**SC Emphasizes on use of Video Conferencing Technology for Matrimonial Cases**

**Case name: Krishna Veni Nagam v. Harish Nagam (Supreme Court- Decided on 9th March, 2017)**

In the case the Supreme Court took the issue of transfer petitioner instituted by wives in matrimonial cases and the Courts mechanically allowing the same. The Court observed that under such circumstances matrimonial cases that should be decided expeditiously are delayed and litigants also suffer.

The Court noted that problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife could not be ignored. Thus, transfer is not always a solution acceptable to both the parties.

In view of the aforesaid, in the case the Court suggested that **video conferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties.**

*Key takeaways from the case:*

The Court in this context further stated that wherever such facility is available the same shall be fully utilized and all the High Courts should to issue appropriate administrative instructions to regulate the use of video conferencing for certain category of cases.

That the advancement of technology ought to be utilized also for service on parties or receiving communication from the parties. Every district court must have at least one e-mail ID. Administrative instructions for directions can be issued to permit the litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated officer/manager of a district court may suitably respond to such e-mail in the manner permitted as per the administrative instructions. Similarly, a manager/ information officer in every district court may be accessible on a notified telephone during notified hours as per the instructions

The Supreme Court in the case issued the following directions:

*that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-*

1. *i) Availability of video conferencing facility.*
2. *ii) Availability of legal aid service.*

*iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.*

1. *iv) E-mail address/phone number, if any, at which litigant from out station may communicate.*

## ****SC: 6 Months Waiting Period for Divorce by Mutual Consent is not mandatory****

**Case name: Amardeep Singh v. Harveen Kaur (Supreme Court)**

In a major development to Hindu Law governing divorce by mutual consent, the Supreme Court ruled that the period of interregnum or cooling off period of 6-18 months provided under [Section 13B(2) of the Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13B_Divorce_by_mutual_consent) is not mandatory but a directory provision and can be waived off under certain circumstances.

The Court further observed that in view of this, Courts can exercise its discretion depending on the facts and circumstances of each case and waive off the stipulated period where there is no possibility of resuming cohabitation and there are chances of alternative rehabilitation.

In this case, the parties were living separately since 2008. In 2017 the parties arrived at a settlement and applied for divorce by mutual consent. In the case, the parties prayed the Court to waive off the period of 6 months as prescribed under [*Section 13B(2) of the Hindu Marriage Act, 1955*](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13B_Divorce_by_mutual_consent)on the ground that they have been living separately for the last 8 years and that there was no possibility of their re-union.

**Key takeaways from the Court’s verdict:**

The Supreme Court stated that the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section [13B(2)](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13B_Divorce_by_mutual_consent) it can do so after considering the following :

* The statutory period of six months specified in [13B(2)](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13B_Divorce_by_mutual_consent)in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself;
* That all efforts for mediation/conciliation to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;
* That the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties
* That the waiting period will only prolong their agony.
* The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver.
* If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.
* That as the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. The Court also stated that such proceedings can also be conducted through video conferencing.

## ****SC: Few Isolated Incidents of Long Past cannot be Cruelty and Ground for Divorce****

**Case name: Suman Singh v. Sanjay Singh (Supreme Court)**

In the case, the husband had pleaded 9 instances which, according to him, constituted “cruelty” within the meaning of [Section 13(1)(i-a) of the Hindu Marriage Act](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13_Divorce)  entitling him to claim dissolution of marriage against the appellant. The impugned instances in the case essentially related to the appellant’s behaviour with the respondent and his family members.

In the case, the appellant prayed for restitution of conjugal rights. The Supreme Court allowed the wife’s appeal and made the following key observations:

That almost all the grounds taken by the respondent in his petition were stale or/and isolated and did not subsist to enable the respondent to seek a decree for dissolution of marriage. In other words, the incidents of cruelty alleged had taken place even, according to the respondent, immediately after marriage. They were solitary incidents relating to the behavior of the appellant.

Second, assuming that one or more grounds constituted an act of cruelty, yet we find that the acts complained of were condoned by the parties due to their subsequent conduct inasmuch as admittedly both lived together till 2006 and the appellant gave birth to their second daughter in 2006.

That the incidents which occurred prior to 2006 could not be relied on to prove the instances of cruelty because they were deemed to have been condoned by the acts of the parties. So far as the instances alleged after 2006 were concerned, they being isolated instances, did not constitute an act of cruelty.

That a **petition seeking divorce on some isolated incidents alleged to have occurred 8-10 years prior to filing of the date of petition cannot furnish a subsisting cause of action to seek divorce after 10 years or so of occurrence of such incidents.**

That the incidents alleged should be of recurring nature or continuing one and they should be in near proximity with the filing of the petition. **Few isolated incidents of long past and that too found to have been condoned due to compromising behavior of the parties cannot constitute an act of cruelty within the meaning of** [**Section 13(1)(i-a) of the Hindu Marriage Act**](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13_Divorce)**.**

**Principle of Res Judicata not Applicable on a Subsequent Suit under Section 13 of HMA**

**Case name: Balveer Singh v. Harjeet Kaur (Uttarakhand High Court)**

In the case the Appellant had filed a petition under [Section 13-A of Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13A_Alternate_relief_in_divorce_proceedings) seeking dissolution of marriage between the parties. The seminal issue that cropped up before the High Court was *whether the suit in question would be barred by*Section 11 of Code of Civil Procedure in view of the fact that the proceedings under [Section 9 of the Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#9_Restitution_of_conjugal_rights)   (restitution of conjugal rights) stood decided?

