THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION Nos.809, 816, 848, 852 & 855 of 2016
&
92,160,199,232,239,240,242,258,262,273,275,284,286,290, 291,318, 373,389,397 & 421 of 2017

COMMON ORDER:

All these Transfer Civil Miscellaneous Petitions are filed under Section 24 of the Code of Civil Procedure (for short "CPC") to withdraw the Original Petitions pending on the file of different Courts shown in column No.2 and transfer the same to the Courts shown in Column No.3, on the ground mentioned in Column No.4 of the table given hereunder.

S No	Transfer OP No.	Court where petition is pending – Court where petition is to be transferred	Transfer Petition by the wife or husband	Relief claimed in petition sought to be transferred	Ground for seeking transfer
(1)	(2)	(3)	(4)	(5)	(6)
1	809/2016	FCOP No.82/2016 **From** Family Court, Visakhapatnam **To** Family Judge, Srikakulam	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ib) Hindu Marriage Act.	• No male assistance for me to travel more than 120Km. • Threat to life at the hands of the Respondent at Visakhapatnam. • Petitioner filed dowry harassment and restitution of conjugal rights cases at Srikakulam, hence the present petition can be transferred to srikakulam so that both cases can be heard together.
2	816/2016	HMOP No35/2016 **From** Principal Senior Civil Judge, Khammam **To** Principal Senior Civil Judge, Adilabad	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia) (ib)Hindu Marriage Act	• No source of income. • Not keeping good health, hence it would be difficult to travel.

3	848/2016	O.P.No.596/2016 **From** Family Court, Secunderabad **To** Family Court, Rajamahendravaram	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia) Hindu Marriage Act	• Difficulty in travelling the distance between Rajahmundry and Seunderabad which is 400Km. • Apprehension of danger in the hands of the Respondent.
4	852/2016	O.P.No.179/2016 **From** Family Court, Warangal **To** Family Court Nizamabad	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia) Hindu Marriage Act.	• No independent source of income. • Difficulty in travelling a distance of 220Km. • DVC case pending in Nizamabad Court. • Respondent is resident of USA, hence no prejudice if the matter is tried in Nizamabad.
5	855/2016	O.P.No.345/2016 **From** Family Court, Vijaywada **To** Senior Civil Judge, Bapatla	Wife-Petitioner	Decree declaring marriage of the petitioner to the Respondent as null and void under sec. 12(c) of Hindu Marriage Act.	• Unable to travel a distance of 80Km. • Apprehends threat to life. • No means to meet the expenditure. • DVC No. 20/201 pending at Bapatla, hence the present petition can also be transferred.
6	92/2017	FCOP No.2049/2016 **From** Family Court, Ranga Reddy **To** Family Court Anantapur	Wife-Petitioner	Dissolution of marriage by decree of divorce under Section 13(1)(ia) Hindu Marriage Act.	• Difficulty in travelling a distance of 400Km. • Respondent is residing in Banglore and distance between Bangalore and Anantapur is 200Km, hence it is convenient for Respondent also. • Cr.No.2/2017 pending before Anantapur court.
7	160/2017	O.P.No.153/2016 **From** Family Court, Karimnagar **To** Family Court, Secunderabad	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia)(ib) Hindu Marriage Act.	• Unable to travel a distance of 200Km, without male assistance. • Apprehends life threat at the hands of Respondent.
8	199/2017	O.P.No.874/2016 **From** District Judge,	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec. 10of	• No independent source of income. • Difficulty in travelling a

		Eluru **To** District Judge, Rajahmundry		Christian Marriage Act, 1872	distance of 100Km. • DVC SR.No. 1888/2017 pending in Rajahmundry, hence it is feasible to transfer the present petition to Rajahmundry.
9	232/2017	HMOP No.53/2016 **From** Senior Civil Judge, Tanuku **To** Senior Civil Judge, Amalapuram	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia) Hindu Marriage Act.	• Senior Civil judge at Tanuku has no jurisdiction to hear the petition. • No independent source of income. • Unable to travel a distance of 100Km.
10	239/2017	O.P.No.593/2016 **From** Principal District and Sessions Judge, Guntur **To** Family Court, Vijaywada	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec. 10(I)(x) of Christian Marriage Act, 1872	• No means of maintenance. • Difficulty in travelling a distance of 45Km without male assistance. • Apprehends life threat
11	240/2017	FCOP Noo.46/2017 **From** Family Court, Nellore **To** Senior Civil Judge, Machilipatnam	Wife-Petitioner	Restitution of Conjugal rights under Sec.9 Hindu Marriage Act.	• Dependent on parents for income and support. • Difficulty in travelling a distance of 350Km without male assistance. • Apprehends life threat at Nellore.
12	242/2017	OP No.153/2016 **From** Senior Civil Judge, Warangal **To** Senior Civil Judge, Huzurabad	Wife-Petitioner	Decree of divorce nullifying marriage under sec. 11 of Hindu Marriage Act	• Financial hardships • DVC No.10/2016 pending before II Additional Judicial Magistrate of First Class at Huzurabad, therefore to secure ends of justice the present petition can also be transferred to Huzurabad. Witnesses in both the above mentioned cases are the same, hence in the interest of witnesses the case can be transferred to Huzurabad.

