Allahabad High Court
Smt. Gurpreet Kaur vs Shri Rajeev Singh on 18 December, 2017
Bench: Shabihul Hasnain, Sheo Kumar Singh-I

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Reserved

Court No. - 3

Case :- FIRST APPEAL DEFECTIVE No. - 6 of 2011

Appellant :- Smt. Gurpreet Kaur

Respondent :- Shri Rajeev Singh

Counsel for Appellant :- Amrit Preet Singh

AND

Case :- FIRST APPEAL DEFECTIVE No. - 4 of 2011

Appellant :- Smt. Gurpreet Kaur

Respondent :- Shri Rajeev Singh

Counsel for Appellant :- Amrit Preet Singh

AND

Case :- FIRST APPEAL DEFECTIVE No. - 5 of 2011

Appellant :- Smt. Gurpreet Kaur

Respondent :- Shri Rajeev Singh

Counsel for Appellant :- Amrit Preet Singh

Hon'ble Shabihul Hasnain,J.

Hon'ble Sheo Kumar Singh-I,J.

(Delivered by Hon'ble Sheo Kumar Singh-I, J.)

1. This is yet another unfortunate matrimonial dispute which has shattered the old matrimonial bond between the parties.

2. The respondent namely Rajeev Singh filed a petition in January, 2005 as Original Suit No.29 of 2005 for judicial separation under Section 10 of Hindu Marriage Act, 19551 and thereafter through amendment the above mentioned case was amended as suit for dissolution of his marriage under Section 13 of the Act instituted in court of the Principal Judge, Family Court, Lucknow, which was registered as Original Suit No.29 of 2005; Rajeev Singh v. Smt. Gurpreet Kaur.

3. In the petition filed before the Family court, it was averred by the respondent-husband that the marriage between the parties was solemnized in accordance with Hindu Sikh rites and customs on 04.11.1998. After marriage the husband and wife stayed together for sometime and during continuance of marriage, a female child named Km. Prabhleen Kaur came to this world on 25.01.2001. It is alleged by the husband that the appellant-wife was non-cooperative, arrogant and her behaviour towards the family members of the husband was unacceptable. Despite misunderstanding, a female child was born in the wedlock and thereafter, the wife took the child and left the house and went to her parental house and chose not to come back to the husband or his family and to perform her duties as wife in the house of her husband. It was pleaded that there had been a marital discord and total non-compatibility, and she had deserted him severing all ties.

4. Wife, Smt. Gurpreet Kaur/appellant, also instituted a suit for restitution of conjugal right under Section 9 of the Act against the respondent, which was registered as Original Suit No.694 of 2005; Smt. Gurpreet Kaur v. Rajeev Singh and another. A suit under Section 27 of the Act was filed before the Principal Judge, Family Court by the appellant, which was registered as Misc. Case No.31C of 2008 for return of "Stridhan' and Original Suit No.42 of 2009 under Section 25 of the Act for grant of permanent alimony. It is alleged that the matter was referred to reconciliation at the "Paramarsh Kendra' (Conciliation Board) in the Family Court Lucknow but the husband withdrawn himself and violated the terms and condition of living together as the good efforts were made in this regard by the reconciliation officers. During the course of hearing all the above suits were consolidated by the learned Principal Judge, Family Court and Original Suit No.29 of 2005 was made leading case. Issues were framed and evidence was taken. After recording the statement of witness and hearing the parties at length, learned Principal Judge, Family Court decided all the above mentioned case vide order dated 27.11.2010 and disposed of as follows:

i. Original Suit No.29 of 2005 filed under Section 13 of the Act was decreed and the marriage between the parties was dissolved.

ii. Original Suit No.694 of 2005 filed under Section 9 of the Act by the wife for restitution of conjugal rights was dismissed.

iii. Misc. Case No.31C of 2008 filed by the wife under Section 27 of the Act was partly allowed and the respondent-husband was directed to return the items of the wife, which was kept by him as "Stridhan'.

iv. Original Suit No.42 of 2009 filed under Section 25 of the Act was partly allowed and the husband was directed to pay an amount of Rs.4,00,000/- to the appellant.

5. Aggrieved by the order, the appellant has filed the present appeals on the ground that:

(a) The husband has not specifically stated and pleaded that he did not want to live with his wife. The appellant-wife has expressed her willingness to live with the respondent-husband and she has filed the suit for restitution of conjugal rights.

(b) The appellant had led the evidence to the fact that she was expelled from her Sasural as she is still ready to live with his husband that the respondent had stated in his oral statement that he wanted to live with the appellant as such he went several times to her parental house to bring her back, which proves that there was no cruelty by the appellant against the respondent.

(c) By filing the petition under Section 27 of the Act, the appellant has expressed her willingness to live with the respondent and always made her ready to live together as husband and wife that by the assessment of oral evidence led by the respondent the form of cruelty or desertion on part of the appellant-wife has not been proved.

(d) That the matter was taken up by the Family Court and "Ramgariya Sabha', Their internal social wing, which has been coordinating in the matter of family dispute and tried their best to decide the matter but the respondent-husband failed to comply the advice given by the "Ramgariya Sabha'

(e) that the respondent-husband has neglected the appellant-wife without any proper reason and rhyme and the above fact has not been considered by the learned family court that in their pleadings, both the parties have stated that while living separately, they have tried to patch up the differences and so accordingly the efforts were made by them to live together as husband and wife but in spite of above facts, the family court reached the conclusion of cruelty and desertion on the part of the wife.

6. A perusal of the suit filed under Section 13 of the Act reveals that the husband has taken following ground for obtaining the decree of divorce:

(i) That after marriage, the conduct and behaviour of his wife was not good with the father of the husband and she used to harass his parents.

(ii) Wife used to pressurize the husband to fulfill her wish and demands.

(iii) The wife always pressurize to live with him at the place of his service but the husband was working in the field of marketing in private sector and usually he remains out of station for official purposes and he was not able to keep his wife with him.

(iv) She threatened him to face dire consequences and also threatened to commit suicide.

(v) She used to visit her parental house without consent of his parents.

(vi) That his mother was suffering from blood pressure and sugar and she was not cooperating with the feeding and providing medicine to his mother.

(vii) That the mother of husband was suffering from backache and there is fracture in her hands, and she was pressurizing regularly to the husband to live with him at his work place.

(viii) She was intended to do some service while the husband was not in view of permitting her to do some service and later on she joined the service without taking his consent.

(ix) When he was at his work place, the wife after consulting her parents left his house with her bag and necessary items and went to her parental house along with daughter.

(x) That the wife has separated and deserted him without any cogent and reasonable ground.

7. In reply thereof, the appellant-wife (defendant in original suit filed for divorce) has submitted written submission with the fact that after birth of female child, she was regularly harassed for one or another reason and for non fulfillment of demand of dowry and family members of the wife tried their best to reach on any compromise so that both of them may live a peaceful social life but the attempt of compromise was failed due to rigid attitude of the husband.

8. Learned Judge, Family Court after going through the pleadings of the parties has framed three issues to the effect as to whether the wife has treated the husband with physical and mental cruelty, and as to whether the wife has deserted the husband without any reason w.e.f. 17.01.2002. To prove the rival versions, the husband Rajeev Singh has examined himself as PW-1 and also examined Arvindar Kaur as PW-2 and G.B. Singh as PW-3. After filing the affidavit, the appellant Gurpreet Singh was examined as DW-1. Swarnjeet Singh as DW-2, Sardar Amarjeet Singh as DW-3, Sardar Harpal Singh as DW-4 and Sadar Manjeet Singh as DW-5 were also examined by the appellant-defendant in the case.

