RESILIENCE

LAW TIMES

LATEST NEWS

Order Allowing Couple To Adopt Not Meant To Supplant CARA Process : Supreme Court Clarifies In Unmarried Student's Abortion Case

The Supreme Court has issued a clarification with respect to the order passed by it in a petition filed by an unmarried woman seeking termination of pregnancy. After the AIIMS reported that there was high probability of the baby coming out alive if the 29-week pregnancy was attempted to be terminated, the Court had persuaded the woman to opt for delivery. The woman, a 21-year old student, expressed difficulty in keeping the child.

During the proceedings, the Solicitor General of India had informed the Court about the willingness expressed by a couple, who are registered with the Central Adoption Resource Authority(CARA), to adopt the child. Accordingly, the Court had passed an order allowing the said couple to adopt the child.

The Court has now clarified that the order was passed in view of the extraordinary circumstances of the case, and the same is not meant to supplant the regular adoption procedure of CARA.

The Court said that in view of the unwillingness expressed by the woman to raise the child, "it had become necessary to seek prospective adoptive parents with the utmost priority and urgency before the delivery". Therefore, the direction allowing adoption by the specified couple was passed exercising the extraordinary powers under Article 142 of the Constitution.

"It is clarified that these directions do not operate to supplant the procedure which has been laid down by CARA in their general application to other cases falling within its jurisdiction", a bench led by Chief Justice of India DY Chandrachud stated.

In view of the above clarification, CARA has been directed to take steps in compliance with the order dated 2 February 2023 without taking recourse to the procedure as mentioned in paras 4(A) and 4(B) of its letter dated 8 February 2023. CARA has been directed to take steps within 24 hours.

Hijab Case : CJI DY Chandrachud To Take A Call On Urgent Listing To Consider Muslim Students' Plea To Attend Exams In Govt Colleges

Chief Justice of India DY Chandrachud on Wednesday said that he will take a call on listing the Hijab case from Karnataka to consider the plea made by the Muslim girls seeking interim relief to allow them to attend exams in the government colleges.
Advocate Shadan Farast mentioned the matter before the CJI seeking urgent listing, saying that the exams are scheduled to commence from March 9.

"Why are they prevented from taking the examination?", CJI asked.

"Because they are wearing headscarfs", Farasat replied. "I will take a call on this", CJI replied.

On January 23, the CJI had agreed to consider the request for urgent listing, after Senior Advocate Meenakshi Arora mentioned the urgency of examinations, which are held in government colleges. After the Karnataka government banned the wearing of hijab in Government Pre-University Colleges,

After the Karnataka government banned the wearing of hijab in Government Pre-University Colleges, several Muslim students had to move to private colleges. However, the exams are conducted in government colleges. In this backdrop, the petitioners seek permission to attend exams.
"They have already lost one year. They don't want to lose one more year. The prayer is only to let them take part in the exam. I am not seeking any other directions", Farasat submitted today.

In March 2022, Karnataka High Court had upheld the ban imposed by the State Government on Muslim girls wearing religious headscarf in government colleges. In October 2022, a two-judge bench of the Supreme Court had delivered a split verdict in the appeals, with Justice Hemant Gupta upholding the hijab ban and Justice Sudhanshu Dhulia ruling against it.

Man Or Woman, A Judge Should Be Addressed As 'Sir' Rather Than 'My Lord' Or 'Your Honour': Gujarat HC Chief Justice Sonia Gokani

Adding her bit to the debate over whether a Judge should be addressed as Milord' Or 'Your Honour', Gujarat High Court Chief Justice Sonia Gokani on Thursday observed that whether a Judge is a man or a woman, the right way to address him is to call him/her 'Sir'.
Chief Justice Gokani was prompted to make the remark after an advocate repeatedly addressed the bench led by Chief Justice Gokani (and also consisting of Justice Sandeep N. Bhatt) as 'Your Ladyship' during the hearing of a case.
Now, when the bench pointed out that the advocate should be addressing and acknowledging both the judges, the lawyer apologized to the bench as he said that it was never his intention to address only one judge of the bench. He also added that he should have addressed the bench as 'Your lordships'.

"Many a times, in the General Clauses Act, we say he includes she; sometimes she includes he also…We believe it should be either 'sir' or 'madam'... It should be sir. That is the right way of doing it rather than 'Milord' or 'Your honour'. So let it be gender neutral," Chief Justice Gokani said.

To this, Senior Advocate Mihir Thakore also said that the term 'Her Ladyship' was not the correct way to address a woman judge and technically, it should be 'My lady'. In response to this, Chief Justice Gokani recalled that once there was a discussion in the National Judicial Academy that what should be the right way to address the Judges as they believed that 'Your Lord' was too feudalistic, when the former Chief Justice, SJ Mukhopadhyay said that most of the advocates had already switched to 'Sir'

Contempt Of Court Case: Punjab & Haryana High Court Sentences Dismissed Punjab DGP, His Aide To 6 Months In Jail

The Punjab and Haryana High Court today sentenced dismissed Punjab Police DSP Balwinder Singh Sekhon and his aide, one Pardeep Sharma to 6 months imprisonment in the contempt case for circulating 'malicious', 'libelous', and 'derogatory' videos on social media pertaining to judicial proceedings of the Judges of the HC.
The bench of Justice G. S. Sandhawalia and Justice Harpreet Kaur Jeewan also imposed a fine

of Rs. 2000 on them. The detailed order is awaited. This development comes four days after they both were ordered to be arrested in the case by the High Court.

The background of the case Earlier on Feb 15, the Court had issued a criminal contempt notice to Sekhon for willingly taking on the High Court in order to achieve their personal ends. The Court noted that Sekhon, who had filed a writ petition in 2021 challenging the order of his dismissal from service, had been circulating videos pertaining to the judicial proceedings which are being conducted by other judges.

The bench had also noted that in one of the videos, referring to more than 10 Judges of the Punjab & Haryana High Court and one sitting Judge of the Supreme Court, scandalous allegations have been made by Sekhon and therefore, a copy of the Court's order and the transcript of the video proceedings was sent to Sekhon to answer the charge. However, after the proceedings ended on February 15, they (Sekhon and an alleged legal expert, Pardeep) aired themselves in open public at the entrance of the Court and launched a vicious tirade on the proceedings which had been conducted. Consequently, the Court took up the suo moto case today pertaining to their conduct on Feb 15.

The Court, in its February 20 order, noted that Pardeep, who put in an appearance in an effort to defend Sekhon before the Court on Feb 15, made a public remark disparagingly about one of the Judges (part of the bench) and the fact that his father was also a Chief Justice and he also did not have the guts to open the reports. Apart from several other allegations, it was further commented that the Judges have been leashed by a certain set of people.

In fact, in one of the videos, the Court found that the Judges of the Court were abused to the fullest and that personal allegations were leveled against the Bench of the Court which was hearing the matter and which had issued the notice.

Taking into account the facts of the matter and against the backdrop of the circumstances of the Court, the Court on Monday made an order for their arrest and directed that they be sent to judicial custody and thereafter be produced before the Court to answer the charge of contempt.

"By putting forth material on the social sites, they have not only by visible representation scandalized and lowered the authority of this Court and have interfered with the course of judicial proceedings and gone on to obstruct the administration of justice and, thus, have fallen foul of Sections 2(c)(i) to (iii) of the Contempt of Courts Act, 1971 ," the Court observed.

"We are informed that a large number of videos are circulated prior to the listing of the contentious matters before Benches. Observations are made how the proceedings are to be conducted and unsubstantiated allegations are levelled regarding the manner in which they might be conducted and also after having been conducted. The said allegations also pertain to raising allegations of financial misdemeanour apart from judges facing political pressure and unfounded reasons which are levelled," the Court further observed as it invoked its jurisdiction under Section 14 of the Contempt of Court Act so that he brought before this Bench to answer the charge against him.

"A virtual panchayat is being held whereby abuses are being showered on this Court in the proceedings conducted by respondent Nos.6 to 8 in the form of a gatling gun and the fact that the Bench does not know the 'A, B, C' of law unmindful of the fact that this 'Temple of Justice' is adjourned by constitutional authorities who are only doing and conducting work in accordance with the oath given to them under the Constitution without fear and favour to anyone. Apart from that, even the family members have not been spared by passing disparaging remarks against them also," the Court added.

CURRENT AFFAIRS

SC refuses to hear PIL on menstrual leave

A Public Interest Litigation was filed with the Supreme Court on Menstrual leave. The apex court first agreed to take up the PIL and said “will hear it in a week”. However, recently the SC refused to take the PIL. According to SC, creating laws or passing judgement on such leaves will become a deterrent to women’s employment. Also, the Supreme Court added that the solution is in the hands of the government. And asked the petitioner to approach the Women and child development ministry.

Supreme Court Action in Adani Case

The Supreme Court had asked the GoI to set up an expert panel and check on the safety of the investors in situations like Adani Stock Manipulation. The Government of India prepared suggestions on what can be done during such cases and what existing provisions led to the issue. However, the suggestions were submitted in a sealed envelope. Meaning, the SC or any other body cannot reveal or read the contents. SC rejected this as the suggestions came in sealed envelopes. The Apex court is to set up its own committee now!

Uttarakhand New Anti-Cheating Law

The Governor of Uttarakhand recently issued an ordinance to control unfair recruitment in the state. In accordance with the ordinance, the State Government can impose fines of up to 10 crores of rupees against unfair practices in exams and in recruitment. Since 2016, there were multiple paper leaks in the state.

DGCA approves Hindustan 228 aircraft of HAL

The Director General of Civil Aviation recently granted permission to HAL to build Hindustan 228 variant aircraft. The Hindustan-228-201W is a 19-seater. Take-off weight of the aircraft is 5695 kg. The variant requires fewer pilot requirements. Any pilot with a commercial pilot license can fly the aircraft. Contents Background About Hindustan 228Hindustan 228 will support UDAN ..

PM Modi inaugurated Shivamogga Airport and launched Development projects in Karnataka

Prime Minister Narendra Modi recently inaugurated the Shivmogga airport in the state of Karnataka. The airport was built for Rs 450 crores. The Passenger Terminal of the airport’s main building is in the form of a lotus. It can accommodate more than 300 passengers. Apart from this, PM Modi also laid the foundation stone of ..

Kerala inks pact with UN Women

The Kerala State Government recently signed an agreement with the United Nations women to increase the role of women in the tourist industry of the state. Under the agreement, the Responsible Tourism Mission is to be implemented in the state. It will be a gender-inclusive mission. The mission will promote women-friendly tourist spots ..

LATEST JUDGMENTS

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. OF 2023 (Arising out of SLP (C) No.9855/2022)

Aparna Ajinkya Firodia …Appellant

Versus

Ajinkya Arun Firodia …Respondent

J U D G M E N T NAGARATHNA J.

Leave granted. 2. Indian Law has proceeded on the assumption that parents are persons who beget a child or who assume the legal obligations of parenthood through formal adoption of child. Under the Indian legal spectrum, a husband is strongly presumed to be the father of a child born to his wife. Thus, there is a strong presumption regarding the paternity of a child. This presumption can be overcome only by evidence precluding any procreative role of the husband, such as by showing that the husband and wife had no access to each other at the relevant time of possible conception. In the absence of proof of non-access, the law considers the husband's paternity to be conclusively established if they cohabited when the child was likely to have been conceived. By allowing rebuttal with proof, that the husband could not have been the biological father, the marital presumption was implicitly premised, in part, on a policy linking parenthood with biological reproduction and on an assumption about the probability of the husband's genetic contribution. The presumption protects social parentage over biological parentage. Scientific proof now makes it possible to know with virtual certainty whether a man is genetically related to a child. As a result, Courts are routinely confronted with husbands seeking to disavow their paternity based on newly acquired DNA evidence, notwithstanding them having long performed the social role of father to a child. The short question in the present appeal is as to how a Court can prevent the law’s tidy assumptions linking paternity with matrimony, from collapsing, particularly when parties are routinely attempting to dislodge such presumptions by employing modern genetic profiling techniques. Factual Background: 3. The present controversy emerges from an application (Exhibit 84/B) filed by the respondent-husband on 9th November, 2020 before the Principal Judge Family Court, Pune, praying for a direction to subject Master Arjun, the second child born to the appellant-wife, during the subsistence of her marriage with the respondent, to deoxyribonucleic acid test (“DNA test” for short), with a view to ascertain his paternity. The said application was filed by the respondent-husband in a petition for divorce filed by him under Sections 13(1)(i) and (ia) of the Hindu Marriage Act, 1955, being Petition No. P.A. 639 of 2017. The same was allowed by the Family Court, Pune by an order dated 12th August, 2021 and confirmed by the High Court of Judicature at Bombay by way of the impugned judgment dated 22nd November, 2021 in Civil Writ Petition No.7077 of 2021. 4. Succinctly stated, the facts leading to the present appeal are as follows: 4.1. The appellant and the respondent got married as per Hindu rites and rituals at Pune, on 23rd November, 2005. Their first child, Master Hridaan Firodia, was born on 21st December, 2009. During the subsistence of their marriage, a second son, namely, Master Arjun Firodia, was born on 17th July, 2013. 4.2. On 1st June, 2017, the respondent-husband, filed a petition for divorce under Sections 13(1)(i) and (ia) of the Hindu Marriage Act, 1955 being Petition No.P.A. 639 of 2017 and a petition seeking custody of their two children, being P.D. No. 17 of 2017 against the appellant-wife, before the Family Court, Pune. In the petition for divorce, the respondent, interalia, alleged

that the appellant-wife was in an adulterous relationship with one Kshitij Bafna, and the respondent discovered the same on 14th September, 2016 when he found that certain intimate messages had been exchanged between the appellant and Kshitij Bafna. 4.3. On 9th November, 2020, the respondent filed an application, being application 84/B, before the Family Court, Pune seeking a direction to subject Master Arjun, the second child born to the appellant-wife, during the subsistence of her marriage with the respondent to DNA testing, with a view to ascertain the child's paternity. The contents of the said application may be summarised as under: i. That Master Arjun, the second son born to the appellant-wife, during the subsistence of her marriage with the respondent, was born out of an adulterous relationship between the appellant and Kshitij Bafna. ii. That the respondent discovered that the appellant had been in an adulterous relationship with Kshitij Bafna, while he was using her phone on 14th September, 2016. That on being confronted about the same the appellant admitted to the adulterous relationship with Kshitij Bafna. iii. That the respondent, being unwilling to accept the truth as confirmed by the appellant, decided to further investigate the issue of Master Arjun's paternity and hence, caused a DNA test to be conducted at DNA Labs India, a private laboratory. The DNA Test report dated 24th November, 2016 indicated as follows: "The alleged father lacks genetic markers that must be contributed to the child by the biological father. The probability of paternity is 0%". iv. That the respondent was certain that Master Arjun was born as a result of the adulterous relationship of the appellant. However, in order to substantiate his contention as to the appellant's infidelity as a ground for divorce, it was necessary to conduct a DNA test which would reveal that the respondent was not the biological father of Master Arjun. v. That a DNA test is the most legitimate and scientifically perfect means, that the respondent could use to establish the assertion of infidelity on part of the appellant. That in the absence thereof it would be impossible for the respondent to conclusively establish the assertions made by him in the pleadings. vi. That the respondent had access to telephonic conversations between him and Kshitij Bafna, wherein Kshitij Bafna had expressed his anger at the respondent for intimating his wife i.e., the wife of Mr. Bafna, of his illicit relationship with the appellant. That Kshitij Bafna when confronted about the paternity of Master Arjun, did not deny that the child was born to him and the appellant. That the appellant was in the habit of maintaining a daily diary wherein she had penned her thoughts as to her adulterous relationship. Having regard to the sensitive nature of the conversation and the contents of the diary, the respondent sought for the leave of the Family Court to produce the recording, the diary and other evidences, if necessary, at the time of final hearing of the divorce proceedings. 4.4. The appellant filed an affidavit in reply, opposing the application filed by the respondent seeking a direction to conduct DNA test of Master Arjun, inter-alia, contending that the respondent had not made out a prima-facie case requiring the Court to exercise its discretion to direct DNA test to be conducted as prayed for. 4.5. By an order dated 12th August, 2021, the Family Court, Pune, allowed the application filed by the respondent seeking DNA test of Master Arjun and further observed that in the event that the appellant fails to comply with the directions of the Court, the allegations of adultery as against her would be determined by drawing an adverse inference as contemplated under Illustration (h) of Section 114 of the Indian Evidence Act, 1872 (hereinafter "Evidence Act" for the sake of brevity). The salient findings of the Family Court may be encapsulated as under: i. That the respondent had filed the application seeking direction to conduct DNA test of Master Arjun, only with a view to establish adultery on the part of the appellant and not to disparage the paternity of the minor child. ii. On perusal of the DNA Test Report

