**Case list**

1. **Landmark Cases:**

***Marriage/Divorce/Maintenance:***

1. ***Bai Tahira*v*. Ali Hussain,* AIR 1979 SC 362**

The respondent divorced the appellant as per customary law after six years of marriage under Mohammedan law, by a consent decree which also paid her a certain sum as *mehr*. Subsequently, the appellant became destitute and filed a petition under section 125 of the Cr.P.C., claiming maintenance from the respondent. The respondent denied maintenance, citing the consent decree and the *mehr* amount as evidence.

The crux of the issue centered around the interpretation of section 127(3)(b) of the Cr.P.C. The court held that the provision was welfare legislation and ought to be construed accordingly. Therefore, where the amount under any customary law was inadequate for the purposes of maintenance, the exception in section 127(3)(b) would not apply and the woman would be entitled to claim maintenance under section 125:

“*The purpose of the payment 'under any customary or personal law' must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole scheme of Section 127(3)(b) is manifestly to recognise the substitute maintenance arrangement by lump sum payment organized by the custom of the community or the personal law of the parties. There must be a rational relation between the sum so paid and its potential as provision for maintenance*.” [para 15]

On the facts, the court found the mehr amount of Rs 5000 was inadequate and allowed the claim for maintenance under section 125.

1. ***Ahmad Khan* v*. Shah Bano Begum*, AIR 1985 SC 945**

The appellant, a Muslim, divorced the respondent by talaaq and denied her claim for maintenance under section 125, Cr.P.C. on the ground that he had already paid her an amount of Rs. 3000 as *dower* under customary law. The lower courts rejected this argument and directed him to pay maintenance. On appeal, the correctness of the earlier decision in *Bai Tahira* came to be doubted and the matter was referred to a Constitution Bench.

The Constitution Bench relied on the Quran as well as commentaries and treatises on Mohammedan law to conclude that Muslim personal law required the payment of maintenance by the husband to a divorced woman if she was unable to maintain herself, and in this respect there was no conflict between the personal law s. 125 of the Cr.P.C. The Court also observed that in any case, s. 125 of the Cr.P.C. was a secular provision and would override personal law in case of a conflict. Consequently, the correctness of the decision in *Bai Tahira* was also upheld and the appeal was dismissed, with the appellant being directed to pay maintenance to the respondent.

1. ***SarlaMudgal*v*. Union of India,* (1995) 3 SCC 635**

The case involved a number of writ petitions, some of which were filed by Hindu women who were rendered destitute by their husbands converting to Islam and solemnizing second marriages. The main questions that were raised were as follows:

“…*whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnize second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?*”

The court analyzed the provisions of Hindu personal law and concluded that conversion by either spouse does not *ipso facto* dissolve a subsisting Hindu marriage:

“*It is obvious from the various provisions of the Act that the modern Hindu Law strictly enforces monogamy. A marriage performed under the Act cannot be dissolved except on the grounds available under Section 13 of the Act. In that situation parties who have solemnized the marriage under the Act remain married even when the husband embraces Islam in pursuit of other wife.*” [para 17]

Consequently, the Court held that a second marriage in such circumstances would be invalid, illegal and void and the husband would be liable for prosecution for bigamy under section 494 of the IPC.

1. ***DanialLatifi*v*. Union of India* AIR 2001 SC 3958**

Following the decision in *Shah Bano*, Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. Section 3 of the Act placed an obligation on the husband to make “a reasonable and fair provision and maintenance” for the wife during the *iddat* period and afterwards, this responsibility would devolve on her heirs and finally the State Wakf Board. The Constitutional validity of the Act was challenged before the Supreme Court.

Upholding the validity of the Act but reading down its provisions, the Court interpreted the words “reasonable and fair provision” in section 3 of the Act to mean a lump sum provision which would be reasonable and fair to sustain the divorced wife for the rest of her lifetime, which was to be paid during the *iddat* period. It also held that the liability of the husband to pay maintenance under the Act was not restricted to the *iddat* period.

1. ***ShamimAra*v. *State of U.P.,* (2002) 7 SCC 518**

The appellant filed a suit for maintenance against her husband whom she had been married to under Mohammedan law. During the proceedings before the trial court, the husband claimed in his written statement that he had divorced her some time earlier by triple talaaq without any other documentary proof. This was accepted by the trial court which held that the divorce had become final from the date of filing the written statement. The issues that arose before the Supreme Court on appeal was whether this could be considered a valid form of divorce under Mohammedan law and if so, from what date the appellant could be held to have been divorced?

The Supreme Court analysed several previous cases and commentaries on Mohammedan law and held that divorce by triple talaaq would be valid only if (i) it was pronounced with reasonable cause; (ii) it was preceded by an attempt at reconciliation between the husband and wife by two arbitrators, one from each of their families. Further, the triple talaaq would also have to be physically pronounced in the presence of witnesses and proof of the same would have to be adduced as evidence. On the facts, the court held that a mere claim made in the written statement, without any supporting evidence, would not amount to a valid dissolution of the marriage. It held that the appellant continued to remain married to her husband who was required to pay her maintenance as per law.

***Inheritance/Succession/Wakf:***

1. ***Commissioner of Wealth Tax* v. *R Sridharan*(1976) 4 SCC 489**

The respondent, a Hindu, married a Christian woman under the Special Marriage Act, 1954. They had a son who was brought up as a Hindu. The question that arose was whether the respondent and his son could claim to be assessed as a Hindu Undivided Family for the purposes of the Income Tax Act, 1961.

It was contended by the Revenue that by virtue of s. 21 of the Special Marriage Act, 1954, the status of the respondent as a Hindu was extinguished and therefore he could not constitute a Hindu Undivided Family along with his son. Rejecting this contention, the Supreme Court held that section 21 only applied to matters of intestate succession and did not affect the status of a Hindu Undivided Family during a person’s lifetime:

“…*the section guarantees inter alia to the issue of the person whose marriage has been solemnized under the Special Marriage Act a collateral statutory right of succession to the estate of the latter in case he dies intestate. It does not in any way impair or alter the joint family structure between an assessee and his son. Nor does it affect* (…) *the discretion vested in a Hindu assessee to treat his properties as joint family properties by taking into his fold his Hindu sons so as to constitute joint family properties*.” [para 24]

It was held that the only relevant consideration in this case was whether the father and son were both Hindus. On the facts, both of them were found to be Hindus and the appeal was disposed off in favour of the respondents.

1. ***Mary Roy* v. *State of Kerala*, (1986) 2 SCC 209.**

The petitioner was a Christian woman who challenged the validity of sections 24, 28 and 29 of the Travancore Cochin Succession Act, 1902 as being in violation of Article 14 of the Constitution on the ground that they discriminated against women in matters of intestate succession among Christians. The Court declined to go into the Constitutional aspects but held that with the passage of the Part B States (Laws) Act, 1951, the impugned Act had been repealed and the provisions of the Indian Succession Act, 1925 would be applicable in its place.

