

# REFRESHER COURSE FOR FAMILY COURTS (P-1439)

15<sup>th</sup> & 16<sup>th</sup> February, 2024

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2.	Laura Robertson, Karen Broadhurst, <i>Introducing Social Science Evidence in Family Court Decision-Making and Adjudication: Evidence from England and Wales</i> , <i>International Journal of Law, Policy and the Family</i> , Volume 33, Issue 2, August 2019, Pages 181– 203, <a href="https://doi.org/10.1093/lawfam/ebz002">https://doi.org/10.1093/lawfam/ebz002</a>	
3.	Natalie Anne Knowlton, “The Modern Family Court Judge: Knowledge, Qualities and Skills for Success” 53(2) FAMILY COURT REVIEW 203 (April, 2015).	
4.	Emily E. Anderson, Kandace C. Gerdes, and F. Michael Goodbee, “The Modern Family Court Judge-More than just Pots and Pans”, 44 <i>The Colorado Lawyer</i> 85 (Aug. 2015).	
5.	Paula Lustbader, “Listening from the Bench Fosters Civility and Promotes Justice”, 13(3) <i>Seattle Journal of Social Justice</i> 903 (2015).	
6.	Lord Denning, “Into the Conduct of Judges” in THE DUE PROCESS OF LAW, Oxford University Press (2012), pp. 58-66	
7.	Honorable Anthony J. Sciolino, “The Changing Role of the Family Court Judge: New Ways of Stemming the Tide”, 3 <i>CARDOZO PUB. LAW, POLICY &amp; ETHICS J</i> 395 (2005).	
8.	A. Saravana Kumar. B.A.B.L., <i>The Role, duties and procedural functions of Family Courts</i> , Tamil Nadu Judicial Academy.	
<b>Additional Reading</b>		
<ul style="list-style-type: none"><li>✓ <i>Handbook on Combating Gender Stereotypes by Supreme Court of India (2023)</i>, Retrieved From: <a href="https://main.sci.gov.in/pdf/LU/04092023_070741.pdf">https://main.sci.gov.in/pdf/LU/04092023_070741.pdf</a></li><li>✓ Dana Ann Remus, <i>Just Conduct: Regulating Bench-Bar Relationships</i>, Yale Law &amp; Policy Review 30, no. 1 (Fall 2011): 123-168</li><li>✓ Justice R.C. Lahoti, <i>Canons of Judicial Ethics</i>, First MC Setalvad Memorial, Lecture delivered by Chief Justice of India, 22nd February, 2005</li><li>✓ <i>Nolan Principles of Public Life</i>, [The Seven Principles of Public Life (the ‘Principles’) apply to people who serve the public in any way, including governors of higher education institutes. The Principles were first set out by Lord Nolan in May 1995 in the first report of the Committee on Standards in Public Life which he chaired. The principles apply to all aspects]</li></ul>		

- ✓ *The Bangalore Principles of Judicial Conduct, 2002 [The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002].*

## SESSION 2

### ROLE OF JUDGES IN DIVORCE AND MAINTENANCE PROCEEDINGS

1.	Agnes, Flavia, <i>Matrimonial Rights and Obligations in Marriage, Divorce And Matrimonial Litigation</i> Volume II (2011) pp. 117 -129,142-145, 153-204, Oxford University Press
2.	Ira Mark Ellman, <i>The Theory of Alimony</i> , 77 Cal. L. Rev. 1 (1989)
3.	Charles L. Chute, <i>Divorce and the Family Court</i> , 18 <i>Law and Contemporary Problems</i> 49-65 (Winter 1953) Available at: <a href="https://scholarship.law.duke.edu/lcp/vol18/iss1/7">https://scholarship.law.duke.edu/lcp/vol18/iss1/7</a>
4.	L. N. Turrentine, <i>The Trial Judge Decrees Maintenance</i> , 10 <i>Law and Contemporary Problems</i> 747-756 (Summer 1944)

#### Additional Reading

- ✓ *Compilation of Landmark Judgments of Supreme Court of India on Family Matters, 2018, Jharkhand State Legal Services Authority*