9. Learned counsel for the appellant has submitted that the family members of the appellant-wife attempted so many times to come back to the matrimonial home but they did not convince the husband as he was acting in the ill advice of his family members and was not intending to keep the appellant-wife at his work place. It was put forth by the appellant that he had without any reasonable cause or excuse refused to perform his marital obligations. The plea of mental hurt and trauma was controverted on the assertion that she had never treated him with cruelty. It has further been contended that the filing of application under Section 9 of the Act for restitution of conjugal

rights to which an objection was filed by the husband shows that the appellant-wife is ready to perform her matrimonial relation but instead the husband had filed the petition firstly for judicial separation. Later on by means of amendment it was converted for divorce under Section 13 of the Act.

10. Assailing the legal sustainability of the judgement of Principal Judge, Family Court, learned counsel appearing for the appellant, has submitted that when the petition was initially filed for judicial separation on the ground of desertion, further amendment under Section 13(1) of the Act does not satisfy the requirement of divorce because the plea as has been taken was judicial separation are not found sufficient to prove the case of divorce.

11. To appreciate the rivalised submissions raised at the Bar, we have carefully perused the petition and the evidence adduced by the parties and the judgment of the Family Court. The plea that was raised for grant of divorce was under Section 13(1)(ib) of the Act. It provides for grant of divorce on the ground of desertion for a continuous period of not less than two year immediately preceding the presentation of the petition. The aforesaid provision stipulates that a husband or wife would be entitled to a dissolution of marriage by decree of divorce if the other party has deserted the party seeking the divorce for a continuous period of not less than two years immediately preceding the presentation of the petition. Desertion, as a ground for divorce, was inserted to Section 13 by Act 68/1976. Prior to the amendment it was only a ground for judicial separation. Dealing with the concept of desertion, the Court in Savitri Pandey v. Prem Chandra Pandey; (2002) 2 SCC 73 has ruled thus:-

""Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbai Shah v. Prabhavati1 held that if a spouse abandons the other in a state of temporary passion, for example, anger [pic]or disgust without intending permanently to cease cohabitation, it will not amount to desertion."

12. Presently to the factual matrix in entirety and the subsequent events, we are absolutely conscious that the relief of dissolution of marriage was sought on the ground of desertion. The submission of the learned counsel for the appellant is that neither subsequent events nor the plea of cruelty could have been considered. There is no cavil over the fact that the petition was filed under Section 13(1)(ib). However, on a perusal of the petition it transpires that there are assertions of ill-treatment, mental agony and torture suffered by the husband.

13. Before we critically examine the judgment in the light of settled law, it has become imperative to understand and comprehend the concept of cruelty. The Shorter Oxford Dictionary defines 'cruelty' as 'the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness'.

The term "mental cruelty" has been defined in the Black's Law Dictionary [8th Edition, 2004] as under:

"Mental Cruelty - As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse."

The concept of cruelty has been summarized in Halsbury's Laws of England [Vol.13, 4th Edition Para 1269] as under:

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exits."

In 24 American Jurisprudence 2d, the term "mental cruelty" has been defined as under:

"Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse."

In the instant case, our main endeavour would be to define broad parameters of the concept of 'mental cruelty'. Thereafter, we would strive to determine whether the instances of mental cruelty enumerated in this case by the appellant would cumulatively be adequate to grant a decree of divorce on the ground of mental cruelty according to the settled legal position as crystallized by a number of cases of this Court and other Courts.

14. The Court has had an occasion to examine in detail the position of mental cruelty in N.G. Dastane v. S. Dastane reported in (1975) 2 SCC 326 at page 337, para 30 observed as under :-

"The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent."

15. In the case of Sirajmohmedkhan Janmohamadkhan v. Haizunnisa Yasinkhan & Anr. reported in (1981) 4 SCC 250, the Apex Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

16. In the case of Shobha Rani v. Madhukar Reddi reported in (1988) 1 SCC 105, the Court had an occasion to examine the concept of cruelty. The word 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i)(a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

17. In Rajani v. Subramonian AIR 1990 Ker. 1 the Court aptly observed that the concept of cruelty depends upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance, judged by standard of modern civilization in the background of the cultural heritage and traditions of our society.

18. Again, the Court had an occasion to examine in great detail the concept of mental cruelty. In the case of V. Bhagat v. D. Bhagat (Mrs.) reported in (1994) 1 SCC 337, the Court observed, in para 16 at page 347, as under:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

19. The Court aptly observed in Chetan Dass v. Kamla Devi reported in (2001) 4 SCC 250, para 14 at pp.258-259, as under:

"Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

20. In Savitri Pandey v. Prem Chandra Pandey reported in (2002) 2 SCC 73, the Court stated as under:

"Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

21. The Court in the case of Gananath Pattnaik v. State of Orissa reported in (2002) 2 SCC 619 observed as under:

"The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting

the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case."

22. The mental cruelty has also been examined by this Court in Parveen Mehta v. Inderjit Mehta reported in (2002) 5 SCC 706 at pp.716-17 [para 21] which reads as under:

"Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

In this case the Court also stated that so many years have elapsed since the spouses parted company. In these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably.

23. In A. Jayachandra v. Aneel Kaur reported in (2005) 2 SCC 22, the Court observed as under:

"The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be

tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

24. The Court in Vinita Saxena v. Pankaj Pandit reported in (2006) 3 SCC 778 aptly observed as under:

"As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer."

25. In Shobha Rani's case (supra) at pp.108-09, para 5, the Court observed as under:

"5. Each case may be different. We deal with the conduct of human beings who are no generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty."

In this case, the Court cautioned the lawyers and judges not to import their own notions of life in dealing with matrimonial problems. The judges should not evaluate the case from their own standards. There may be a generation gap between the judges and the parties. It is always prudent if the judges keep aside their customs and manners in deciding matrimonial cases in particular.

26. In a recent decision of the Court in the case of Rishikesh Sharma v. Saroj Sharma reported in 2006 (12) Scale 282, this Court observed that the respondent wife was living separately from the year 1981 and the marriage has broken down irretrievably with no possibility of the parties living together again. The Court further observed that it will not be possible for the parties to live together and therefore there was no purpose in compelling both the parties to live together. Therefore the best course was to dissolve the marriage by passing a decree of divorce so that the parties who were litigating since 1981 and had lost valuable part of life could live peacefully in remaining part of their life. The Court further observed that her desire to live with her husband at that stage and at that distance of time was not genuine.

27. The Court observed that under such circumstances, the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant who sought divorce from the Court. "Mental cruelty" is a problem of human behaviour. This human problem unfortunately exists all over the world. Existence of similar problem and its adjudication by different courts of other countries would be of great relevance, therefore, we deem it appropriate to examine similar cases decided by the Courts of other jurisdictions. We must try to derive benefit of wisdom and light received from any quarter.

ENGLISH CASES:

28. William Latey, in his celebrated book 'The Law and Practice in Divorce and Matrimonial Causes' (15th Edition) has stated that there is no essential difference between the definitions of the ecclesiastical courts and the post- 1857 matrimonial courts of legal cruelty in the marital sense. The authorities were fully considered by the Court of Appeal and the House of Lords in Russell v. Russell (1897) AC 395 and the principle prevailing in the Divorce Court (until the Divorce Reform Act, 1969 came in force), was as follows:

Conduct of such a character as to have caused danger to life, limb, or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger. {see: Russell v. Russell (1895) P. 315 (CA)}.

