtue of solemnizing the marriage under the Act of 1954 with a man belonging to another religion.</i></p>
6.	<p>Nandakumar v. State of Kerala, (2018) 16 SCC 602</p> <p><i>Arts. 21 and 226 Constitution of India - Freedom of choice - Right to marry or have live-in relationship with person of own choice- Scope of High Court's jurisdiction - held, where detenue appears before court, is found to be a major and claims to be living with the appellant after marrying him in temple, High court has no jurisdiction to further ascertain age of appellant at the time of marriage and finding him a minor at the time and finding lack of sufficient evidence of marriage, conclude that marriage was unlawful, and entrust custody of detenue to her father. Detenue being a major has freedom to marry or to have live-in relationship with anyone of her choice.</i></p>
7.	<p>Lata Singh v. State of UP, (2006) 5 SCC 475</p> <p><i>The Supreme Court quashed criminal proceedings initiated against an inter-caste couple by their relatives who disapproved of the marriage. It also noted that violence against inter-caste and inter-religious couples was a violation of their fundamental right of marital choice and held that the State was under an obligation to protect the choices of these individuals.</i></p>
8.	<p>Rev. Stainislaus v. State Of Madhya Pradesh, (1977) 1 SCC 677</p> <p><i>Article 25 guarantees to all persons right to freedom and conscience and the right freely to profess, practice and propagate religion subject to public order, morality and health. The word 'propagate' has been used in the Article as meaning to transmit or spread from person to person or from place to place. The Article does not grant right to convert other person to one's own religion but to transmit or spread one's religion by an exposition of its tenets. The freedom of religion enshrined in Art. 25 is not guaranteed in respect of one</i></p>

	<i>religion only but covers all religions alike which can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following other religion. What is freedom for one is freedom for the other in equal measure and there can, therefore, be no such thing as a fundamental right to convert any person to one's own religion.</i>
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Session 3 Exploring Psycho-Social Aspects of Family Conflicts
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1.	Shiju Joseph and Anand Inbanathan, Marital Disharmony among Working Couples in Urban India – A Sociological Inquiry , Working Paper No. 373 (2016), http://www.isec.ac.in/WP%20373%20-20Shiju%20Joseph%20and%20Anand%20Inbanathan%20-%20-%20Final.pdf	178
2.	Mediation and Conciliation Project Committee, Supreme Court of India, Understanding Conflict in MEDIATION TRAINING MANUAL OF INDIA, pp. 10-15.	203
3.	Mediation and Conciliation Project Committee, Supreme Court of India, Conflict Management in MEDIATION TRAINING MANUAL FOR CAPSULE COURSE, pp. 05-08.	209
4.	Renni Ariplackal & Tony Sam George, Psychological Components for Marital Distress and Divorce in Newlywed Indian Couples , 56(1) Journal of Divorce & Remarriage, (2015) pp. 1-24.	213
5.	Alejandro R. Aparicio, Family and Social Dynamics: Freudian Interpretation, Explanation, and Prediction of Behavior , 2 Athene Noctua: Undergraduate Philosophy Journal pp. 1-4 (2014).	239
6.	Frank D. Fincham Marital Conflict: Correlates, Structure and Context , 12(1) Current Directions in Psychological Science 23-27 (2003)	243

Session 4 Adjudication of Custody & Guardianship Disputes
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1.	Elaine Sutherland, The Welfare Test: Determining the Indeterminate , 22(1) Edin. L.R. 94-100 (2018)	248
2.	Debrati Halder, “ Who Wins the Battle for Custody? An Analysis of the Nature of Modern Judicial Understandings of Women’s Rights in Cases of Custody of Minor Children in Matrimonial Disputes under the Hindu Laws ” in ESSAYS IN FAMILY LAW IN MEMORY OF PROFESSOR B N SAMPATH: GENDER, HUMAN RIGHTS AND LAW,(pp. 8-18) Ed. Sarasu Esther Thomas, National Law School of India University, Bangalore (2012).	258
3.	Tommie Forslund, Pehr Granqvist, <i>et al.</i> , Attachment Goes To Court: Child Protection and Custody Issues, Attachment & Human Development , 2022, VOL. 24, NO. 1, 1–52	272
4.	Tejaswi Pandit and Manovi Mitra, Custody of Children , 2019 SCC OnLine Blog LME 5	326
5.	Custody of Children/ Guardianship/ Visitation Rights , Available at: https://cja.gov.in/All%20Judgments/Custody%20of%20Children.pdf	335

Additional Reading (Suggestive)

- Law Commission of India, Report No. 257 - **Reforms in Guardianship and Custody Laws in India**, pp. 12-34, 41-50 (2015).