#### 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.	<p><b>Rina Kumari v. Dinesh Kumar Mahto, 2025 SCC OnLine SC 72</b></p> <p><i>The Supreme Court noted that maintenance proceedings under Section 125 of the Cr.P.C. are essentially civil in nature and should not be equated with criminal proceedings merely because they involve a penal consequence.</i></p> <p><i>“Even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.”</i>, the bench remarked.</p>
2.	<p><b>Amutha v. A.R. Subramanian, 2024 SCC OnLine SC 3822</b></p> <p><i>"Forcing a marriage to continue when it has become a source of unhappiness and conflict undermines the very purpose of the institution of marriage. In the present case, the interests of both the parties are best served by allowing both parties to move on with their lives independently,"</i> the Court observed.</p>
3.	<p><b>Kiran Jyot Maini v. Anish Pramod Patel, 2024 SCC OnLine SC 1724</b></p> <p><i>Maintenance or permanent alimony should not be penal but should be for the purposes of ensuring a decent living standard for the wife.</i></p>
4.	<p><b>Shilpa Sailesh v. Varun Sreenivasan, (2023) 14 SCC 231</b></p> <p><i>In a significant verdict, a Constitution Bench of the Supreme Court held that it can invoke its special powers under Article 142 of the Constitution of India to grant divorce on the ground of irretrievable</i></p>

	<p><i>breakdown of marriage, which is not yet a statutorily recognised ground.</i></p> <p><i>"We have held that it is possible for this court to dissolve marriage on the ground of irretrievable breakdown of marriage. That will not contravene the specific or fundamental principles of public policy", the court said that the judgment has specified the factors which have to be kept in mind while dissolving marriage on this ground and how to balance out equities, specifically with regard to maintenance, alimony and the rights of the children.</i></p> <p><i>Notably, the bench also held that the mandatory waiting period of six months for divorce by mutual consent can be dispensed with subject to the requirements and conditions laid down in the previous judgments.</i></p>
5.	<p><b>Rajib Kumar Roy v. Sushmita Saha, 2023 SCC OnLine SC 1221</b></p> <p><i>Constitution of India, 1950 ; Article 142 - Irretrievable Breakdown of Marriage - Keeping the parties together despite irretrievable breakdown of marriage amounts to cruelty on both sides - Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of "irretrievable breakdown of marriage - When there is irretrievable breakdown of marriage then dissolution of marriage is the only solution.</i></p>
6.	<p><b>Prabhavathi @ Prabhamani v. Lakshmeesha M.C. CIVIL APPEAL NO(s).___OF 2024 (Arising out of SLP(C) No. 28201/2023)</b></p> <p><i>The Supreme Court expressed dismay over the mechanical approach adopted by the Family Court in granting a divorce decree against the wife despite no fault being attributed to her. The Court said that the husband cannot be benefitted from seeking annulment of the marriage when he was solely responsible for the breakdown of the marital relationship.</i></p> <p><i>"The bogey of irretrievably breaking down of marriage cannot be used to the advantage of a party (husband in this case) who is solely responsible for tearing down the marital relationship.", the bench said.</i></p>
7.	<p><b>Rajnesh v. Neha, (2021) 2 SCC 324</b></p> <p><i>The Apex Court laid down comprehensive guidelines to govern payment of maintenance in matrimonial cases.</i></p> <p><i>While adjudicating this case, the Court found the need to frame guidelines that would cover "overlapping jurisdiction under different enactments for payment of maintenance, payment of interim maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and the enforcement of orders of maintenance."</i></p>
8.	<p><b>Shyju .P.K v. Nadeera, Mat.Appeal No. 173 OF 2015 Judgment dated 05.10.2021</b></p> <p><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></p>
9.	<p><b>Rana Nahid v. Sahidul Haq Chisti, (2020) 7 SCC 657</b></p> <p><i>Appropriate forum to adjudicate claim of maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986.</i></p>
10.	<p><b>Sanjeev Kapoor v. Chandana Kapoor, (2020) 13 SCC 172</b></p> <p><i>Embargo in S. 362 Cr.P.C. prohibiting court to alter or review its judgment or final order disposing</i></p>