issued by DNA Labs India dated 24th November, 2016, the Family Court concluded that the possibility of the respondent being the biological father Master Arjun has been excluded. That in view of Section 14 of the Family Courts Act, 1984 the said Report can be read as evidence. iii. Reliance was placed on the decision of this Court in Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik, (2014) 2 SCC 576, to hold that Section 112 of the Evidence Act was enacted at a time when scientific advancement in the field of DNA test was not as sophisticated. That although Section 112 raises a presumption of conclusive proof on the satisfaction of the conditions enumerated therein, the same is rebuttable. That where the truth of a fact is known, there is no need or room for any presumption. Thus, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. iv. That the respondent had made out a prima-facie case justifying the Court's exercise of discretionary power to direct conducting DNA Test by collecting blood samples of the respondent and the minor child. v. That the respondent would be able to substantiate his allegations of adultery/infidelity on the part of the appellant, only if permission is granted for conducting a DNA test. That it would be impossible for the respondent to establish and confirm the assertions made in the pleadings, other than by way of a DNA test. That DNA Testing is the most legitimate and scientifically perfect means, that the husband could use, to establish his assertion of infidelity. vi. That in the event that the appellant accepts the direction issued by the Court, the DNA Test will determine conclusively the veracity of the accusations levelled by the respondent against her. In case, she declines to comply with the direction issued by the Court, the allegations would be determined by the Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, particularly, in terms of illustration (h) thereof. vii. That by adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 112 of the Indian Evidence Act. 4.6. Aggrieved by the Order dated 12th August, 2021 passed by the Family Court, Pune, the appellant filed a Writ Petition, being Civil Writ Petition No.7707 of 2021, before the High Court of Judicature at Bombay, assailing the same, inter-alia, on the ground that the Family Court failed to appreciate that a strong prima-facie case is a sine qua non for directing DNA profiling and that there was no evidence to support the respondent's prayer for DNA test. Further, that the order of the Family Court was contrary to the presumption provided under Section 112 of the Indian Evidence Act and the provisions of the Hindu Marriage Act, 1955 and was contrary to the fundamental rights guaranteed under Article 21 of the Constitution of India. 4.7. By the impugned judgment dated 22nd November, 2021 the High Court dismissed the Writ Petition filed by the appellant herein and upheld the order of the Family Court dated 12th August, 2021. The pertinent findings of the High Court may be epitomized as under: i. That the respondent had carried out a DNA Test of Master Arjun at DNA Labs India and had produced the report of the same dated 24th November, 2016 wherein the possibility of the respondent being the biological father of Master Arjun was stated to be 0%. Thus, the very foundation for taking recourse of moving an application for a direction to conduct the DNA Test was expressly and strongly laid down by the respondent. ii. As regards the question as to whether an order directing DNA test of the appellant's minor child would encroach on the legal or Constitutional rights of the appellant, the High Court held that fundamental rights guaranteed under Article 21 of the Constitution of India are always subject to reasonable restrictions. Reliance was placed on Sharda vs. Dharmpal, (2003) 4 SCC 493 to hold that a matrimonial court has the power to direct a person to undergo medical tests and

such a direction would not amount to a violation of the personal liberty guaranteed under Article 21 of the Constitution of India. iii. That Section 112 of the Indian Evidence Act provides for the presumption of conclusive proof of legitimacy. However, such a presumption is rebuttable. One way of rebutting such presumption is by pleading and establishing a strong prima facie case like the one demonstrated by the respondent. iv. That a Court is required to be sensitive to the fact that but for the medical/DNA test, it would be impossible for the respondent to establish the assertions made in the pleadings. v. That the Family Court had been adequately sensitive in taking note of the statement of the respondent to the effect that he would not disown Master Arjun even if the paternity test establishes that he is not the biological father. That the respondent had also made prayers for the custody of the said child, therefore, the interest of the child was not jeopardized in allowing the DNA test. vi. That if the appellant failed to comply with the directions of the Family Court, the Court can draw a presumption of the nature contemplated under illustration (h) of Section 114 of the Evidence Act. 4.8. Aggrieved by the order of the Family Court dated 12th August, 2021, as well as the impugned judgment, the appellant has assailed the same in the present appeal. Submissions: 5. We have heard learned Senior Counsel, Sri Huzefa Ahmadi for the appellant-wife, and learned Senior Counsel, Sri Kapil Sibal for the respondent-husband and perused the material on record. 6. At the outset, Sri Huzefa Ahmadi submitted that the High Court had erred in upholding the direction of the Family Court, Pune, to conduct the DNA test of the younger son of the parties. That the respondent had failed to satisfy the test of “eminent need” as laid down by this Court in Goutam Kundu vs. State of West Bengal, (1993) 3 SCC 418 wherein it was observed that the Indian law leans towards legitimacy and that a direction for DNA test should be passed only after balancing the interests of the parties, including the rights of the child, and if such a test is eminently needed. That in the present case, the respondent had failed to demonstrate that the direction for conducting DNA test could not have been avoided, and therefore, the direction to conduct the same was erroneous. 6.1. Learned Senior Counsel for the appellant further contended that the High Court erred in observing that the interest of the child would not be jeopardized by simply relying on the statement of the respondent that he would not disown his son. That even if such a statement is taken at its face value, it will not be enough to protect the child from societal repercussions associated with the illegitimacy of his birth (if any) and that any direction to conduct DNA test would be contrary to the interests of the child and the same is being sought by the respondent to secure his interests alone, without any consideration of the interest of the child. It was next contended that the rationale behind the Indian Law leaning towards legitimacy is that the DNA test would impinge on the right to privacy of a child and any issue as to legitimacy will have major societal repercussions on the innocent child. Further, balancing the interests of the child and the respondent does not justify passing a direction for conducting the DNA test of the child. 6.2. Sri Huzefa Ahmadi, learned senior counsel next submitted that the respondent had failed to establish any case demonstrating non-access at the relevant time, so as to dislodge the presumption under Section 112 of the Evidence Act and thus, no direction could have been passed to conduct a DNA test of the child. That the language of Section 112 of the Evidence Act and the decisions of this Court in Goutam Kundu, Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women, (2010) 8 SCC 633 and Ashok Kumar vs. Raj Gupta, (2022) 1 SCC 20, would establish that a party seeking a direction to conduct DNA test is required to bring on record strong prima-facie evidence of nonaccess vis-a-vis the presumption under Section 112 of the Evidence Act. That clear and satisfactory evidence of

non-access is needed to rebut the presumption under Section 112 of the Evidence Act, vide Perumal Nadar (dead) by Lrs. vs. Ponnuswami, (1970) 1 SCC 605. 6.3. That in the instant case, Master Arjun was born on 17th July, 2013, during the continuance of marital relations between the parties and that the respondent does not deny access to the appellant at the relevant time. 6.4. That a direction to conduct a DNA test cannot be passed based on vague material. That the respondent has sought to rely on the DNA test report dated 24th November, 2016. However, the authenticity of the said DNA Report has to be established during trial and any reliance placed on the same before the authenticity of the same is proved would, in future, amount to giving a license to a party (such as the respondent herein), seeking a direction to conduct a DNA test, to produce unauthenticated reports and this would have a devastating effect on the child. 6.5. With respect to the assertion of the respondent that he came across messages on the phone of the petitioner in the month of September 2016, disclosing the appellant's adulterous actions, it was submitted on behalf of the appellant that no evidence or material in support of the same had been produced by the respondent and thus, no reliance can be placed on the same. 6.6. That it would be incorrect to state that simply because DNA tests are scientifically accurate, the same may be routinely conducted to dislodge the presumption of legitimacy under Section 112 of the Evidence Act. 6.7. It was averred that the issue of legitimacy is inextricably linked to the allegations of adultery and the same cannot be lightly trifled with, merely at the request of the respondent. Therefore, the presumption of legitimacy must be preserved by Courts. With the aforesaid submissions, learned Senior Counsel, Sri Huzefa Ahmadi has prayed that the instant appeal be allowed and the impugned judgment of the High Court, as well as the order of the Family Court dated 12th August 2021, be set aside. 7. Per contra, learned Senior Counsel Sri Kapil Sibal, appearing on behalf of the respondent-husband submitted that the impugned judgment of the High Court and the order of the Family Court dated 12th August 2021 have been passed on an unimpeachable appreciation of the facts of the case, as well as the relevant law, and therefore, the same do not call for interference by this Court. 7.1. Sri Kapil Sibal asserted that the instant appeal is an abuse of the process of law and is not maintainable either on law or based on the facts of the present case. That the present appeal has been filed with a view to mask the adulterous conduct of the appellant, in the guise of the child's welfare. 7.2. Reliance was placed on the decision of this Court in Uday Chand Dutt vs. Saibal Sen, (1987) Supp SCC 506 to contend that in the face of two concurrent findings of the Family Court and the High Court, such findings may not be interfered with by this Court. 7.3. Learned Senior Counsel appearing on behalf of the respondent referred to Section 41 of the Evidence Act and stated that a judgment in a matrimonial proceeding is a judgment in-rem and therefore, to arrive at a just and proper judgment in the pending Divorce Petition, any evidence to bring out the truth is germane to the matter and has to be permitted to be brought in and cannot be ignored. That the issue is one of a fair trial from the point of view of both the parties. 7.4. It was next submitted that Section 112 of the Evidence Act would not come in the way of the Courts directing DNA tests to be conducted in deserving cases. Reliance was placed on the decision of this Court in Dipanwita Roy vs. Ronobroto Roy, (2015) 1 SCC 365 to contend that this Court in the said case laid down the process to be followed by Courts in directing DNA tests, while at the same time preserving the presumption under Section 112 of the Evidence Act. That a similar approach must be permitted to be adopted in the present case. 7.5. It was further contended that in the present case, the most material piece of evidence to establish the allegations of adultery is the DNA test and the same cannot be shut out on the ground of

sensitivity or privacy. Reliance was placed on the decision of this Court in Sharda to contend that in the said case it was categorically held that an order passed by a matrimonial court ordering a person to undergo a medical test would not be violative of the right of personal liberty as envisaged in Article 21 of the Constitution of India. That therefore, the reluctance and hesitation of the appellant to allow the DNA test corroborates the allegations of adultery against her and brings forth the need to conduct the said DNA Test. 7.6. That the Family Court passed the order directing DNA test after having due regard to the prima facie evidence brought before the said court and the High Court has rightly confirmed the order passed by the Family Court. The Report of the privately conducted DNA test filed before the Family Court, in unequivocal terms rules out the possibility of the respondent being the biological father of the minor child. The said Report strongly lays down the foundation for taking recourse of moving an application for directions to conduct the DNA test. That under Section 14 of the Evidence Act, Family Courts have been given vast powers to take into consideration any report, statement, documents, and information which may assist the court to deal effectively with the dispute and thus, the Family Court was right in accepting the report of the privately conducted DNA test. With the aforesaid averments, it was prayed that the instant appeal be dismissed as being devoid of merit and an abuse of the process of law, and the impugned judgment as well as the order of the Family Court, be affirmed. Points for Consideration: Having heard learned Senior Counsel for the respective parties, and upon perusal of the record, the following points would arise for our consideration: i. Whether, the Family Court, Pune and the High Court of Judicature at Bombay, have rightly appreciated Section 112 of the Evidence Act in directing that a DNA test of Master Arjun be conducted? ii. Whether, on non-compliance on the part of the appellant of the direction to subject Master Arjun to DNA test, allegations of adultery as against her could be determined by drawing an adverse inference as contemplated under Illustration (h) of Section 114? iii. What order? Legal Scheme: 8. For an easy and immediate reference, the relevant provisions of the Evidence Act are extracted hereinunder: “4. ‘Conclusive proof’.—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. x x x 112. Birth during marriage, conclusive proof of legitimacy. — The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten. x x x 114. Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The Court may presume — xxx (h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him; …….” 8.1. According to Sarkar on Law of Evidence, 20th Edition, in the interest of health, order and peace in society, certain axiomatic presumptions have to be drawn. One such presumption is the conclusive presumption of paternity under Section 112 of the Evidence Act. Section 112 embodies the rule of law that the birth of a child during the continuance of a valid marriage or within 280 days (i.e., within the period of gestation) after its dissolution shall be “conclusive proof” that the child is legitimate unless it is established by evidence that the husband and wife did not or could not have any access to each other at any time when the

child could have been conceived. The object of this provision is to attach unimpeachable legitimacy to children born out of a valid marriage. When a child is born during the subsistence of lawful wedlock, it would mean that the parents had access to each other. Therefore, the Section speaks of “conclusive proof” of the legitimate birth of a child during the period of lawful wedlock. The latter part of the Section is with reference to proof of the nonaccess of the parents of the child to each other. Thus, the presumption of legitimacy of the birth of the child is rebuttable by way of strong evidence to the contrary. The principle underlying Section 112 is to prevent an unwarranted enquiry as to the paternity of the child whose parents, at the relevant time had “access” to each other. In other words, once a marriage is held to be valid, there is a strong presumption as to the children born from that wedlock as being legitimate. This presumption can be rebutted only by strong, clear and conclusive evidence to the contrary. Section 112 of the Evidence Act is based on the presumption of public morality and public policy vide Sham Lal vs. Sanjeev Kumar, (2009) 12 SCC 454. Since Section 112 creates a presumption of legitimacy that a child born during the subsistence of a marriage is deemed to be legitimate, a burden is cast on the person who questions the legitimacy of the child. 8.2. Further, “access” or “non-access” does not mean actual cohabitation but means the “existence” or “non-existence” of opportunities for sexual relationship. Section 112 refers to point of time of birth as the crucial aspect and not to the time of conception. The time of conception is relevant only to see whether the husband had or did not have access to the wife. Thus, birth during the continuance of marriage is “conclusive proof” of legitimacy unless “non-access” of the party who questions the paternity of the child at the time the child could have been begotten is proved by the said party. 8.3. It is necessary in this context to note what is “conclusive proof” with reference to the proof of the legitimacy of the child, as stated in Section 112 of the Evidence Act. As to the meaning of “conclusive proof” reference may be made to Section 4 of the Evidence Act, which provides that when one fact is declared to be conclusive proof of another, proof of one fact, would automatically render the other fact as proved, unless contra evidence is led for the purpose of disproving the fact so proved. A conjoint reading of Section 112 of the Evidence Act, with the definition of “conclusive proof” under Section 4 thereof, makes it amply clear that a child proved to be born during a valid marriage should be deemed to be a legitimate child except where it is shown that the parties to the marriage had no access to each other at any time when the child could have been begotten or within 280 days after the dissolution of the marriage and the mother remains unmarried, that fact is the conclusive proof that the child is the legitimate son of the man. Operation of the conclusive presumption can be avoided by proving non-access at the relevant time. 8.4. The latter part of Section 112 of the Evidence Act indicates that if a person is able to establish that the parties to the marriage had no access to each other at any time when the child could have been begotten, the legitimacy of such child can be denied. That is, it must be proved by strong and cogent evidence that access between them was impossible on account of serious illness or impotency or that there was no chance of sexual relationship between the parties during the period when the child must have been begotten. Thus, unless the absence of access is established, the presumption of legitimacy cannot be displaced. Thus, where the husband and wife have co-habited together, and no impotency is proved, the child born from their wedlock is conclusively presumed to be legitimate, even if the wife is shown to have been, at the same time, guilty of infidelity. The fact that a woman is living in adultery would not by itself be sufficient to repel the conclusive presumption in favour of the legitimacy of a child. Therefore, shreds of evidence to the effect that the husband did

not have intercourse with the wife at the period of conception, can only point to the illegitimacy of a child born in wedlock, but it would not uproot the presumption of legitimacy under Section 112. 8.5. The presumption under Section 112 can be drawn only if the child is born during the continuance of a valid marriage and not otherwise. “Access” or “non-access” must be in the context of sexual intercourse that is, in the sexual sense and therefore, in that narrow sense. Access may for instance, be impossible not only when the husband is away during the period when the child could have been begotten or owing to impotency or incompetency due to various reasons or the passage of time since the death of the husband. Thus, even though the husband may be cohabiting, there may be non-access between the husband and the wife. One of the instances of non-access despite co-habitation is the impotency of the husband. If the husband has had access, adultery on the wife's part will not justify a finding of illegitimacy. 8.6. Thus, “non-access” has to be proved as a fact in issue and the same could be established by direct and circumstantial evidence of an unambiguous character. Thus, there could be “non-access” between the husband and wife despite co-habitation. Conversely, even in the absence of actual co-habitation, there could be access. 8.7. Section 112 was enacted at a time when modern scientific tests such as DNA tests, as well as Ribonucleic acid tests (‘RNA’, for short), were not in contemplation of the legislature. However, even the result of a genuine DNA test cannot escape from the conclusiveness of the presumption under Section 112 of the Evidence Act. If a husband and wife were living together during the time of conception but the DNA test reveals that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. What would be proved, is adultery on the part of the wife, however, the legitimacy of the child would still be conclusive in law. In other words, the conclusive presumption of paternity of a child born during the subsistence of a valid marriage is that the child is that of the husband and it cannot be rebutted by a mere DNA test report. What is necessary to rebut is the proof of non-access at the time when the child could have been begotten, that is, at the time of its conception vide Kamti Devi vs. Poshi Ram, (2001) 5 SCC 311. 9. The next aspect of the matter that requires to be considered is whether an adverse presumption can be drawn in the nature of Illustration (h) to Section 114, as to the wife’s adulterous conduct when she refuses to comply with a direction for the child to undergo a DNA test. 9.1. Section 114 states that the Court may presume the existence of any fact that it thinks likely to have happened, having regard to the common course of natural events, human conduct and public and private business, in relation to the facts of a particular case. Broadly speaking, there are two classes of presumptions, viz presumption of fact and presumption of law. The latter is again categorised as “rebuttable presumptions of law” and “irrebuttable or conclusive presumptions of law”. The Court may presume that if a man refuses to answer a question which he is not compelled to answer by law, the answer if given would be unfavourable to him. The questions that one is not compelled to answer by law, are dealt with in Sections 121-129. Refusal to answer a question is generally a legitimate ground for unfavourable inference against the person who may not answer the question. If a witness refuses to answer the question, the Court has the power to draw an inference from such refusal vide Section 148(4) of the Evidence Act. Section 148(4) reads as under:- “148. Court to decide when question shall be asked and when witness compelled to answer.— If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to