Case Law Jurisprudence

(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)

1.	Neha Tyagi v. Deepak Tyagi , (2022) 3 SCC 86 <i>The husband cannot be absolved from his liability and responsibility to maintain his son till he attains the age of majority. Whatever be the dispute between the husband and the wife, a child should not be made to</i>
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	<i>suffer. The liability and responsibility of the father to maintain the child continues till the child / son attains the age of majority.</i>
2.	X v. Y , Mat. Appeal No. 142 of 2020 Judgment dated 11.10.2021 <i>The joint parental care must be the norm and, custody to single parent must be an exception. The Court has also to find, how negative factors attributed to a spouse would reflect upon the child. Without conducting such an inquiry, the Court cannot deny custody to a spouse merely stating that spouse lives in adultery.</i>
3.	Smitha Antony v. Koshy Kurian 2022 SCC OnLine Ker 2477 <i>Family Court is the proper forum to decide on the question of guardianship of the person or the custody of or access to any minor. The High Court exercising supervisory power under Article 227 of the Constitution cannot by pass the Family Court to decide on the question of guardianship of the person or custody of or access to any minor.</i>
4.	D.S.G. v. A.K.G. , (2020) 12 SCC 248 <i>While exercising parens patriae jurisdiction, the Court is required to give due weight to the ordinary comfort of the child, contentment, intellectual, moral and physical development, health, education and general maintenance, and the favourable surroundings. The Court is not bound either by statutes, nor by strict rules of evidence, nor procedure or precedent. In deciding the issue of custody, the paramount consideration should be the welfare and well-being of the child.</i>
5.	Nutan Gautam v. Prakash Gautam , (2019) 4 SCC 734 <i>Paramount considerations are welfare, interest and desire of the child. Directions were issued to admit child in a particular school of his/her choice.</i>
6.	Amit Kumar v. Sonila , (2019) 12 SCC 711 <i>Modification of terms of custody only where the children so desire or the appellant husband failed to take care of children. Mere factum of second marriage of appellant husband and children born from such marriage not grounds for modification of terms of custody.</i>
7.	Sheoli Hati v. Somnath Das , (2019) 7 SCC 490 <i>The purpose and object of the Guardians and Wards Act, 1890 is not mere physical custody of minor but due protection of ward's health, maintenance and education. Power and duty of court is to seek the welfare of the child including physical, moral and ethical.</i>
8.	Gaytri Bajaj v. Jiten Bhalla , (2012) 12 SCC 471 <i>Object and purpose of the Guardians and Wards Act, 1890 is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. In considering the question of welfare of minor, due regard has, of course, to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.</i>
9.	Vivek Singh v. Romani Singh , (2017) 3 SCC 231 <i>The welfare principle is aimed at serving twin objectives. In the first instance, it is to ensure that the child grows and develops in the best environment. The best interest of the child has been placed at the vanguard of family/custody disputes according to the optimal growth and development of the child and has primacy over other considerations. This right of the child is also based on individual dignity. The second justification behind the welfare principle is the public interest that stands served with the optimal growth of the children. Child-centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation.</i>
10.	Lahari Sakhamuri v. Sobhan Kodali , (2019) 7 SCC 311 <i>The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children and equally for the parents can be, inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.</i>