	<p><i>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 &amp; 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.</i></p> <p><i>S. 125 Cr.P.C. is a social justice legislation &amp; 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></p>
11.	<p><b>Swapan Kumar Banerjee v. State of W.B., (2020) 19 SCC 342</b></p> <p><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.</i></p> <p><i>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></p>
12.	<p><b>Rakesh Malhotra v. Krishna Malhotra, (2020) 14 SCC 150</b></p> <p><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></p>
13.	<p><b>Kaushalya v. Mukesh Jain, (2020) 17 SCC 822</b></p> <p><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></p>
14.	<p><b>Lalita Toppo v. State of Jharkhand, (2019) 13 SCC 796</b></p> <p><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></p>
15.	<p><b>Kamala v. M.R. Mohan Kumar, (2019) 11 SCC 491</b></p> <p><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 S. 125 Cr.P.C.</i></p>
16.	<p><b>Ajay Kumar v. Lata, (2019) 15 SCC 352</b></p> <p><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></p>

17.	<p><b>Nutan Gautam v. Prakash Gautam, (2019) 4 SCC 734</b></p> <p><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></p>
18.	<p><b>Shailja v. Khobbanna, (2018) 12 SCC 199</b></p> <p><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></p>
19.	<p><b>Sanjay Kumar Sinha v. Asha Kumari, (2018) 5 SCC 333</b></p> <p><i>Maintenance granted under S. 24 of the Hindu Marriage Act, 1955 would supercede maintenance granted under S. 125 Cr.P.C.</i></p>
20.	<p><b>Kalyan Dey Chowdhury v. Rita Dey Chowdhury nee Nandy, (2017) 14 SCC 200</b></p> <p><i>Power of court to modify or vary discharge permanent alimony or maintenance due to change in circumstances.</i></p>
21.	<p><b>Manish Jain v. Akanksha Jain, (2017) 15 SCC 801</b></p> <p><i>Grant of maintenance pendente 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></p>
22.	<p><b>Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165</b></p> <p><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></p>
23.	<p><b>Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705</b></p> <p><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></p>
24.	<p><b>Jaiminiben Hirenghai Vyas v. Hirenghai Rameshchandra Vyas, (2015) 2 SCC 385</b></p> <p><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></p>

	<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 &amp; 354(6) must be read together. As per S. 354(6) Cr.P.C. the court should record reasons in support of order passed by it in both eventualities.</i>
<b>25.</b>	<b>Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188</b> <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>
<b>26.</b>	<b>Shamim Bano v. Asraf Khan, (2014) 12 SCC 636</b> <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>
<b>27.</b>	<b>Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715</b> <i>Merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.</i>
<b>28.</b>	<b>Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755</b> <i>Whether the non-maintenance of the appellant in a broken live-in-relationship will amount to domestic violence.</i>
<b>29.</b>	<b>Deoki Panjhiyara v. Shashi Bhushan Narayan Azad, (2013) 2 SCC 137</b> <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>
<b>30.</b>	<b>Darshan Gupta v. Radhika Gupta, (2013) 9 SCC 1</b> <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>

31.	<b>Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade, (2011) 3 SCC 650</b> <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>
32.	<b>Pyla Mutyalamma v. Pyla Suri Demudu, (2011) 12 SCC 189</b> <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>
33.	<b>Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112</b> <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>
34.	<b>Shabana Bano v. Imran Khan, (2010) 1 SCC 666</b> <i>Family Court has exclusive jurisdiction to adjudicate the applications filed under S. 125 Cr.P.C.</i>
35.	<b>Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415</b> <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>
36.	<b>Vishnu Dutt Sharma v. Manju Sharma, (2009) 6 SCC 379</b> <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>
37.	<b>Chand Patel v. Bismillah Begum, (2008) 4 SCC 774</b> <i>Wife and children from irregular (fasid) marriage are entitled to maintenance unless the marriage has been declared void.</i>
38.	<b>S.R. Batra v. Taruna Batra, (2007) 3 SCC 169</b> <i>Interpretation of the definition of SHARED HOUSEHOLD as appearing in Sec. 2(S) of P.W.D.V Act.</i>
39.	<b>Rohtash Singh v. Ramendri, (2000) 3 SCC 180</b> <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>