the following considerations:— xxx (4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable." The use of the word expression "may" would imply that the Court has the discretion to draw such an inference and it not bound to do so. The Court is to exercise such discretion having regard to the facts of each independent case. 9.2. For the purpose of reaching one conclusion, the Court can rely on a factual presumption unless the presumption is disproved or dispelled or rebutted. However, Illustration (h) to Section 114 has given enough discretionary power to the Court to draw certain inferences from the facts. The presumption under the section is discretionary and not mandatory. The use of the phrase "may presume" in the said provision indicated that that the Courts of Justice are to use their own sense and experience in judging the effect of particular facts, and in determining whether a presumption is to be drawn therefrom. 10. At this juncture, it may be useful to refer to the decision of this Court in Dipanwita Roy wherein the interplay between Sections 112 and 114 of the Evidence Act has been discussed. The said case arose out of divorce proceedings initiated by the respondent-husband on the ground of adultery and infidelity. The respondent's case was that at the time when the child, whose paternity was in question, was conceived, the parties were not living in co-habitation and on no occasion shared a bed. The respondent sought to establish by way of a DNA test that the son conceived during the said period was born outside wedlock and as a result of the appellant-wife's adulterous relationship with another person and consequently demonstrated infidelity on the part of the appellant-wife. This Court took note of the plea of the respondent-husband as to nonaccess at the relevant time, and accordingly opined that it would be a fit case for directing that a DNA test be conducted. Further, in the facts and circumstances of the said case, this Court accepted that a DNA test would be the only way in which the respondent-husband could establish his plea of infidelity on the part of the appellant-wife. While upholding the direction of the High Court to conduct DNA test of the minor child, this Court cautioned that if the direction to hold such a test can be avoided, it should be so avoided, and legitimacy of the child should not be put to peril. The relevant portions of the decision in the said case have been usefully extracted hereinunder: "10. It is borne from the decisions rendered by this Court in Bhabani Prasad Jena (supra), and Nandlal Wasudeo Badwaik (supra), that depending on the facts and circumstances of the case, it would be permissible for a Court to direct the holding of a DNA examination, to determine the veracity of the allegation(s), which constitute one of the grounds, on which the concerned party would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril. 11. The question that has to be answered in this case, is in respect of the alleged infidelity of the Appellant-wife. The Respondent-husband has made clear and categorical assertions in the petition filed by him Under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person, who was the father of the male child born to the Appellantwife. It is in the process of substantiating his allegation of infidelity, that the Respondent-husband had made an application before the Family Court for conducting a DNA test, which would establish whether or not, he had fathered the male child born to the Appellant-wife. The Respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the Appellant-wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the Respondent-husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied, that the direction issued by the High Court, as has

been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the Respondent-husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the Appellant-wife is right, she shall be proved to be so. 12. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the Appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the Respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Section 114 as also illustration (h), referred to above, are being extracted hereunder: "114. Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him." This course has been adopted to preserve the right of individual privacy to the extent possible. of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated Under Section 112 of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved." 10.1. However, it is necessary to distinguish the facts of the present case with the facts in Dipanwita Roy. In the said case, the respondenthusband had made a specific plea of non-access in order to rebut the presumption under Section 112. He made clear and categorical assertions in the petition filed by him alleging infidelity. He even named the person who was the father of the male child born to the appellant-wife, and asserted that at the relevant time, he and his wife did not share a bed on any occasion. In that backdrop, this Court specifically recorded a finding that in the facts and circumstances of the said case, it would have been impossible to prove the allegations of adultery/infidelity in the absence of a DNA test. However, in the present case, no plea has been raised by the respondent-husband as to non-access in order to dislodge the presumption under Section 112 of the Evidence Act. Further, the respondent has specifically claimed that he is in possession of call recordings/transcripts, and the daily diary of the appellant, which would point to the infidelity of the appellant. Therefore, this is not a case where a DNA test would be the only possible way to ascertain the truth regarding the appellant's adultery. Hence, in the present case, there is insufficient material to dislodge the presumption under Section 112 of the Evidence Act and permit a DNA test of Master Arjun. Further, having regard to the compelling need for a DNA test in the said case, in order to establish the truth, this Court directed that if the appellant-wife therein refused to comply with the direction of the Court regarding DNA test, the allegations of adultery as against her would be determined by drawing an adverse inference as contemplated under Illustration (h) of Section 114 of the Evidence Act. However, such an observation made in the said case cannot be regarded as a precedent which can be applied to all cases in a strait jacket manner wherein the wife refuses to comply with the direction of the Court regarding

DNA test. It is highlighted at this juncture that presumptions are established on the basis of facts, and the Court enjoys the discretionary power, either to presume a fact or not. As observed hereinabove, the facts in Dipanwita Roy were so compelling, so as to justify a direction to conduct a DNA test. In the said case, the husband had taken a specific plea of non-access. Further, the Court accepted that a DNA test would be the only manner in which the case of adultery could be proved. However, facts of the present case neither warrant a direction to conduct a DNA test of Master Arjun, nor do they justify drawing an adverse inference as against the appellantwife, under Section 114 of the Evidence Act, on her refusal to subject her son to a DNA test. As per Black's Law Dictionary, 9th Edition, 'Inference' means "a conclusion reached by considering other facts and deducing a logical consequence from them." 'Adverse Inference' is explained as follows: "A detrimental conclusion drawn by the fact-finder from a party's failure to produce evidence that is within the party's control. Some courts allow the inference only if the party's failure is attributable to bad faith." The aforesaid meaning would also suggest that inferences, whether adverse or otherwise, are to be drawn by the Court, on consideration of facts and circumstances of each individual cases. Hence, the judgment of this Court in Dipanwita Roy is to be read in the aforesaid context. In the instant case, there is no dispute about the paternity of Master Arjun as even during the course of arguments, Learned Senior Counsel Shri Kapil Sibal admitted that Master Arjun was born during the continuous cohabitation of the parties and thus during the subsistence of a valid marriage. The thrust of the submissions of Learned Senior Counsel Shri Kapil Sibal was that if the appellant herein does not agree to subject Master Arjun to a DNA test, then, an adverse inference could be raised against her regarding her adulterous life. What is the nature of the adverse inference that could be raised against the appellant herein? The adverse inference is not with regard to Master Arjun being a child born outside wedlock and therefore an illegitimate child. What was contended was that an adverse inference regarding adultery on the part of the appellant herein could be raised. We cannot accede to such an approach in the matter. The issue of paternity of Master Arjun is alien to the issue of adultery on the part of the appellant herein. Master Arjun being a legitimate child of the parties herein has nothing to do with the alleged adultery on the part of the appellant herein. Hence, the judgment of this Court in Dipanwita Roy is of no assistance to the respondent herein. The aforesaid case, turns on its own facts and cannot be relied upon as a precedent having regard to the facts of this case. Use of DNA profiling technology as a means to prove adultery: 11. With the advancement of science, DNA profiling technology which is a tool of forensic science can, in case of disputed paternity of a child by mere comparison of DNA obtained from the body fluid or body tissues of the child with his parents, offer infallible evidence of biological parentage. But, it is not always necessary to conduct a DNA test to ascertain whether a particular child was born to a particular person, however, the burden of proof is on the husband who alleges illegitimacy. He has to establish the fact that he has not fathered the child born to his wife which is a negative plea by positive proof in accordance with Section 112 of the Evidence Act. 11.1. A Family Court, no doubt, has the power to direct a person to undergo medical tests, including a DNA test and such an order would not be in violation of the right to personal liberty under Article 21 of the Constitution, vide Sharda. However, the Court should exercise such power only when it is expedient in the interest of justice to do so, and when the fact situation in a given case warrants such an exercise. Thus, an order directing that a minor child be subjected to DNA test should not be passed mechanically in each and every case. 11.2. This Court has, while considering questions connected with Section 112 of the Evidence Act, consistently

expressed the stand against DNA tests being ordered on a mere asking. Further, the law does not contemplate use of DNA tests as exploratory or investigatory experiments for determining paternity. The following decisions of this Court are highly instructive in determining the circumstances under which a DNA test may be ordered by a Court in matters involving disputed questions of paternity: i. In Goutam Kundu, this Court was required to consider whether a blood test of a minor child could be ordered to be conducted as a means to determine disputed questions of paternity in what was essentially a matrimonial dispute concerning maintenance. In the said case, the appellant-husband therein disputed the paternity of the child and prayed for blood group test of the child to prove that he was not the father of the child. According to him, if that could be established, he would not be liable to pay maintenance. In that context, this Court held that due deference must be accorded to the presumption of legitimacy of a child born during the subsistence of a marriage, as expressed under Section 112 of the Evidence Act. The consequence of the said presumption on the power of the Courts to direct blood test as a means to determine paternity in matrimonial disputes was discussed by this Court, and the following principles were culled out so as to guide the Courts in issuing such directions: “26. From the above discussion it emerges: (1) that courts in India cannot order blood test as a matter of course; (2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained. (3) there must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act. (4) the court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman. (5) no one can be compelled to give sample of blood for analysis.” ii. In Bhabani Prasad Jena, this Court emphasised that a direction to use DNA profiling technology to determine the paternity of a child, is an extremely delicate and sensitive aspect. Therefore, such tests must be directed to be conducted only when the same are eminently needed. That DNA profiling in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the court to reach the truth without use of such test. It was further declared that a Court may direct that a DNA test be conducted, to conclusively determine paternity, only when there is a strong prima-facie case in favour of the person seeking such a direction. iii. In Inayath Ali vs. State of Telangana, MANU/SC/1538/2022, the question before this Court was whether a DNA test of two minor children could be ordered by a Court, with a view to facilitate proof of allegations under Sections 498A, 323, 354, 506 and 509 of Indian Penal Code, 1860. This Court speaking through Aniruddha Bose, J. at the outset took note of the fact that the dispute was essentially one relating to dowry related offences, and that paternity of the children of the complainant was not directly related to the allegations. The complainant therein sought for a direction to conduct DNA test of her two minor children, in order to establish that they were born as a result of her forced relationship with her brother-in-law. Rejecting the complainant’s plea, this Court held as under as to the power of Courts to subject children to DNA testing, in proceedings in which their status is not required to be examined: “In the present proceeding, we are taking two factors into account which have been ignored by the Trial Court as also the Revisional Court. The Trial Court allowed the application of the respondent no.2 mechanically, on the premise that the DNA fingerprint

test is permissible under the law. High Court has also proceeded on that basis, referring to different authorities including the case of Dipanwita Roy v. Ronobroto Roy [2015 (1) SCC 365]. The ratio of this case was also examined by the Coordinate Bench in the decision of Ashok Kumar (supra). 7. The first factor, which, in our opinion, is of significance, is that in the judgment under appeal, blood sampling of the children was directed, who were not parties to the proceeding nor were their status required to be examined in the complaint of the respondent no.2. This raised doubt on their legitimacy of being borne to legally wedded parents and such directions, if carried out, have the potential of exposing them to inheritance related complication. Section 112 of the Evidence Act, also gives a protective cover from allegations of this nature. The said provision stipulates:- "Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten." 8. In our opinion, the Trial Court as also the Revisional Court had completely ignored the said factor and proceeded as if the children were material objects who could be sent for forensic analysis. The other factor, in our opinion, which was ignored by the said two Courts is that the paternity of the children was not in question in the subject-proceeding. 9. The substance of the complaint was not related to paternity of the children of the respondent no.2 but the question was whether the offences under the aforesaid provisions of the 1860 Code was committed against her or not. The paternity of the two daughters of the respondent no.2 is a collateral factor to the allegations on which the criminal case is otherwise founded. On the basis of the available materials, in our opinion, the case out of which this proceeding arises could be decided without considering the DNA test report. This was the reasoning which was considered by the Coordinate Bench in the case of Ashok Kumar (supra), though that was a civil suit. Merely because something is permissible under the law cannot be directed as a matter of course to be performed particularly when a direction to that effect would be invasive to the physical autonomy of a person. The consequence thereof would not be confined to the question as to whether such an order would result in testimonial compulsion, but encompasses right to privacy as well. Such direction would violate the privacy right of the persons subjected to such tests and could be prejudicial to the future of the two children who were also sought to be brought within the ambit of the Trial Court's direction." (Emphasis by us) 12. Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted: i. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions. ii. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima-facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed. iii. A Court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding. iv. Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to

lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the Court can direct such test. v. While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc. 13. Further, in Nandlal Wasudeo Badwaik, the facts of the case were that due to non-opposition of the counsel for the wife, this Court directed that the serological test be conducted. The report was brought on record, which stated that the appellant-husband was not the biological father of the minor child. At the request of the respondent-wife, a re-test was ordered, which also revealed the same result. The plea with regard to the applicability of section 112 of the Evidence Act was taken only after the DNA test was conducted on the direction of this Court and the report was brought on record. This Court held that when a report of a DNA test conducted on the direction of a Court, was available on record and was in conflict with the presumption of conclusive proof of the legitimacy of the child, the DNA test report cannot be ignored. Hence, this Court relied on the DNA test report and held that the appellant-husband would not be liable to pay maintenance. The said case would be of no assistance to the case of the respondent herein. This is because, in the said case, this Court was confronted with a situation in which DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child, under Section 112 of the Evidence Act. However, in the present case, no DNA test is available till date, which was conducted on the direction of a competent Court. Therefore, the respondent-husband would first need to dislodge the presumption under Section 112 of the Evidence Act and thereafter seek a direction to conduct a DNA test of Master Arjun. 14. The evidentiary value of blood tests for determining paternity, has been discussed in Rayden and Jackson on Divorce and Family Matters, (1983) Vol. I, at Pg. 1054, in the following words: "…depending on the type of litigation, samples of blood, when subjected to skilled scientific examination, can sometimes supply helpful evidence on various issues, to exclude a parentage set up in the said case. But the consideration remains that the party asserting the claim to have a child and the rival set up parents put to blood test must establish his right to do so. The courts exercise protective jurisdiction on behalf of an infant. In my considered opinion, it would be unjust and not fair either to direct a test for a collateral reason to assist a litigant in his or her claim. The child cannot be allowed to suffer because of his incapacity; the aim is to ensure that he gets his rights. If in a case the court has reason to believe that the application for the blood test is of a fishing nature or designed for some ulterior motive, it would be justified in not according to such a prayer." (Emphasis by us) 15. It is trite that the burden is on a litigating party to prove his case by adducing evidence in support of his plea. The Court is not to compel one party to the dispute to assist the other contesting party, vide Ashok Kumar. Therefore, DNA tests are not to be directed on a routine basis, merely to enable a party to prove his case of adultery. The right of children not to have their legitimacy questioned frivolously in Courts of Law: 16. The default position in India is that for many reasons, parents are presumed to be the decision makers for their children, in so far as healthcare, consent for genetic testing etc. are concerned. Justifications for this position include that parents are free within very broad limits to decide how to bring up their children, parents are thought to be most likely to act in their child's best interests, children generally lack the capacity to make fully competent decisions so someone else