1. ***John Vallamattom*v. *Union of India,* AIR 2003 SC 2902**

The petitioner was a Christian man who challenged the validity of section 118 of the Indian Succession Act, 1925 as being in violation of Articles 14, 15, 25 and 26 of the Constitution. The impugned section, which was applicable only to Christians, restricted the ability of a person to make a religious or charitable bequest. It was contended that such a restriction being applicable only to Christians was in violation of the equality and anti-discrimination clauses under Articles 14 and 15, and restricted their religious rights under Articles 25 and 26. The Supreme Court held that Articles 15, 25 and 26 were not attracted as Article 15 was applicable only for individual rights and not class legislation, and the right to make a religious bequest was not a part of religious practice that was protected under Article 25. However, it found that the provision was arbitrary and struck it down as violating Article 14 of the Constitution.

***Miscellaneous:***

1. ***SyednaSaifuddin* v. *State of Bombay*, AIR 1962 SC 853**

The petitioner was the religious head of the DawoodiBohra community, who, as per the community’s customary religious practices, was vested with the power of excommunicating individuals from the community. He challenged the validity of the Bombay Prohibition of Excommunication Act, 1949 as being in violation of the right to religious freedom guaranteed under Articles 25 and 26 of the Constitution.

The State sought to defend the legislation as being for the purposes of social welfare and reform, and thereby saved under Article 25(2)(b). The Court, on an analysis of precedent and the provisions, held that while the right to practice and profess a religion under Article 25(1) was an individual right, every religious denomination had the collective right to manage its own affairs in matters of religion under Article 26(b). The legislation under Article 25(2)(b) could not go to the extent of eviscerating the right under Article 25(1) or Article 26(b):

“*the saving in Art. 25(2)(b) is not intended to cover the basic essentials of the creed of a religion, which is protected by Art. 25(1)*” [para 70]

On the facts of the case, the Court found that the power of excommunication was an integral part of the religious creed of the DawoodiBohra community. Consequently, the legislation was found to be in excess of the limit permissible under Article 25(2)(b) and struck down.

1. ***Stainislaus* v. *State of M.P*., AIR 1977 SC 908**

The petitioner, a Christian preacher, challenged certain provisions of the Madhya Pradesh Freedom of Religion Act, 1968, which restricted religious conversions, as being in violation of his right to propagate religion under Article 25(1) of the Constitution. The court analyzed the meaning of the term “propagate” in Article 25(1) and held that it includes the right to spread one’s own religion by an exposition of its tenets, but does not include the right to “convert” another person to one’s own religion. Upholding the validity of the Act, it also observed that the impugned act was in the interest of public order as it had been enacted with the objective of restricting religious conversions by force or fraud.

1. ***Soosai* v. *Union of India*, AIR 1986 SC 733**

The petitioner was a member of the AdiDravidar community which was classified as a Scheduled Caste. He was denied the benefit of a Government scheme on the ground that he had converted to Christianity. He challenged paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 which excluded individuals other than Hindus and Sikhs from being classified as Scheduled Castes, arguing that his caste continued to remain a part of his social identity even after conversion. The held that it was not sufficient to merely demonstrate that caste continues to be a part of social identity after conversion:

“*It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin -Hinduism - continue in their oppressive severity in the new environment of a different religious community.”* [para 9]

On the facts of the case, the court found that no material had been placed before it to demonstrate this, and dismissed the petition.

1. ***Bijoe Emmanuel* v. *State of Kerala*, AIR 1987 SC 748**

The petitioner and his siblings belonged to the Jehovah’s Witnesses community. On account of their religious beliefs, they declined to sing the national anthem at school and were consequently expelled. They challenged the order of expulsion as being in violation of their religious rights under Article 25 of the Constitution. The court held that a belief, genuinely and conscientiously held, would attract the protection of Article 25 of the Constitution. On facts, the Court examined cases and literature involving Jehovah’s Witnesses from around the world, and concluded that their faith did not permit them to sing the words of a national anthem. It found that the petitioners were genuinely and conscientiously practicing members of the Jehovah’s Witnesses, held that the action of the school administration in expelling the petitioners to be unconstitutional and in violation of Article 25, and directed the school to re-admit them.

1. ***Ahmedabad Women’s Action Group* v. *Union of India,*(1997) 3 SCC 573**

The case involved a set of writ petitions filed as public interest litigations, seeking to set aside various provisions of personal laws as being in violation of Articles 14 and 15 of the Constitution. Relying on a number of earlier decisions, the Court held that issues concerning personal laws and the Uniform Civil Code were a matter of State policy reform in which the Court would not interfere. It declined to examine the petitions on merits and dismissed all of them.

1. **Cases from 2009 onwards:**

***Marriage/Divorce/Guardianship/Maintenance/Adoption:***

* 1. ***ShabanaBano* v. *Imran Khan*, (2010) 1 SCC 666**

The appellant filed a claim for maintenance under s. 125, Cr.P.C. against the respondent after getting divorced from him. The respondent denied the claim on the ground that the Muslim Women (Protection of Rights on Divorce) Act, 1986 barred a Muslim woman from claiming maintenance beyond the expiry of three months of *iddat* period after divorce. Rejecting this contention, the Supreme Court held that while the Act was applicable only for the period of three months of iddat, a divorced Muslim woman would continue to be able to claim maintenance from her ex-husband under s. 125, Cr.P.C. as long as she did not remarry:

“*The appellant’s petition under Section 125 of the Cr.P.C. would be maintainable before the Family Court as long as appellant does not remarry. The amount of maintenance to be awarded under Section 125 of the Cr.P.C. cannot be restricted for the iddat period only.*” (para 27)

“*Cumulative reading of the relevant portions of judgments of this Court in DanialLatifi (supra) and IqbalBano (supra) would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women.*” (para 29)

On the facts, the Supreme Court held that the appellant was entitled to maintenance under s. 125, Cr.P.C. after the expiry of her *iddat* period and remitted the matter back to the trial court for determination of maintenance.

* 1. ***AtharHussain* v. *Syed Siraj Ahmed*, (2010) 2 SCC 654**

Custody – Guardianship: distinction between

The case was a dispute for custody in the family court between the father (appellant) and maternal grandfather (respondent) of two minor children whose mother had passed away. The appellant argued that as per the Guardians and Wards Act, the father was the natural guardian of the child and should have been granted custody pending the final proceedings. The respondents stated that as per Mohammedan law, guardianship of minor children would vest with the maternal grandparents of the child in the absence of the mother.

Distinguishing between custody and guardianship, the court held that the Muslim personal law would prevail in the case of interim custody, during the pendency of the proceedings before the trial court:

“*However, the question of custody is different from the question of guardianship. Father can continue to be the natural guardian of the children; however, the considerations pertaining to the welfare of the child may indicate lawful custody with another friend or relative as serving his/her interest better.*” (para 33)

“*As far as matters of custody are concerned, the Court is not bound by the bar envisaged under Section 19 of the Act. In our opinion, as far as the question of custody is concerned, in the light of the aforementioned decisions, the personal law governing the minor girl dictates her maternal relatives, especially her maternal aunt, shall be given preference. To the extent that we are concerned with the question of interim custody, we see no reason to override this rule of Mohammedan Law and, hence, a prima facie case is found in favour of the respondents.*” (para 43)

On facts, the Court found that the best interests of the children would be served by applying the Mohammedan law and directed that interim custody would be vested in the respondents till the disposal of the proceedings.