11.	<p>Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318</p> <p><i>The Hindu Minority and Guardianship Act postulates that the custody of an infant or a tender-aged child should be given to his/her mother unless the father discloses cogent reasons that are indicative of and presage the likelihood of the welfare and interest of the child being undermined or jeopardised if the custody is retained by the mother. However, it is immediately clarified that S. 6(a) or for that matter any other provision including those contained in the Guardians and Wards Act, does not disqualify the mother to custody of the child even after the latter's crossing the age of five years.</i></p>
12.	<p>Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42</p> <p><i>In child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.</i></p>
13.	<p>Premvati Meena v. State of Rajasthan D.B. Habeas Corpus Petition No. 333/2022 date of Judgment 01.11.2022</p> <p><i>The High Court has asked the Grandparents seeking custody of their minor grandson to deposit 50k as an advance litigation cost.</i></p>
14.	<p>Mansi v. State of Punjab, CRWP-7332-2022 (O&M) Date of Decision: 07.11.2022</p> <p><i>The Punjab and Haryana High Court on Monday, while disposing of a habeas corpus petition filed by a mother alleging illegal detention of her 2 years old child at the hands of her husband and in-laws, held that a mother, even if she is mentally ill, is entitled to the custody of a minor child, especially if the child is below the age of 5 years, unless the mental illness is such that it shall be detrimental to the health of the child</i></p>
15.	<p>Manyata Avinash Dolani v. State of Gujarat R/Special Criminal Application No. 9903 of 2021 Date of Judgment 30/09/2022</p> <p><i>The Gujarat High Court, while dealing with a plea filed by the mother of a minor child, recently held that the habeas corpus petition is maintainable even in matters of child custody, provided that detention of the minor child by the other parent or others is proved to be illegal and without any authority of law.</i></p>
16.	<p>Rohith Thammana Gowda v. State of Karnataka, 2022 SCC Online SC 937</p> <p><i>The Supreme Court observed that the question of 'what is the wish/desire' of the child is different and distinct from the question 'what would be the best interest of the child'. "The question 'what is the wish/desire of the child' can be ascertained through interaction, but then, the question as to 'what would be the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances. When couples are at loggerheads and wanted to part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, 'what would be the best interest of the child concerned'.</i></p>
17.	<p>Bindu Philips v. Sunil Jacob, (2018) 12 SCC 203</p> <p><i>The Supreme Court of India has passed as order with sincere hope that both the parents are highly educated and would understand and realise their duties and obligations towards their children being father and mother living separately. Role and importance of both the parents for children emphasized. Determining custody and visitation, rights welfare of the child should be the paramount consideration.</i></p>
18.	<p>ABC v. State (NCT of Delhi), (2015) 10 SCC 1</p> <p><i>An analysis of the law relating to custody and guardianship of children born outside wedlock in various jurisdictions indicates that the preponderant position is that it is the unwed mother who possesses primary custodial and guardianship rights with regard to her children and that the father is not conferred with an equal position merely by virtue of his having fathered the child. In today's society, where women are increasingly choosing to raise their children alone, we see no purpose in imposing an unwilling and unconcerned father on an otherwise viable family nucleus. It seems to us that a man who has chosen to forsake his duties and responsibilities is not a necessary constituent for the well-being of the child.</i></p>

19.	Gaurav Nagpal v. Sumedha Nagpal , (2009) 1 SCC 42 <i>The principles in relation to the custody of a minor child are well settled. The paramount consideration of the court in determining the question as to who should be given custody of a minor child, is the “welfare of the child” and not rights of the parents under a statute for the time being in force or what the parties say. The court has to give due weightage to the child’s ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted.</i>
20.	Nil Ratan Kundu v. Abhijit Kundu , (2008) 9 SCC 413 <i>In deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child’s ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.”</i>
21.	Mamta v. Ashok Jagannath Bharuka , (2005) 12 SCC 452 <i>Before deciding the issue as to whether the custody should be given to the mother or the father or partially to one and partially to the other, the High Court must (a) take into account the wishes of the child concerned, and (b) assess the psychological impact, if any, on the change in custody after obtaining the opinion of a child psychiatrist or a child welfare worker. All this must be done in addition to ascertaining the comparative material welfare that the child/children may enjoy with either parent.</i>
22.	Githa Hariharan v. Reserve Bank of India , (1999) 2 SCC 228 <i>Father and Mother are the natural guardian of a minor Hindu child, and the mother cannot be said to be the natural guardian only after the death of the father as that would not only be discriminatory but also against the welfare of the child.</i>
23.	Vikram Vir Vohra v. Shalini Bhalla , (2010) 4 SCC 409 <i>Welfare of child is of paramount importance in matters relating to child custody and may have primacy even over statutory provisions. Child custody being a sensitive issue, custody orders are considered interlocutory orders capable of being modified keeping in mind the needs of the child. Such orders even when based on consent can be varied if welfare of the child so demands. Every person has a right to develop his or her potential and the right to development is a basic human right. A mother cannot be asked to choose between her child and her career.</i>

Session 5
Effective Strategies for Resolution of Matrimonial Conflicts

1.	Mediation Training Manual for Capsule Course , Mediation and Conciliation Project Committee, Supreme Court of India, Available at: https://main.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Capsule%20Course.pdf	363
2.	Flavia Agnes, Challenges Confronting Family Courts in MARRIAGE, DIVORCE AND MATRIMONIAL LITIGATION, Volume II pp. 305 -322, Oxford University Press (2011)	417
3.	Nandini Gore & Karanveer Singh Anand, Alternative Dispute Resolution As A Solution For Family Disputes , June 2022, Available at: https://www.mondaq.com/india/arbitration--dispute-resolution/1199420/alternative-dispute-resolution-as-a-solution-for-family-disputes	435
4.	Rattan Singh and Shikha Dhiman, An Anodyne Mode of Negotiation : Mediation in Dissension of Indian Family Matters , 1 SML L Rev 190 (2018)	441