13	258/2017	FCMOP No.20/2017 **From** III Additional District Judge, Srikakulam **To** Senior Civil Judge, Kakinada	Wife-Petitioner	Restitution of Conjugal rights under Sec.9 Hindu Marriage Act.	• Apprehends imminent life threat. • No source of income. • No male assistance to travel from Kakinada to srikakulam. Besides, she has a small daughter aged around 2 years.
14	262/2017	FCOP No.40/2017 **From** Family Court, Khammam **To** Family Court, Guntur	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia) (ib)Hindu Marriage Act r/w sec.7 Family Court Act	• Aged 60 years, health condition is deteriorating. • Receives a meager amount of Rs.1000/- and no other source of income. • Unable to travel distance of 180Km and there is no assistance.
15	273/2017	OP No.18/2016 **From** Senior Civil Judge at Sircilla, Karimnagar **To** Family Court, Hyderabad	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec. 13(1)(ia) Hindu Marriage Act	• Physically handicapped and no employment. • Living alone in Hyderabad. • Apprehends danger to life while attending court at Sircilla.
16	275/2017	OP No.96/2016 **From** Senior Civil Judge at Huzurabad, Karimnagar **To** Family Court, Sec'bad	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec. 13(1)(ia) Hindu Marriage Act	• No means to maintain herself and her son who is 2 years old. • Dependent on her brother, hence cannot incur financial expenditure.
17	284/2017	OP No.368/2016 **From** Senior Civil Judge, Kakinada, East Godavari **To** Family Court, Visakhapatnam	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia)(ib), (1-A), Hindu Marriage Act	• Living with and dependent on old aged widow mother, difficulty to travel and financial hardship. • Also FC.O.P 720/14 pending adjudication Family Court, Visakhapatnam
18	286/2017	OP No.93/2016 **From** Additional District Judge, Nizamabad	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia) Hindu Marriage	• Inconvenience in travelling without male assistance. • No independent source of income and not in a

		To Principal Senior Civil Judge, Khammam		Act	position to bear expenditure for travel. • Apprehension of threat in Nizamabad.
19	290/2017	OP No.18/2017 **From** Senior Civil Judge, Sangareddy **To** Senior Civil Judge, Gudivada	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia) (ib)Hindu Marriage Act	• No Source of independent income and unable to meet travel expenditure. • Inconvenience in travelling a distance of over 400Km. • Respondent threatened with dire consequences and therefore there is apprehension of risk to life.
20	291/2017	FCOP No.607/2016 **From** Family Court, Sec'bad **To** Family Court, Visakhapatnam	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec. 13(1)(ia) Hindu Marriage Act	• Living with parents and no one to escort her to defend the OP in Hyderabad.
21	318/2017	HMOP No.88/2016 **From** Senior Civil Judge, Suryapet **To** Special Judge, Family Court, Khammam	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec. 12 Hindu Marriage Act	• No one to escort her to defend the OP at Suryapet. • Apprehends danger to life as Respondent threatened her with dire consequences.
22	373/2017	FCOP No.296/2016 **From** Family Court, Ranga Reddy **To** Family Court, Visakhapatnam	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia)(ib) Hindu Marriage Act	• No source of income. • Club the present petition with FC. O.P 904/2016 pending on the file of Family Court, Visakhapatnam.
23	389/2017	FCOP No.904/2016 **From** V Additional District cum Sessions Judge, Visakhapatnam	Husband-Petitioner	Restitution of Conjugal rights under Sec.9 Hindu Marriage Act.	• Underwent major surgery, rod implanted from hip to knee in right leg, therefore cannot undertake travel. • Apprehends imminent life threat from respondent.

		To I Additional family court cum IV Additional District Judge, Ranga Reddy			
24	397/2017	DOP.No.41/2017 **From** Principal District Court, Kurnool **To** Family Court, Kadapa	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec. 10(I),(vii), (ix) and (x) of Christian Marriage Act, 1872	• Marriage performed at Kadapa, hence court at Kurnool has no jurisdiction. • No means to travel and has a small daughter to look after. • Crl.M.No. 272/2017 in M.C. No. 5/2008 for enhancement of maintenance pending at Family Court, Kadapa.
25	421/2017	FCOP No.659/2016 **From** Family Court, Guntur **To** Family Court, Ranga Reddy	Wife-Petitioner	Dissolution of marriage by decree of divorce under Sec.13(1)(ia)(ib) Hindu Marriage Act	• Unemployed and facing financial hardships. • Apprehends imminent life threat.

All these Transfer petitions are filed mostly by wives against the husbands for withdrawal and transfer, primarily on the ground of their inability to undertake journey from the place where they are staying; their inability to meet the expenses for travelling and other incidental expenses not only for the wives but also to the person, who accompanied her and also on the ground of life threat to attend the Court; pendency of other cases either under Section 9 of Hindu Marriage Act (for short 'HM Act') or registration of the crime against the husband on the complaint made by wives for the offences under Sections 498-A IPC and 3 and 4 of Dowry Prohibition Act (for short 'DP Act'), but in some cases pendency of

criminal cases against the husband and DVC i.e., the petitions under Section 12 of Protection of Women from Domestic Violence Act, maintenance case, rarely on the ground of pendency of petition for custody of the minors filed by the wives or husbands and finally on the ground of lack of territorial jurisdiction.

These instances referred above are elliptic, but there is a possibility of raising different grounds for such withdrawal and transfer to exercise power under Section 24 of the CPC by this Court.