must, and state intervention is rarely appropriate. Genetic information is broadly understood as shedding light on a person's essence, as going to the very heart of who he/she is. That kind of intimate, personal information, which is so highly valued in our society, is precisely what the law protects in the right of privacy, which extends even to children. 17. Further, children have the right not to have their legitimacy questioned frivolously before a Court of Law. This is an essential attribute of the right to privacy. Courts are therefore required to acknowledge that children are not to be regarded like material objects, and be subjected to forensic/DNA testing, particularly when they are not parties to the divorce proceeding. It is imperative that children do not become the focal point of the battle between spouses. The Rights to Privacy, Autonomy and Identity of Children under The Convention on Rights of Child: 18. In 1989, the United Nations Organisation drew up the Convention on Rights of Child with a view to provide special protection to children, proclaiming that "childhood is entitled to special care and assistance." The Declaration, inter-alia, recognises that a child, for full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. The Declaration further emphasises the importance of family, as the "fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children." 19. Article 19 of the Convention protects children against all forms of violence, neglect, and abuse; Article 24(3) protects children against traditional practices that are prejudicial to a child's health; and Article 37 protects children against torture and cruel, inhuman, and degrading treatment. Complementing these provisions is a child's right to privacy, which extends to the physical and psychological integrity of a child. Importantly, violations of a child's bodily integrity that reach the threshold of torture or cruel inhuman degrading treatment will never be justifiable, given the absolute prohibition on such treatment. Thus, a violation of this prohibition will always constitute a violation of a child's right to privacy. However, the right to privacy has a residual application in those cases where there is an interference with a child's physical and/or psychological integrity that does not reach the threshold for torture or cruel, inhuman, and degrading treatment. In such circumstances the question becomes whether the interference with a child's integrity is lawful and non-arbitrary. 20. The Convention accommodates and protects parental rights with respect to the upbringing of their Children, vide Article 5. However, this deference to parental wishes is subject to the strict caveat that such rights are exercised for the purpose of providing guidance and assistance to a child. Thus, unless a parent can demonstrate on the basis of objective evidence that an interference with a child's bodily integrity is intended to benefit the health and development of a child, the interference will not be justified. If any interference with the right to privacy or bodily integrity of a child is to be justified, it must be established that there is objective evidence that establishes a nexus between the measure and aim; that there is no reasonably available alternative which would have minimized the interference with the child's right. Applying the said principles enumerated in the Convention, to the facts of the present case, we are unable to accept that conducting a DNA test of a child, as a means to prove adultery on the part of the appellant-wife, is with a view to provide guidance and assistance to a child, as required under the Convention. Further, interference with the bodily integrity of a child in such a case, would not be justified, as there is no nexus between the Respondent's request for the DNA test and the best interests of the child. 21. The concept of privacy for a child may not be equivalent to that of an adult. However, the evolving capacity of children has been recognised and the Convention acknowledges the

control that individuals, including children, have over their own personal boundaries and the means by which they define who they are in relation to other people. Children are not to be deprived of this entitlement to influence and understand their sense of self simply by virtue of being children. Further, Article 8 of the Convention provides children with an express right to preserve their identity. Details of parentage are an attribute of a child's identity. Therefore, long-accepted notions about a child's parentage must not be frivolously challenged before Courts of Law. Best interests of a child: 22. The phrase "mankind owes to the child the best it has to give" clearly underlines our duties towards children, and it entitles them to the best that mankind can give. This implies that the interest of the child should be given primary consideration in actions involving children. This idea has been effectively expressed in Article 3 of the Convention on the Rights of Child which reads as under: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". 22.1 In two English decisions reported in Re L., (1968) 1 All ER 20 and B. (B.R.) vs. B.(J.), (1968) 2 All ER 1023, blood test of the child was permitted for determining paternity. However, the decision in Re L. was passed based on the reasoning that a blood test can be directed if it serves the best interest of the child. Lord Denning, MR, was however of the view that blood tests could be ordered even in cases involving paternity issues or in proceedings where it is in the best interest of the child to have its paternity settled one way or the other. However, in the same decision, Wilmer, LJ and Davoes, LJ, expressed their reservations against the opinion of Lord Denning, MR, regarding blood tests in proceedings other than in custodial jurisdiction. However, in the latter decision of B. (B.R.), it was held that a judge of the High Court can order a blood test on a paternity issue or indeed on any other issue, when doing so would be in the best interest of the child to do so. 22.2 This Court has consistently invoked the principle of best interest of child, particularly, in disputes concerning custody of children. 22.3. It is undeniable that a finding as to illegitimacy, if revealed in a DNA test, would, at the very least adversely affect the child psychologically. It can cause not only confusion in the mind of the child but a quest to find out who the real father is and a mixed feeling towards a person who may have nurtured the child but is not the biological father. Not knowing who one's father is creates a mental trauma in a child. One can imagine, if, after coming to know the identity of the biological father what greater trauma and stress would impact on a young mind. Proceedings which are in rem have a real impact on not only the child but also on the relationship between the mother and the child itself which is otherwise sublime. It has been said that parents of a child may have an illegitimate relationship but a child born out of such a relationship cannot carry the stamp of illegitimacy on its forehead, as, such a child has no role to play in its birth. An innocent child cannot be traumatised and subjected to extreme stress and tension in order to discover its paternity. That is why Section 112 of the Evidence Act speaks about a conclusive presumption regarding the paternity of a child, subject to a rebuttal, as provided in the second part of the Section. In today's world, there can even be a race to claim paternity of a child so as to invade upon its rights, particularly, if such a child is endowed with property and wealth. There could also be exclusions in a testament doubting the paternity of a child or an evasion in performance of parental obligations such as payment of maintenance or living and educational expenses by simply doubting the paternity of a child. In many cases, this would cast a doubt on the chastity of the mother of a child when no such doubt could arise. As a result, the reputation and dignity of a mother of a child would be jeopardised in society. What is of utmost importance for a lady who is

the mother of a child is to protect her chastity as well as her dignity and reputation, in that, she would also preserve the dignity of her child. No woman, particularly, who is married can be exposed to an enquiry on the paternity of a child she has given birth to in the face of Section 112 of the Evidence Act subject to the presumption being rebutted by strong and cogent evidence. Section 112 particularly speaks about birth of a child during marriage and raises a conclusive presumption about legitimacy. Section 112 has recognised the institution of marriage i.e., a valid marriage for the purpose of conferring legitimacy on children born during the subsistence of such a marriage. As to children born outside a valid marriage, the personal law of respective parties would apply. But in the cases of children born from a relationship in the nature of marriage and when the parents are in a domestic relationship or those born as a result of a sexual assault or to those who are in a casual relationship or to those forced or subjected to render sexual favours and beget children, the problem of their legitimacy gets complex and is serious. A child should not be lost in its search for paternity. Precious childhood and youth cannot be lost in a quest to know about one's paternity. Therefore, the wholesome object of Section 112 of the Evidence Act which confers legitimacy on children born during the subsistence of a valid marriage, subject to the same being rebutted by cogent and strong evidence, is to be preserved. Children of today are citizens and the future of a nation. The confidence and happiness of a child who is showered with love and affection by both parents is totally distinct from that of a child who has no parents or has lost a parent and still worse, is that of a child whose paternity is in question without there being any cogent reason for the same. The plight of a child whose paternity and thus his legitimacy, is questioned would sink into a vortex of confusion which can be confounded if Courts are not cautious and responsible enough to exercise discretion in a most judicious and cautious manner. Further, questions surrounding paternity have a significant impact on the identity of a child. Routinely ordering DNA tests, particularly in cases where the issue of paternity is merely incidental to the controversy at hand, could, in some cases even contribute to a child suffering an identity crisis. It is also necessary to take into account that some children, although born during the subsistence of a marriage and on the desire and consent of the married couple to beget a child, may have been conceived through processes involving sperm donation, such as intrauterine insemination (IUI), in-vitro fertilisation (IVF). In such cases, a DNA test of the child, could lead to misleading results. The results may also cause a child to develop a sense of mistrust towards the parents, and frustration owing to the inability to search for their biological fathers. Further, a child's quest to locate its biological father may compete with the right to anonymity of the sperm donor. Having regard to such factors, a parent may, in the best interests of the child, choose not to subject a child to a DNA test. It is also, antithetical to the fundamentals of the right to privacy to require a person to disclose, in the course of proceedings in rem, the medical procedures resorted to in order to conceive. The reasons for the parent's refusal may be several, and hence, it is not prudent to draw an adverse inference under Section 114 of the Evidence Act, in every case where a parent refuses to subject the child to a DNA test. Therefore, it is necessary that only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy, the Court can direct such test. Further, a direction to conduct DNA test of a child, is to be ordered even rarely, in cases where the paternity of a child is not directly in issue but is merely collateral to the proceeding, such as in the instant case. Conclusions: 23. 'Illegitimate'- a term that brands an individual with the shame of being born outside wedlock, casts a shadow on one's identity. Times change and attitudes may change, but the impact of growing up with the social stigma of being

illegitimate, does not. The Courts must hence be inclined towards upholding the legitimacy of the child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimisation of the child would result in rank injustice to the father, vide Dukhtar Jahan vs. Mohammed Farooq, (1987) 1 SCC 624. 24. Questions as to illegitimacy of a child, are only incidental to the claim of dissolution of marriage on the ground of adultery or infidelity. Allowing DNA tests to be conducted on a routine basis, in order to prove adultery, would amount to redefinition of the maxim, “Pater est quem nuptiae demonstrant” which means, the father is he whom the nuptials point out. While dealing with allegations of adultery and infidelity, a request for a DNA test of the child, not only competes with the presumption under Section 112, but also jostles with the imperative of bodily autonomy. 25. Another aspect that needs to be considered in the instant case is whether, for a just decision in the divorce proceedings, a DNA test is eminently necessary. This is not a case where a DNA test is the only route to the truth regarding the adultery of the mother. If the paternity of the children is the issue in a proceeding, DNA test may be the only route to establish the truth. However, in our view, it is not so in the present case. The evidence of DNA test to rebut the conclusive presumption available under Section 112 of the Evidence Act, can be allowed only when there is compelling circumstances linked with 'access', which cannot be liberally used as cautioned by this Court in Dipanwita Roy. 26. The case of the Respondent-husband is that if a DNA test is allowed and the same reveals that he is not the biological father of Arjun, as a corollary, it would be proved that the Appellant-wife committed adultery. We do not find favour with the approach suggested by the Respondenthusband to prove adultery, for the following reasons: i. It is not in dispute that Master Arjun, the son stated to be born to the Appellant-wife from the wedlock, was born in the year 2013. DNA testing, cannot be used as a short cut to establish infidelity that might have occurred over a decade ago or subsequently after the birth of Master Arjun. ii. In the circumstances of the present case, we are unable to accept that a DNA test would be the only way in which the truth of the matter can be established. The respondent-husband has categorically claimed that he is in possession of call recordings/transcripts and the daily diary of the appellant, which may be summoned in accordance with law to prove the infidelity of the appellant. Therefore, it seems to us that the respondent is in a position to attempt to make out a case based on such evidence, as to adultery/infidelity on the part of the appellant. iii. No plea has been raised by the respondent-husband herein as to non-access in order to dislodge the presumption under Section 112 of the Evidence Act. Therefore, no prima-facie case has been made out by the respondent which would justify a direction to conduct a DNA test of Master Arjun. iv. No adverse inference can be raised in the instant case regarding the legitimacy or paternity of Master Arjun vis-à-vis the appellant herein, on her declining to subject Master Arjun to a paternity test. Further, on the appellant declining to subject Master Arjun to a paternity test, no adverse inference can be drawn as regards the alleged adultery on the part of the appellant herein can be raised. In our view, the allegation of adultery has to be proved by the respondent herein de hors the issue of paternity of Master Arjun. 27. In the result, the present appeal is allowed. Consequently, the impugned judgment of the High Court of Judicature at Bombay dated 22nd November, 2021 and the order of the Family Court, Pune dated 12th August, 2021, are set aside. Bearing in mind the facts of the present case, the appeal is allowed with cost of Rs.1 Lakh payable by the respondent to the appellant. The same shall be paid before the Family Court within a period of one month from today. ….....……..J. [V. RAMASUBRAMANIAN]

……..J. [B.V. NAGARATHNA] NEW DELHI; 20th FEBRUARY, 2023. 52 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO……. OF 2023 (Arising out of S.L.P. (Civil) No.9855 of 2022) APARNA AJINKYA FIRODIA …..APPELLANT VERSUS AJINKYA ARUN FIRODIA …..RESPONDENT J U D G M E N T V. Ramasubramanian, J. 1. While I am entirely in agreement with the opinion wellcrafted by my learned sister Hon'ble Mrs. Justice B.V. Nagarathna, I thought that two aspects of the matter require little more emphasis. Hence a separate but concurring opinion. 2. As we have seen from the narration of facts given by my learned sister Hon'ble Mrs. Justice B.V. Nagarathna – • The marriage of the appellant with the respondent took place on 23.11.2005. • The first child was born on 21.12.2009. • The second child was born on 17.7.2013. 53 • The respondent-husband claims to have found out the alleged adulterous conduct of the appellant, on 14.9.2016, (3 years after the birth of the second child) when he accidentally stumbled upon the Whatsapp messages in the mobile phone of the appellant. • Then the respondent privately had a DNA test conducted on the second child, in November 2016, from DNA Labs India, which is said to be an ISO 17025 certified, A2LA and NATA accredited agency. • The respondent then filed a petition for divorce on the ground of adultery, in June 2017. • During the pendency of the proceedings for divorce, the respondent moved an application in November 2020 seeking a direction to subject the second son to DNA testing at the Government Central Forensic Laboratory. 3. The Family Court allowed the application filed by the respondent-husband and the High Court also affirmed the same, forcing the wife to come up with the above appeal, contending that under Section 112 of the Indian Evidence Act, 18721 , birth during marriage is conclusive proof of legitimacy and that no evidence to disprove the same can be allowed by the Court. This is especially so when the parties to the marriage admittedly had 1For short, "Evidence Act" or the "Act", as the case may be 54 access to each other during the time when the child could have been begotten. 4. The main contention of Shri Kapil Sibal, learned senior counsel for the respondent-husband is that the respondent is not even questioning the legitimacy of the child, but alleging adultery against the appellant-wife and that therefore, on the refusal of the wife to subject the child to DNA test, a presumption under Section 114(h) of the Evidence Act can be drawn against the appellant-wife. In other words, his contention is that what is applicable in the case on hand, is not Section 112 but Section 114(h) and that the Court need not subject the child to DNA test, if the appellant is not willing. 5. In the light of the aforesaid contention, two aspects, in my opinion, require deeper analysis. They are (i) the interplay between Sections 112 and 114(h) of the Evidence Act; and (ii) whose rights, are to tilt the balance in the scales of justice? Interplay between Sections 112 and 114(h) of the Evidence Act 6. Section 4 of the Evidence Act defines the expressions "may presume", "shall presume" and "conclusive proof". Section 4 indicates the course of action to be followed by a Court, wherever 55 the Act makes it (i) optional to presume a fact; (ii) mandatory to presume a fact; and (iii) obligatory for the Court to take one fact to be conclusive proof of another. To put it in simple terms, wherever the Act uses the expression "may presume", it is optional for the Court either to presume or not to presume. If a Court refuses to presume the fact in question as proved, that is the end of the matter. But when the Court agrees to presume such fact, it is up to the other party to lead evidence to rebut the presumption. Wherever the Act uses the expression "shall presume", the Court has no option but to presume the fact, till such time it is rebutted. But wherever the Act uses the expression "conclusive proof", the Court cannot even allow evidence to be given for the purpose of disproving it. 7. The expression "shall presume" is used in the Evidence Act- • In