40.	<b>Danial Latifi v. Union of India, (2001) 7 SCC 740</b> <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>
41.	<b>Ashok Hurra v. Rupa Bipin Zaveri, (1997) 4 SCC 226</b> <i>Prolonging a dead marriage serves no interest and only perpetuates the agony of the parties involved.</i>
42.	<b>Noor Saba Khatoun v. Mohd. Quasim, (1997) 6 SCC 233</b> <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>
43.	<b>Vanamala v. H.M. Ranganatha Bhatta, (1995) 5 SCC 299</b> <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>
44.	<b>Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70</b> <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>

### SESSION 3

#### EXPLORING PSYCHO-SOCIAL ASPECTS OF FAMILY DISPUTES

1.	Shiju Joseph and Anand Inbanathan, <i>Marital Disharmony among Working Couples in Urban India – A Sociological Inquiry</i> , Working Paper No. 373 (2016), <a href="http://www.isec.ac.in/WP%20373%20-%20Shiju%20Joseph%20and%20Anand%20Inbanathan%20-%20Final.pdf">http://www.isec.ac.in/WP%20373%20-%20Shiju%20Joseph%20and%20Anand%20Inbanathan%20-%20Final.pdf</a>
2.	Mediation and Conciliation Project Committee, Supreme Court of India, <i>Understanding Conflict</i> in MEDIATION TRAINING MANUAL OF INDIA, pp. 10-15.
3.	Mediation and Conciliation Project Committee, Supreme Court of India, <i>Conflict Management</i> in MEDIATION TRAINING MANUAL FOR CAPSULE COURSE, pp. 05-08.
4.	Renni Ariplackal & Tony Sam George, <i>Psychological Components for Marital Distress and Divorce in Newlywed Indian Couples</i> , 56(1) Journal of Divorce & Remarriage, (2015) pp. 1-24.
5.	Alejandro R. Aparicio, <i>Family and Social Dynamics: Freudian Interpretation, Explanation, and Prediction of Behavior</i> , 2 Athene Noctua: Undergraduate Philosophy Journal pp. 1-4 (2014).
6.	Frank D. Fincham <i>Marital Conflict: Correlates, Structure and Context</i> , 12(1) Current Directions in Psychological Science 23-27 (2003)



## SESSION 4

### ADJUDICATION OF CUSTODY & GUARDIANSHIP DISPUTES

1.	Elaine Sutherland, <i>The Welfare Test: Determining the Indeterminate</i> , 22(1) Edin. L.R. 94-100 (2018)
2.	Debrati Halder, “ <i>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</i> ” in <i>ESSAYS IN FAMILY LAW IN MEMORY OF PROFESSOR B N SAMPATH: GENDER, HUMAN RIGHTS AND LAW</i> ,(pp. 8-18) Ed. Sarasu Esther Thomas, National Law School of India University, Bangalore (2012).
3.	Tommie Forslund, Pehr Granqvist, <i>et al.</i> , <i>Attachment Goes To Court: Child Protection and Custody Issues</i> , <i>Attachment &amp; Human Development</i> , 2022, VOL. 24, NO. 1, 1–52
4.	Tejaswi Pandit and Manovi Mitra, <i>Custody of Children</i> , 2019 SCC OnLine Blog LME 5
5.	Marques, T.M.; Narciso, I.; Ferreira, L.C. <i>How Do Family Court Judges Theorize about Parental Alienation? A Qualitative Exploration of the Territory</i> . <i>Int. J. Environ. Res. Public Health</i> 2022, 19, 7555. <a href="https://doi.org/10.3390/ijerph19137555">https://doi.org/10.3390/ijerph19137555</a>
6.	<i>Custody of Children/ Guardianship/ Visitation Rights</i> , Available at: <a href="https://cja.gov.in/All%20Judgments/Custody%20of%20Children.pdf">https://cja.gov.in/All%20Judgments/Custody%20of%20Children.pdf</a>