* 1. ***ShabnamHashmi* v. *Union of India*, (2014) 4 SCC 1**

The petition was filed as a public interest litigation seeking recognition of the right to adopt as a fundamental right under Part III of the Constitution. The petition was opposed by the All India Muslim Personal Law Board as an intervener, which argued that the provisions of Section 41(5) of the Juvenile Justice Act, 2000 were not in accordance with Muslim personal law. The Court declined the relief but also rejected the opposing contention, observing that while the JJ Act was a secular law and would apply to all people irrespective of personal law, it was not mandatory and individuals could opt not to use it if they did not wish to do so.

***Inheritance/Succession/Wakf:***

* 1. ***Ramesh Gobindram* v. *SugraHumayun*, (2010) 8 SCC 726**

The question of law that arose in this case was whether the Wakf Tribunal constituted under section 83 of the Wakf Act 1995 was competent to adjudicate civil disputes relating to occupation or encroachment of Wakf properties. Several High Courts had expressed conflicting views on the matter and the position of law was sought to be clarified before the Supreme Court. The Court held that the Civil Court would ordinarily have jurisdiction over all civil disputes within its territory unless the same was specifically excluded by law. On facts, the Court found that sections 6, 7 and 85 only excluded the jurisdiction of the Civil Court to a limited extent and specifically not in respect of questions relating to eviction, tenancy etc. Consequently, it answered the question in the negative and held that disputes relating to occupation or encroachment of Wakf properties would have to be decided by the Civil Court and not the Tribunal.

* 1. ***Bhanwar Lal*v. *Rajasthan Board of Wakf,* (2014 – unreported)**

The dispute revolved around a property of the appellant which was claimed by the respondents to be a Wakf property. During the pendency of the proceedings, the respondents disputed the jurisdiction of the court to hear the dispute and argued that under section 85 of the Rajasthan Wakf Act 1995, only the Tribunal under that Act could determine the question of whether the said property was a Wakf property or not.

The Court held that the provisions of the Act would not apply to suits that were pending before the Act came into force and since this proceeding had been pending since 1980, the civil court would continue to exercise jurisdiction over the matter.

* 1. ***SreeramachandraAvadhani* v. *Shaik Abdul Rahim*, (2014 – unreported)**

‘A’ gifted his immovable property to ‘B’. After the death of ‘A’, ‘B’ sold the property to the appellant. This sale was challenged by the respondents, who were the legal heirs of ‘A’, on the grounds that the gift was conditional and only created a life interest in favour of ‘B’ who therefore had no right to alienate the property.

The court held that as per Mohammedan law, a gift of corpus amounts to an absolute transfer of property and all conditions imposed on a gift are void:

“*Having given our thoughtful consideration to the treatises on Muhammedan Law brought to our notice, as also, the judgment rendered by the Privy Council in Nawazish Ali Khan's case (supra), we are of the considered view, that in a gift which contemplates the transfer of the corpus, there is no question of such transfer being conditional. The transfer is absolute. Conditions imposed in a gift of the corpus, are void.*” (para 15)

On the facts of the case, the Court found that ‘A’ intended to transfer the corpus of the property to ‘B’. Therefore the gift was absolute and the alienation by ‘B’ in favour of the appellants was held to be valid.

***Miscellaneous:***

* 1. ***M. Chandra* v. *M. Thangamuthu*, (2010) 9 SCC 712**

The appellant and the respondent contested the election to the Tamil Nadu Legislative Assembly from a seat reserved for the SC community, after which the appellant was declared elected. This was contested by the respondent by means of an election petition filed before the High Court, which was allowed and the election of the appellant was set aside. The ground of challenge was that the appellant had converted to Christianity and was therefore not eligible for the benefits of reservation for SCs.

The appellant challenged the decision of the High Court before the Supreme Court. The High Court had reasoned that since the appellant had stated that she had converted from Christianity to Hinduism, the burden of proof was on her to prove that she had renounced Christianity. This was rejected by the Supreme Court which held that in an election petition, the burden of proof would be on the petitioner and in any case, the appellant had produced a certificate from the AryaSamaj regarding her conversion to Hinduism which was not disputed by the respondents. Further, the evidence relied on by the respondent was only hearsay evidence whereas the appellant’s witnesses had actually known and interacted with her and her family, and hence their testimony would be reliable in the matter of determining the religion of the appellant. The Supreme Court allowed the appeal and restored the election of the appellant.

* 1. ***PrafullGoradia* v. *Union of India*, (2011) 2 SCC 568**

The petitioner challenged the provisions of the Haj Committee Act, 2002 as being ultra vires Articles 14, 15 and 27 of the Constitution. The main contention was that taxes paid by all citizens of the country were being used to fund the Haj pilgrimage, which was exclusively for the benefit of the Muslim community, in violation of Article 27. Rejecting this argument, the Supreme Court held that:

“*In our opinion, if only a relatively small part of any tax collected is utilized for providing some conveniences or facilities or concessions to any religious denomination that would not be volatile of Article 27 of the Constitution. It is only when a substantial part of the tax is utilized for any particular religion that Article 27 would be violated.*”

On facts, the Supreme Court found that there was no evidence to suggest that a substantial portion of any tax was expended on the Haj pilgrimage. Likewise, the Court also observed that similar facilities were being provided to pilgrims belonging to other religions and hence there was no violation of Articles 14 or 15. The petition was accordingly dismissed.

* 1. ***Union of India* v. *RafiqueShaikhBhikan*, (2013) 4 SCC 699**

The matter arose out of a series of petitions by private travel operators for Haj pilgrimage challenging the conditions laid down for their operation in the Haj Policy, 2012. The Court upheld all the conditions but also went into other aspects of the Haj Policy. It held the practice of sending a goodwill delegation comprising of members nominated by the Government, to be arbitrary and *ultra vires* Article 14 of the Constitution. It also observed that the subsidy being provided by the Government of India to the pilgrims, who had been progressively increasing over the years, was not necessary, and directed the Government to progressively phase it out over a period of 10 years.

* 1. ***VishwaLochan Madan* v. *Union of India*, (2014) 7 SCC 707**

The petition was filed as public interest litigation by the petitioner who sought a declaration from the Court that the parallel system of shariat courts being set up by the All India Muslim Personal Law Board and similar organizations was illegal and unconstitutional, and that fatwa’s or decrees pronounced by these bodies would have no legal sanction. The Court held that fatwa’s issued by private bodies or individuals would not have the force of law or be capable of being enforced. However, it held that the establishment of Shariat courts for resolving disputes within the community was not illegal but the decisions thereof would not be binding on the parties thereto. The court also suggested that fatwa’s should not be issued unless specifically requested for by one of the affected parties and that interference by third parties in such matters should be discouraged.

**Supreme Court of India**

**Rohit Chauhan vsSurinder Singh & Ors on 15 July, 2013**

Sole plaintiff Rohit Chauhan is the appellant. His grandfather Budhu had three sons, from amongst them Gulab Singh, father of the plaintiff, has been arrayed as defendant no. 2. He got some of his share in the property through his father. At that time Gulab Singh was unmarried and he had got alienated the land which had come to his share when the plaintiff came into existence. Meaning thereby that the property which Gulab Singh had got by the decree was although his separate property qua other relation but became JHF property immediately when the petitioner was born thereby getting characteristic of coparcenary property. Accordingly, the lower appellate court allowed the appeal and set aside the judgment and decree of the trial court and dismissed the suit.Plaintiff, aggrieved by the same, preferred second appeal and the High Court which also got dismissed.

Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, the property which defendant no. 2 got on partition was an ancestral property and till the birth of the plaintiff he was sole surviving coparcener but the moment plaintiff was born, he got a share in the father’s property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of defendant no. 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth defendant no. 2 could have alienated the property only as Karta for legal necessity. It is nobodyâ€™s case that defendant no. 2 executed the sale deeds and release deed as Karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale-deeds and release deed, the parties can work out their remedies in appropriate proceeding..

In view of what we have observed above, the view taken by the lower appellate court as affirmed by the High Court is erroneous in law.

In the result, we allow this appeal, set aside the judgment and decree of the lower appellate court as affirmed by the High Court and restore that of the trial court

**Supreme Court of India**

**Shivdev Kaur (D) By Lrs. & Ors vs R.S. Grewal on 20 March, 2013**

One Dr. Hira Singh had acquired a huge property in his life time. He executed various deeds creating certain rights in favour of his sole son Dr. Shivdev Singh Grewal and two daughters, namely, Smt. Dayawant Kaur and Dr. Shivdev Kaur. Dr. Hira Singh died. ShriShivdev Singh Grewal and Smt. Dayawant Kaur also died leaving behind their children. Dr. Shivdev Kaur claimed certain rights on the basis of the Will, and for the same she filed Suitagainst her nephew for mandatory injunction seeking his eviction from the suit premises claiming absolute right/ownership over the same in view of the provisions of Section 14 of the Hindu Succession Act, 1956. The respondent/defendant contested the suit denying such a right. During the pendency of the said suit, the respondent/defendant also filed suit, against the appellant/plaintiff for permanent injunction restraining her from transferring/alienating the suit property. The trial court decided the suit, holding that appellant/plaintiff had no absolute right/ownership over the suit property.

The appellate court dismissed the appeal filed by the respondent and appeal filed by the appellant was allowed to certain extent. The issue relating to conversion of the life interest into absolute title was decided against the appellant.

The appellant executed a Will in respect of the suit property creating a trust in the name of her father and appointingtrustees. The appellant and thus executors of her will got impleded.

The High Court allowed both the RSAs filed by the respondent and dismissed the claim of the appellant.It is evident from the aforesaid part of the Will that only a life interest had been created in favour of the appellant by that Will. Therefore, the sole question for our consideration remains as to whether such limited right got converted into absolute right on commencement of the Act 1956.Whether person is destitute or not, is a question of fact. A person can be held destitute when no one is to support him and is found wandering without any settled place of abode and without visible means of subsistence. In the instant case, no factual foundation has ever been laid by the appellant before the courts below in this regard. In such a fact-situation, the issue does not require consideration. All the courts have taken a consistent view rejecting the claim of the appellant of having acquired an absolute title. Appeals lack merit and are accordingly dismissed.

**Supreme Court of India**

**GanduriKoteshwaramma& Anr vsChakiriYanadi& Anr on 12 October, 2011**

The question that arises in this appeal, by special leave, is: whether the benefits of Hindu Succession (Amendment) Act, 2005 are available to the appellants.The appellants and the respondents are siblings being daughters and sons of ChakiriVenkataSwamy. The 1 st respondent (plaintiff) filed a suit for partition in the court of Senior Civil Judge, Ongole impleading his father ChakiriVenkataSwamy (1st defendant), his brother ChakiriAnjiBabu (2nd defendant) and his two sisters - the present appellants - as 3rd and 4th defendant respectively. In respect of schedule properties `A', `C' and `D' - coparcenary property - the plaintiff claimed that he, 1st defendant and 2nd defendant have 1/3rd share each. As regards schedule property `B'--as the property belonged to his mother--he claimed that all the parties have 1/5th equal share.

The 1st defendant died during the pendency of the suit. The trial court vide its judgment and preliminary decree declared that plaintiff was entitled to 1/3 rd share in the schedule `A', `C' and `D' properties and further entitled to 1/4th share in the 1/3rd share left by the 1st defendant. As regards schedule property `B' the plaintiff was declared to be entitled to 1/5th share. The controversy in the present appeal does not relate to schedule `B' property and is confined to schedule `A', `C' and `D' properties. The trial court ordered for separate enquiry as regards menses profits. The trial court appointed the Commissioner for division of the schedule property and in that regard directed him to submit his report

**Supreme Court of India**

**GhisalalvsDhapubai (D) By Lrs on 12 January, 2011**

Whether mere presence of Dhapubai in the ceremonies performed by her husband Gopalji for adoption of Ghisalal amounted to her consent as contemplated by the proviso to Section 7 of the Hindu Adoptions and Maintenance Act, 1956 is the main question which arises for consideration in these appeals filed against judgment of the learned Single Judge of the Madhya Pradesh High Court, Indore Bench whereby he partly allowed the second appeals filed by the parties and modified the decree passed by the lower appellate Court, which had substantially reversed the decree passed by the trial Court in a suit for declaration, partition and possession.

Ghisalal’s father, Kishanlal gave him in adoption to Gopalji; that ceremonies like putting of tilak on his forehead and distribution of sweets were performed; that registered deed of adoption was executed by Kishanlal and Gopalji.Gopalji had inherited certain agricultural lands from his father; that after adoption, he became coparcener in the family of Gopalji and thereby acquired right in the suit properties.Gopalji executed three Gift deed and Sale Deed were fraudulent and were intended to deprive him of his right in the ancestral properties and that even in his capacity as karta of the family, Gopalji could not have gifted more than 1/3rd of his share. On the basis of these pleadings, Ghisalal prayed that a decree of partition be passed and he be given one half share in the suit properties. He further prayed that Gopalji may be directed to give an account of the agricultural produce and pay him his share.

The learned Single Judge confirmed the finding recorded by the two Courts on the legality of Ghisalal's adoption by Gopalji. The learned Single Judge also agreed with the lower appellate Court that Ghisalal was not entitled to challenge Gift Deed but held that Will cannot be treated to have been validly executed by Gopalji. The learned Single Judge further held that the lower appellate Court was not justified in issuing a direction that Ghisalal be given land in village Kuchrod and Dhapubai would not get any share in that land. He finally disposed of the second appeals.

In view of the above discussion, we hold that the concurrent finding recorded by the trial Court and the lower appellate Court, which was approved by the learned Single Judge of the High Court that Gopalji had adopted Ghisalal with the consent of Dhapubai is perverse inasmuch as the same is based on unfounded assumptions and pure conjectures. We further hold that Dhapubai had succeeded in proving that the adoption of Ghisalal by Gopalji was not valid because her consent had not been obtained as per the mandate of the proviso to Section 7 of the 1956 Act. As a corollary, it is held that the suit filed by Ghisalal for grant of a decree that he is entitled to one half share in the properties of Gopalji was not maintainable and the findings recorded by the trial Court, the lower appellate Court and/or the High Court on the validity of Gift Deeds dated 29.11.1944 and 22.10.1966, Will dated 27.10.1975 executed by Gopalji in favour of Dhapubai and Sale Deed dated 19.1.1973 executed by her in favour of Sunderbai are liable to be set aside.