Before adverting to the facts of various petitions, it is apposite to advert to Section 24 of the CPC. Section 24 deals with general power of transfer and withdrawal. According to it, on the application of any of the parties, after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may at any stage:

> (1) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same: withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; try or dispose of the same; transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same and retransfer the same for trial or disposal to the Court from which it was withdrawn.
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> (2) where any suit or proceeding has been transferred or withdrawn under Section (1), the Court is thereafter to try or dispose of such suit or proceeding, may

subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn;

(3) For the purpose of this Section:

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) Proceeding includes a proceeding for the execution of a decree or order;

(4) The Court trying any suit transferred or withdrawn under this Section from a Court of Small Causes shall for the purposes of such suit, be deemed to be a Court of Small Causes;

(5) A suit or proceeding may be transferred under this Section from a Court which has no jurisdiction to try it, which was introduced by Act 104 of 1976 with effect from 01.02.1977.

Keeping in mind the broader prospective of Section 24 of CPC, Transfer Civil Miscellaneous Petitions shall be decided.

In most cases in the table given above, the reason for seeking transfer is that their inability to travel and appear before the Courts at distant places, varying from case to case and thereby, they are disabled to prosecute the proceedings effectively. If, for any reason, the pendency of O.Ps on the file of different Courts are not withdraw and transferred to the other Courts, which they have sought for in Column No.2 of the table, it amounts to depriving them to enjoy the fundamental right of access to justice.

"Access to justice", in its general term, means an individual's Access to Court or a guarantee of legal representation. It has many fundamental elements such as identification and recognition of grievance, awareness, legal advice or assistance, accessibility to court, claim for relief, adjudication of grievance and enforcement of relief; of course, this may be the ultimate goal of a litigant public. The concept of 'access to justice' has two significant components. The first is a strong and effective legal system with rights, enumerated and supported by substantive legislations. The other is a useful and accessible judicial/remedial system easily available to the litigant public. Access to justice rests on fair treatment.

The Indian Constitution contains several provisions which enumerated the fundamental right to access to justice. Articles 32, 142 & 226 of the Constitution of India are relevant in this regard.

Articles 32 & 142 of the Constitution of India empowered the Apex Court to issue suitable direction to the Courts. Both these aspects are well traversed by judicial pronouncements of the Apex Court, as well as by the Courts in England, in which the Courts have a liberty to examine the jurisprudential aspect to right to access to justice and it is co-related with right to life. Availability of Article 142 of the Constitution of India directing transfer of cases in situation where such power is not available under any statute of the Constitution has also been declared by the Apex Court on several earlier occasions. But, this Court is concerned with the power under Section 24 of the Code of Civil Procedure. Therefore, Articles 32 & 142 of the Constitution of India are not germane for consideration in the present facts of the case.

The concept of '*access to justice*' as an invaluable human right, also recognized in most constitutional democracies as a fundamental right, has its origin in common law as much as in the Magna Carta. The Magna Carta lays the foundation for the basic right of access to courts in the following words:

> *"No freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.*
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> *To no man will we sell, to no one will we deny or delay right to justice.*
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> *Moreover, all those aforesaid customs and liberties, the observance of which we have granted in our kingdom as far as pertains to us towards our men, shall be observed by all our kingdom, as well clergy as laymen, as far as pertains to them towards their men.*
>
> *Wherefore, it is our will, and we firmly enjoin, that the English Church be free, and the men in our kingdom have an hold all the aforesaid liberties, rights and concessions, well as peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all aspects and in all places for ever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intention-Given under our hand-the above named and many others being witnesses-in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.*

The Universal Declaration of Rights drafted in the year 1948 gave recognition to two rights pertaining to 'access to justice' in the following words:

> *Article 8: Everyone has the right to an effective remedy by the competent national*

> *tribunals for acts violating the fundamental rights granted him by the Constitution or by law.*
>
> *Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him.*

To the same effect is Clause 3 of Article 2 of International Covenant on Civil and Political Rights, 1966 which provides that each State party to the Covenant shall undertake that every person whose rights or freedom as recognised is violated, shall have an effective remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, and the State should also ensure to develop the possibilities of judicial remedies.

Courts in England have over the centuries post *Magna Carta* developed fundamental principles of common law which are enshrined as the basic rights of all humans. These principles were over a period of time recognised in the form of Bill of Rights and Constitutions of various countries which acknowledged the Roman maxim '*Ubi Jus Ibi Remedium*' i.e. every right when it is breached must be provided with a right to a remedy. Judicial pronouncements have delved and elaborated on the concept of access to justice to include among other aspects the State's obligation to make available to all its citizens the means for a just and peaceful settlement of disputes between them as to their respective legal rights. In ***R. v. Secretary of State for Home Dept., ex p Leech***[1] Steyn L.J was dealing with a prisoner who

[1] 1993 [4] All ER 539)

complained that correspondence with his solicitor concerning litigation in which he was involved or which he intended to launch, was being censored by the prison authorities under the Prisons Rules, 1964. He challenged the authority of the Secretary of State to create an impediment in the free flow of communication between him and his solicitor about contemplated legal proceedings. The court held that access to justice was a basic right which could not be denied or diluted by any kind of interference or hindrance. The Court said:

> *"It is a principle of our law that every citizen has a right of unimpeded access to a court. In* ***Raymond v. Honey*** *[1982 [1] Alt ER 756]. Lord Wilberforce described it as a 'basic right'. Even in our unwritten Constitution, it ranks as a constitutional right. In Raymond v. Honey, Lord Wilberforce said that there was nothing in the Prisons Act, 1952 that confers power to 'interfere' with this right or to 'hinder' its exercise. Lord Wilberforce said that Rules which did not comply with this principle would be ultra vires. Lord Elwyn Jonesand Lord Russell of Killowan agreed... It is true that Lord Wilberforce held that the rules, properly construed, were not ultra vires. But that does not affect the importance of the observations. Lord Bridge held that Rules in question in that case were ultra vires...*
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> *He went further than Lord Wilberforce and said that a citizen's right to unimpeded access can only be taken away by express enactment... It seems (to) us that Lord Wilberforce's observation ranks as the ratio decidendi of the case, and we accept that such rights can as a matter of legal principle be taken away by necessary implication."*

The legal position is no different in India. Access to justice has been recognised as a valuable right by courts in this country long before the commencement of the Constitution. Reference in this regard may be made to ***Re: Llewelyn Evans***[2] in which Evans was arrested in Aden and brought to Bombay on the charge of criminal breach of trust. Evan's legal adviser was denied access to meet the prisoner. The Magistrate who ordered the remand held that he had no jurisdiction to grant access, notwithstanding Section 40 the Prisons Act, 1894. The question that therefore fell for consideration was whether the right extended to the stage where the prisoner was in police custody. The High Court of Bombay, while referring to Section 340 of the Code of Criminal Procedure, 1898, held that the right under that provision implied that the prisoner should have a reasonable opportunity, if in custody, of getting into communication with his legal adviser for the purposes of preparing his defence. Madgavkar, J., comprising the Bench added that:

> *"....if the ends of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own case and to lay its evidence fully, freely and fairly before the Court. This necessarily involves preparation. Such preparation is far more effective from the point of view of justice, if it is made with the aid of skilled legal advice-advice so valuable that in the gravest of criminal trials, when life or death hangs in the balance, the very state which undertakes the prosecution of the prisoner, also provides him, if poor, with such legal assistance."*

[2] AIR 1926 Bom 551

In the facts of ***P.K. Tare v. Emperor***[3], the Petitioner had participated in the Quit India Movement of 1942. The detention was challenged on the ground of being vitiated on account of refusal of permission by the authorities to allow them to meet their counsel to seek legal advice or approach the court in person. The State opposed that plea based on Defence of India Act, 1939, which, according to it, took away right of the detenu to move a habeas corpus petition Under Section 491 of the Code of Criminal Procedure, 1898. Rejecting the contention and relying upon the observation of Lord Hailsham in ***Eshugbayi v. Officer Administering the Govt. of Nigeria***[4], the Court held that such fundamental rights, safeguarded under the Constitution with elaborate and anxious care and upheld time and again by the highest tribunals of the realm in language of utmost vigour, cannot be swept away by implication or removed by some sweeping generality. Justice Vivian Bose, giving the leading opinion of the court explained that the right to move the High Court remained intact notwithstanding the Defence of India Act, 1939. He further held that although courts allow a great deal of latitude to the executive and presumptions in favour of the liberty of the subject are weakened, those rights do not disappear altogether. The Court ruled that the attempt to keep the applicants away from the Court under the guise of these Rules was an abuse of the power and warranted intervention. It s further emphasized the importance of the right of any person to apply to the court and demand that he be dealt with according to law. He said:

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[3] AIR 1943 Nagpur 26
[4] AIR (18) 1931 PC 248

> *"...the right is prized in India no less highly than in England, or indeed any other part of the Empire, perhaps even more highly here than elsewhere; and it is zealously guarded by the courts."*

Decisions of Apex Court too have unequivocally recognised the right of a citizen to move the court as a valuable constitutional right recognised by Article 32 of the Constitution as fundamental right by itself. [See ***In re Under Article 143, Constitution of India [Keshav Singh v. Speaker, Legislative Assembly[5]]*** and ***L. Chandra Kumar v. Union of India[6]***.

In ***Hussainara Khatoon v. State of Bihar[7]*** the Apex Court declared speedy trial as an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. It also pointed out that Article 39-A made free legal service an inalienable element of reasonable, fair and just procedure and that the right to such services was implicit in the guarantee of Article 21.

In ***Imtiyaz Ahmad v. State of Uttar Pradesh and Ors[8]***, a two-Judge Bench of the Apex Court examined the correctness of an interlocutory order passed by a learned Single Judge of the High Court of Allahabad, whereby, the Single Judge had stayed the order passed by the Additional Chief Judicial Magistrate, directing registration of a case against the Respondents. Since the matter had remained pending before the High Court, and was not heard for a long time of over six years or so and since several other cases in different High Courts in India were similarly pending in which

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[5] AIR 1965 SC 745
[6] (1997) 3 SCC 261
[7] (1980) 1 SCC 81
[8] (2012) 2 SCC 688

the proceedings before the Trial Court had been stayed, no matter the cases involved commission of heinous offences like murder, rape, kidnapping and dacoity etc., the Apex Court enlarged the scope of the proceedings and directed the Registrar Generals of the High Courts to furnish a report containing statistics of cases pending in the respective Courts in which the proceedings had been stayed at the stage of registration of FIR, and framing of charges in exercise of powers Under Article 226 of the Constitution or Section 482 or 397 of the Code of Criminal Procedure. On the basis of the statistics so furnished by the High Courts, this Court held that administration of justice was facing problems of serious dimensions. The Apex Court also noticed, on the basis of the material made available by the High Courts, that unduly long delay was being caused in the disposal of the cases resulting in a blatant violation of the Rule of law and the right of common man to seek access to justice. Emphasizing the importance of access to justice and recognizing the right as a fundamental right relatable to Article 21 of the Constitution of India, this Court observed:

> *"25. Unduly long delay has the effect of bringing about blatant violation of the Rule of law and adverse impact on the common man's access to justice. A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of the right undermines public confidence in the justice delivery system and incentivises people to look for shot cuts and other fora where they feel that injustice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the Rule of law.*

> *26. It may not be out of place to highlight that access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and inequitable [see United Nations Development Programme, Access to Justice-Practice Note (2004)]*
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> *27. The present case discloses the need to reiterate that "access to justice" is vital for the Rule of law, which by implication includes the right of access to an independent judiciary. It is submitted that the stay of investigation or trial for significant periods of time runs counter to the principle of Rule of law, wherein the rights and aspirations of citizens are intertwined with expeditious conclusion of matters. It is further submitted that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of citizen's rights under the Constitution, in particular Under Article 21."*

In **Brij Mohan Lal v. Union of India and Ors**[9] the Apex Court declared that Article 21 guarantees to the citizens the rights to expeditious and fair trial. The Court observed:

> *"137. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39A of the Constitution recognises the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access to justice so that every person is able to receive an expeditious, inexpensive and fair trial.*

[9] (2012) 6 SCC 502

The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens."

In **Tamilnad Mercantile Bank Shareholders Welfare Association v. S.C. Sekar and Ors**[10], the Apex Court declared that an aggrieved person cannot be left without the remedy and that access to justice is a human right. In certain situations it may also be considered to be a fundamental right.

Summing up, access to justice is and has been recognised as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman Jurisprudential maxim of "Ubi Jus Ibi Remedium', the development of fundamental principles of common law by judicial pronouncements of the Courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilized societies and systems recognise and enforce.

In **Khatri II v. State of Bihar**[11], the right to free legal aid was held to be a right covered under Article 21 of the Constitution

[10] (2009) 2 SCC 784
[11] (1981) 1 SCC 627

of India. In **Sheela Barse v. Union of India**[12], this Court declared speedy trial to be an essential right under Article 21 of the Constitution of India.

In the recent Constitution Bench judgment decision of the Apex Court in **Subramanian Swamy v. Union of India**[13], this Court held reputation to be an inherent and inseparable component of Article 21.

> ***The four main facets that constitute the essence of access to justice are:***
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> *i. The State must provide an effective adjudicatory mechanism;*
> *ii. The mechanism so provided must be reasonably accessible in terms of distance;*
> *iii. The process of adjudication must be speedy; and*
> *iv. The litigant's access to the adjudicatory process must be affordable.*

To decide the present controversy, point Nos. 2 & 4 that constitute the essence of access to justice are relevant.

The mechanism must be conveniently accessible in terms of distance:

The forum/mechanism so provided must, having regard to the hierarchy of courts/tribunals, be reasonably accessible in terms of distance for access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the court/tribunal/court/competent authority to grant such a relief. (See **D.K. Basu v. State of West Bengal**[14])

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[12] (1978) 4 SCC 494
[13] [W.P. (Crl.) No. 184 of 2014]
[14] (2015) 8 SCC 744

The process of adjudication must be affordable to the disputants:

Access to justice will again be no more than an illusion if the adjudicatory mechanism provided is so expensive as to deter a disputant from taking resort to the same. Article 39A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate Sections of the society. Legal aid to the needy has been recognized as one of the facets of access to justice in **Madhav Hayawadanrao Hoskot v. State of Maharashtra**[15] where the Apex Court observed:

> "If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court Under Article 142, read with Articles 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Article 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the

[15] (1978) 3 SCC 544

> court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court."

If, these principles are applied to the present facts of the cases, the principle laid down by the Apex Court in **D.K. Basu v. State of West Bengal** (referred supra), reiterated in **Anita Kushwaha v. Pushap Sudan**[16] to the present facts of the case, on account of distance, no party to the litigation shall be deprived of their right to redress their grievance. So, keeping in view of this principle, the present controversy has to be decided as to whether the petitions pending in different Courts at a distance place where the suit or matrimonial case is filed can be withdrawn and transferred at the choice of the wife or husband.

As discussed above, in many cases the Courts are liberally taking lenient view towards the wife to withdraw the pending cases at distant places and transferring the matrimonial cases to the places of choice of the wives, ignoring the rights of the husband. Husband is the *dominus litis* who has approached the Court to redress his claim, subject to the jurisdiction of the Court where cause of action or part of cause of action arose. But, when one party wanted to diverts jurisdiction of a particular Court, such party must show strong and justifiable cause for such diversion of

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[16] AIR 2016 SC 3506

the territorial jurisdiction when posted before a particular Court, where husband or wife filed matrimonial cases.

As discussed above, the Apex Court reiterated in **Anita Kushwaha v. Pushap Sudan** (referred supra), denial of withdrawal of matrimonial cases from one Court and transfer to another Court, at the request of wife would certainly infringe the fundamental right guaranteed under Article 21 of the Constitution of India and Clause 3 of Article 2 of International Covenant on Civil and Political Rights, 1966 and universal declaration of human rights.