#### Additional Reading

- ✓ 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.	<p><b>Gautam Kumar Das v. State (NCT of Delhi), (2024) 10 SCC 588</b></p> <p><i>While granting custody of a minor daughter to her father, the Supreme Court observed that granting temporary custody of a minor child to a relative would not preclude the natural guardian from seeking custody of a minor child.</i></p> <p><i>“In our opinion, merely because of the unfortunate circumstances faced by the appellant as a result of which, respondent Nos. 5 and 6 were given the temporary custody of the minor child ... and only because they looked after her for few years, the same cannot be a ground to deny the custody of the minor child to the appellant, who is her only natural guardian.”, the bench said.</i></p>
2.	<p><b>Ramneesh Pal Singh v. Sugandhi Aggarwal, 2024 SCC OnLine SC 847</b></p> <p><i>The Supreme Court discussed the concept of "Parental Alienation Syndrome (PAS)" in the case between an estranged couple for the custody of their children.</i></p> <p><i>PAS is a syndrome whereby one parent, who has custody of the child, promotes feelings of disaffection against the other parent in the mind of the child, which ultimately influences the child's preference for one parent in a court litigation for custody.</i></p>

3.	<p><b>Somprabha Rana v. State of M.P., (2024) 9 SCC 382</b></p> <p><i>Observing that the welfare of a child is of paramount importance, the Supreme Court on set aside the High Court's order which had granted the custody of a 2.5-year-old child to her father on the sole ground of he being a 'natural guardian' of the child.</i></p> <p><i>"As far as the decision regarding custody of the minor children is concerned, the only paramount consideration is the welfare of the minor. The parties' rights cannot be allowed to override the child's welfare. This principle also applies to a petition seeking Habeas Corpus concerning a minor," the Court observed.</i></p> <p><i>The Court summarised the principles regarding habeas corpus as follows :</i></p> <ul style="list-style-type: none"> <li>• <i>Writ of Habeas corpus is a prerogative writ. It is an extraordinary remedy. It is a discretionary remedy;</i></li> <li>• <i>The High Court always has the discretion not to exercise the writ jurisdiction depending upon the facts of the case. It all depends on the facts of individual cases;</i></li> <li>• <i>Even if the High Court, in a petition of Habeas Corpus, finds that custody of the child by the respondents was illegal, in a given case, the High Court can decline to exercise jurisdiction under Article 226 of the Constitution of India if the High Court is of the view that at the stage at which the Habeas Corpus was sought, it will not be in the welfare and interests of the minor to disturb his/her custody;</i></li> <li>• <i>As far as the decision regarding custody of the minor children is concerned, the only paramount consideration is the welfare of the minor. The parties' rights cannot be allowed to override the child's welfare. This principle also applies to a petition seeking Habeas Corpus concerning a minor</i></li> <li>• <i>When the Court deals with the issue of Habeas Corpus regarding a minor, the Court cannot treat the child as a movable property and transfer custody without even considering the impact of the disturbance of the custody on the child. Such issues cannot be decided mechanically. The Court has to act based on humanitarian considerations. After all, the Court cannot ignore the doctrine of parens patriae.</i></li> </ul>
4.	<p><b>Sugirtha v. Gowtham, 2024 SCC OnLine SC 3825</b></p> <p><i>"The interest of the minor child is paramount. In the process of adjudicating upon the rights of the parents, her health cannot be compromised," the Court observed while holding that the visitation rights of the parent cannot be at the cost of health and well-being of the child.</i></p>
5.	<p><b>Vasudha Sethi v. Kiran V. Bhaskar, 2022 SCC OnLine SC 43</b></p> <p><i>In a habeas corpus case the Division Bench held that in a case for custody of the child the rights of the parties to a custody dispute (parents) are irrelevant. However, adding an exception, the Bench stated, "We may note here that a writ Court while dealing with the issue of habeas corpus cannot direct a parent to leave India and to go abroad with the child. If such orders are passed against the wishes of a parent, it will offend her/his right to privacy."</i></p>
6.	<p><b>Neha Tyagi v. Deepak Tyagi, (2022) 3 SCC 86</b></p> <p><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 suffer. The liability and responsibility of the father to maintain the child continues till the child / son attains the age of majority.</i></p>
7.	<p><b>Amyra Dwivedi v. Abhinav Dwivedi, (2021) 4 SCC 698</b></p>