In the result, Civil Appeal Nos.6375-6376 of 2002 are allowed. The judgments and decrees passed by the trial Court, the lower appellate Court and the High Court are set aside and the suit filed by Ghisalal is dismissed. As a sequel to this, Civil Appeal Nos.6373-6374 of 2002 is dismissed.

**Bai Tahira v. Ali Hussain, AIR 1979 SC 362**

The respondent divorced the appellant as per customary law after six years of marriage under Mohammedan law, by a consent decree which also paid her a certain sum as *mehr*. Subsequently, the appellant became destitute and filed a petition under section 125 of the Cr.P.C., claiming maintenance from the respondent. The respondent denied maintenance, citing the consent decree and the *mehr* amount as evidence.

The crux of the issue centred around the interpretation of section 127(3)(b) of the Cr.P.C. The court held that the provision was welfare legislation and ought to be construed accordingly. Therefore, where the amount under any customary law was inadequate for the purposes of maintenance, the exception in section 127(3)(b) would not apply and the woman would be entitled to claim maintenance under section 125:

“*The purpose of the payment 'under any customary or personal law' must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole scheme of Section 127(3)(b) is manifestly to recognise the substitute maintenance arrangement by lump sum payment organised by the custom of the community or the personal law of the parties. There must be a rational relation between the sum so paid and its potential as provision for maintenance*.” [para 15]

On the facts, the court found the mehr amount of Rs 5000 was inadequate and allowed the claim for maintenance under section 125.

**Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945**

The appellant, a Muslim, divorced the respondent by talaaq and denied her claim for maintenance under section 125, Cr.P.C. on the ground that he had already paid her an amount of Rs. 3000 as *dower* under customary law. The lower courts rejected this argument and directed him to pay maintenance. On appeal, the correctness of the earlier decision in *Bai Tahira* came to be doubted and the matter was referred to a Constitution Bench.

The Constitution Bench relied on the Quran as well as commentaries and treatises on Mohammedan law to conclude that Muslim personal law required the payment of maintenance by the husband to a divorced woman if she was unable to maintain herself, and in this respect there was no conflict between the personal law s. 125 of the Cr.P.C. The Court also observed that in any case, s. 125 of the Cr.P.C. was a secular provision and would override personal law in case of a conflict. Consequently, the correctness of the decision in *Bai Tahira* was also upheld and the appeal was dismissed, with the appellant being directed to pay maintenance to the respondent.

**SarlaMudgal v. Union of India, (1995) 3 SCC 635**

The case involved a number of writ petitions, some of which were filed by Hindu women who were rendered destitute by their husbands converting to Islam and solemnizing second marriages. The main questions that were raised were as follows:

“…*whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?*”

The court analysed the provisions of Hindu personal law and concluded that conversion by either spouse does not *ipso facto* dissolve a subsisting Hindu marriage:

“*It is obvious from the various provisions of the Act that the modern Hindu Law strictlyenforces monogamy. A marriage performed under the Act cannot be dissolved except on thegrounds available under Section 13 of the Act. In that situation parties who have solemnized the marriage under the Act remain married even when the husband embraces Islam in pursuitof other wife.*” [para 17]

Consequently, the Court held that a second marriage in such circumstances would be invalid, illegal and void and the husband would be liable for prosecution for bigamy under section 494 of the IPC.

**DanialLatifi v. Union of India, AIR 2001 SC 3958**

Following the decision in *Shah Bano*, Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. Section 3 of the Act placed an obligation on the husband to make “a reasonable and fair provision and maintenance” for the wife during the *iddat* period and afterwards, this responsibility would devolve on her heirs and finally the State Wakf Board. The Constitutional validity of the Act was challenged before the Supreme Court.

Upholding the validity of the Act but reading down its provisions, the Court interpreted the words “reasonable and fair provision” in section 3 of the Act to mean a lump sum provision which would be reasonable and fair to sustain the divorced wife for the rest of her lifetime, which was to be paid during the *iddat* period. It also held that the liability of the husband to pay maintenance under the Act was not restricted to the *iddat* period.

**ShamimAra v. State of U.P., (2002) 7 SCC 518**

The appellant filed a suit for maintenance against her husband whom she had been married to under Mohammedan law. During the proceedings before the trial court, the husband claimed in his written statement that he had divorced her some time earlier by triple talaaq without any other documentary proof. This was accepted by the trial court which held that the divorce had become final from the date of filing the written statement. The issues that arose before the Supreme Court on appeal was whether this could be considered a valid form of divorce under Mohammedan law and if so, from what date the appellant could be held to have been divorced?

The Supreme Court analysed several previous cases and commentaries on Mohammedan law and held that divorce by triple talaaq would be valid only if (i) it was pronounced with reasonable cause; (ii) it was preceded by an attempt at reconciliation between the husband and wife by two arbitrators, one from each of their families. Further, the triple talaaq would also have to be physically pronounced in the presence of witnesses and proof of the same would have to be adduced as evidence. On the facts, the court held that a mere claim made in the written statement, without any supporting evidence, would not amount to a valid dissolution of the marriage. It held that the appellant continued to remain married to her husband who was required to pay her maintenance as per law.

**Commissioner of Wealth Tax v. R. Sridharan, (1976) 4 SCC 489**

The respondent, a Hindu, married a Christian woman under the Special Marriage Act, 1954. They had a son who was brought up as a Hindu. The question that arose was whether the respondent and his son could claim to be assessed as a Hindu Undivided Family for the purposes of the Income Tax Act, 1961.

It was contended by the Revenue that by virtue of s. 21 of the Special Marriage Act, 1954, the status of the respondent as a Hindu was extinguished and therefore he could not constitute a Hindu Undivided Family along with his son. Rejecting this contention, the Supreme Court held that section 21 only applied to matters of intestate succession and did not affect the status of a Hindu Undivided Family during a person’s lifetime:

“…*the section guarantees inter alia to the issue of the person whose marriage has been solemnized under the Special Marriage Act a collateral statutory right of succession to the estate of the latter in case he dies intestate. It does not in any way impair or alter the joint family structure between an assessee and his son. Nor does it affect*(…) *the discretion vested in a Hindu assessee to treat his properties as joint family properties by taking into his fold his Hindu sons so as to constitute joint family properties*.” [para 24]

It was held that the only relevant consideration in this case was whether the father and son were both Hindus. On the facts, both of them were found to be Hindus and the appeal was disposed off in favour of the respondents.

**Mary Roy v. State of Kerala, (1986) 2 SCC 209**

The petitioner was a Christian woman who challenged the validity of sections 24, 28 and 29 of the Travancore Cochin Succession Act, 1902 as being in violation of Article 14 of the Constitution on the ground that they discriminated against women in matters of intestate succession among Christians. The Court declined to go into the Constitutional aspects but held that with the passage of the Part B States (Laws) Act, 1951, the impugned Act had been repealed and the provisions of the Indian Succession Act, 1925 would be applicable in its place.