29. In England, the Divorce Reform Act, 1969 came into operation on January 1, 1971. Thereafter the distinction between the sexes is abolished, and there is only one ground of divorce, namely that the marriage has broken down irretrievably. The Divorce Reform Act, 1969 was repealed by the Matrimonial Causes Act, 1973, which came into force on January 1, 1974. The sole ground on which a petition for divorce may be presented to the court by either party to a marriage is that the marriage has broken down irretrievably.

30. Lord Stowell's proposition in Evans v. Evans (1790) 1 Hagg Con 35 was approved by the House of Lords and may be put thus: before the court can find a husband guilty of legal cruelty towards his wife, it is necessary to show that he has either inflicted bodily injury upon her, or has so conducted himself towards her as to render future cohabitation more or less dangerous to life, or limb, or mental or bodily health. He was careful to avoid any definition of cruelty, but he did add: 'The causes must be grave and weighty, and such as to show an absolute impossibility that the duties of married life can be discharged'. But the majority of their Lordships in Russell v. Russell (1897) (supra) declined to go beyond the definition set out above. In this case, Lord Herschell observed as under:

"It was conceded by the learned counsel for the appellant, and is, indeed, beyond controversy, that it is not every act of cruelty in the ordinary and popular sense of that word which amounted to saevitia, entitling the party aggrieved to a divorce; that there might be many wilful and unjustifiable acts inflicting pain and misery in respect of which that relief could not be obtained."

31. Lord Merriman, in Waters v. Waters (1956) 1 All. E.R. 432 observed that intention to injure was not necessary ingredient of cruelty.

32. Sherman, J. in Hadden v. Hadden, The Times, December 5, 1919, (also reported in Modern Law Review Vol.12, 1949 at p.332) very aptly mentioned that he had no intention of being cruel but his intentional acts amounted to cruelty. In this case, it was observed as under:

'It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called upon to endure it.'

33. Lord Simon in Watt (or Thomas) v. Thomas [(1947) 1 All E.R. 582 at p. 585] observed as under:

"..the leading judicial authorities in both countries who have dealt with this subject are careful not to speak in too precise and absolute terms, for the circumstances which might conceivably arise in an unhappy married life are infinitely various.

Lord Stowell in Evans v. Evans 1790 (1) Hagg Con 35 avoids giving a "direct definition". While insisting that "mere austerity of temper, petulance of manners, rudeness of language, want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty."

34. In Simpson v. Simpson (1951) 1 All E.R. 955, the Court observed that:

"When the legal conception of cruelty is described as being conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, it is vital to bear in mind that it comprises two distinct elements: first, the ill-treatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus, it is inaccurate, and liable to lead to confusion, if the word "cruelty" is used as descriptive only of the conduct complained of, apart from its effect on the victim.

35. Lord Reid, concurring, reserved opinion as to cases of alleged cruelty in which the defender had shown deliberate intention, though he did not doubt that there were many cases where cruelty could be established without its being necessary to be satisfied by evidence that the defender had such an intention. Lord Tucker, also concurring, said:

'Every act must be judged in relation to its attendant circumstances, and the physical or mental condition or susceptibilities of the innocent spouse, the intention of the offending spouse and the offender's knowledge of the actual or probable effect of his conduct on the other's health are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies.'

36. In Prichard v. Pritchard (1864) 3 S&T 523, the Court observed that repeated acts of unprovoked violence by the wife were regarded as cruelty, although they might not inflict serious bodily injury on the husband.

37. Wilde, J.O. in Power v. Power (1865) 4 SW & Tr. 173 aptly observed that cruelty lies in the cumulative ill conduct which the history of marriage discloses.

38. In Bravery v. Bravery (1954) 1 WLR 1169, by majority, the Court held as under:

'If a husband submitted himself to an operation for sterilization without a medical reason and without his wife's knowledge or consent it could constitute cruelty to his wife. But where such an operation was performed to the wife's knowledge, though without her consent and she continued to live with him for thirteen years, it was held that the operation did not amount to cruelty.'

39. Lord Tucker in Jamieson v. Jamieson (1952) I All E.R. 875 aptly observed that "Judges have always carefully refrained from attempting a comprehensive definition of cruelty for the purposes of matrimonial suits, and experience has shown the wisdom of this course".

40. In Le Brocq v. Le Brocq [1964] 3 All E.R. 464, at p. 465, the court held as under:

"I think ... that 'cruel' is not used in any esoteric or 'divorce court' sense of that word, but that the conduct complained of must be something which an ordinary man or a jury .. would describe as 'cruel' if the story were fully told."

41. In Ward v. Ward [(1958) 2 All E.R. 217, a refusal to bear children followed by a refusal of intercourse and frigidity, so that the husband's health suffered, was held to be cruelty; so also the practice by the husband of coitus interruptus against the wish of his wife though she desired to have a child. (Also see: White (otherwise Berry) v. White [1948] 2 All E.R. 151; Walsham v. Walsham, [1949] I All E.R. 774; Cackett (otherwise Trice) v. Cackett, [1950] I All E.R. 677; Knott v. Knott [1955] 2 All E.R. 305.

42. Cases involving the refusal of sexual intercourse may vary considerably and in consequence may or may not amount to cruelty, dependent on the facts and circumstances of the parties. In Sheldon v. Sheldon, [1966] 2 All E.R. 257, Lord Denning, M.R. stated at p. 259:

"The persistent refusal of sexual intercourse may amount to cruelty, at any rate when it extends over a long period and causes grave injury to the health of the other. One must of course, make allowances for any excuses that may account for it, such as ill-health, or time of life, or age, or even psychological infirmity. These excuses may so mitigate the conduct that the other party ought to put up with it. It after making all allowances however, the conduct is such that the other party should not be called upon to endure it, then it is cruelty."

43. Later, Lord Denning, at p. 261, said that the refusal would usually need to be corroborated by the evidence of a medical man who had seen both parties and could speak to the grave injury to health consequent thereon. In the same case, Salmon, L. J. stated at p. 263:

"For my part, I am quite satisfied that if the husband's failure to have sexual intercourse had been due to impotence, whether from some psychological or physical cause, this petition would be hopeless. No doubt the lack of sexual intercourse might in such a case equally have resulted in a breakdown in his wife's health. I would however regard the husband's impotence as a great misfortune which has befallen both of them."

There can be cruelty without any physical violence, and there is abundant authority for recognizing mental or moral cruelty, and not infrequently the worst cases supply evidence of both. It is for the judges to review the married life of the parties in all its aspects. The several acts of alleged cruelty, physical or mental, should not be taken separately. Several acts considered separately in isolation may be trivial and not hurtful but when considered cumulatively they might well come within the description of cruelty. (see: Jamieson v. Jamieson, [1952] I All E.R. 875; Waters v. Waters, [1956] I All E.R. 432. "The general rule in all questions of cruelty is that the whole matrimonial relations must be considered." (per Lord Normand in King v. King [1952] 2 All E.R. 584).

44. In Warr v. Warr [1975] I All ER 85), the Court observed that "Section 1(2)(c) of the Matrimonial Causes Act, 1973 provides that irretrievable breakdown may be proved by satisfying the court that the respondent has deserted the petitioner for a continuous period of at least two years immediately

preceding the presentation of the petition."

AMERICAN CASES:

45. In Jem v. Jem [(1937) 34 Haw. 312], the Supreme Court of Hawaii aptly mentioned that cruel treatment not amounting to physical cruelty is mental cruelty.