Section 79 in relation to genuineness of certified copies of documents. • In Section 80 in relation to documents produced as record of evidence. • In Section 81 in relation to genuineness of Gazettes, newspapers, Acts of Parliament, etc. • In Section 81A in relation to genuineness of every electronic record purporting to be the Official Gazette. 56 • In Section 82 in relation to documents admissible in England without proof of seal or signature. • In Section 83 in relation to accuracy of maps or plans made by the authority of the Government. • In Section 84 in relation to genuineness of every book purporting to be printed or published under the authority of the Government, containing collection of the laws of the country and reports of the decisions of the Courts. • In Section 85 in relation to certain powers-of-attorney. • In Sections 85A, 85B and 85C in relation to electronic agreements, electronic records and the electronic signature certificates. • In Section 89 in relation to due execution of documents called for and not produced after notice to produce. • In Section 111A in relation to certain offences. • In Section 113 in relation to cession of territory. • In Section 113B in relation to dowry death. • In Section 114A in relation to absence of consent in certain prosecutions for rape. 8. The expression “may presume” is used in the Evidence Act- • In Section 86 in relation to certified copies of judicial records of countries other than India. 57 • In Section 87 in relation to the author, publisher and the place and time of publication of books, maps and charts, to which a reference is made for information on matters of public or general interest. • In Section 88 in relation to telegraphic messages. • In Section 88A in relation to electronic messages. • In Section 90 in relation to documents which are thirty years old. • In Section 90A in relation to electronic records which are five years old. • In Section 113A in relation to abetment of suicide by a married woman. • In Section 114 in relation to existence of certain facts. 9. It is interesting to note that the Evidence Act does not include legitimacy of birth during marriage, either under the category of a fact which “may be presumed” or under the category of a fact which “shall be presumed”. On the contrary, the Act places birth during marriage as “conclusive proof” of legitimacy. But Section 112 keeps a window open, enabling a party to the marriage who questions the legitimacy of the child, to show that he/she had no access to the other, when the child could have been begotten. 58 10. We have seen that under Section 4, when one fact is declared by the Act to be conclusive proof, the Court shall, on proof of that one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. This is why Section 112 does not use the word “proved” or “disproved”. Section 112 uses the words “unless it can be shown”. 11. A combined reading of Section 4 and Section 112 would show that once the party questioning the legitimacy of the birth of a child shows that the parties to the marriage had no access to each other, then the benefit of Section 112 is not available to the party invoking Section 112. In other words, if a party to a marriage establishes that there was no access to the other party to the marriage, then the shield of conclusive proof becomes unavailable. If on the contrary, such a party is not able to prove that he had no access to the other party to the marriage, then the shield of Section 112 protects the other party to such an extent that it cannot be pierced by any amount of evidence in view of the prohibition contained in Section 4. 12. In contrast, Section 114 on which heavy reliance is placed by Shri Kapil Sibal, learned senior counsel for the respondent, deals only with facts which the Court “may presume”. The 59 existence of any fact which the Court may presume to have likely to have happened, turn on three things, namely, (i) common course of natural events; (ii) common course of human conduct; and (iii) common course of public and private business. Since natural events, human conduct, etc. are not

always consistent, the presumption regarding the existence of any fact with regard to these things, are placed only under the category of facts which “may be presumed”. 13. As pointed out earlier, wherever the Act uses the expression “may presume”, it is only optional and not mandatory for the Court to presume the existence of such a fact. That it is only optional stands reinforced by, (i) the Illustrations under Section 114; and (ii) the further exposition of those Illustrations. At this stage it may be useful to extract (i) Section 114; (ii) the Illustrations under Section 114; and (iii) the exposition of those Illustrations, all of which read as follows:- “114. Court may presume existence of certain facts.— The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations The Court may presume— (a) That a man who is in possession of stolen goods soon after the theft is either the thief or has 60 received the goods knowing them to be stolen, unless he can account for his possession; (b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars; (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration; (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence; (e) That judicial and official acts have been regularly performed; (f) That the common course of business has been followed in particular cases; (g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it; (h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him; (i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged. But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:— As to illustration (a)—A shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business; As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself; As to illustration (b)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable; 61 As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A’s influence; As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course; As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances; As to illustration (f)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances; As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family; As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked; As to illustration (i)—A bond is in possession of the

obligor, but the circumstances of the case are such that he may have stolen it." 14. As may be seen from the exposition to the Illustrations, the Court, while taking a decision to presume or not, the existence of any fact, should have regard to some additional facts, in considering whether such maxims do or do not apply to the particular case. 15. It is relevant to note that there are nine Illustrations under Section 114, from (a) to (i). Immediately after those Illustrations, the exposition of those Illustrations begins with the words: "But the Court shall also have regard to such facts as the 62 following, in considering whether such maxims do or do not apply to the particular case before it". 16. Let us take for instance, Illustration (h) under Section 114. It says that if a man refuses to answer a question which he is not compelled to answer by law, the Court may presume that the answer, if given, would be unfavourable to him. But the exposition to Illustration (h) says that in considering the maxim under (h), the Court shall have due regard as to whether the refusal of the man to answer the question, is due to the fact that the answer may cause loss to him in matters unconnected with the matter in relation to which it is asked. 17. In other words, while dealing with a situation where a presumption in terms of Illustration (h) under Section 114 is sought to be raised, the Court has to examine whether the refusal of the person to answer, is on account of the fear that the answer may produce an unfavourable result to him in relation to the matter in issue or due to the fear that such an answer might cause loss to him in a matter unconnected to it. 18 Keeping in mind the above scheme of Sections 4, 112 and 114, let us now test the main contention of Shri Kapil Sibal, learned senior counsel for the respondent-husband that the 63 attempt of the respondent-husband is not so much to show that he did not father the second child but is only to show that the appellant was living in adultery and that what comes into play in this case is only Section 114 and not Section 112. The learned senior counsel submitted that the respondent-husband is even prepared to accept the second child as his own, irrespective of the outcome of the DNA test. According to the learned senior counsel for the respondent, it is open to the appellant-wife not to subject the child to DNA test, even if the Court orders the same, but if the appellant chooses not to subject the child to DNA test, the Court is obliged to draw an adverse inference in terms of Section 114(h). According to the learned senior counsel, such adverse inference need not be about the paternity of the child but shall be only about the adulterous conduct of the appellant-wife. 19. To drive home the point that such an adverse inference, not about the paternity of the child, but about the adulterous conduct of the wife is permissible in law, learned senior counsel for the respondent placed heavy reliance upon last two paragraphs of the decision in Dipanwita Roy vs. Ronobroto Roy2 . These paragraphs read as follows: 2 (2015) 1 SCC 365 64 "17. The question that has to be answered in this case is in respect of the alleged infidelity of the appellant wife. The respondent husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person who was the father of the male child born to the appellant wife. It is in the process of substantiating his allegation of infidelity that the respondent husband had made an application before the Family Court for conducting a DNA test which would establish whether or not he had fathered the male child born to the appellant wife. The respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the appellant wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the respondent husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most

legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant wife is right, she shall be proved to be so. 18. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent husband against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the court concerned by drawing a presumption of the nature contemplated in Section 114 of the Evidence Act, especially, in terms of Illustration (h) thereof. Section 114 as also 65 Illustration (h), referred to above, are being extracted hereunder: "114.Court may presume existence of certain facts.—The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case." "Illustration (h)—that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;" This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 112 of the Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved." 20. Heavy reliance is also placed by Shri Kapil Sibal, learned senior counsel for the respondent on paragraph 79 of the decision in Sharda vs. Dharmpal3 . It reads as follows: "79. If despite an order passed by the court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference would be made out. Section 114 of the Indian Evidence Act also enables a court to draw an adverse inference if the party does not produce the relevant evidences in his power and possession." 21. But we do not know how a mix up of Section 112 and Section 114 is possible. Section 112 deals with something where the existence of a fact is taken to be conclusive proof, without any possibility for the disputing party to lead evidence for disproving 3 (2003) 4 SCC 493 66 the same. The only escape route or emergency exit as we may call it, available for a person to deprive another person of the benefit of Section 112, is to show that the parties to the marriage did not have access to each other at the time when the child could have been begotten. Section 114 has nothing to do with, nor is in connection with conclusive proof of legitimacy dealt with by Section 112. Both Section 112 and Section 114 fall under different compartments. The word "presumption" itself is not used in Section 112. The expression used in Section 112 is "conclusive proof". Therefore, by virtue of Section 4, no evidence shall be allowed to be given for the purpose of disproving it. 22. As we have indicated elsewhere, if one of the parties to the marriage shows that he had no access to the other at the time when the child could have been begotten, then Section 112 itself does not get attracted. On the contrary, if the parties have had access to each other at the relevant point of time, the fate of the question relating to legitimacy is sealed. 23. We are not suggesting for a moment that Section 112 acts as a shield even for the alleged adulterous conduct on the part of the wife. All that we say is that anything that would destroy the 67 legal effect of Section 112 cannot be used by the respondent, on the ground

that the same is being done to achieve another result. 24. In the case on hand, the very pleading of the respondent in his petition for divorce before the Family Court is that the second child-Master Arjun was born on 17.7.2013 and that the respondent came to know about the alleged adulterous behavior of the appellant herein, only on 14.9.2016. In paragraph 23 of his petition for divorce, the respondent pleaded as follows: "23. The Petitioner states that he has not condoned the adultery and the cruel behavior of Respondent No.1. The Petitioner has had no physical relations with Respondent No.1 after discovering her adulterous act. The Petitioner states that though the Petitioner and the respondent no.1 are living under the same roof, the Petitioner and Respondent no.1 have not shared the bedroom and have had no physical relations since the day the Petitioner discovered the adultery of Respondent No.1." 25. The pleading of the respondent extracted above to the effect that after September 2016, he has had no physical relationship with the appellant-wife means that he has at least had access to the wife both at the time when the child was begotten and for a full period of three years even thereafter. Therefore, the conclusive proof under Section 112 has actually come into play in this case. 26. There is another fallacy in the argument of the respondent. It is the contention of the respondent that he is seeking an 68 adverse inference to be drawn only as against the wife under Section 114(h), upon the refusal of the wife to subject the child to DNA test. But the stage at which the wife may refuse to subject the child to DNA, would arise only after the Court comes to the conclusion that a DNA test should be ordered. To put in simple terms, there are three stages in the process, namely, (i) consideration by the Court, of the question whether to order DNA test or not; (ii) passing an order directing DNA test, after such consideration; and (iii) the decision of the wife to comply or not, with the order so passed. The respondent should first cross the outer fence namely whether a DNA test can be ordered or not. It is only after he convinces the Court to order DNA test and successfully secures an order that he can move to the inner fence, regarding the willingness of the wife to abide by the order. It is only at that stage that the respondent can, if at all, seek refuge under Section 114(h). 27. But today, we are actually at the outer fence in this case, adjudicating as to whether DNA test can be ordered at all. Therefore, the respondent cannot jump to the inner fence bypassing the outer fence. 69 28. Coming to the presumption under Section 114(h), the contention of the respondent is obviously misplaced. An adverse inference, in law, can be drawn only against the person who refuses to answer a question. In the case on hand, the appellant has a dual role to play, namely, that of the respondent's wife and that of Master Arjun's mother. If the appellant does or refuses to do something, for the purpose of deriving a benefit to herself, an adverse inference can be drawn against her. But in her capacity as a mother and natural guardian if the appellant refuses to subject the child to DNA test for the protection of the interests and welfare of the child, no adverse inference of adultery can be drawn against her. By refusing to subject the child to DNA test, she is actually protecting the best interests of the child. For protecting the best interests of the child, the appellant-wife may be rewarded, but not punished with an adverse inference. By taking recourse to Section 114(h), the respondent cannot throw the appellant to a catch-22 situation. 29. Therefore, Section 114(h) has no application to a case where a mother refuses to make the child undergo DNA test. It is to be remembered that the object of conducting a DNA test on the child is primarily to show that the respondent was not the biological 70 father. Once that fact is established, it merely follows as a corollary that the appellant was living in an adulterous relationship. 30. What comes out of a DNA test, as the main product, is the paternity of the child, which is subjected to a test. Incidentally, the

adulterous conduct of the wife also stands established, as a by-product, through the very same process. To say that the wife should allow the child to undergo the DNA test, to enable the husband to have the benefit of both the product and the byproduct or in the alternative the wife should allow the husband to have the benefit of the by-product by invoking Section 114, if she chooses not to subject the child to DNA test, is really to leave the choice between the devil and the deep sea to the wife. 31. In fact, in cases of this nature the Court must bear in mind that Section 114 uses only the word "may" and not the word "shall". Therefore, the constraints articulated in the exposition to Illustration (h) under Section 114 may dissuade the Court not to presume at all. 32. Hence, we reject the contention of the respondent that what is sought to be invoked is only Section 114(h) and not Section 112. 71 Whose rights, are to tilt the balance in the scales of justice? 33. As rightly contended by Shri Huzefa Ahmadi, learned senior counsel for the appellant, the question as to whether a DNA test should be permitted on the child, is to be analysed through the prism of the child and not through the prism of the parents. The child cannot be used as a pawn to show that the mother of the child was living in adultery. It is always open to the respondenthusband to prove by other evidence, the adulterous conduct of the wife, but the child's right to identity should not be allowed to be sacrificed. 34. It is contended by Mr. Kapil Sibal, learned senior counsel for the respondent that after all the endeavour of every Court should be to find the truth and that every party to a litigation is entitled to produce the best evidence. Enabling the party to produce the best of evidence, is part and parcel of right to fair trial. Therefore, it is contended by learned senior counsel that the refusal to subject the child to DNA test would infringe upon the respondent's right to fair trial. To buttress the contention that the right to privacy of an individual must yield to the right to fair trial of another, reliance is placed upon the decision of this Court in 72 Sahara India Real Estate Corporation Limited & Ors. vs. Securities and Exchange Board of India & Anr.4 . 35. Attractive as it may seem at first blush, the said argument does not carry any legal weight. The lis in these cases is between the parties to a marriage. The lis is not between one of the parties to the marriage and the child whose paternity is questioned. To enable one of the parties to the marriage to have the benefit of fair trial, the Court cannot sacrifice the rights and best interests of a third party to the lis, namely, the child. 36. Therefore, I concur wholeheartedly with my learned sister that the Family Court as well as the High Court were wrong in allowing the application of the respondent for subjecting the child to DNA test. Therefore, the appeal deserves to be allowed and accordingly it is allowed. However, this shall not preclude the respondent-husband from leading any other evidence to establish the allegations made by him against the appellant in the petition for divorce. ……J. (V. Ramasubramanian)

Ravi Dhingra v. State of Haryana

1. Leave granted in Special Leave Petition (Crl.) No. 5296 of 2012. In all other cases, leave has already been granted.

(Sanjay Kishan Kaul and B.V. Nagarathna, JJ.)

Criminal Appeal No. 987 of 2009, decided on March 1, 2023

Ravi Dhingra _____ Appellant;

v.

State of Haryana _____ Respondent.

With

Criminal Appeal Nos. 989-990 of 2009

Criminal Appeal No. 986 of 2009

Criminal Appeal No. 988 of 2009

And

Criminal Appeal No. 645 of 2023

(@ Special Leave Petition (Crl.) No. 5296 of 2012)

Criminal Appeal No. 987 of 2009; Criminal Appeal Nos. 989-990 of 2009; Criminal Appeal No. 986 of 2009; Criminal Appeal No. 988 of 2009; and Criminal Appeal No. 645 of 2023 (@ Special Leave Petition (Crl.) No. 5296 of 2012)

The Judgment of the Court was delivered by
Nagarathna, J.:—

1. Leave granted in Special Leave Petition (Crl.) No. 5296 of 2012. In all other cases, leave has already been granted.

2. The present appeals have been filed by five accused whose convictions were confirmed by the impugned judgement of the Punjab and Haryana High Court dated 13.02.2008, under Sections 148, 149 and 364A of the Indian Penal Code, 1860 ('IPC', for short). The details of the cases are as under:

Criminal Appeals/SLP No.	**Name of the accused persons**	**Period of custody undergone with remission**
Criminal Appeal No. 987 of 2009	Raman Goswami (Deceased, Accused No. 3)	6 years, 8 months & 10 days as per jail custody certificate dated 31.01.2023 (Since deceased) appeal abates.
Criminal Appeal No. 987 of 2009	Ravi Dhingra (Accused No. 4)	7 years, 10 months & 13 days (on bail since 13.05.2009 as per jail custody certificate dated 31.01.2023)
Criminal Appeal Nos. 986 of 2009 and 988 of 2009	Laxmi Narain (Accused No. 5)	Custody certificate not produced

Criminal Appeal No. 989-990/2009	Baljit Pahwa (Accused No. 2)	7 years, 8 months & 2 days (on bail since 13.05.2009 as per jail custody certificate dated 31.01.2023)
SLP (Crl.) No. 5296 of 2012	Parvez Khan (Accused No. 1)	3 years, 7 months & 2 days (on bail since 28.07.2012 as per jail custody certificate dated 31.01.2023)

3. Criminal Appeal No. 987 of 2009, filed by Raman Goswami stands abated on account of his death *vide* order dated 08.04.2019. Accordingly, Criminal Appeal No. 987 of 2009, is considered in respect of Ravi Dhingra alone. All these matters were heard together and they are being disposed of by this common judgment.

4. Facts in brief, as per FIR No. 64 dated 15.02.2000 at Police Station, City Thanesar lodged at the instance of complainant, Dr. H.K. Sobti (PW-20) are that the appellants accused kidnapped Harsh (PW-21), aged 14 years, son of Dr. H.K. Sobti and Smt. Indra Sobti (PW-5) when he was going to school, at about 8:15 a.m. on the aforesaid date. The Station House Officer had filed the FIR with a remark that a case under Section 364/34 of the IPC seems to be made out from the facts. As per the statement of PW-21, he was intimidated by co-accused Ravi Dhingra to ride as a pillion rider on his scooter and upon his refusal, he was forcibly put inside a car. Upon screaming for safety, he was threatened to be killed with a knife and pistol if he cried. They also told him that his affluent father could even pay the ransom of Rs. 50 lakhs.

5. It emerged in the investigation that PW-21 was kept in House No. 772, Sector-13, Kurukshetra. Smt. Kanta Goyal (PW-2) who was a resident of house No. 1653/13 which was near the said school and another student of 9th Standard, namely, Manish (PW-4) told them that at 8:15 a.m., two boys with muffled faces had put Harsh in a Maruti car without a number plate and having tinted window glass. Later, on the same day, calls demanding ransom were received, acting on which, PW-20 reached the concerned location with the ransom demanded. While he was waiting for the appellants accused to receive the ransom and release his child, PW-21 Harsh Sobti was released between 04:00 a.m. and 04:30 a.m. on 16.2.2000 and dropped near the house of PW-11 Suraj Bhan Rathee. He made a phone call to his mother, who took him to his house at around 5:30 a.m.