**John Vallamattom v. Union of India, AIR 2003 SC 2902**

The petitioner was a Christian man who challenged the validity of section 118 of the Indian Succession Act, 1925 as being in violation of Articles 14, 15, 25 and 26 of the Constitution. The impugned section, which was applicable only to Christians, restricted the ability of a person to make a religious or charitable bequest. It was contended that such a restriction being applicable only to Christians was in violation of the equality and anti-discrimination clauses under Articles 14 and 15, and restricted their religious rights under Articles 25 and 26. The Supreme Court held that Articles 15, 25 and 26 were not attracted as Article 15 was applicable only for individual rights and not class legislation, and the right to make a religious bequest was not a part of religious practice that was protected under Article 25. However, it found that the provision was arbitrary and struck it down as violating Article 14 of the Constitution.

**SyednaSaifuddin v. State of Bombay, AIR 1962 SC 853**

The petitioner was the religious head of the DawoodiBohra community, who, as per the community’s customary religious practices, was vested with the power of excommunicating individuals from the community. He challenged the validity of the Bombay Prohibition of Excommunication Act, 1949 as being in violation of the right to religious freedom guaranteed under Articles 25 and 26 of the Constitution.

The State sought to defend the legislation as being for the purposes of social welfare and reform, and thereby saved under Article 25(2)(b). The Court, on an analysis of precedent and the provisions, held that while the right to practice and profess a religion under Article 25(1) was an individual right, every religious denomination had the collective right to manage its own affairs in matters of religion under Article 26(b). The legislation under Article 25(2)(b) could not go to the extent of eviscerating the right under Article 25(1) or Article 26(b):

“*the saving in Art. 25(2)(b) is not intended to cover the basic essentials of the creed of a religion, which is protected by Art. 25(1)*” [para 70]

On the facts of the case, the Court found that the power of excommunication was an integral part of the religious creed of the DawoodiBohra community. Consequently, the legislation was found to be in excess of the limit permissible under Article 25(2)(b) and struck down.

**Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908**

The petitioner, a Christian preacher, challenged certain provisions of the Madhya Pradesh Freedom of Religion Act, 1968, which restricted religious conversions, as being in violation of his right to propagate religion under Article 25(1) of the Constitution. The court analysed the meaning of the term “propagate” in Article 25(1) and held that it includes the right to spread one’s own religion by an exposition of its tenets, but does not include the right to “convert” another person to one’s own religion. Upholding the validity of the Act, it also observed that the impugned act was in the interest of public order as it had been enacted with the objective of restricting religious conversions by force or fraud.

**Soosai v. Union of India, AIR 1986 SC 733**

The petitioner was a member of the AdiDravidar community which was classified as a Scheduled Caste. He was denied the benefit of a Government scheme on the ground that he had converted to Christianity. He challenged paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 which excluded individuals other than Hindus and Sikhs from being classified as Scheduled Castes, arguing that his caste continued to remain a part of his social identity even after conversion. The held that it was not sufficient to merely demonstrate that caste continues to be a part of social identity after conversion:

“*It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin -Hinduism - continue in their oppressive severity in the new environment of a different religious community.”*[para 9]

On the facts of the case, the court found that no material had been placed before it to demonstrate this, and dismissed the petition.

**Bijoe Emmanuel v. State of Kerala, AIR 1987 SC 748**

The petitioner and his siblings belonged to the Jehova’s Witnesses community. On account of their religious beliefs, they declined to sing the national anthem at school and were consequently expelled. They challenged the order of expulsion as being in violation of their religious rights under Article 25 of the Constitution. The court held that a belief, genuinely and conscientiously held, would attract the protection of Article 25 of the Constitution. On facts, the Court examined cases and literature involving Jehova’s Witnesses from around the world, and concluded that their faith did not permit them to sing the words of a national anthem. It found that the petitioners were genuinely and conscientiously practicing members of the Jehova’s Witnesses, held that the action of the school administration in expelling the petitioners to be unconstitutional and in violation of Article 25, and directed the school to re-admit them.

**Ahmedabad Women’s Action Group v. Union of India, (1997) 3 SCC 573**

The case involved a set of writ petitions filed as public interest litigations, seeking to set aside various provisions of personal laws as being in violation of Articles 14 and 15 of the Constitution. Relying on a number of earlier decisions, the Court held that issues concerning personal laws and the Uniform Civil Code were a matter of State policy reform in which the Court would not interfere. It declined to examine the petitions on merits and dismissed all of them.

**Who is a Hindu?**

*Betsy and Anr.*v*. Nil*, 2011 ACJ 261 (Supreme Court)

The landmark judgment helped settle the age long controversy as to who is a Hindu, and what is the manner of conversion to and out of the religion. The lady Betsy who was a Christian by birth, converted into Hinduism and married a Hindu man, under Hindu Marriage laws. Due to cracks developing in their marriage, they filed for divorce by mutual consent. However, The Family Court rejected the application, declaring that the marriage was invalid ab initio because it did not take place under the Special Marriage Act, for people from two different religions as was the case here. The family court came to the decision that the Hindu Marriages Act allows for marriages between two Hindus only, and that the solemnization of marriage rites under MisravivahaSangam Office were not as per Hindu rites and customs.

However, in the appeal before the High Court, Mrs. Betsy asserted that she had converted to Hinduism before her marriage, and they had gotten married as per Hindu customs and rituals. Also she had continued to live as a Hindu thereafter, and therefore classified as a Hindu convert. The question before the Court was whether a person could convert to Hinduism, as the religion has no specified method of conversion. The Court answered this with the help of *Perumal*v.*Ponnuswami*, AIR 1971 SC 2352, in which it was held that bona fide intention to be converted to Hinduism, along with expression of that intention, and manifestation of that intention in terms of conduct was enough ground to determine conversion. Presence or absence of certain rituals is insignificant. The court laid down the following guidelines:

*“We may broadly indicate that an assertion of the 1st Appellant that she had, prior to her marriage, embraced Hinduism will have to be given due weight. She can explain the assertion and satisfy the court that the tests indicated above have been satisfied by her in accepting conversion to Hinduism. She can prove the conduct of having her marriage with the 2nd Appellant solemnised in accordance with Hindu religious rites and ceremonies. She can certainly show before court that she had, after such conversion, been worshipping Hindu Gods. She can also adduce evidence to show that after such conversion, she has held out to the world that she is a Hindu.”*

Thus, this was the most significant judgment in the year 2009, in the area of marriage and divorce, as it dealt with a massively controversial question, with regard to conversion to Hinduism.

**Child Marriage**

*Jitender Kumar Sharma* v*. State*, (2010) 171 DLT 543.

In this case, an 18 year old boy eloped with a 16 year old girl and got married according to Hindu rites. The girl was later forcibly brought back to her parent’s home and meanwhile an FIR was registered against the boy who filed the present writ petition to quash the FIR gainst him and produce his wife.

The Court clarified the status of a Hindu child marriage and examined its dual nature. It ruled that a marriage in contravention of S. 5 (iii) of HMA can be void if any of the provisions of S.12, Prohibition of Child Marriage Act, 2006 are attracted. In any event, such a marriage is voidable at the option of the minor spouse as per S.3 of the same act.

According to court however, a distinction has to be understood between problems of child marriages as traditionally understood and consensual teenage marriages. The latter require to be treated differently by courts.

Moreover, the (minor) husband of a child wife is her natural guardian unless the Court deems him unfit to carry out such duties. The welfare of the minor is the primary consideration in all such decisions.