5.	Daniel Mathew, <i>Notes and Comments: Arriving at a Settlement Under Family Courts Act, 1984: Deconstructing the Role of the Judge of the Family Court and Counselor</i> , 56 JILI (2014) 376	450
6.	A. Saravana Kumar. B.A.B.L., <i>The Role, duties and procedural functions of Family Courts</i> , Tamil Nadu Judicial Academy.	458

Additional Reading (Suggestive)

- Law Commission of India, **Recognition of Foreign Divorces**, Report No. 65 (1976)
- Prof. SP Srivastava, *et.al, An Analysis of Pendency of Cases in Family Courts of Madhya Pradesh and Methods to Reduce Pendency*, Project Report by National Judicial Academy, under the Scheme for Action Research and Studies on Judicial Reforms, Ministry of Law and Justice (Department of Justice), New Delhi, January 2020. Available at:
<https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2021/11/2021112376.pdf>

Case Law Jurisprudence

(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)

1.	Vasvi Grover v. Manish Grover, 2023 SCC OnLine Del 8128 <i>Keeping in view the fact that this is a matrimonial dispute, the learned Family Court should be more lenient than it would be had it been a commercial dispute between the parties. A matrimonial dispute involves relationships and, therefore, requires a little more sensitivity by the learned Family Court.</i>
2.	Ramachandran @ Chandran v. State Of Kerala ILR 2022(2) Kerala 671 <i>The sexual act on promise to marry is an offence against the decisional autonomy of a woman having the choice to engage in physical intimacy. The material facts related to consent, known to the offender or the accused, if not disclosed at the time of the sexual act, the consent so obtained would violate the decisional autonomy of the victim to engage in physical intimacy or not. If such fact was not disclosed, consent may fall under the category of 'misconception of fact' and the consent would be vitiated under the category of misconception of fact as referred to in Section 90 of the IPC.</i>
3.	XXXXX v. XXXXX, R.P.No.936 of 2021 Judgment dated 28.10.2022 <i>In the absence of any mechanism in the country to recognize the termination of marriage at the instance of the wife when the husband refuses to give consent, the court can simply hold that khula can be invoked without the conjunction of the husband. The right to terminate the marriage at the instance of a Muslim wife is an absolute right, conferred on her by the holy Quran and is not subject to the acceptance or the will of her husband.</i>
4.	Nisha Haneefa v. Abdul Latheef, 2022 SCC OnLine Ker 1556 <i>The powers of the Family Court are adjudicative power following the rules of procedure as applicable under the adversarial system, Proactive role for settlement of disputes between the parties and Inquisitorial power to enquire into the truth of the matter.</i>
5.	T. Anjana v. J.A. Jayesh Jayaram 2022 SCC OnLine Ker 2043 <i>The scope of enquiry in the Family Court is not confined with the evidence brought before it by the parties. The Family Court is competent to embark upon any enquiry to elicit the truth. The master of the proceedings before the Family Court is the presiding officer of the Family Court and not the parties. So long as the principles of fairness are followed and adhered to, the power of the Family Court cannot be questioned by the parties. If the Family Court is of the view that the opposite party would be affected or impacted, consequent upon not pressing the petition, it shall proceed with the case to find out the truth.</i>
6.	Madhavendra L. Bhatnagar v. Bhavna Lall, (2021) 2 SCC 775 <i>Interim Anti-suit Injunction - Order 39 Rules 1& 3 and S. 151 - If other party had already resorted to proceedings before another court including courts outside India, an anti-suit injunction can be issued if the fact situation so warrants.</i>
7.	Shiju Joy. A. v. Nisha, OP (FC).NO.352 OF 2020 Judgment dated 23..3.2021 <i>A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. Family Court Judges is expected to decide the matters as expeditiously as possible keeping in view the</i>