6. That demands and enquiries for ransom were made through letters and telephonic messages to PW-20 on 09.03.2000, 12.03.2000, 13.03.2000 and 14.03.2000. Another message regarding ransom was received *via* telephone on 15.03.2000 at 2:30 p.m. He informed the appellants that while he could not arrange Rs. 15 lakhs, he had arranged Rs. 12 lakhs. Acting on the instructions received in these messages, PW-20, after intimating the police, boarded the train at 8:15 p.m. with a bag of money. When the train stopped at Ambala, he got down. He went back to Kurukshetra wherefrom he was asked to leave his house with the bag of money and come to Karnal. PW-20 went in his car with two sub-inspectors in civil dress. Upon the delivery of the cash in a bag near a bridge, it was discovered that calls were made from a mobile phone registered in the name of an engineering student, Ravi Duhan (PW-19). He revealed that his friends, appellants herein, had borrowed his phone. On 17.03.2000, upon receiving secret information about the whereabouts of four accused persons, namely, Ravi Dhingra, Baljit Pahwa, Parvej Khan and Raman Goswami, were apprehended by the police except accused Laxmi Narain who was

apprehended on 03.04.2000. The Chief Judicial Magistrate, Kurukshetra, committed the case to the Court of Sessions for trial on 06.06.2000.

7. Additional Sessions Judge, Fast Track Court, Kurukshetra, ('Trial Court', for the sake of convenience) tried the appellants accused for the commission of offences under Sections 364, 364A, 342, 506 read with Section 148 of the IPC. The prosecution presented 27 witnesses and 72 documentary Exhibits, including statements of the appellants under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.PC', for short) and 5 case properties. From the appellants' side, 13 documentary exhibits were presented. The Trial Court recorded the appellants'-accused's statements under Section 313 of the Cr. PC.

8. Appellants maintained that they were falsely implicated and had been kept in illegal confinement after being apprehended. They also argued that they were produced before the Court after their pictures had been widely publicised through local media and confronted with prosecution witnesses. Further, it was submitted that they were tortured before being presented before the court on 18.03.2000. They also stated that they were forced to sign statements prepared by Investigating Officer on 20.03.2000.

9. The Trial Court considered the aforementioned statements and the other evidence on record and held that appellants formed an unlawful assembly and in pursuance of a common object, kidnapped PW-21 to compel his father to pay a ransom amount of Rs. 15 Lakhs. The Trial Court also concluded that the appellants sought to take advantage of PW-21's confinement and the threat to cause death to him for compelling PW-20 to pay the ransom.

10. The Trial Court found no reason to disbelieve the statement of the PW-21.

11. Thus, appellants were held guilty for the commission of offences punishable under Sections 148 and 364A read with Section 149 of the IPC. Appellants prayed for leniency in the sentence on the ground that they had old parents and there was no one else to look after them. The Trial Court concluded the trial and rendered its verdict on 29.05.2003. The Trial Court sentenced the accused-appellants to undergo rigorous imprisonment for three years under Section 148 of the IPC, rigorous imprisonment for life and to pay a fine of Rs. 2000/- each under Section 364A read with Section 149 of the IPC. The Trial Court further clarified that the period of under-trial detention would be set off and both sentences shall run concurrently.

12. Appellants appealed against the order of conviction and sentence before the Punjab and Haryana High Court. The High Court considered the question as to whether there existed reliable evidence to identify and connect the appellants with the offence of kidnapping for ransom under Section 364A of the IPC. The High Court termed PW-21's statement to be crucial, and placing reliance on the same, held that all ingredients of Section 364A of the IPC had been satisfied.

13. The High Court rejected the plea that there was material discrepancy in the prosecution's case and held that there was no reason to cast any doubt on the veracity of the versions of prosecution witnesses. Regarding PW-21, the High Court remarked that he was "*a child witness, but he faced long and searching cross-examination*" and there is no contradiction in his version. It rejected the contention as to the contradictions in PW-20's stance by declaring that "*Discrepancy in investigation cannot by itself a ground to reject the testimony of a reliable witness*."

14. Further, the High Court concluded that by virtue of the testimony of PW-20 and PW-21 itself, the "*connection of the accused with the crime stands established beyond reasonable doubt.*"

15. The High Court rejected the plea of the appellants to modify the conviction to that for an offence under Section 363 or 365 of the IPC or under Section 506 IPC, which did not provide for a minimum sentence of life imprisonment on the ground of prolonged detention of over seven years.

16. Being aggrieved by the judgement and sentence of the High Court, the accused have approached this Court by filing their respective Special Leave Petitions, in which leave has been granted and are now considered Criminal Appeals.

17. On 11.05.2009, this Court noted that the appellants had served seven years in prison and could be granted bail on the satisfaction of the Trial Court of necessary conditions. It also granted leave to appeal in the Special Leave Petitions and admitted the matters.

18. Appellants-accused before this Court have submitted that there is grave doubt about the fact that the appellants herein are the very persons who had kidnapped Harsh Sobti, PW-21, but the Courts below have found reasons to believe the evidence of PW-21. Thus, without conceding the arguments made for acquittal by raising questions about the investigation, appellants have urged that judicial notice may be taken of the long period of their incarceration and their conviction under Section 364A of the IPC be modified to a conviction under Section 363 of the IPC.

19. Sri Gaurav Agrawal, learned counsel appearing on behalf of the appellants appointed by Supreme Court Legal Services Committee, placed reliance on *Sk. Ahmed* v. *State of Telangana*, (2021) 9 SCC 59 ("*SK Ahmed*"), to contend that the essential ingredients of Section 364A of the IPC have not been proved in this case. The crux of his argument was that the Sessions' Court as well as the High Court have disregarded the fact that PW-21's statement before the Court on 15.04.2002 was a substantial improvement upon the statement made to the police on 15.02.2000. Therefore, he submitted that no threat to cause death or hurt has been proven. He also submitted that no demand for ransom on the basis of the cause of death or hurt could be proven as these emanated from the police. He submitted that PW-12 turned hostile and PW-13 was only a chance witness. Hence, the judgments impugned may be interfered with and the appellants may be granted relief by modifying the sentences imposed on them even if acquittal of the appellants may not be possible.

20. On the other hand, Sri Rakesh Mudgal, learned AAG for the respondent-State supported the judgment of the High Court and contended that there is no merit in these appeals and the same may be dismissed. He submitted that the High Court was justified in its reasoning and in dismissing the appeals filed by the appellants herein.

21. In view of the facts on record and the rival submissions of the parties, we deem it appropriate to limit the point for consideration in this appeal to whether the facts, in this case, attract the offence under Section 364A of the IPC and if the answer is in the negative, would it be just and proper to modify the conviction to a sentence under Section 363 of the IPC.

22. To put the matter in perspective, the provisions of Section 361 read with Sections 363, 364 and 364A ought to be compared. The said provisions read as under:

Section 361: Kidnapping from lawful guardianship. Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.–The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.–This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

x x x

Section 363: Punishment for kidnapping. Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 364. Kidnapping or abducting in order to murder. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 364A. Kidnapping for ransom, etc. – Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

23. We note that Section 363 of the IPC punishes the act of kidnapping and Section 364 thereof punishes the offence of kidnapping or abduction of a person in order to murder him. Section 364A further adds to the gravity of the offence by involving an instance of coercive violence or substantial threat thereof, to make a demand for ransom. Accordingly, the maximum punishment for the three crimes is seven years imprisonment; ten years' imprisonment and imprisonment for life or death, respectively.

24. The nuanced, graded approach of the Parliament while criminalising the condemnable act of kidnapping must be carefully interpreted. Before interpreting the varying ingredients of crime and rigours of punishment, and appraising the judgments impugned, we deem it appropriate to reiterate the observations of this Court in *Lohit Kaushal* v. *State of Haryana*, (2009) 17 SCC 106, wherein this Court observed as under:

"**15.** … It is true that kidnapping as understood under Section 364-A IPC is a truly reprehensible crime and when a helpless child is kidnapped for ransom and that too by close relatives, the incident becomes all the more unacceptable. The very gravity of the crime and the abhorrence which it creates in the mind of the court are, however, factors which also tend to militate against the fair trial of an accused in such cases. A court must, therefore, guard against the possibility of being influenced in its judgments by sentiment rather than by objectivity and judicial considerations while evaluating the evidence."

25. This Court, notably in *Anil* v. *Administration of Daman & Diu*, (2006) 13 SCC 36 ("*Anil*"), *Vishwanath Gupta* v. *State of Uttaranchal* (2007) 11 SCC 633 ("*Vishwanath Gupta*") and *Vikram Singh* v. *Union of India*, (2015) 9 SCC 502 ("*Vikram Singh*") has clarified the essential ingredients to order a conviction for the commission of an offence under Section 364A of the IPC in the following manner:

a) In *Anil*, the pertinent observations were made as regards those cases where the accused is convicted for the offence in respect of which no charge is framed. In the said case, the question was whether appellant therein could have been convicted under Section 364A of the IPC when the charge framed was under Section 364 read with Section 34 of the IPC. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under:

"**54.** The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges.

55. The ingredients for commission of offence under Section 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of Section 364 of the Penal Code, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

56. It was, thus, obligatory on the part of the learned Sessions Judge, Daman to frame a charge which would answer the description of the offence envisaged under Section 364-A of the Penal Code. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge."

b) In *Vishwanath Gupta*, it was observed as under:

"**8.** According to Section 364-A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

9. The important ingredient of Section 364-A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not met then the victim is likely to be put to death and in the event death is caused, the offence of Section 364-A is complete. There are three stages in this section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under Section 364-A of the Penal Code. Any of the three ingredients can take place at one place or at different places."

c) In *Vikram Singh*, it was observed as under:

"**25.** … Section 364-A IPC has three distinct components viz. (*i*) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (*ii*) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (*iii*) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom. These ingredients are, in our opinion, distinctly different from the offence of extortion under Section 383 IPC. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of Section 364-A IPC proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above."

26. It is necessary to prove not only that such kidnapping or abetment has taken place but that thereafter, the accused threatened to cause death or hurt to such person or by his conduct gave rise to a reasonable apprehension that such person may be put to death or hurt or cause hurt or death to such person in order to compel the Government or any foreign State or international, inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

27. Most recently, this Court in *SK Ahmed* has emphasised that Section 364A of the IPC has three stages or components, namely,

i. kidnapping or abduction of a person and keeping them in detention;

ii. threat to cause death or hurt, and the use of kidnapping, abduction, or detention with a demand to pay the ransom; and

iii. when the demand is not met, then causing death.

28. The relevant portions of the said judgement are extracted as under:

"12. We may now look into Section 364-A to find out as to what ingredients the section itself contemplate for the offence. When we paraphrase Section 364-A following is deciphered:

(i) "Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction"

(ii) "and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom"

(iv) "shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

The first essential condition as incorporated in Section 364-A is "whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction". The second condition begins with conjunction "and". The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfil the second condition for offence. The third condition begins with the word "or" i.e. or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the words "or causes hurt or death to such person in order to compel the Government or any foreign State to do or abstain from doing any act or to pay a ransom". Section 364-A contains a heading "Kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364-A.

13. We have noticed that after the first condition the second condition is joined by conjunction "and", thus, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person.

14. The use of conjunction "and" has its purpose and object. Section 364-A uses the word "or" nine times and the whole section contains only one conjunction "and", which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfilment of first condition, the second condition i.e. "and threatens to cause death or hurt to such person" also needs to be proved in case the case is not covered by subsequent clauses joined by "or".

15. The word "and" is used as conjunction. The use of word "or" is clearly distinctive. Both the words have been used for different purpose and object. Crawford on Interpretation of Law while dealing with the subject "disjunctive" and "conjunctive" words with regard to criminal statute made following statement:

"… The court should be extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words, and vice versa, if such action adversely affects the accused."

xxx

33. After noticing the statutory provision of Section 364-A and the law laid down by this Court in the above noted cases, we conclude that the essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is "and". Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained."

29. Thus, this Court in *SK Ahmed* set aside the conviction under Section 364A of the IPC and modified the same to conviction under Section 363, for the reason that the additional conditions were not met by observing as follows:

"**42.** The second condition having not been proved to be established, we find substance in the submission of the learned counsel for the appellant that conviction of the appellant is unsustainable under Section 364-A IPC. We, thus, set aside the conviction of the appellant under Section 364-A. However, from the evidence on record regarding kidnapping, it is proved that the accused had kidnapped the victim for ransom, demand of ransom was also proved. Even though offence under Section 364-A has not been proved beyond reasonable doubt but the offence of kidnapping has been fully established to which effect the learned Sessions Judge has recorded a categorical finding in paras 19 and 20. The offence of kidnapping having been proved, the appellant deserves to be convicted under Section 363. Section 363 provides for punishment which is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

30. Now, we shall consider the applicability of the above ratio to the present case and deal with appellants' argument about contradictions in the statements of the PW-21. We agree with the High Court that the statements are crucial. We also note that the Courts below, as is usual in kidnapping cases, have placed singular reliance on the testimony of PW-21 to prove the element of 'threat to cause death or hurt', or to determine whether the appellants' conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. We have perused the statement of PW-21 made to the police on 18.02.2000, i.e., two days after he had returned home from the captivity of appellants-herein. The statements record that he was threatened at night by the appellants with a 'revolver,' which was claimed to be possessed by them. The exact statement was, "*One handkerchief and one black cloth were tied on the eyes and said to me they have revolver and they will kill him if [he] raises any voice."* However, the statement before the Trial Court dated 15.04.2002, nearly two years after the initial statement, includes a substantial detail that was omitted in the previous statement. After mentioning that the PW-21 was forcibly put inside the car and gagged, the statement reads,

"*The occupants threatened me with a knife and pistol and threatened me to kill."* Thus, three crucial changes may be noticed: first, a change in the exact timing of the threat; second, the specificity of the delivery of the threat to kill; and third, omission of the intent behind the threat i.e. to prevent PW-21 from crying out. These details are crucial to proving the second ingredient of the charge under Section 364A and essential to bring home the guilt under this section namely, threat resulting in giving rise to a reasonable apprehension that such person may be put to death or hurt. It is clear that this ingredient has not been proved beyond reasonable doubt. The Courts below did not thoroughly address this doubt before convicting the appellants. For proving the ingredient of threat, the intimidation of the child victim, for the purpose of making him silent, cannot be enough. If the sentence carrying a maximum sentence of death and a minimum sentence of life sentence has such a low evidentiary threshold, the difference between punishments for kidnapping under 363, 364 and 364A shall become meaningless.

31. In particular, we note that the High Court did not apply the precedent in *Malleshi* v. *State of Karnataka*, (2004) 8 SCC 95 ("*Malleshi*") properly. The facts in the said case, concerning the kidnapping of a major boy, revolved around the party to whom the demand for ransom ought to be made to bring home the guilt under Section 364A. It was observed in *SK Ahmed* that the *Malleshi* case dealt with demand for ransom and held that demand originally was made to the person abducted and the mere fact that after making the demand the same could not be conveyed to some other person as the accused was arrested in the meantime does not take away the effect of conditions of Section 364A. As clarified by this Court in *SK Ahmed*, *Malleshi* was merely concerned with ransom and its ratio would be of no assistance to cases where the fulfilment of other ingredients of crime under Section 364A is brought into question.

32. In the facts of the present case, we therefore agree with the submission of the learned counsel for the appellants, Sri Gaurav Agrawal, that the conviction of the appellants is unsustainable under Section 364A of the IPC.

33. This Court has wide power to alter the charge under Section 216 of the Cr.PC whilst not causing prejudice to the accused, as reiterated in *Jasvinder Saini* v. *State (Govt. of NCT of Delhi)* (2013) 7 SCC 256, para 11; *Central Bureau of Investigation* v. *Karimullah Osan Khan* (2014) 11 SCC 538, paragraph Nos. 17 and 18. The following observations of this Court in *Dr. Nallapareddy Sridhar Reddy* v. *State of Andhra Pradesh* (2020) 12 SCC 467, paragraph No. 21 are also instructive:

"**21.** From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216

judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

34. Therefore, we allow the appeals in part and set aside the conviction under Section 364A of the IPC.

35. The judgments of the learned Trial Court and the High Court are modified to the above extent. The appellants are now convicted for the offence under Section 363 of the IPC; i.e., kidnapping and sentenced to imprisonment for seven years and a fine of Rs. 2000/-. If the appellants have completed imprisonment of more than seven years with remission and have paid the fine of Rs. 2000/-, we direct the appellants to be released forthwith; if not on bail. If not, the appellants shall surrender within a period of four weeks and serve the remainder of the sentence.