	<i>It was held that the child has a right to love and affection of both the parents which supersedes the privilege of having access to the child of both the parents.</i>
<b>8.</b>	<b>Yashita Sahu v. State of Rajasthan, (2020) 3 SCC 67</b> <i>It was held that the court cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each, further this Court granted visitation and contact right to the father.</i>
<b>9.</b>	<b>X v. Y, Mat. Appeal No. 142 of 2020 Judgment dated 11.10.2021</b> <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>
<b>10.</b>	<b>Smitha Antony v. Koshy Kurian 2022 SCC OnLine Ker 2477</b> <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>
<b>11.</b>	<b>D.S.G. v. A.K.G., (2020) 12 SCC 248</b> <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>
<b>12.</b>	<b>Nutan Gautam v. Prakash Gautam, (2019) 4 SCC 734</b> <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>
<b>13.</b>	<b>Amit Kumar v. Sonila, (2019) 12 SCC 711</b> <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>
<b>14.</b>	<b>Sheoli Hati v. Somnath Das, (2019) 7 SCC 490</b> <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>
<b>15.</b>	<b>Gaytri Bajaj v. Jiten Bhalla, (2012) 12 SCC 471</b> <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>
<b>16.</b>	<b>Vivek Singh v. Romani Singh, (2017) 3 SCC 231</b> <i>The welfare principle is aimed at serving twin objectives. In the first instance, it is to ensure that the</i>

	<i>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>
<b>17.</b>	<b>Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311</b> <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>
<b>18.</b>	<b>Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318</b> <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>
<b>19.</b>	<b>Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42</b> <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>
<b>20.</b>	<b>Premvati Meena v. State of Rajasthan D.B. Habeas Corpus Petition No. 333/2022 date of Judgment 01.11.2022</b> <i>The High Court has asked the Grandparents seeking custody of their minor grandson to deposit 50k as an advance litigation cost.</i>
<b>21.</b>	<b>Mansi v. State of Punjab, CRWP-7332-2022 (O&amp;M) Date of Decision: 07.11.2022</b> <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>
<b>22.</b>	<b>Manyata Avinash Dolani v. State of Gujarat R/Special Criminal Application No. 9903 of 2021 Date of Judgment 30/09/2022</b> <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>
<b>23.</b>	<b>Rohith Thammana Gowda v. State of Karnataka, 2022 SCC Online SC 937</b> <i>The Supreme Court observed that the question of 'what is the wish/desire' of the child is different and</i>

	<p><i>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>
24.	<p><b>Bindu Philips v. Sunil Jacob, (2018) 12 SCC 203</b></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>
25.	<p><b>ABC v. State (NCT of Delhi), (2015) 10 SCC 1</b></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>
26.	<p><b>Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42</b></p> <p><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></p>
27.	<p><b>Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413</b></p> <p><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></p>

28.	<b>Mamta v. Ashok Jagannath Bharuka, (2005) 12 SCC 452</b> <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>
29.	<b>Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228</b> <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>
30.	<b>Vikram Vir Vohra v. Shalini Bhalla, (2010) 4 SCC 409</b> <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