46. While dealing with the matter of extreme cruelty, the Supreme Court of South Dakota in the case of Hybertson v. Hybertson (1998) 582 N.W. 2d 402 held as under:

"Any definition of extreme cruelty in a marital setting must necessarily differ according to the personalities of the parties involved. What might be acceptable and even common place in the relationship between rather stolid individuals could well be extraordinary and highly unacceptable in the lives of more sensitive or high-strung husbands and wives. Family traditions, ethnic and religious backgrounds, local customs and standards and other cultural differences all come into play when trying to determine what should fall within the parameters of a workable marital relationship and what will not."

47. In Rosenbaum v. Rosenbaum [(1976) 38 Ill.App.3d. 1] the Appellate Court of Illinois held as under:

"To prove a case entitling a spouse to divorce on the ground of mental cruelty, the evidence must show that the conduct of the offending spouse is unprovoked and constitutes a course of abusive and humiliating treatment that actually affects the physical or mental health of the other spouse, making the life of the complaining spouse miserable, or endangering his or her life, person or health."

48. In the case of Fleck v. Fleck 79 N.D. 561, the Supreme Court of North Dakota dealt with the concept of cruelty in the following words:

"The decisions defining mental cruelty employ such a variety of phraseology that it would be next to impossible to reproduce any generally accepted form. Very often, they do not purport to define it as distinct from physical cruelty, but combine both elements in a general definition of 'cruelty,' physical and mental. The generally recognized elements are:

(1) A course of abusive and humiliating treatment;

(2) Calculated or obviously of a nature to torture, discommode, or render miserable the life of the opposite spouse; and (3) Actually affecting the physical or mental health of such spouse."

49. In Donaldson v. Donaldson [(1917) 31 Idaho 180, 170 P. 94], the Supreme Court of Idaho also came to the conclusion that no exact and exclusive definition of legal cruelty is possible. The Court referred to 9 RCL p. 335 and quoted as under:

"It is well recognized that no exact inclusive and exclusive definition of legal cruelty can be given, and the courts have not attempted to do so, but generally content themselves with determining whether the facts in the particular case in question constitute cruelty or not. Especially, according to the modern view, is the question whether the defending spouse has been guilty of legal cruelty a pure question of fact to be resolved upon all the circumstances of the case."

CANADIAN CASES:

50. In a number of cases, the Canadian Courts had occasions to examine the concept of 'cruelty'. In Chouinard v. Chouinard 10 D.L.R. (3d) 263], the Supreme Court of New Brunswick held as under:

"Cruelty which constitutes a ground for divorce under the Divorce Act, whether it be mental or physical in nature, is a question of fact. Determination of such a fact must depend on the evidence in the individual case being considered by the court. No uniform standard can be laid down for guidance; behaviour which may constitute cruelty in one case may not be cruelty in another. There must be to a large extent a subjective as well as an objective aspect involved; one person may be able to tolerate conduct on the part of his or her spouse which would be intolerable to another. Separation is usually preceded by marital dispute and unpleasantness. The court should not grant a decree of divorce on evidence of merely distasteful or irritating conduct on the part of the offending spouse. The word 'cruelty' denotes excessive suffering, severity of pain, mercilessness; not mere displeasure, irritation, anger or dissatisfaction; furthermore, the Act requires that cruelty must be of such a kind as to render intolerable continued cohabitation."

51. In Knoll v. Knoll 10 D.L.R. (3d) 199, the Ontario Court of Appeal examined this matter. The relevant portion reads as under:

"Over the years the courts have steadfastly refrained from attempting to formulate a general definition of cruelty. As used in ordinary parlance "cruelty" signifies a disposition to inflict suffering; to delight in or exhibit indifference to the pain or misery of others; mercilessness or hard-heartedness as exhibited in action. If in the marriage relationship one spouse by his conduct causes wanton, malicious or unnecessary infliction of pain or suffering upon the body, the feelings or emotions of the other, his conduct may well constitute cruelty which will entitle a petitioner to dissolution of the marriage if, in the court's opinion, it amounts to physical or mental cruelty "of such a kind as to render intolerable the continued cohabitation of the spouses."

52. In Luther v. Luther [(1978) 5 R.F.L. (2d) 285, 26 N.S.R. (2d) 232, 40 A.P.R. 232], the Supreme Court of Nova Scotia held as under:

"7. The test of cruelty is in one sense a subjective one, namely, as has been said many times, is this conduct by this man to this woman, or vice versa, cruelty? But that does not mean that what one spouse may consider cruel is necessarily so. Cruelty must involve serious and weighty matters, which, reasonably considered, may cause physical or mental suffering. It must furthermore -- an important additional requirement -- be of such a nature and kind as to render such conduct intolerable to a reasonable person."

The Supreme Court further held as under:

"9. To constitute mental cruelty, conduct must be much more than jealousy, selfishness or possessiveness which causes unhappiness, dissatisfaction or emotional upset. Even less can mere incompatibility or differences in temperament, personality or opinion be elevated to grounds for divorce."

53. In another case Zalesky v. Zalesky 1 D.L.R. (3d) 471, the Manitoba Court of Queen's Bench observed that where cohabitation of the spouses become intolerable that would be another ground of divorce. The Court held as under:

"There is now no need to consider whether conduct complained of caused 'danger to life, limb, or health, bodily or mentally, or a reasonable apprehension of it' or any of the variations of that definition to be found in the Russell case.

In choosing the words 'physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses' Parliament gave its own fresh complete statutory definition of the conduct which is a ground for divorce under s. 3(d) of the Act."

AUSTRALIAN CASES:

54. In Dunkley v. Dunkley (1938) SASR 325, the Court examined the term "legal cruelty" in the following words:

'Legal cruelty', means conduct of such a character as to have caused injury or danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of danger. Personal violence, actual or threatened, may alone be sufficient; on the other hand, mere vulgar abuse or false accusations of adultery are ordinarily not enough; but, if the evidence shows that conduct of this nature had been persisted in until the health of the party subjected to it breaks down, or is likely to break down, under the strain, a finding of cruelty is justified.'

55. In La Rovere v. La Rovere [4 FLR 1], the Supreme Court of Tasmania held as under:

"When the legal conception of cruelty is described as being conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, it is vital to bear in mind that it comprises two distinct elements: first, the ill-treatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus it is inaccurate and liable to lead to confusion, if the word 'cruelty' is used as descriptive only of the conduct complained of, apart from its effect on the victim."

We have examined and referred to the cases from the various countries. We find strong basic similarity in adjudication of cases relating to mental cruelty in matrimonial matters. Now, we deem it appropriate to deal with the 71st report of the Law Commission of India on "Irretrievable Breakdown of Marriage".

56. The 71st Report of the Law Commission of India briefly dealt with the concept of irretrievable breakdown of marriage. This Report was submitted to the Government on 7th April, 1978. In this Report, it is mentioned that during last 20 years or so, and now it would be around 50 years, a very important question has engaged the attention of lawyers, social scientists and men of affairs, should the grant of divorce be based on the fault of the party, or should it be based on the breakdown of the marriage? The former is known as the matrimonial offence theory or fault theory. The latter has come to be known as the breakdown theory. It would be relevant to recapitulate recommendation of the said Report.