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LATEST NOTIFICATION

Haryana ADA Recruitment 2023 Overview	
Particulars	**Details**
Recruiting Body	Haryana Public Service Commission
Official Website	HPSC
Advertisement Number	14/2023
Name of Post	Assistant District Attorney
Salary	Rs. 53100- Rs 167800
Number of Vacancy	112
Age Limit	21 to 42 years
Educational Qualification	Bachelors in Law (Professional)
Online Application Begins	1st March 2023
Online Application Ends	28th March 2023 (11:55 pm)
Last Date for Payment	28th March 2023 (11:55 pm)
Selection Process (Expected)	○ Written Exam ○ Interview ○ Document Verification ○ Medical Test
Admit Card Release Date	To be notified
Exam Date	To be notified
Result Date	To be notified

Haryana ADA Vacancy 2023

HPSC has announced 112 vacancies for HPSC Assistant District Attorney recruitment 2023 in the Prosecution Department Haryana. The highest vacancy is for General category candidates i.e. 54 vacancies. Look at the table below for the category-wise vacancies.

UR	SC of Haryana	BC-A of Haryana	BC-B of Haryana	Total	ESM	PwBD (VH)	PwBD (Ortho)
54	21	17	10	112	UR - 03 SC - 01 BCA - 01 BCB - 01	04	04

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विज्ञापन संख्या :– 10/DR/E-2/Civil Judge/2022-23

उत्तराखण्ड न्यायिक सेवा सिविल न्यायाधीश परीक्षा– 2023
{Uttrakhand Judicial Service Civil Judge Examination- 2023}

विज्ञापन प्रकाशन की तिथि	**–**	**01 मार्च, 2023**
ऑनलाइन आवेदन पत्र भरने की अन्तिम तिथि	**–**	**21 मार्च, 2023 (रात्रि 11.59.59 बजे तक)**
आवेदन शुल्क Net Banking/Debit Card/Credit Card/UPI Payment द्वारा जमा करने की अन्तिम तिथि	**–**	**21 मार्च, 2023 (रात्रि 11.59.59 बजे तक)**

(i) ऊर्ध्वाधर आरक्षण का विवरण :–

क्र0 सं0	विभाग	पदनाम	कुल रिक्त पद	श्रेणीवार विवरण				
				अनारक्षित	उत्तराखण्ड अनुसूचित जाति	उत्तराखण्ड अनुसूचित जनजाति	उत्तराखण्ड अन्य पिछड़ा वर्ग	आर्थिक रूप से कमजोर वर्ग
01.	न्याय विभाग	सिविल न्यायाधीश	16	07	04	01	03	01

(ii) क्षैतिज आरक्षण का विवरण :–

क्षैतिज आरक्षण	सामान्य	क्षैतिज आरक्षण	
		उत्तराखण्ड महिला	दिव्यांग
अनारक्षित	07	02	01 पद (एल0सी0, डीडब्लू, ए0ए0वी, एम0डी0वाई0)
अनुसूचित जाति	04	01	
अनुसूचित जनजाति	01	–	
अन्य पिछड़ा वर्ग	03	01	
आर्थिक रूप से	01	–	

MCQ'S

Q1: 'Wrongful gain' means

(a)gain by lawful means of property which the person gaining is not entitled

(b)gain by unlawful means of property which the person gaining is not entitled

(c)gain by unlawful means of property which the person gaining is entitled

(d)all the above.

Q2: The provision of personation at elections under section 171D of IPC

(a)shall apply to a person who has been authorised to vote as proxy for an elector under any law in force

(b)shall not apply to a person who has been authorised to vote as proxy for an elector under any law in force

(c)does not lead to any restriction under any l in force

(d)none of the above.

Q3: 'Fraudulently' has been defined as doing anything with intent to defraud

(a)section 23

(b)Section 25

(c)section 24

(d)section 26.

Q4: Which among these codes, is included in the schedule to the Prevention of Money Laundering Act, 2002.

(a)Civil Procedure Code

(b)Criminal Procedure Code

(c)Indian Penal Code

(d)none of these.

Q5: Section 34 of IPC

(a)creates a substantive offence

(b)is a rule of evidence

(c)both (a) and (b)

(d)neither (a) nor (b).

Q6: 'Voluntarily' has been defined as an effect caused by means whereby a person intended to caused it or by means, at the time of employing those means, know or had reason to believe to be likely to cause it under

(a)section 39

(b)section38

(c)section37

(d)section40.

Q7: U/S 46 of IPC, death denotes

(a)death of a human being

(b)death of an animal

(c)death of a human being and of an animal both

(d)death of either human being or an animal.

Q8: Animal denotes

(a)any living creature including human being

(b)any living creature other than a human being

(c)any creature-live or dead

(d)either (a) or (c).

Q9: U/S 60 of IPC, in certain cases of imprisonment, the sentence of imprisonment

(a)has to be wholly rigorous

(b)has to be wholly simple

(c)can be partly rigorous and partly simple

(d)either (a) or (b).

Q10: U/S 65 of IPC sentence of imprisonment for non-payment of fine shall be limited to

(a)one-third of the maximum term of imprisonment fixed for the offence

(b)one-fourth of the maximum term of imprisonment fixed for the offence

(c)one-half of the maximum term of imprisonment fixed for the offence

(d)equal to the maximum term of imprisonment fixed for the offence.

Q11: U/S 498A of IPC cruelty includes

(a)harassment of the woman

(b)physical cruelty only

(c)mental cruelty only

(d)cruelty by wife.

Q12: In case of an offence punishable with fine only, an offender who is sentenced to pay a fine exceeding Rs. 100, the imprisonment in default of payment of fine shall not exceed

(a)one year

(b)six months

(c)four months

(d)two months.

Q13: Imprisonment for non-payment of fine shall terminate

(a)on payment of fine

(b)on expiry of the term of imprisonment for non-payment

(c)both (a) & (b)

(d)neither (a)nor (b).

Q14: In case of imprisonment for non-payment of fine, if a part of the fine is paid, such sentence

(a)shall be reduced proportionately

(b)shall not be reduced in direct proportion to the fine paid

(c)shall be reduced but subject to the discretion of the court as to the quantum of reduction

(d)all of the above.

Q15: If an offender has been sentenced to imprisonment not exceeding six months, the solitary confinement

(a)shall not exceed 15 days

(b)shall not exceed one month

(c)shall not exceed two months

(d)shall not exceed forty-five days.

Q16: If an offender is sentenced to imprisonment for a term exceeding one year, the term of solitary confinement shall not exceed

(a)one month

(b)two months

(c)three months

(d)six months.

Q17: General exceptions are contained in

(a)chapter III of IPC

(b)chapter IV of IPC

(c)chapter V of IPC

(d)chapter VI of IPC.

Q18: The maximum 'ignorantia juris non excusat' means

(a)ignorance of law is no excuse

(b)ignorance of fact is no excuse

(c)ignorance of law is an excuse

(d)ignorance of fact is an excuse.

Q19: Accident as an exception has been dealt with in

(a)section 77

(b)section 78

(c)section 80

(d)section 82.

Q20: The principle as to the way in which a man should behave when he has to make a choice between two evils is illustrated in

(a)section 80 of IPC

(b)section 81 of IPC

(c)section 82 of IPC

(d)section 78 of IPC

Q21: 'Infancy' as an exception has been provided under

(a)section 80

(b)section 81

(c)section 82

(d)section 84.

Q22: Section 82 of IPC enunciates

(a)a presumption of fact

(b)a rebuttable presumption of law

(c)a conclusive or Irrebuttable presumption o law

(d)none of the above.

Q23: Section 83 of IPC lays down

(a)a presumption of fact

(b)an inconclusive or rebuttable presumption of law

(c)conclusive or Irrebuttable presumption of law

(d)Irrebuttable presumption of fact.

Q24: U/S 82 & section 83 of IPC an offence is punishable if it is done by a child

(a)of below seven years of age

(b)of above seven years of age but below twelve years if he hs not attained sufficient maturity and understanding

(c)of above seven years of age but below twelve years having attained sufficient maturity and understanding

(d)all the above.

Q25: "In every statute, mens rea is to be implied unless the contrary is shown."

This view was expressed in

(a)Sherras v De Rutzen

(b)R. V Dudley & Stephen

(c)harding V Price

(d)R. V Prince.

Q26: Section 84 of IPC provides for

(a)medical insanity

(b)legal insanity

(c)moral insanity

(d)unsoundness of mind of any kind.

Q27: A hangman who hangs the prisoners pursuant to the order of the court is exempt from criminal liability by virtue of

(a)section 77 of IPC

(b)section 78 of IPC

(c)section 79 of IPC

(d)section 76 of IPC.

Q28: Which of the following I correct

(a)the burden of proof that the accused was not insane at the time of commission of offence is on the prosecution

(b)the burden of providing that the accused was insane at the time of commission of offence is on the accused

(c)there is a rebuttable presumption of fact that accused was insane at the time of commission of the offence

(d)it is a matter of inference to be drawn by the court on the facts proved by the prosecution.

Q29: Intoxication as defence is contained in

(a)section 85 of IPC

(b)section 86 of IPC

(c)section 87 of IPC

(d)both (a) & (b).

Q30: For a defence of intoxication, to escape criminal liability, the intoxication

(a)can be self-administered

(b)administered against his will or knowledge

(c)should not be self-administered

(d)all the above.

Q31: The doctrine 'volenti non fit injuria' is contained in

(a)section 87 of IPC

(b)section 88 of IPC

(c)section 89 of IPC

(d)all the above.

Q32: The defence of 'consent' is restrictive in its applicability in cases involving

(a)alienable rights

(b)inalienable rights

(c)both (a) & (b)

(d)neither (a) nor (b).

Q33: Operating of consent to all offences, short of causing death intentionally, has been extended under

(a)section 88 of IPC

(b)section 90 of IPC

(c)section 91 of IPC

(d)section 87 of IPC.

Q34: The consent is not a valid consent U/S 90.

(a)if given under a fear of injury or misconception of fact

(b)if given by a person of unsound mind

(c)if given by a child below 12 years of age

(d)all the above.

Q35: The maxim 'de minimus non curat lex' means

(a)law would not take action on small & trifling matter

(b)law does not ignore any act which cause the slightest harm

(c)law would not take action in serious matters

(d)all he above.

Q36: The right of private defence is contained in

(a)section 94 of IPC

(b)section 95 of IPC

(c)section 96 of IPC

(d)section 98 of IPC.

Q37: The right to private defence is

(a)unrestricted

(b)subject to restriction contained in section 99 of IPC

(c)subject to restrictions contained in chapter IV of IPC

(d)subject to restrictions contained in any other provision of IPC.

Q38: The law on private defence in India

(a)is the same as in England

(b)is narrower than the one in England

(c)is wider than the one in England

(d)none of the above.

Q39: U/S 98 right to private defence also is available against a

(a)person of unsound mind

(b)person who does not have maturity of understanding

(c)both (a) & (b)

(d)neither (a) nor (b).

Q40: Every person has a right of private defence of his property or of any other person against certain offences affecting the property, has been provided

(a)U/S 95 of IPC

(b)U/S 96 of IPC

(c)U/S 97 of IPC

(d)U/S 98 of IPC.

Q41: In a case of free fight between two parties

(a)right of private defence is available to both the parties

(b)right of private defence is available to individuals against individual

(c)no right of private defence is available to either party

(d)right to private defence is available only to one party.

Q42: Right to private defence U/S 99

(a)extend to causing more harm than is necessary for the purpose of defence

(b)does not extend to causing more than harm is necessary for the purpose of defence

(c)does not extend to causing the harm necessary for the purpose of defence

(d) restricts the harm caused to be less than the one necessary for the purpose of defence.

Q43: Right of private defence of the body extends to causing death has been with under

(a)section 100 of IPC

(b)section 101 of IPC

(c)section 102 of IPC

(d)section 103 of IPC.

Q44: In case of assault causing reasonable apprehension of death or of grievous hurt, the right of private defence extends voluntarily

(a)causing grievous hurt

(b)causing death

(c)causing any harm other than death

(d)causing any harm other than death or grievous hurt.

Q45: In case of kidnapping & abduction the right of private defence extends voluntarily causing

(a)any harm other than death

(b)any harm other than death & grievous hurt

(c)any harm including death

(d)both (a) & (b).

Q46: Where a wrong doer commits house breaking by night, the right to private defence extends to voluntarily causing

(a)any harm other than death

(b)any harm including death

(c)any harm other than death and grievous hurt

(d)either (a) or (c).

Q47: U/S 102 of IPC the right to private defence of the body

(a)commences as soon as a reasonable apprehension of danger to the body arises and continues as long as that apprehension continues

(b)commences as soon as a reasonable apprehension of danger to the body arises

and continues even after that apprehension ceases

(c)commences only when the assault is actually done & continues during the period of assault

(d)commences only when the assault is actually done & continues after the assailant has left.

Q48: Section 106 of IPC extends the right of private defence, in case of apprehension of death, to causing

(a)any harm other than death to any innocent person

(b)any harm other than grievous hurt to any innocent person

(c)any harm including death to any innocent person

(d)none of the above.

Q49: Right of Private defence is not available

(a)against any act which in itself is not an offence

(b)against any act which is not legal wrong

(c)against any act which is a moral wrong

(d)all the above.

Q50: Abettor is a person

(a)who commits the offence

(b)who instigates the commission of offence

(c)against whom the offence is committed

(d)who is innocent.

Q51: For abetment

(a)it is necessary that the person abetted should be capable of committing on offence under the law

(b)it is necessary that the person abetted should have the same guilty intention.

(c)it is not necessary that the person abetted should be capable of committing an offence under the law or should have the same guilty intention

(d)both (a) & (b).

Q52: Abetment of an offence is:

(a)always an offence

(b)never an offence

(c)may be an offence depending on the circumstances but not always

(d)may not be an offence depending on the circumstances.

Q53: Abetment by instigation may be

(a)by words spoken

(b)by letters

(c)by conduct

(d)all the above.

Q54: X ordered his employee Y to beat Z. Y refuses. Now.

(a)X has committed abetment & Y has committed assault

(b)X has committed abetment & Y has committed no offence

(c)X &Y both have committed no offence

(d)X has committed no offence but Y has committed offence of subordination.

Q55: Conspiracy has been defined as an agreement between two or more persons to do an illegal act or an act which is not illegal means, under.

(a)section 120B of IPC

(b)section 120A of IPC

(c)section 120 of IPC

(d)section 121A of IPC.

Q56: Under criminal conspiracy

(a)mere agreement is made an offence even if no step is taken to carry out that agreement

(b)mere agreement is not made an offence unless a step is taken to carry out that

Agreement

(c)both (a) &(b) are correct

(d)neither (a) nor (b) id correct.

Q57: Sedition has been defined as bring hatred or contempt, or exciting or attempt to excite disaffection towards the Government established by law in India, by words, either spoken or written, or by signs or visible representation or otherwise, under

(a)section 120 of IPC

(b)section 120A of IPC

(c)section 121A of IPC

(d)section 124A of IPC.

Q58: For an unlawful assembly under section 141 of IPC, the minimum number of persons required is

(a)Five

(b)Seven

(c)ten

(d)twenty.

Q59: Which of the following is not specified to be the common object of an assembly to make it unlawful, under section 141 of IPC.

(a)over wing the Government or its officers

(b)resistance to legal process

(c)forcible possession or dispossession of property

(d)none of the above.

Q60: Rioting means use of force or violence by an unlawful assembly, or by a member thereof, in prosecution of the common object of such assembly, as per.

(a)section 144 of IPC

(b)section 145 of IPC

(c)section 146 of IPC

(d)section 148 of IPC.

Q61: Section 149 of IPC is

(a)declaratory provision

(b)creates a distinct offence

(c)a rule of evidence

(d)all the above.

Q62: Under section 149 of IPC if an offence is committed by a member of the unlawful assembly in furtherance of their common object

(a)every person who at that time was a member of that assembly shall be guilty of that offence

(b)only the person committing the offence shall be guilty of that offence and all shall be guilty of unlawful assembly only.

(c)only that person committing the offence shall be guilty and others shall not be guilty of any offence

(d)either (b) or (c).

Q63: 10 persons were charged for offence under section 302/149 IPC, out of which six persons were acquitted, the remaining four

(a)cannot be convicted for offence under section 302/149 of IPC

(b) cannot be convicted for offence under section 302 of IPC

(c) cannot be convicted for offence under section 149 of IPC

(d)all the above.

Q64:'B' happened to be a member of unlawful assembly. A factional fight ensued during which 'B' was injured and retired to the side, later on a man was killed. Now

(a)'B' s guilty of murder being member of unlawful assembly

(b)'B' is not guilty of murder as he ceased to be a member of unlawful assembly at the time when the murder was committed

(c)B is not guilty of murder though he happened to be a member of unlawful assembly

(d)none of the above.

Q65: The word 'wrong' in a defence of insanity refers to

(a)a legal wrong

(b)a civil wrong

(c)a moral wrong

(d)moral as well as legal wrong.

Q66: Fight under section 159 of IPC signifies

(a)to opposite parties actively involved

(b)two parties one of which is passive

(c)two parties both of which are passive

(d)all the above.

Q67: Promoting hatred among classes is n offence

(a)under section 121A of IPC

(b)under section 124A of IPC

(c)under section 153A of IPC

(d)under section 153B of IPC.