In view of the inability expressed by the parties to appear before the Court, where matrimonial cases are pending, and the Court denies such an opportunity to contest the petitions for withdrawal and transfer, it amounts to denial of access to justice since the judiciary has been a watch dog to protect fundamental rights of every citizen of India. Therefore, the object of transfer of cases in the Courts is only to permit the parties to access justice and get fair justice. In case, this Court is not inclined to exercise power under Section 24 of CPC for withdrawal and transfer of the cases pending before the Courts under its control, it amounts to denial of fundamental right to access to justice. But, at the same time, in the event of withdrawal and transfer, the opposite party to the present petitions, the respondents herein, would be put to inconvenience and it amounts to denial of access to justice to them. In such a case, the question is how to strike the balance between the rights of the wives and husbands in a petition filed to exercise jurisdiction under Section 24 of CPC.

The power of the Civil Court for withdrawal and transfer of the case are covered by Sections 22, 23 and 24 of CPC.

Section 22 of the CPC deals with power to transfer the suit which may be instituted in more than one Court, where a trial of the case is lying pending before the Court and the same jurisdiction is shared by many other territorial or other Court, the defendant, who may have objection to the jurisdiction or place of trial of the Court may after moving an application, the Court may give an opportunity to be heard and argued and then the Court may determine the merit of the case and order for instructions. In Civil cases, when a case is to obtain specific relief by a party, it is preferred to file a case within the jurisdiction of the Court under which the property or other cause of action or place where the defendant ordinarily residing or work for gain. Section 22 CPC also confers a different type of jurisdiction to withdraw the suits in one of two or more Courts and transfer to all or any such Court and such power can be exercised only after affording an opportunity to the parties to the pending matters.

Section 23 of CPC deals with the option of the parties to which Court the petition lies. But Section 24 of CPC deals with general power of transfer as stated above. In matrimonial cases, there is an additional rule i.e., Section 21-A of Hindu Marriage Act, which deals with power of the Court to transfer petitions in certain cases. According to Section 21-A of H.M.Act, where an application under Hindu Marriage Act is presented before the Court having jurisdiction by a party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce

under Section 13; and any other petition under this Act has been presented, thereafter by the other party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13 on any ground, whether in the same District Court or in a different district court in the same State or different States, the petition shall be dealt with as specified in Sub Rule 2 of Section 21-A of HM Act. In a case where Sub-section (1) applies, if the petitions are presented in the same District Court, both the petitions shall be tried and heard together by the District Court and if the petitions are presented to different District Courts, the petition presented later shall be transferred to the District Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the District Court in which the earlier petition was presented.

In case where clause (b) of sub-section (2) of Hindu Marriage Act, applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceedings from the District Court in which the later petition has been presented to the District Court, in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under this Code. Thus, special power is conferred on the Courts by Section 21-A of H.M. Act to exercise power of transfer, but such power is purely discretionary either under Section 21-A of HM Act or under Section 24 of CPC and the Court can exercise such power keeping in view the concept of access to justice.

As discussed above, in most of the cases, the grievance of the parties is inconvenience. This is based on the principle of forum inconvenience. The law declared by the Apex Court in different cases with regard to exercise of power under Section 24 CPC in matrimonial cases is not consistent, but the Courts exercising its discretionary power under Section 24 of CPC, depending upon the facts of each case since the circumstances may vary from case to case.

Yet, another problem that may crop up in exercise of such power is pending of one petition before the Senior Civil Judge and the other before the Judge, Family Court. But, the parties are seeking transfer of pending petitions on the file of the Judge, Family Court to the Court of Senior Civil Judge. The Court of the Judge, Family Court, is presided over by an officer having not less than seven years of experience as judicial officer in the cadre of District Judge; whereas the Courts of the Senior Civil Judges are presided over by an officer, who is inferior in the rank to the District Judge. The special purpose to appoint such an Officer having seven years of experience as a judicial officer is on the presumption that the senior judicial officers will have a broader perspective than the junior officers many times and their experience in the life of the officer may have its own impact in deciding the sensitive matters pending before the Family Court with more sense of responsibility because of his experience in life etc., Therefore, there is a specific purpose in appointing an Officer having 7 years of experience in the cadre as judicial officer to preside over the Court of the Judge, Family Court.

Various High Courts and the Apex Court laid down certain guidelines for exercising power under Section 24 of CPC. But, before adverting to the law laid down by the Apex Court for withdrawal and transfer of matrimonial cases, it is apposite to advert to the law laid down by the Apex Court under Section 24 CPC, which is a general provision, which deals with the power of the Court to withdraw and transfer of pending cases from one Court to the other Court under the control of High Court.

The paramount consideration to exercise power to transfer cases under Section 25 of CPC must be a requirement of justice and mere convenience of the parties or any one of them may not be enough for exercise of such power, but it should even be shown that the trial within the chosen forum can lead to denial of justice. If the ends of justice shall demand and the transfer of the case imperative, there will not be hesitation to transfer the case. The right of *dominus litus* to choose the forum of consideration of the plaintiff convenience etc., cannot eclipse the requirement of justice. Justice must be done to all, at all costs, if necessary by the provision of the code, from one Court to the other (vide **Dr. Subramanian Swamy v. Ramakrishna Hegde[17])**

The Apex Court in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh v Kandi Friends Educational Trust and others***[18], laid down the following guidelines to exercise power under Section 24 of CPC by the Courts and they are as follows:

> ***(1) Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;***

[17] AIR 1990 SC 113
[18] 2008 (3) SCC page 659

(2) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit.
(3) Issues raised by the parties.
(4) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending.
(5) important questions of law involved or a considerable section of public interested in the litigation.
(6) interest of justice demanding for transfer of case etc.,"