57. In the Report, it is mentioned that the germ of the breakdown theory, so far as Commonwealth countries are concerned, may be found in the legislative and judicial developments during a much earlier period. The (New Zealand) Divorce and Matrimonial Causes Amendment Act, 1920, included for the first time the provision that a separation agreement for three years or more was a ground for making a petition to the court for divorce and the court was given a discretion (without guidelines) whether to grant the divorce or not. The discretion conferred by this statute was exercised in a case Lodder v. Lodder 1921 New Zealand Law Reports 786. Salmond J., in a passage which has now become classic, enunciated the breakdown principle in these words:

"The Legislature must, I think, be taken to have intended that separation for three years is to be accepted by this court, as prima facie a good ground for divorce. When the matrimonial relation has for that period ceased to exist de facto, it should, unless there are special reasons to the contrary, cease to exist de jure also. In general, it is not in the interests of the parties or in the interest of the public that a man and woman should remain bound together as husband and wife in law when for a lengthy period they have ceased to be such in fact. In the case of such a separation the essential purposes of marriage have been frustrated, and its further continuance is in general not merely useless but mischievous."

58. In the said Report, it is mentioned that restricting the ground of divorce to a particular offence or matrimonial disability, causes injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such a nature that the parties to the marriage do not want to divulge it, yet such a situation has arisen in which the marriage cannot survive. The marriage has all the external appearances of marriage, but none in reality. As is often put pithily, the marriage is merely a shell out of which the substance is gone. In such circumstances, it is stated, there is hardly any utility in maintaining the marriage as a fagade, when the emotional and other bonds which are of the essence of marriage have disappeared.

59. It is also mentioned in the Report that in case the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce, then the parties alone can decide whether their mutual relationship provides the fulfilment which they seek. Divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and developments by working out the most satisfactory basis upon which they may regulate their relationship in the changed circumstances.

60. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

Law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented concrete instances of human behaviour as bring the institution of marriage into disrepute.

61. This Court in Naveen Kohli v. Neelu Kohli reported in (2006) 4 SCC 558 dealt with the similar issues in detail. Those observations incorporated in paragraphs 74 to 79 are reiterated in the succeeding paragraphs.

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems then are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

79. When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory."

62. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

63. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

64. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

65. According to the Philosophy of the Act, the Parties to a marriage tying nuptial knot are supposed to bring about the union of souls. It creates a new relationship of love, affection, care and concern between the husband and wife. According to Hindu Vedic philosophy it is sanskar a sacrament; one of the sixteen important sacraments essential to be taken during one's lifetime. There may be physical union as a result of marriage for procreation to perpetuate the lineal progeny for ensuring spiritual salvation and performance of religious rites, but what is essentially contemplated is union of two souls. Marriage is considered to be a junction of three important duties i.e. social, religious and spiritual.

The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties.

66. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the "Consortium Omnis Vitae" which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

67. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in Dawood and Another v. Minister of Home Affairs and Others 2000 (3) SA 936 (CC) noted as follows:

"Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well.

The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends...."

68. South African Constitutional Court in various judgments recognized the above mentioned principle. In Satchwell v. President of the Republic of South Africa and Another 2002 (6) SA 1 (CC), Du Toit and Another v. Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as Amicus Curiae) 2003 (2) SA 198 (CC), the Constitutional Court of South Africa recognized the right "free to marry and to raise family". Section 15(3)(a)(i) of the Constitution of South Africa, in substance makes provision for the recognition of "marriages concluded under the tradition, or a system of religious, personal or family law." Section 9(3) of the Constitution of South

Africa reads as follows:

"The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

69. Article 23 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that:

"1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

70. Article 16 of the Universal Declaration of Human Rights, 1948 provides that:

"1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at it dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

71. Parties in the present case are Hindus by religion and are governed by the Hindu Marriage Act, 1955. The expression "marriage", as stated, is not defined under the Hindu Marriage Act, but the "conditions for a Hindu marriage" are dealt with in Section 5 of the Hindu Marriage Act and which reads as under:

"5. Conditions for a Hindu marriage - A marriage may be solemnized between any two hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty- one years and the bride the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two."

72. Section 7 of the Hindu Marriage Act deals with the "Ceremonies for a Hindu marriage" and reads as follows:

"7. Ceremonies for a Hindu marriage. -

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

73. Entering into a marriage, therefore, either through the Hindu Marriage Act or the Special Marriage Act or any other Personal Law, applicable to the parties, is entering into a relationship of "public significance", since marriage being a social institution, many rights and liabilities flow out of that legal relationship. The concept of marriage as a "civil right" has been recognised by various courts all over the world, for example, Skinner v. Oklahoma 316 US 535 (1942), Perez v. Lippold 198 P.2d 17, 20.1 (1948), Loving v. Virginia 388 US 1 (1967).

74. We have referred to, in extenso, about the concept of "marriage and marital relationship" to indicate that the law has distinguished between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or, marriage-like relationship or defacto relationship.

75. Married couples who choose to marry are fully cognizant of the legal obligation which arises by the operation of law on solemnization of the marriage and the rights and duties they owe to their children and the family as a whole, unlike the case of persons entering into live-in relationship. This

Court in Pinakin Mahipatray Rawal v. State of Gujarat (2013) 2 SCALE 198 held that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on.

RELATIONSHIP IN THE NATURE OF MARRIAGE:

76. Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

a) Consanguinity

b) Marriage

c) Through a relationship in the nature of marriage

d) Adoption

e) Family members living together as joint family.

77. The definition clause mentions only five categories of relationships which exhausts itself since the expression "means", has been used. When a definition clause is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression "include" so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression "relationship in the nature of marriage".

78. We have already dealt with what is "marriage", "marital relationship" and "marital obligations". Let us now examine the meaning and scope of the expression "relationship in the nature of marriage" which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is "relationship in the nature of marriage" which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

79. Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in- relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party

asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".

80. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

a) Domestic relationship between an unmarried adult woman and an unmarried adult male: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".

d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

e) Domestic relationship between same sex partners (Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

81. Section 2(f) of the DV Act though uses the expression "two persons", the expression "aggrieved person" under Section 2(a) takes in only "woman", hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

82. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence", have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the "nature of marriage". Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression "relationship in the nature of marriage", of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression "in the nature of marriage". Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in (a) and (d) supra. Women, who fall under categories (b) and (c), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 37(b) of the Judgment.

83. We have, therefore, come across various permutations and combinations, in such relationships, and to test whether a particular relationship would fall within the expression "relationship in the nature of marriage", certain guiding principles have to be evolved since the expression has not been defined in the Act.

84. Section 2(f) of the DV Act defines "domestic relationship" to mean, inter alia, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression "relationship in the nature of marriage" is also described as defacto relationship, marriage - like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship) etc.

85. Courts and legislatures of various countries now began to think that denying certain benefits to a certain class of persons on the basis of their marital status is unjust where the need of those benefits is felt by both unmarried and married cohabitants. Courts in various countries have extended certain benefits to heterosexual unmarried cohabitants. Legislatures too, of late, through legislations started giving benefits to heterosexual cohabitants.

86. In U.K. through the Civil Partnership Act, 2004, the rights of even the same-sex couple have been recognized. Family Law Act, 1996, through the Chapter IV, titled "Family Homes and Domestic Violence', cohabitants can seek reliefs if there is domestic violence. Canada has also enacted the Domestic Violence Intervention Act, 2001. In USA, the violence against woman is a crime with far-reaching consequences under the Violence Against Women Act, 1994 (now Violence Against Women Reauthorization Act, 2013).