[Section 11 of Code of Civil Procedure](https://www.vakilno1.com/bareacts/laws/civil-procedure-code-1908.html#11_Res_judicata) enunciates that no Court should try any suit or “issue” in which the matter directly and substantially in issue has been directly and substantially decided in a formal suit.

*While deciding this issue, the High Court referred to the impugned provisions and made following key observations in the case:*

* That on a simple reading of [Section 9 of the Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#9_Restitution_of_conjugal_rights), it has altogether a different purpose. The purpose of [Section 9 of the Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#9_Restitution_of_conjugal_rights) is to meet a contingency. It deals with a situation where a married couple for no justifiable reason is withdrawing himself from discharging the obligations attached to the institution of marriage, which at the hand of one of them is attempted to be settled together. The grant of relief of the restitution is subject to the satisfaction being established of non-meeting of the matrimonial obligations.
* That if both the provisions if are scrutinized harmoniously, the legislature in all its wisdom had provided that the two sections i.e. [Section 9 of the Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#9_Restitution_of_conjugal_rights) and [Section 13-A of Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13A_Alternate_relief_in_divorce_proceedings) are framed to meet a separate set of contingencies. Thus, both the provisions are divergent to one another one aims to bring family together and the other is a judicial process to separate the family.
* The High Court opined **that proceedings would not attract** [**Section 11 of Code of Civil Procedure**](https://www.vakilno1.com/bareacts/laws/civil-procedure-code-1908.html#11_Res_judicata) **to create a Bar in filing of a subsequent suit under either of the provisions under**[**Section 9 of the Hindu Marriage Act, 1955**](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#9_Restitution_of_conjugal_rights)**or** [**Section 13-A of Hindu Marriage Act, 1955**](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13A_Alternate_relief_in_divorce_proceedings)**.**
* If [Section 9 of the Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#9_Restitution_of_conjugal_rights)is either decreed or dismissed, it will not take away a right of a party to file [Section 13-A of Hindu Marriage Act, 1955](https://www.vakilno1.com/bareacts/hindumarriageact/hindumarriageact.html#13A_Alternate_relief_in_divorce_proceedings) for dissolution of marriage at any subsequent stage.

## ****Bombay HC Dismisses Husband’s Petition for Divorce Filed on the Ground of Wife’s Mental Disorder****

In the case, the husband alleged that the wife had been suffering intermittently from mental disorder of such kind and to such an extent that he cannot be reasonably expected to live with her.

The Court noted that admittedly, the husband had taken the respondent wife to a psychiatrist however, the Appellant had not examined the said psychiatrist.

The Bombay High Court in the case further opined that there was a certificate purportedly issued by the psychiatrist which had not been admitted in evidence. The Court noted that to prove mental disorder of respondent wife the psychiatrist was the best witness to depose in support of the plea of the appellant– husband that the respondent – wife was intermittently suffering from mental disorder. However, the appellant – husband had made no efforts to examine the said witness. Hence, the said ground for divorce under [Section 27(1)(e) of the Special Marriage Act](https://www.vakilno1.com/bareacts/splmarriage1954/specialmarriageact.html#27_A_Alternate_relief_in_divorce_proceedings) (Mental disorder of spouse is one of the grounds to seek divorce under the Special Marriage Act) is not proved.

## ****Lodging false case under Section 498A of IPC is Cruelty and Ground for Divorce****

**Case name: Mrs. Christine Lazarus Menezes v. Mr. Lazarus Peter Menezes (Bombay High Court)**

In the case, the Appellant wife appealed against Family Court’s order whereby the Family Court had granted Respondent’s prayer for dissolution of marriage.

The Bombay High Court dismissed the appeal and refused to interfere with the Family Court’s order in allowing the Petition for divorce of the husband on the ground of ‘cruelty’.

The Court noted in the case that during examination, the wife had admitted in her affidavit that she had lodged an FIR with the Kherwadi Police Station, Mumbai, against her husband under sections 498-A and 406 of the Indian Penal Code, 1860. The Appellant wife had also admitted in the case that she had filed the Criminal Complaint in order to bring back her husband to their matrimonial home.

In view of the aforesaid, the Court noted that if the Criminal Complaint filed by the appellant wife against her husband was false and was filed only to bring back her husband and consequent to which he was arrested and was in jail for about 7 days, it would constitute a clear case of cruelty by the wife against her husband.

## ****FIR Instituted against one and all Family Members Liable to be quashed****

**Case name: Natubhai Somabhai Rohit v. State of Gujrat & Anr. (Gujrat High Court)**

In the case, the Appellant had prayed for quashing of FIR instituted by the complainant wife under sections 498-A, 323, 504, 506(2) and 114 of the Indian Penal Code, 1860, read with section 3 and section 7 of the Dowry Prohibition Act.

In all ten persons-all family members were shown as accused in the First Information Report. The Gujrat High Court noted that the tendency to rope in all the family members in the FIR speaks for themselves and in such circumstances, the requirements of alleging specific role for each of the members becomes necessary, for which the indispensable aspects that all should stay together.

The Court also relied on Supreme Court’s verdict in **G. V. Rao vs. L.H.V. Prasad*****[[1]](https://www.vakilno1.com/legal-news/landmark-matrimonial-divorce-judgments-2017.html%22%20%5Cl%20%22_ftn1)*** wherein the Court stated that a complaint relating to matrimonial dispute where all the members are roped into irrespective of role, becomes liable to be quashed.

The Court observed that when the allegations are shown to be non-specific and not of the degree of seriousness contemplated in law, and when the applicants accused are shown to be living separately coupled with attendant facts and aspects, the allegations become too bald to be sustained in law.

[[1]](https://www.vakilno1.com/legal-news/landmark-matrimonial-divorce-judgments-2017.html%22%20%5Cl%20%22_ftnref1) (2003) SCC 693