**Divorce under Hindu Marriage Act**

**Dissolution if Grounds Clearly Made Out**

*Sanjeeta Das* v. *Tapan Kumar Mohanty*, (2010) 10 SCC 222.

The respondent wished to get his marriage with the appellant dissolved. He filed for dissolution of his marriage with the Appellant on grounds of cruelty and desertion in a family court. These grounds were opposed by the appellant who claimed that she had been deserted. The family court ordered the parties to cohabitate under section 23 of HMA. On an appeal before the High Court, the respondent offered to pay a large sum of money for his wife and their daughter’s maintenance in consideration of the dissolution of the marriage. The High Court granted divorce to the parties on that basis.

The Supreme Court on appeal held that a Hindu marriage cannot be dissolved unless any of the grounds under Section 13 of the Hindu Marriage Act are plainly and clearly made out. A purchase of a decree of divorce for consideration, with or without the consent of the other side is not permitted unless the parties proceed under Section [13B](javascript:fnOpenGlobalPopUp('/ba/disp.asp','20293','1');) of the Act.

**Mutual Consent**

*Anil Kumar Jain* v*. Maya Jain*, AIR 2010 SC 229

In the case, the respondent- the wife, wanted to live separate from her husband without getting a divorce, by mutual consent. Moreover, the two parties had been residing separately for more than seven years. The court did not accept the contention of the respondent, especially since separate residence is one of the main grounds for divorce by mutual consent. Most importantly, the Supreme Court exercised its extraordinary powers granted by the Constitution under Art. 142, and dissolved the marriage without waiting for the stipulated statutory six months period in Article 13-B of The Hindu Marriage Act (1955).

According to the Supreme Court, although irretrievable break-down of marriage is not a ground under either Sections 13 or 13B of HMA, the Apex Court can apply this doctrine can to a proceeding in the exercise of its extraordinary powers under Article 142 of the Constitution and waive off the statutory waiting period of six months however this power is available to no other court. The court can also similarly convert a proceeding under Section 13 of the Act into one under Section 13B and grant divorce upon application of the said doctrine without enforcing the waiting period.

*NeetiMalviya* v. *Rakesh Malviya*, (2010) 6 SCC 413

In this case as well the parties had filed for a decree of divorce by mutual consent under section 13B of HMA and matter came up before the Supreme Court by a transfer petition filed by one of the parties.

The Supreme Court looked at the powers of the court under Article 142 and various judgements of the court on whether the six month waiting period under section 13B can be waived off or reduced by the Supreme Court. The court saw substantial confusion on the point of law with divergent opinions of several two judge benches of the court and therefore referred the matter for consideration of a three judge bench of the court. The matter has not since come up for final hearing before a higher bench.

**Cruelty**

Generally divorce law lacks uniformity with respect to cruelty as a ground for divorce, and the phraseology used in statutes is non-definitive, in order to give the judiciary ample scope for interpretation depending on given case facts.

Cruelty could manifest itself in several forms; including beatings, and mental abuse, emotional blackmail by means of suicide threats, filing complaints based on false allegations, or causing loss of reputation it is a valid ground for divorce under Section 13 of the Hindu Marriage Act (1955), as has been expressed by several judgments over the years.

*Smt. AratiMondal*v*. BhupatiMondal,* AIR 2009 Cal 200

In this case, the appellant/wife appealed for divorce on the grounds for cruelty, against the decree of the lower court that granted divorce to the respondent/husband. After analysing the facts of the case there are a set of allegation from either party against each other. The wife alleged cruelty in terms of abusive language, beating, and adultery against the husband. The husband on the other hand asserted cruelty in terms of severe beating, attempts at disturbing the peace by the wife’s brother and father, attempt to kill him, and most importantly, the deprivation of conjugal rights. The court ultimately held that the appeal was dismissed because the husband should be granted divorce on account of cruelty, which had been proved satisfactorily, the most crucial factor being the deprivation of conjugal rights, irrespective of whether the cruelty was intentional or not, because for any honest law abiding man, his wife was the only way of fulfilling carnal desires, and the deprivation of this constituted the highest form of cruelty.

*Suman Kapoor v. SudhirKapoor,* AIR 2009 SC 589.

The Supreme Court delivered a remarkable judgement in this case. Here, the respondent had sought divorce on the grounds of cruelty. The judicial pronouncement discusses the issue of mental cruelty extensively. It is incisive in the sense that it attempts to segregate mundane instances of marital rupture like trivial quarrels etcetera from sustained reprehensible conduct and lack of basic conjugal kindness. The test of reasonable apprehension that further marital life with the other partner would be intolerable was affirmed. In the instant case, the termination of pregnancy twice by the wife without the consent or knowledge of the husband due to no reason like a health problem was held to constitute mental cruelty and divorce was granted to the husband under s.13(1)(i-a) of the Hindu Marriage Act.

*DebabrataChakraborty v. RinaChakraborty,* 2008 Indlaw CAL 687

In this voluminous judgment delivered by the Calcutta High Court, the issue of cruelty towards husband resurfaced again. Interestingly, the appellant had filed for restitution of conjugal rights and in the alternative for divorce under cruelty. The case appears to have been fought quite acrimoniously with the husband specifying numerous instances of cruel behaviour by the wife and the wife countering them with allegations of adultery, wife beating, harbouring venereal diseases and proclivity for bad habits. Both were solo witnesses at the trial court level where only a decree for restitution was granted. The husband decided to appeal because according to him he would have preferred divorce as the wife had opposed all the prayers he had made and also levelled serious allegations regarding his character. Further she had not accepted the fact that she left the house without just cause. The High Court held that having made serious allegations against the husband, the wife did not make any efforts to place evidence on record or bring witnesses, both of which it deemed to be within her capacity. This, it said, leads to a presumption of blamelessness. The High Court granted a decree for divorce. In the process it followed the rationale delivered in *VijaykumarBhate v. NeelaBhate[[1]](#footnote-2)* that *“the act of leveling disgusting accusations of unchastity and indecent familiarity with a person outside the wedlock and allegations of extramarital relationship constituted grave assault on the character, honour, reputation, status as well as the health of other spouse. Such aspersions of perfidiousness attributed to the other spouse viewed in the context of an educated Indian person and justified by the Indian conditions and standards, would amount to a worst form of insult and cruelty which is sufficient by itself to substantiate cruelty in law.”*

*Manoj* v. *Vidhya,* ILR 2010 (1) Kerala 75

An important test was laid down, that cruelty was when the behaviour complained about by the spouse was of a nature that one “cannot be reasonably expected to live with the other spouse”. This test has to make allowance for a multiple variations in human behaviour. When the spouse is petitioning, has been unable to live with the other due to the cruel aforementioned conduct, resulting in the marriage being broken down in a manner that is irretrievable, the behaviour is the proof need to establish that living together has been rendered impossible. Therefore, it in understood that the proof of “inability to actually live together because of the conduct alleged” is therefore inherently available in irretrievable break down of marriage. It was held that the irretrievable break down of marriage if proven, as a ground for divorce in itself is not entirely irrelevant, however it is gains significance and relevance, in claims for divorce on the grounds of cruelty.