87. The Interpretation Act, 1984 (Australia) has laid down certain indicators to determine the meaning of "de facto relationship", which are as follows:

"A. De facto relationship and de facto partner, references to (1) A reference in a written law to a de facto relationship shall be construed as a reference to a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

(2) The following factors are indicators of whether or not a de facto relationship exists between 2 persons, but are not essential--

(a) the length of the relationship between them;

(b) whether the 2 persons have resided together;

(c) the nature and extent of common residence;

(d) whether there is, or has been, a sexual relationship between them;

(e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(f) the ownership, use and acquisition of their property (including property they own individually);

(g) the degree of mutual commitment by them to a shared life;

(h) whether they care for and support children;

(i) the reputation, and public aspects, of the relationship between them."

88. The Domestic and Family Violence Protection Act, 2012 (Queensland) has defined the expression "couple relationship" to mean as follows":

"18. Meaning of couple relationship

1) xxx xxx xxx

2) In deciding whether a couple relationship exists, a court may have regard to the following -

a) the circumstances of the relationship between the persons, including, for example-

(i) the degree of trust between the persons; and

(ii) the level of each person's dependence on, and commitment to, the other person;

b) the length of time for which the relationship has existed or did exist;

c) the frequency of contact between the persons;

d) the degree of intimacy between the persons.

3) Without limiting sub-section (2), the court may consider the following factors in deciding whether a couple relationship exists-

a) Whether the trust, dependence or commitment is or was of the same level;

b) Whether one of the persons is or was financially dependent on the other;

c) Whether the persons jointly own or owned any property;

d) Whether the persons have or had joint bank accounts;

e) Whether the relationship involves or involved a relationship of a sexual nature;

f) Whether the relationship is or was exclusive.

4) A couple relationship may exist even if the court makes a negative finding in relation to any or all of the factors mentioned in subsection (3).

5) A couple relationship may exist between two persons whether the persons are of the same or a different gender.

6) A couple relationship does not exist merely because two persons date or dated each other on a number of occasions."

89. The Property (Relationships) Act, 1984 of North South Wales, Australia also provides for some guidelines with regard to the meaning and content of the expression "de facto relationship", which reads as follows:

"4 De facto relationships (1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:

(a) who live together as a couple, and

(b) who are not married to one another or related by family.

(2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:

(a) the duration of the relationship,

(b) the nature and extent of common residence,

(c) whether or not a sexual relationship exists,

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,

(e) the ownership, use and acquisition of property,

(f) the degree of mutual commitment to a shared life,

(g) the care and support of children,

(h) the performance of household duties,

(i) the reputation and public aspects of the relationship.

(3) No finding in respect of any of the matters mentioned in subsection (2) (a)-(i), or in respect of any combination of them, is to be regarded as necessary for the existence of a de facto relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(4) Except as provided by section 6, a reference in this Act to a party to a de facto relationship includes a reference to a person who, whether before or after the commencement of this subsection, was a party to such a relationship."

90. "In Re Marriage of Lindsay, 101 Wn.2d 299 (1984), Litham v. Hennessey 87 Wn.2d 550 (1976), Pennington 93 Wash.App. at 917, the Courts in United States took the view that the relevant factors establishing a meretricious relationship include continuous cohabitation, duration of the relationship, purpose of the relationship, and the pooling of resources and services for joint projects. The Courts also ruled that a relationship need not be "long term" to be characterized as meretricious relationship. While a long term relationship is not a threshold requirement, duration is a significant factor. Further, the Court also noticed that a short term relationship may be characterized as a meretricious, but a number of other important factors must be present.

91. In Stack v. Dowden [2007] 2 AC 432, Baroness Hale of Richmond said:

"Cohabitation comes in many different shapes and sizes. People embarking on their first serious relationship more commonly cohabit than marry. Many of these relationships may be quite short-lived and childless. But most people these days cohabit before marriage..... So many couples are cohabiting with a view to marriage at some later date - as long ago as 1998 the British Household Panel Survey found that 75% of current cohabitants expected to marry, although only a third had firm plans: John Ermisch, Personal Relationships and Marriage Expectations (2000) Working Papers of the Institute of Social and Economic Research: Paper 2000-27. Cohabitation is much more likely to end in separation than is marriage, and cohabitations which end in separation tend to

last for a shorter time than marriages which end in divorce. But increasing numbers of couples cohabit for long periods without marrying and their reasons for doing so vary from conscious rejection of marriage as a legal institution to regarding themselves ''as good as married' anyway: Law Commission, Consultation Paper No 179, Part 2, para 2.45."

92. In MW v. The Department of Community Services [2008] HCA 12, Gleeson, CJ, made the following observations:

"Finn J was correct to stress the difference between living together and living together ''as a couple in a relationship in the nature of marriage or civil union'. The relationship between two people who live together, even though it is a sexual relationship, may, or may not, be a relationship in the nature of marriage or civil union. One consequence of relationships of the former kind becoming commonplace is that it may now be more difficult, rather than easier, to infer that they have the nature of marriage or civil union, at least where the care and upbringing of children are not involved."

93. In Lynam v. The Director-General of Social Security (1983) 52 ALR 128, the Court considered whether a man and a woman living together ''as husband and wife on a bona fide domestic basis' and Fitzgerald, J. said:

"Each element of a relationship draws its colour and its significance from the other elements, some of which may point in one direction and some in the other. What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. The endless scope for differences in human attitudes and activities means that there will be an almost infinite variety of combinations of circumstances which may fall for consideration. In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated persons of the opposite sex meets the statutory test."

94. Tipping, J. in Thompson v. Department of Social Welfare (1994) 2 SZLR 369 (HC), listed few characteristics which are relevant to determine relationship in the nature of marriage as follows:

"(1) Whether and how frequently the parties live in the same house. (2) Whether the parties have a sexual relationship. (3) Whether the parties give each other emotional support and companionship.

(4) Whether the parties socialize together or attend activities together as a couple.

(5) Whether and to what extent the parties share the responsibility for bringing up and supporting any relevant children. (6) Whether the parties share household and other domestic tasks. (7) Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise. (8) Whether the parties run a common household, even if one or other partner is absent for periods of time.

(9) Whether the parties go on holiday together. (10) Whether the parties conduct themselves towards, and are treated by friends, relations and others as if they were a married couple."

95. Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other countries. In Lata Singh v. State of U.P. [AIR 2006 SC 2522] it was observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in Civil Law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.

96. Section 125 Cr.P.C., of course, provides for maintenance of a destitute wife and Section 498A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnization of marriage also deals with the provisions for divorce. For the first time, through, the DV Act, the Parliament has recognized a "relationship in the nature of marriage" and not a live-in relationship simplicitor.

97. We have already stated, when we examine whether a relationship will fall within the expression "relationship in the nature of marriage" within the meaning of Section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved.

98. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

1) Duration of period of relationship Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc. (6) Children Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

99. In light of the above proposition of law, we have gone through the allegations made in the evidence before the learned Judge, family court. During pendency of this appeal, the husband Rajeev Singh has filed an affidavit with the facts that prior to passing judgement of the learned Judge, family court, the deponent-husband suffered from heart problem (Angina Stroke) and was admitted in SGPGI, Lucknow where coronary angiography was done and Stent to LCX Lesion was done on 01.10.2010 in which the deponent incurred expenses of more than two lakh and further submitted that in respect of the case under Section 27 of the Act, the appellant, during the course of argument before the court, showed her willingness to accept the jewellery articles and was admitted before the family court. The husband brought the said jewellery items before the court on the said date. Neither the appellant nor her counsel appeared before the court to receive the jewellery and further stated that husband is ready to pay an amount of Rs.2.5 lakh to his daughter namely Prabhleen Kaur in addition to what he has already given to his daughter.