Q68: Personating a public servant is an offence

(a)under section 169 of IPC

(b)under section 170 of IPC

(c)under section 171 of IPC

(d)under section 186 of IPC.

Q69: Causing disappearance of evidence of offence or giving false information to screen offender, is an offence

(a)U/S 200 of IPC

(b)U/S 201 of IPC

(c)U/S 212 of IPC

(d)U/S 204 of IPC.

Q70: Culpable homicide has been defined

(a)U/S 299 of IPC

(b)U/S 300 of IPC

(c)U/S 302 of IPC

(d)U/S 304 of IPC.

Q71: Culpable homicide is not murder, if it is committed under

(a)grave & sudden provocation

(b)self-intoxication

(c)irresistible impulse

(d)all the above.

Q72: Murder is defined as

(a)an act by which the death is caused, must have been done with the intention of causing such bodily injury as is likely to cause death

(b)an act by which the death is caused, is done with the knowledge that he is likely to cause death but his act

(c)an act by which the death is caused, with the intention of causing of such bodily injury as the offender knows which is likely to cause death of the person to whom the injury is caused

(d)all the above.

Q73:'A' knows that 'B' is suffering from a disease in his head and also knows that if a fist blow is given to 'B' on his head, it is likely to cause his death. Knowing it 'A' gives a fist blow to B on his head and caused death of 'B', 'A' is.

(a)guilty of culpable homicide not amounting to murder since he does not think that his act is likely to cause death.

(b)guilty of murder since he had knowledge that in all probability it is likely to cause death of 'B'.

(c)guilty of no offence since the blow is not sufficient to cause the death of a person of normal health.

(d)guilty of causing hurt only.

Q74: Causing of the death of child in the mother's womb is not homicide as provided under

(a)explanation I to section 299

(b)explanation II to section 299

(c)explanation III to section 299

(d)explanation V to section 300.

Q75: If the offender does not know that his act is so imminently dangerous that it must, in all probability causes death he will be guilty of

(a)murder

(b)attempt to murder

(c)culpable homicide not amounting to murder

(d)either (a) or (b).

Q76: Culpable homicide is causing death

(a)with the intention of causing death

(b)with the intention of causing such bodily injury as is likely to cause death

(c)with the knowledge that by such act death is likely to be caused

(d)all the above.

Q77: Hurt has been defined as bodily pain, disease or infirmity to any person under section

(a)section 319 of IPC

(b)section 320 of IPC

(c)section 323 of IPC

(d)section 325 of IPC.

Q78: During the scuffle between 'A' & 'B' , A gave a blow on the face of 'B' and consequently two teeth of 'B' were broken. In these circumstances 'A' has committed an offence of causing

(a)simple hurt

(b)attempt to cause culpable homicide not amounting to murder

(c)grievous hurt

(d)no offence at all.

Q79: Two ladies of young age, A & B fight with each other. A was having a blade with which 'A' inflicts injury on the face of B leaving a scar on the cheek of B. A is guilty of offence of causing

(a)grievous hurt

(b)grievous hurt by rash or negligent act

(c)simple hurt

(d)simple hurt by rash or negligent act.

Q80: Wrongful confinement has been defined under

(a)section 342 of IPC

(b)section 341 of IPC

(c)section 340 o IPC

(d)section 339 of IPC.

Q81: Assault cannot be caused by

(a)mere words

(b)mere gestures

(c)mere preparation

(d)all the above.

Q82: Assault or criminal force used in attempting to commit theft of property I punishable

(a)under section 378 of IPC

(b)under section 379 of IPC

(c)under section 384 of IPC

(d)under section 356 of IPC.

Q83: In kidnapping, the consent of minor is

(a)wholly immaterial

(b)partly immaterial

(c)wholly material

(d)partly material.

Q84: Which of the following is correct as to theft under section 378 of IPC.

(a)Dishonest intention to take property

(b)the property must be moveable

(c)the property must be in possession of the prosecutor

(d)of the above.

Q85: 'A' puts 'Z' into fear of hurt & dishonestly induces 'Z' to sign a blank cheque & deliver it to 'A' , Z signs the cheque and delivers it to A. 'A' is guilty of

(a)theft

(b)extortion

(c)robbery

(d)attempt to commit extortion.

Q86: Robbery becomes dacoity when committed conjointly by

(a)two persons

(b)more than two persons but less than five persons

(c)five persons or more

(d)at least ten persons.

Q87: In case of dishonest misappropriation the initial possession of the property

(a)is dishonest

(b)is fraudulent

(c)is innocent

(d)both (a) & (b).

Q88: Criminal breach of trust on an offence signifies

(a)entrustment

(b)demand

(c)refusal

(d)all the above.

Q89: The subject matter of theft

(a)can be movable property

(b)can be immovable property

(c)both (a) & (b)

(d)either (a) or (b).

Q90: Immovable property can be the subject matter of

(a)theft

(b)extortion

(c)robbery

(d)dacoity

Q91: The expression 'harm' is used in section 81 of the Indian Penal Code in the sense of

(a)hurt

(b)injury or damage

(c)physical injury

(d)moral wrong or evil.

Q92: The causing of death of child in the mother's womb is not homicide under

(a)Indian law only

(b)English law only

(c)both English and Indian law

(d)none of these.

Q93: The essential ingredients of a crime are

(a)motive, mens rea, and actus reus

(b)motive, intention and knowledge

(c)actus reus and mens rea

(d)knowledge, intention and action.

Q94: The limit of solitary confinement is dealt with in

(a)section 74 of IPC

(b)section 75 of IPC

(c)section 73 of IPC

(d)section 7 of IPC.

Q95: Dishonest intention must precede the act of taking in

(a)criminal misappropriation

(b)criminal breach of trust

(c)theft

(d)robbery.

Q96: Removal of ornaments from body of one after causing his death is

(a)robbery

(b)theft

(c)cheating

(d)an offence under section 404.

Q97: Persons not exempted from criminal prosecution under the Indian Penal Code are

(a)the President of India

(b)Governors of States

(c)foreigners

(d)none of these.

Q98: Dacoity is dealt under

(a)section 394

(b)section 395

(c)section 391

(d)section 393.

Q99: A woman ran to a well stating she would jump in it but she was caught before she could reach it. She is guilty of

(a)attempt to suicide

(b)attempt to injure her

(c)attempt to culpable homicide

(d)no offence.

Q100: Sex with a girl through fraudulent consent, amounts to

(a)simple physical assault

(b)molestation

(c)attempt to rape

(d)rape.

Q101: Oral threat or inducement allegedly given by lawyers to approver not to give any statement against accused

(a)amounts to commission of offence

(b)does not amount to commission of offence

(c)can attract discretion of the court to consider as offence

(d)none of the above.

Q102: Under the Indian Penal Code who among the following is liable for committing theft

(a)child below 7 years of age

(b)child below 8 years of age

(c)child between 7 and 10 years of age

(d)child between 7 and 12 years of age having maturity of understanding.

Q103: The imprisonment for the offence of molestation under IPC amounts to

(a)imprisonment upto 2 years

(b)imprisonment upto 1 year

(c)imprisonment upto 6 months

(d)imprisonment upto 3 months

Q104: Criminal Law (Amendment) Act, 2013 is effective from

(a)3rd February, 2013

(b)4th February, 2013

(c)5th February, 2013

(d)1st January, 2013.

Q105: Section 326B in IPC which was added by Criminal Law (Amendment) Act, 2013 refers to

(a)Grievous hurt

(b)Trafficking of a person

(c)Attempting to throw acid

(d)Sexual assault.

Q106: What is the punishment for grievous hurt by use of acid

(a)Imprisonment not less than 7 years

(b)Imprisonment not less than 10 years

(c)Imprisonment not less than 5 years

(d)Imprisonment not less than 2 years.

Q107: Word "illegal" is defined in which section of IPC?

(a)Section 31

(b)Section52A

(c)Section 52

(d)Section 43.

Q108: Attempt to commit an offence is punishable with'

(a)Two third

(b)Half

(c)Full

(d)One eighth.

Q109: X and Y plans to murder Z the next dy. They would be guilty for which of the following office

(a)Attempt to murder

(b)Murder

(c)attempt to Culpable Homicide

(d)Criminal Conspiracy.

Q110: For invoking section 34, IPC there must be at least:

(a)Five or more person

(b)Two or more persons

(c)Two persons

(d)Five persons.

Q111: Which of the following theories of punishment provides that a crime is a disease and the object should be to cure disease

(a)Deterrent theory

(b)Reformative theory

(c)Retributive theory

(d)None of the above.

Q112: In the light of the Criminal Law (Amendment) Act, 2013 which of the following statement(s) is/are incorrect?

(a)The word "rape" in section 375 of Indian Penal Code, 1860 has been replaced with "sexual assault".

(b)Rape is now a gender neutral offence.

(c)The Amendment has fixed the age for consensual sex as 16 years.

(d)All the above.

Q113: Match the following and choose the correct answer from th codes below

Offence	Section
A. Stalking	1.Section 376E
B.Voyeurism	2.Section 354D
C.Gang Rape	3.Section 370
D.Trafficking of person	4.Section 354C
	5.Section 376D

Codes:

	A	B	C	D
(a)	1	4	5	3
(b)	2	4	5	3
(c)	4	2	1	3
(d)	2	4	1	3

Q114: Assault or use of criminal force to woman with intent to disrobe is punishable under which section of Indian Penal Code, 1860?

(a)Section 376A

(b)Section 354B

(c)Section354D

(d)Section376D.

Q115: Stalking for a second subsequent conviction attracts a punishment of

(a)Imprisonment up to 3 years or fine or both

(b)Imprisonment up to 5 years or fine or both

(c)Imprisonment up to 3 years and fine

(d)Imprisonment up to 5 years and fine.

Q116: The offence of Voyeurism upon first conviction is

(a)Non-cognizable & Bailable

(b)Cognizable & Bailable

(c)Cognizable & Non-bailable

(d)Non-cognizable & Non-bailable.

Q117: Any man who watches or captures the image of a woman engaging in a private act in circumstances were she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image is guilty of the offence of

(a)Stalking

(b)Voyeurism

(c)sexual Harassment

(d)Assault or use of criminal force to woman with intent to disrobe.

Q118: Assault or criminal force to woman with intent to outrage her modesty under Section 354 of the Indian Penal Code, 1860 is which kind of offence?

(a)Non-Cognizable & Bailable

(b)Cognizable & Bailable

(c)Cognizable & Non-bailable

(d)Non-cognizable & Non-bailable.

Q119: The minimum punishment for the offence of Gang Rape as laid down in section 376D of the Indian Penal Code, 1860 is

(a)Imprisonment of not less than 10 years

(b)Imprisonment of not less than 14 years

(c)Imprisonment of not less than 20 years

(d)None of the above.

Q120: The section of the Indian Penal Code, 1860 dealing with trafficking of person is

(a)Section 370A

(b)Section 354A

(c)Section 376A

(d)None of the above.

Q121: The offence of word, gesture or act intended to insult the modesty of a woman under section 509 of the Indian Penal Code, 1860 is

(a)Cognizable & Bailable

(b) Non-Cognizable & Bailable

(c) Cognizable & Non-bailable

(d) Non-cognizable & Non-bailable.

Q122: The punishment for refusing to offer first-aid or medical treatment to victims of offence under Section 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the Indian Penal Code, 1860 applies in case of

(a)Public hospitals run by Central Government or State Government or any local body

(b)Private hospitals

(c)Public hospitals run by Central Government or State Government or any local body and Private hospitals

(d)None of the above.

Q123: The offence of voluntarily throwing or attempting to throw acid punishable under Section 326B of the Indian Penal Code is triable by

(a)Court of Session

(b)Magistrate of First Class

(c)Any Magistrate

(d)None of the above.

Q124: Which Section of the Indian Penal Code codifies, in the field of criminal law, the maxim: 'de minimis non curat lex':

(a)Section 85, IPC

(b)Section 88, IPC

(c)Section 95, IPC

(d)Section 96, IPC.

Q125: Whether a weapon is a deadly weapon is a question of:

(a)Law

(b)Fact

(c)Opinion to the expert witness

(d)Opinion to the judge.

Q126:'A' indulges in voluntary sexual intercourse with 'B', a married woman without the consent of her husband. He is guilty of adultery. The married woman 'B' is liable to be tried with 'A' as an

(a)Abettor

(b)adulteress

(c)Jointly as co-accused

(d)None of the above.

Q127: 'B' assaults 'A' using a sharp edged weapon, resulting in an injury which is 6 cm long and ½ cm. deep in the right forearm of 'A', 'B' is liable to be charged for an offence punishable under

(a)Section 323, IPC

(b)Section 324, IPC

(c)Section 325, IPC

(d)Section 326, IPC.

Q128: Which of the following statement is/are correct?

(a)Mens rea is not an essential ingredient of an offence punishable under section 107, IPC.

(b)Mens rea is not an essential ingredient of an offence punishable under section 304 A, IPC

(c)Mens rea is not an essential ingredient of an offence punishable under section 364A, IPC

(d)Both (a) & (b) above.

Q129: Nothing is an offence if it is done by a person who is a

(a)Boy of 6 years having sufficient maturity to understand the nature and consequence of his conduct

(b)Girl below 12 years having sufficient maturity to understand the nature and consequence or her conduct

(c)A man aged 100 years

(d)All of the above.

Q130: The distinction between 'similar intention' and common was clarified in the case of:

(a)Mahboob shah V Emperor

(b)Barindra kumar Ghosh V King Emperor

(c)shrinivas Mall V Emperor

(d)Dudley V Stephen.

Q131: In which of the following cases the Supreme Court has pronounced 'Triple Test 'formula for awarding death sentence?

(a)Jagmohan Singh V State of U.P

(b)Shatrughan Chauhan V Delhi Administration

(c)Mohinder Singh V Delhi Administration

(d)Shankar kishanrao khade V State of Maharashtra.

Q132: "A" by pledging as diamonds article which he knows are not diamond, intentionally deceives "Z" and thereby dishonestly induces "Z" to lend money. Here "A" is the guilty of the offence of?

(a)Dishonest misappropriation of property

(b)Criminal breach of trust

(c)Cheating

(d)Cheating by personation.

Q133: "A" puts jewels into a box belong to "B" with the intention that they may be found in that box, with the result that "B" may committed the offence under:

(a)Section 191 of IPC

(b)Section 192 of IPC

(c)Section 193 of IPC

(d)Section194 of IPC.

Q134: A private person:

(a)cannot arrest an accused

(b)can arrest any person who in his presence commits a non-bailable and cognizable offence in the absence of a police officer

(C)can arrest a person if he sees him running away from the crime spot where an offence has been committed

(d)can arrest any person suspected of committing an offence.

Q135: The defence of intoxication is not available.

(a)where the person is incapable of knowing the nature of the act.

(b)where the intoxication is voluntary

(c)where the person is incapable of knowing that what he is doing is wrong

(d)where the person is incapable of knowing that what he is doing is contrary to law.

Q136: 'A' had a step-child, whom he wanted to kill. For this purpose, he gave 'B', who was taking care of the child, a piece of cake, which had poison in it, and asked 'B' to feed the child the cake. 'B' however ate the cake himself and died as a result. Which of the following statements is accurate:

(a)'A' will be liable for the offence of murder

(b)'A' will not be liable for the offence of murder

(c)'A' will be liable for abetment to murder

(d)'A' will be liable for conspiracy to commit murder.

Q137: In which of the following cases the Supreme Court has declared Section 303 of the Indian Penal Code as unconstitutional?

(a)Bachchan Singh V State of Punjab

(b)Rajendra Kumar V State of U.P

(c)Machchi Singh V State of Punjab

(d)Mitthu Singh V State of Punjab.

Q138: Under Indian Penal Code, 1860 any assembly of five or more persons is not an unlawful assembly if their common object is:

(a)T compel any person to do what he is legally bound to do

(b)To commit any mischief

(c)To commit criminal trespass

(d)To obtain property forcefully.

Q139: According to Section 52 of the Indian Penal Code, 1860, nothing is said to be done or believed in good faith which is done or believed without----------

(a)due care or diligence

(b)due attention or bonafide

(c)due care or attention

(d)due diligence or bonafide.

Q140: 'B' and his girlfriend 'G', both adults engage in consensual sexual intercourse in the privacy of the bedroom of the latter and 'B' with her consent prepares a video clip on his mobile camera and later shows it in total privacy to his friend 'F'. It amounts to

(a)Stalking

(b)Molestation

(c)Voyeurism

(d)Sexual harassment.

ANSWER KEY

1(b)
2(b)
3(b)
4(c)
5(b)
6(a)
7(a)
8(b)
9(c)
10(b)
11(a)
12(b)
13(c)
14(a)
15(b)
16(c)
17(b)
18(a)
19(c)
20(b)
21(c)
22(c)
23(b)
24(c)
25(a)
26(b)
27(b)
28(b)
29(d)
30(b)
31(d)
32(b)
33(a)
34(d)
35(a)
36(c)
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40(c)
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136(a)
137(d)
138(a)
139(c)
140(c)