	<i>objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.</i>
8.	X v. Y , Mat. Appeal No. 434 of 2016 Decided On: 19.11.2021 <i>When a spouse himself or herself shuts up in one or two rooms in the same house and have nothing to do with the other spouse and living separately, effectively, desertion would exist. According to Lord Denning, if the spouse had forsaken and abandoned cohabitation, a case of desertion would be attracted. Spouse may have reasons or dislikes to cohabit with the other spouse. If that reason or cohabitation reached to a point in declaring not to resume cohabitation, the Court has to hold that desertion commenced from that stage.</i>
9.	X v. Y Mat. Appeal.No.89 of 2020 Judgment dated 09.04.2021 <i>The right to invoke khula conferred upon a married Muslim women is an absolute right; akin to talaq conferred upon married Muslim men. In the matter of khula, there are differences of opinion in regard to procedures, methods etc. Family Court can grant divorce on the basis of the agreement executed between the parties, referring khula and mubaraat as a divorce based on mutual consent.</i>
10.	Dinesh Singh Thakur v. Sonal Thakur , (2018) 17 SCC 12 <i>Principles for grant or refusal of anti-suit injunction restraining another court outside its jurisdiction including a foreign court - Such injunction deserves to be refused when by such refusal no grave injustice would be suffered by party seeking such injunction. Power should be exercised by court cautiously, carefully, sparingly and not in a routine manner. Grant of injunction is governed by the doctrine of equity.</i>
11.	Prateek Gupta v. Shilpi Gupta , (2018) 2 SCC 309 <i>The court held that unless, the continuance of the child in the country to which it has been removed, is unquestionably harmful, when judged on the touchstone of overall perspectives, perceptions and practicabilities, it ought not to be dislodged and extricated from the environment and setting to which it had got adjusted for its well-being.</i>
12.	Nithya Anand Raghavan v. State (NCT of Delhi) , (2017) 8 SCC 454 <i>It was held that at the threshold the High Court is only supposed to examine whether “the minor is in lawful custody” of the respondent or not and a natural guardian would constitute as one by default. The biological mother is one such natural guardian. Once such a factor has been ascertained, only in exceptional cases can writ petitions for removal of guardianship of the child from the mother be entertained by the High Courts.</i>
13.	Shayara Bano v. Union of India , (2017) 9 SCC 1 <i>The practice of ‘talaq-e-biddat’ – triple talaq was held to be violative of Article 14 of the Constitution</i>
14.	Augustine Kalathil Mathew v. Marriage Officer , 2016 SCC OnLine Ker 41114 <i>The Kerala High Court has decided that mutual divorce in foreign courts are acceptable in India under section 13 of Civil Procedure Code, 1908. it was clarified that although the general rule is that a foreign matrimonial judgment can be recognised in India only if the jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted are in accordance with the matrimonial law under which the parties are married, such judgments can be accepted as conclusive in India where the person seeking relief voluntarily and effectively submits to the jurisdiction of the forum and consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.</i>
15.	Manas Acharya vs State & Anr Case , 2012 SCC OnLine Del 4462 <i>The court emphasised that the resolution reached by mediation is legal and accurate and that the decision reached during the mediation period is binding on all sides.</i>
16.	Ruchi Majoo v. Sanjeev Majoo , (2011) 6 SCC 479 <i>Repatriation of child on the principle of comity of courts - when not desirable. Interest and welfare of the minor being paramount, a competent court in India is entitled and duty bound to examine the matter independently, taking the foreign judgment only as an input for its final adjudication. Simply because a foreign court has taken a particular view regarding the welfare of the minor is not enough for the courts in India to shut out an independent consideration of the matter. Indian courts have to decide the issue regarding the validity of the decree in accordance with Indian law. Comity of courts demands consideration</i>

	<i>of any such order issued by foreign courts and not necessarily their enforcement.</i>
17.	Athar Hussain v. Syed Siraj Ahmed, (2010) 2 SCC 654 <i>While deciding the question of interim custody, the court must be guided by the welfare of the children since Section 12 empowers the court to make any order as it deems proper. The factors that must be kept in mind while determining the question of guardianship will apply with equal force to the question of interim custody. The strict parameters governing an interim injunction do not have full play in matters of custody.</i>
18.	B.S. Joshi v. State of Haryana, (2003) 4 SCC 675 <i>The wife, had filed an FIR against the partner but later said that their marriage as well, and that the FIR was filed rashly and without thought. Supreme Court stated, "Courts should promote reconciliation, especially in matrimonial disputes of such kind."</i>
19.	Y. Narasimha Rao v. Y. Venkata Lakshmi, (1991) 3 SCC 451 <i>Recognition of foreign judgment on matrimonial dispute- Held, the decree of foreign court dissolving marriage is without jurisdiction as neither the marriage was celebrated, nor the parties last resided within the jurisdiction of that court. However, even presuming that the foreign court had by its rules rightly entertained the dispute and granted a valid decree, it must be held that since the jurisdiction of the forum and the ground on which the decree was passed by the foreign court is not in accordance with the Act under which the parties were married and the respondent has not submitted to the jurisdiction of the court nor consented to its passing, it cannot be recognised by the courts in this country and is therefore unenforceable.</i>

Additional Reading (Suggestive)

COMPILATION OF LANDMARK JUDGMENTS OF SUPREME COURT OF INDIA ON FAMILY MATTERS, Compiled By Jharkhand State Legal Services Authority, Publication : 2018