### COUNSELLING & MEDIATION IN RESOLVING FAMILY DISPUTES

1.	<i>Mediation Training Manual for Capsule Course, Mediation and Conciliation Project Committee, Supreme Court of India, Available at: <a href="https://main.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Capsule%20Course.pdf">https://main.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Capsule%20Course.pdf</a></i>
2.	<i>Nandini Gore &amp; Karanveer Singh Anand, Alternative Dispute Resolution As A Solution For Family Disputes, June 2022, Available at: <a href="https://www.mondaq.com/india/arbitration--dispute-resolution/1199420/alternative-dispute-resolution-as-a-solution-for-family-disputes">https://www.mondaq.com/india/arbitration--dispute-resolution/1199420/alternative-dispute-resolution-as-a-solution-for-family-disputes</a></i>
3.	<i>Rattan Singh and Shikha Dhiman, An Anodyne Mode of Negotiation : Mediation in Dissension of Indian Family Matters, 1 SML L Rev 190 (2018)</i>
4.	<i>Daniel Mathew, Notes and Comments: Arriving at a Settlement Under Family Courts Act, 1984: Deconstructing the Role of the Judge of the Family Court and Counselor, 56 JILI (2014) 376</i>

#### Additional Reading

- ✓ Law Commission of India, *Recognition of Foreign Divorces*, Report No. 65 (1976)

#### 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.	<b>Vasvi Grover v. Manish Grover, 2023 SCC OnLine Del 8128</b> <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.”DV</i>
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2.	<p><b>Ramachandran @ Chandran v. State Of Kerala ILR 2022(2) Kerala 671</b></p> <p><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></p>
3.	<p><b>XXXXX v. XXXXX, R.P.No.936 of 2021 Judgment dated 28.10.2022</b></p> <p><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></p>
4.	<p><b>Nisha Haneefa v. Abdul Latheef, 2022 SCC OnLine Ker 1556</b></p> <p><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></p>
5.	<p><b>T. Anjana v. J.A. Jayesh Jayaram 2022 SCC OnLine Ker 2043</b></p> <p><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></p>
6.	<p><b>Madhavendra L. Bhatnagar v. Bhavna Lall, (2021) 2 SCC 775</b></p> <p><i>Interim Anti-suit Injunction - Order 39 Rules 1 &amp; 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></p>
7.	<p><b>Shiju Joy. A. v. Nisha, OP (FC).NO.352 OF 2020 Judgment dated 23..3.2021</b></p> <p><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 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></p>
8.	<p><b>X v. Y, Mat. Appeal No. 434 of 2016 Decided On: 19.11.2021</b></p> <p><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></p>

9.	<p><b>X v. Y</b> Mat. Appeal.No.89 of 2020 Judgment dated 09.04.2021</p> <p><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></p>
10.	<p><b>Dinesh Singh Thakur v. Sonal Thakur, (2018) 17 SCC 12</b></p> <p><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></p>
11.	<p><b>Prateek Gupta v. Shilpi Gupta, (2018) 2 SCC 309</b></p> <p><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></p>
12.	<p><b>Nithya Anand Raghavan v. State (NCT of Delhi), (2017) 8 SCC 454</b></p> <p><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></p>
13.	<p><b>Shayara Bano v. Union of India, (2017) 9 SCC 1</b></p> <p><i>The practice of ‘talaq-e-biddat’ – triple talaq was held to be violative of Article 14 of the Constitution</i></p>
14.	<p><b>Augustine Kalathil Mathew v. Marriage Officer, 2016 SCC OnLine Ker 41114</b></p> <p><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></p>
15.	<p><b>Manas Acharya vs State &amp; Anr Case, 2012 SCC OnLine Del 4462</b></p> <p><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></p>
16.	<p><b>Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479</b></p> <p><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</i></p>



	<i>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 of any such order issued by foreign courts and not necessarily their enforcement.</i>
<b>17.</b>	<b>Athar Hussain v. Syed Siraj Ahmed, (2010) 2 SCC 654</b> <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>
<b>18.</b>	<b>B.S. Joshi v. State of Haryana, (2003) 4 SCC 675</b> <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>
<b>19.</b>	<b>Y. Narasimha Rao v. Y. Venkata Lakshmi, (1991) 3 SCC 451</b> <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>