Similarly, in ***Guda Vijayalakshmi v Guda Ramchandra Sekhara Sastry***[19], the Apex Court discussed the scope of Section 21-A of HM Act and Section 24 of CPC i.e., general power of Civil Courts for withdrawal and transfer under the Code of Civil Procedure and concluded that Section 21-A was incorporated in the Act prior to amendment of Civil Procedure Code in February, 1, 1977 by Act 104 of 1976, but Section 24 of CPC will override Section 21-A of HM Act. Therefore, the general power under Section 24 of CPC alone will govern the power of the Courts to withdraw and transfer the matrimonial cases pending on the file of different courts under the control of High Court. Thus, the general principles laid down by the Apex Court in ***Kulwinder Kaur's*** case (referred supra)**,** will prevail and those guidelines can be applied by the Courts for exercise of jurisdiction.

In ***Ruchi Ram Khattar v Sarah Narain, Shah and another***[20], a petition was filed before Lahore High Court, Pakistan, for transfer of civil suit based on promissory note for recovery of money from the Court of Subordinate Judge, Rawalpindi, to Dera Ismail Khan District, as sought for by the petitioner, and the cause

[19] AIR 1982 SC 1143
[20] AIR 1928 Lah 159

shown by him is that it would be difficult for him if the suit is tried in Rawalpindi as he will have to bring his witnesses all the way from Dera Ismail Khan and that the ground for transfer is inconvenience. The High Court succinctly held that the principle is well settled that it is the right of the plaintiff to choose the forum for his action and that in deciding whether the plaintiff should be deprived of that right a very strong case must be made out by the Defendant. Further, mere convenience of the defendant is not the sole factor and accordingly, dismissed the petition.

In ***Indian Overseas Bank, Madras v Chemical Construction Company***[21]***,*** *wherein* a civil suit is sought to be transferred from the Court of District Judge, Madhya Pradesh, to the file of High Court at Madras, where another suit is pending and material issues in both the suits are common or inter dependant, the Apex Court observed that there is no cast iron formula uniformly applicable to all situations as to what constitutes a valid ground for transfer and a mere balance of inconvenience in favour of the proceedings in another Court, *albeit*, a material consideration, may not always be a sure criterion justifying transfer. One of the grounds is that where two suits arise common question of fact and law between the parties common to both the suits, are pending in two different courts, it is generally in the interest of justice to transfer one of the suit to other forum to be tried by the same Court with the consequent avoidance of multiplicity of proceedings and risk of conflicting decisions.

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[21] 1979 4 SCC 358

In ***Thiruvenkitan v Anantha Kumar***[22]**,** the Kerala High Court held that when a petition is filed for withdrawal and transfer of the suit filed for partition to Sub Court, Kottayam, from Sub Court, Kollam, on the ground that major items of the property are situated within the jurisdiction of Alappuzha Sub Court and that the places of business of the family are at Alappuzha and Kottayam, but the Court held that mere inconvenience as pointed out by the defendant would not be a ground sufficient to deprive of his choice of forum. It is well established that plaintiff has a right to choose the forum for his action. The essential guiding principle is convenience of both the parties must be weighed. Since majority of properties are situated at Alappuzha, the Court allowed the Petition.

If these general principles are kept in mind while deciding an application filed under Section 24 of CPC, which deals with general power of the Court to withdraw and transfer of the cases pending on the file of the Court Subordinate to it and transfer to the other, it is easy for any Judge to decide the transfer petition. On close analysis, the law declared by the Apex Court in ***Kulwinder Kaur's*** case (referred supra), ***Guda Vijayalakshmi's*** case (referred supra) and also in **Indian Oversees Bank's** case (referred supra), the convenience to the party to appear before the Court alone is not the ground to withdraw the pending cases before another Court and transfer to the other.

The Court has to keep in mind the inconvenience caused to both the parties and if the Court finds that inconvenience caused

[22] ILR 1991 (1) Kerala 565

to the petitioner outweighed the inconvenience being caused to the respondent, then the Court may withdraw the pending matrimonial case from one Court and transfer to another Court.

In the recent judgment in ***Santhini v Vijaya Venkatesh***[23]**,** the full bench of the Apex Court while dealing with powers of the Court to withdraw and transfer the cases in conjunction with the judgment in **Krishna Veni Nagam v Harish Nagam**[24]*, had* an occasion to deal with an identical question. In ***Krishna Veni Nagam's*** case, the Apex Court took note of inconvenience to the parties and directed the trial Court to record examination of the witnesses by video linkage. But, the Full Bench overruled part of the Judgment in ***Krishna Veni Nagam***'s case, referred supra. The observations made in **Anindita Das v Srijit Das**[25]**,** to the effect that on an average at least 10 to 15 transfer petitions are on board of each Court on each admission day was noticed. The learned Judges apprised themselves about the observations made in ***Mona Aresh Goel v Aresh Staya Goel***[26]***, Lalita A. Ranga v Ajay Champalal Ranga***[27]***, Deepa v Anil Panicker***[28]***, Archana Rastogi v Rakesh Rastogi***[29]***, Leena Mukherjee v Rabi Shankar Mukherjee***[30]***, Neelam Bhatia v Satbir Singh Bhatia***[31]***, Soma Choudhury v Gourab Choudhaury***[32]***, Rajesh Rani v Tej Pal***[33]***, Vandana Sharma v. Rakesh Kumar Sharma***[34] ***and Anju Ohri v***