100. The statement of witnesses recorded before the learned Judge, family court reveals that the husband has relied upon the following grounds for decree of divorce:

(i) That the wife is of the view to do service and after some times, she joined the service and presently she is in employment against the wishes of the husband or his family members.

101. Learned counsel for the appellant has submitted that this can be never a ground for divorce and the facts that the wife is working cannot be treated to be the ground for cruelty. He has further submitted that the husband has deserted the wife and was not ready to keep her with him and thus she compelled to resides with her parents and to maintain her livelihood with her child at the parental home, she was compelled by the circumstances to join the service according to her status and education.

102. Fight for the rights of women may be difficult to trace in history but it can be stated with certitude that there were lone and vocal voices at many a time raising battles for the rights of women and claiming equal treatment. Initially, in the West, it was a fight to get the right to vote and the debate was absolutely ineffective and, in a way, sterile. In 1792, in England, Mary Wollstonecraft in "A Vindication of the Rights of Women" advanced a spirited plea for claiming equality for, "the Oppressed half the Species". In 1869, "In Subjection of Women" John Stuart Mill stated, "the subordination of one sex to the other ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other". On March 18, 1869 Susan B. Anthony proclaimed "Join the union girls, and together say, "Equal pay, for Equal work". The same personality again spoke in July 1871 : "Women must not depend upon the protection of man but must be taught to protect themselves".

103. Lord Denning in his book Due Process of Law has observed that a woman feels as keenly thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom - develop her personality to the full - as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in life of the community, her's is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals.

104. The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community... The World Conference on Human Rights urges governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection of human rights of women and the girl child.

105. The Preamble of our Constitution is "a key to open the mind of the makers of the Constitution which may show the general purpose for which they make the Constitution. It declares the rights and freedoms which the people of India intended to secure to all citizens. The Preamble begins with the words "WE, THE PEOPLE OF INDIA....." which includes men and women of all castes, religions, etc. It wishes to render "EQUALITY of status and or opportunity" to every man and woman. The Preamble again assures "dignity of individuals" which includes the dignity of women. On the basis of the Preamble, several important enactments have been brought into operation, pertaining to every walk of life - family, succession, guardianship and employment - which aim at providing the protecting the status, rights and dignity of women. Our compassionate Constitution, the Fountain Head of all laws, is gender sensitive.

106. The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. It is apt to refer to certain constitutional provisions which are significant in this regard:

(i) Equality before law (Article 14)

(ii) The State not to discriminate against any citizen on grounds only of religion, race caste, sex, place of birth or any of them (Article 15(i))

(iii) The State to make any special provision in favour of women and children (Article 15(3))

(iv) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))

(v) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)

(vi) The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)

(vii) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A)(e))

(viii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))

(ix) Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D(4))

(x) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T(3))

(xi) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T(4)).

107. Reservation under Articles 243 D (3), D (4), T (3) and T (4) are meant to empower the woman politically.

108. Some Articles play a major role in the field of women empowerment. Article 15(3) empowers the State to make special provisions for them. The well-being of a woman is an object of public interest and it is to be achieved to preserve the strength and vigour of the race. This provision has enabled the State to make special statutory provisions exclusively for the welfare of women.

109. Article 39(a), requires the State to direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood. Under Article 39(d), the State shall direct its policy towards securing equal pay for equal work for both men and women. This Article draws its support from Article 14 and 16 and its main objective is the building of a welfare society and an equalitarian social order in the Indian Union. To give effect to this Article, the Parliament has enacted the Equal Remuneration Act, 1976 which provides for payment of equal remuneration to men and women workers and prevents discrimination on the ground of sex. Further, Article 39(e) is aimed at protecting the health and strength of workers, both men and women.

110. A very important and useful provision for women's welfare and well-being is incorporated under Article 42 of the Constitution. It imposes an obligation upon the State to make provisions for securing just and humane conditions of work and for maternity relief. Some of the legislations which promoted the objectives of this Article are the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965, and the like.

111. Conferment of equal status on women apart from being a constitutional right has been recognized as a human right. In Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty; 1996 AIR 922, 1996 SCC (1) 490, the Court observed that women have the right to be respected and treated as equal citizens. Accentuating on the concept, it proceeded to state thus: -

"9. ...Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not playthings for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world."

112. Economic empowerment is a necessary fulcrum of empowerment. The Constitutional Courts in many an authority have laid emphasis on said conception and interpreed the provisions to elevate the status of women and to empower them.

113. In Thota Manikayamma V. Thota Manikyamma (1991) 4 SCC 312 the Court, while interpreting Section 14 of the Hindu Succession Act, 1956 converting the women's limited ownership of property

into full ownership, has observed as follows:-

"21..... Article 15(3) relieves from the rigour of Article 15(1) and charges the State to make special provision to accord to women socio-economic quality ..... It would mean that the court would endeavour to give full effect to legislative and constitutional vision of socio-economic equality to female citizen by granting full ownership or property to a Hindu female. As a fact Article 15(3) as a forerunner to common code does animate to make law to accord socio-economic equality to every female citizen of India irrespective of religion, race, caste or religion."

114. When the matter relating to mother as natural guardian was questioned, the Court held that relegation of mother to inferior position to act as a natural guardian is violation of Articles 14 and 15 and hence, the father cannot claim that he is the only natural guardian. The guardianship right of women has undergone a sea change by this interpretation given by the Court in Gita Hariharan v. RBI, (1999) 2 SCC 228.

115. In Gayatri Devi Pansari v. State of Orissa, (2000) 4 SCC 221, The Court has also upheld an Orissa Government Order reserving 30% quota for women in the allotment of 24 hours medical stores as part of self-employment scheme. Thus, the language of Article 15 (3) is in absolute terms and does not appear to restrict in any way the nature or ambit of special provisions which the State may make in favour of women or children.

116. In this context it is useful to refer to the decision rendered in the case of Sellammal v. Nallammal, (1977) 3 SCC 145, wherein the Court held that the Hindu Marriage Act will override the U.P. Jamindari Abolition and Land Reforms Act and also held that exclusive right to male succession may be suspended till female dependent adopt another mode of livelihood.

117. Many a time question arises with regard to rights of women qua property. Various High Courts have interpreted Section 27 of the Hindu Marriage Act in a different manner. As far as the High Court of Madhya Pradesh is concerned the Court in the case of Ashok Kumar Chopra v. Visandi, AIR 1996 MP 226, held that "Stridhan' is the property of the wife in her individual capacity and the husband is merely trustee of that property and the husband is liable to return that property and value thereof under the substantive law and in equity. The power has been conferred by the M.P. High Court on the matrimonial courts in respect of certain properties.

118. In this regard it is necessary to refer that Hindu women who were not entitled to right to property have been given equal share along with male heir and they have presently been given equal rights. The concept of equality is the bedrock of gender justice. In the case of Neera Mathur v. LIC (1992) 1 SCC 286, a female candidate was required to furnish information about her menstrual period, last date of menstruation, pregnancy and miscarriage. When the matter came before the Court, their Lordships held that such declarations were improper. The Court directed that the Corporation would do well to delete such column in the declaration.

119. In light of the above facts, the ground as the wife joined the service, in our view, cannot be made the ground for treating it as cruelty or ground for divorce.