*Gurbux Singh* v. *Harminder Kaur*, AIR 2011 SC 114

The appellant in this case had filed for divorce in the trial court on the ground of cruelty by his wife. The petition was dismissed and the judgement was upheld by the High Court of Punjab and Haryana. The Supreme Court observed that the burden was on the appellant to prove that a particular or part of conduct or behaviour resulted in cruelty to him and there can be no assumptions that a conduct is itself cruel. In this case, the appellant had cited certain instances of his wife abusing his parents.

According to the court, trivial irritations, quarrels and arguments with elder may be part of everyday married life. Further, it said, “the married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty.”

**Irretrievable Breakdown of Marriage**

*SatishSitole v. Ganga,* AIR 2008 SC 3093.

Here, the Supreme Court encountered a classic case of irretrievable breakdown of marriage. The appellant and respondent had lived separately for 14 years out of the 16 years of marriage and repeated attempts to unite the two had failed miserably. Furthermore, the court was also a scene of acrimonious mudslinging with each party levelling allegations against each other. Added to this was the dowry harassment case that the respondent had filed two years after the marriage under s.498A of the IPC.[[2]](#footnote-3) Applying the principle enunciated in the *Romesh Chandracase* to the facts at hand the Court decided that since the marriage was beyond repair, the very continuance of it would amount to cruelty. Therefore using the special powers vested in it by Article 142 of the Constitution of India[[3]](#footnote-4), the Court dissolved the marriage. This case has since been affirmed in one other and has been discussed in three other cases.

*VimalaBalani v. Jai KrishanBalani*, (2009) 158 DLT 75

In this case, the Delhi High Court delivered a peculiar judgment. Firstly, it dismissed an appeal for a decree of divorce filed under s.28 of the Hindu Marriage Act stating that the marriage had irretrievably broken down as the parties were not cohabiting since 1968. It discussed the ratios laid down in *SatishSitole v. Ganga[[4]](#footnote-5)*, *Naveen Kohli v. NeeluKohli*[[5]](#footnote-6)and also discussed the 71st Law Commission Report extensively to establish that the relationship in the instant case had broken down irretrievably. Further, it followed the conclusion reached in *Romesh Chandra v. Savitri*[[6]](#footnote-7), stating that continuing a broken down marriage would amount to cruelty to the spouse. But curiously enough, it did not do what it was seemingly leading up to and dismissed the appeal stating that since a decree had been granted in the lower court on the grounds of cruelty to the respondent there was no need for the appeal in question. This case appears to have become one the leading cases on irretrievable breakdown.

*Darshan Gupta* v*. Radhika Gupta*, (2013) 9 SCC 1

In this case, the appellant had sought a divorce on the grounds of cruelty by his wife as well as the fact that his wife was of incurable unsound mind the appellant could not continue a married life with her. The appellant had also contended that having lived in separation with his wife for 12 years, there was an irretrievable breakdown of the marriage.

The court acceded that the wife suffered from a mental condition caused due to complications during child birth. The court found that the complications leading to the condition were caused itself by conception of a child against advice of the doctors. Therefore the husband was responsible for the condition and because the party seeking divorce has to be innocent of any blame, the court could not allow this ground under the ‘fault theory’.

On the issue of irretrievable breakdown of the marriage it opined that mere separation is not sufficient and there should be break down of marriage from both sides. It said: “we cannot persuade ourselves to grant a decree of divorce, on the ground of irretrievable breakdown of marriage for the simple reason that the breakdown is only from the side of the husband as the wife consistently maintained that she was intensely concerned with her future relationship with her husband and that her greatest and paramount desire was to rejoin her husband and to live with him normally in a matrimonial relationship, once again. Since the respondent does not consent to the severance of matrimonial ties, it may not be possible for us to accede the prayer.”

**Adultery**

*NabakumarBanik*v.*Smt. AmitaDatta,* AIR 2009 Gau 103.

In the given case, the appellant (husband) pleaded for divorce on the grounds of cruelty, asserting abuse, beating perpetrated by his wife, under section 13 and 23 of the Hindu Marriage Act. The respondent/wife claimed that, au contraire the husband after almost a decade of matrimonial peace, had begun an illicit relationship with another woman, denying any cruelty on her part. The court held that the burden of proof was on the husband to prove cruelty here, in which he was unsuccessful, and the wife succeeded in proving adultery on his part, and his uncle also testified that he had deserted her. The court held that the appellant had turned the respondent out of her matrimonial home, and the fault lay with him, and therefore, the appeal was dismissed, because irretrievable breakdown of marriage had not occurred. The appeal for divorce had no merit.

**Illness & Diseases**

*N. Rukmini*v*. P. Puttuswami*, 2008 Indlaw KAR 306

In this striking case that came up before the Karnataka High Court – although it has not yet been decided – the petitioner, who is a woman constable, sought the quashing of an order passed by the trial court at Hassan. The case is of special interest because the petitioner’s husband, who is the respondent in this case, had alleged that the petitioner was suffering from Paranoid Schizophrenia and sought a divorce under s.13 of the Hindu Marriage Act. The couple got married in 1994, have since had two children and appear to have been leading harmonious lives. Strangely, the whole affair is devoid of any acrimony with the wife and husband not levelling any allegations against the other apart from the sole charge made by the husband. The evidence of one Arunachalaiah, who has been working as a psychiatrist for the past 25 years at Hassan was admitted as evidence. The wife, understandably, filed an application for a second opinion which is currently the bone of contention. The trial surprisingly rejected the application, emphasising strangely on the reputation of the psychiatrist even as it showed little empathy to the wife’s situation. Upon this the High Court had to rule and it rightfully chastised the trial court for seriously erring in not seeking a second opinion on a matter that had such a bearing on lives of the wife and the children. Subsequently, it allowed for a second opinion to be taken from a psychiatrist in NIMHANS. Further, in what is a subtle indicator of what might happen when the divorce petition comes up for ruling, the High Court also pointed out that Paranoid Schizophrenia was just one ground for divorce and not the only ground under s.13 of the Hindu Marriage Act.

*Kollam Chandra Sekhar* v. *Kollam Padma Latha*, (2014) 1 SCC 225

Here, the appellant-husband had filed for divorce under Section 13(1)(iii) on the ground that his wife suffered from Schizophrenia. The AP High Court had reversed the decree of dissolution of marriage granted by the trial court noting that Schizophrenia was treatable, manageable disease and she could not be said to be suffering from such a serious ailment that made marriage impossible.

The Supreme Court also noted that the respondent had completed her MBBS and was working as a Government Medical Officer and had she been actually suffering from acute Schizophrenia, she could not have continued working. A husband cannot abandon his wife and seek dissolution of marriage on account of her illness. Here, especially since they have a child born to them, the court was unable to grant a divorce keeping in mind the welfare of the child.

1. AIR 2003 SC 2462. [↑](#footnote-ref-2)
2. S.498A, Indian Penal Code, 1860. [↑](#footnote-ref-3)
3. Art. 142, The Constitution of India, 1950. [↑](#footnote-ref-4)
4. AIR 2008 SC 3093. [↑](#footnote-ref-5)
5. 128 (2006) DLT 360 SC. [↑](#footnote-ref-6)
6. AIR 1995 SC 851. [↑](#footnote-ref-7)