120. Second ground is that the wife left the house without consent of the husband.

121. Learned counsel for the appellant-wife has drawn attention towards the statement of husband Rajeev Singh recorded before the lower court as PW-1 on 17.04.2007 in which he had categorically admitted that the appellant, wife has left his house with his consent. Husband had further admitted that the wife wants to live with him at his work place but he was of the view to keep her with his family members for keeping care of his parents for the reasons that his job is of touring job.

122. The ground as taken by the husband that she was not intended to live with his family members cannot be treated the ground for cruelty. She was always ready and willing to reside with the husband and at one point of time, when there was a mediation with Ramgariya Sabha in Gurudwara members persuaded and made attempt that the husband should keep the wife with him at his work place, the husband was not ready to follow this terms of compromise.

123. We have carefully examined the grounds as taken by the husband for decree of divorce in light of the above facts and are of the view that the grounds as taken by the husband are not the ground coming within the purview of cruelty and desertion.

124. No decree of divorce could be granted on the ground of desertion in the absence of pleading and proof. Learned counsel for the appellant submitted that even in the absence of specific issue, the parties had led evidence and there was sufficient material for the Family Court to return a verdict of desertion having been proved. In the light of the submissions made by the learned counsel, we have opted to examine this aspect of the matter despite the fact that there was no specific issue framed or insisted to be framed.

125. "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbhai Shah v. Prabhavati [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passions, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held:

"For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving

reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a different between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co-exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus ort it may be that the separation and the animus deserendi coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decide to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court."

126. Following the decision in Bipinchandra's case (supra) this Court again reiterated the legal position in Lachman Utamchand Kirpalani v. Meena alias Mota [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as deserting spouse is concerned, two essential conditions must be there (1) the factum of separation and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by

conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

127. To prove desertion in matrimonial matter it is not always necessary that one of the spouse should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case.

128. There is another aspect of the matter which disentitles the appellant from seeking the relief of divorce on the ground of desertion in this case. As desertion in matrimonial cases means the withdrawal of one party from a state of things, i.e., a marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation between the parties for the purpose of consummating the marriage. Cohabitation by the parties is an essential of a valid marriage as the object of the marriage is to further the perpetuation of the race by permitting lawful indulgence in passions for procreation of children. In other words, there can be no desertion without previous cohabitation by the parties. The basis for this theory is built upon the recognised position of law in matrimonial matters that no-one can desert who does not actively or wilfully bring to an end the existing state of cohabitation. However, such a rule is subject to just exceptions which may be found in a case on the ground of mental or physical incapacity or other peculiar circumstances of the case. However, the party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong.

129. Further the wife has filed a suit for restitution of conjugal rights under Section 9 of the Act, which shows that she was always ready to live with the husband. Accordingly, we are of the view that lower court has erred in reaching at the conclusion that the acts of the wife comes within the category of the cruelty. The grounds as taken are neither physical cruelty nor mental cruelty. Thus the decision on issue no.1 and 2 in original suit no.29 of 2005 under Section 13 of the Act that the wife has treated the husband with physical and mental cruelty is not found proved and it is perverse and against the evidence on record. Further the finding that the wife has deserted without any reason is also not based on evidence on record.

130. In light of the above facts and evidence on record, we are of the view that the finding on issue no.1, 2 and 3 of the original suit is against the settled proposition of law and evidence on record and the decree of divorce is not maintainable. The suit for decree of divorce deserves to be dismissed. In light of the above facts, we are also of the view that cruelty has not been proved against the husband and the wife has not deserted the husband. Willingly she had filed a suit for restitution of conjugal rights numbered as Original Suit No.694 of 2005 under Section 9 of the Act. It deserves to be allowed for restitution of conjugal rights. Original Suit No.42 of 2009 was filed by the wife under Section 27 of the Act for grant of maintenance for herself and her child, it was concluded that the husband should provide an amount of four lakh for maintenance, education and expenditure of marriage of the daughter Prabhleen Kaur.

131. We have considered rival contentions and perused the judgment impugned and other materials available on record. Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in sub-section (1) of Section 25. In a case reported in (1970) 3 SCC 129, Kulbhushan Kumar vs. Raj Kumari and Anr., it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.

132. At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by the Family Courts Act, 1984. In Smt. Dukhtar Jahan v. Mohammed Farooq, (1987) 1 SCC 624, the Court opined that proceedings under Section 125 of the Code, it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.

133. A three-Judge Bench in Vimla (K.) v. Veeraswamy (K.), (1991) 2 SCC 375, while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

134. A two-Judge Bench in Kirtikant D. Vadodaria v. State of Gujarat and another, (1996) 4 SCC 479, while adverting to the dominant purpose behind Section 125 of the Code, ruled that:

"While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

135. In Chaturbhuj v. Sita Bai, (2008) 2 SCC 316, reiterating the legal position the Court held: -

"Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives

effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 63[6]."

136. Recently in Nagendrappa Natikar v. Neelamma 2013 (3) Scale 561, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

137. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in K.A. Abdul Jaleel v. T.A. Shahida, (2003) 4 SCC 166, while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus: -

"The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith."

138. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for five years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and 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.

139. On this point by filing counter affidavit, the husband has stated that he had deposited an amount of Rs.81,000/-, which was granted as maintenance allowance in favour of the daughter and has also invested Rs.15,000/- in term deposit in State Bank of India in favour of the daughter, which is going to mature on 15.10.2019. The maturity amount of the same is Rs.31,535/-. In para-9 of the affidavit, he has submitted that since financial condition of the deponent is not as sound as of the appellant and in comparison to the appellant the deponent is getting salary of Rs.18,447/-, however,

he is still ready and willing to pay Rs.2.5 lakh, out of his total savings which is about Rs.3 lakh, to his daughter namely Prabhleen Kaur in addition to what he has already given to his daughter. The child is minor and studying in preliminary stage. A reasonable amount is required for her higher studies and expenditure of marriage.

140. We are of the view that total amount of Rs.10 lakh, in addition to what he has already paid, be deposited in the name of his daughter namely Prabhleen Kaur and be kept in the form of FDR (Fixed Deposit Receipt) in a nationalized bank under the guardianship of the mother and regularly the interest be paid in her savings account opened in the name of minor to be operative by the mother guardian and be expended only for the education and for the benefit of the minor whenever required. At the time of marriage, the total amount may be withdrawn by the mother as a guardian to meet out the expenditure of marriage. Rest of the expenditure for marriage shall be borne by the mother. Accordingly, we allow the appeals and disposed of the applications/suits as follows:

(i) The appeals are allowed. The judgement and order dated 27.11.2010 passed in Original Suit No.29 of 2005 Rajeev Singh v. Smt Gurpreet Singh filed under Section 13 of the Act is set aside with cost.

(ii) Original Suit No.694 of 2005, Smt. Gurpreet Kaur v. Rajeev Singh for restitution of conjugal rights under Section 9 of the Act is allowed.

(iii) We are not in view to disturb the findings passed in Misc Case No.31C of 2008 but direct that the order be complied immediately say within 30 days.

(iv) The order passed in Original Suit No.42 of 2009; Smt. Gurpreet Singh v. Rajeev Singh is modified and the amount of Rs.4 lakh as directed by the learned Judge, family court is enhanced to the tune of Rs.10 lakh and the respondent-husband is directed to pay this amount to the daughter and be kept in a nationalized bank as narrated above.

141. The appellant's applications and appeals are disposed of accordingly.

Order Date :-18.12.2017 Anupam S/-

(Sheo Kumar Singh-I, J.) (Shabihul Hasnain, J.)