[23] AIR 2017 SC 745
[24] AIR 2017 SC 1345
[25] 2006 9 SCC 197
[26] 2009 9 SCC 255
[27] 2000 (9) SCC 355
[28] (2000) 9 SCC 441,
[29] 2000 10 SCC 350
[30] 2002 10 SCC 480
[31] 2004 13 SCC 436
[32] 2004 12 SCC 462
[33] 2007 15 SCC 597
[34] 2008 11 SCC 768

Varinder Ohri[35], which rest on the principle of expedient for ends of justice to transfer the proceedings. It also adverted to ***Premlata Singh v Rita Singh***[36]**,** wherein the Apex Court had not transferred the proceedings but directed the husband to pay for travelling, lodging and boarding expenses of the wife and/or person accompanying her for each hearing. The said principle was also followed in ***Gana Saraswathi v H. Raghu Prasad***[37]**.**

Referring those judgments, the majority view of the Judges of Full Bench of the Apex Court while observing with the approval of ***Ram Gulam Pandit v Umesh J. Prasad***[38] ***and Rajwinder Kaur v Balwinder Singh***[39] opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by the Courts, number of transfer petitions are filed by women and therefore, it is required to consider each petition on merit. Then, the Court dwelled upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court at Delhi. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.

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[35] 2007 15 SCC 556,
[36] 2005 12 SCC 277
[37] 2000 10 SCC 277
[38] 2002 10 SCC 551
[39] 2003 11 SCC 726

Having noted the authorities relating to Transfer of matrimonial disputes, the Apex Court referred to Section 25 of the Code of Civil Procedure, which reads as follows:

> "Section 25. Power of Supreme Court to transfer suits, etc.-
> (1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceedings be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.
> (2) Every application under this section shall be made by motion which shall be supported by an affidavit.
> (3) The court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.
> (4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.
>
> (5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such Suit, appeal or proceeding."

The Apex Court further referred to Order XLI Rule 2 of the Supreme Court Rules, 2013, but they are not necessary for deciding the present Petitions.

The Apex Court also adverted to the provisions of Family Court's Act and the objects and reasons for establishment of Family Courts. In ***Bhuwan Mohan Singh v Meena and others***[40]**,** the Full Bench of the Apex Court referred the decision in ***K.A.Abdul Jaleel v T.A. Shahida***[41] and laid stress on securing speedy settlement of disputes relating to marriage and family

[40] (2015) 6 SCC 353,
[41] (2003) 4 SCC 166

affairs. Emphasizing on the role of the Family Court Judge, the Court in ***Bhuwan Mohan Singha***'s case (referred supra) expressed its anguish as the proceedings before the Family Court had continued for a considerable length of time in respect of application filed under Section 125 of the Code of Criminal Procedure observed as follows:

> "It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow."

And again:

> "We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc."

Finally, the Apex Court concluded that in view of the mandatory requirement under the Family Court Act or Hindu Marriage Act, the Court has to take reconciliatory measures at the first instance and in the event of failure of reconciliation, the parties may proceed to adduce evidence in support of their pleas, but such proceedings in view of Section 11 of Family Court shall be in camera, but not open, and the reason for holding in camera proceedings also discussed by the Apex Court.

In this context, the Apex Court in ***Naresh Shridhar Mirajkar and others v State of Maharasthra and another***[42] adverting to the judgment of Constitutional Bench (Nine Judges Bench) after enunciating the universally accepted proposition in favour of open trials held as follows:

> "While emphasizing the importance of public trial, we cannot overlook the fact that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera

[42] AIR 1967 SC 1

> either partly or fully? If the primary function of the court is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in camera; but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself. The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court."

In view of the enunciation of nine Judges of constitutional bench Judgment, the Apex Court was in favour of in camera trial, but subject to guidelines laid down in para No.56 of the Judgment, which are as follows:

> (i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.
>
> (ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.
>
> (iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.
>
> (iv) In a transfer petition, video conferencing cannot be directed.
>
> (v) Our directions shall apply prospectively.
>
> (vi) The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent

Thus, in view of the law declared by the Apex Court, still it is open for the parties to choose or opt to record their evidence by Video conferencing by filing joint memo. The right of the parties to choose to be examined by video conferencing is not totally taken away, but subject to compliance of certain conditions mentioned in the conclusions arrived by the Apex Court referred supra. Therefore, if the inconvenience alone is claimed, as a ground, by the wife to withdraw and transfer the petition, the Court has to consider the same where such inconvenience would outweigh the inconvenience of the respondent in the event of transfer, since it is a right of the petitioner being a *dominus litus* in matrimonial case, to choose their forum convenience for himself when the Court is compelled to diverse the jurisdiction depriving the petitioner in matrimonial cases right to choose the forum may amount to denial of access of justice to the petitioner in matrimonial cases. At the same time, if the petition pending before any other Court is not

withdrawn and transferred to the other Court at the convenience of wife, it may also amounts to denial of access to fair justice. In such case, the Court has to strike the balance between the rights of the individuals and pass appropriate orders.

As per the scheme of the Family Court Act, the parties are required to appear before the Court on every date of adjournment. The intention to incorporate such provisions is that if the personal appearance of the parties consistently before the Court, there is a possibility of settling the dispute. But, sometimes that may give rise to another criminal case on account of bitter enmity and passions prevailing at the time and the question of pacifying the passions in matrimonial cases is rarely found. Normally, when one party approached the Court for redressal of matrimonial dispute is bound to make certain allegations. Those allegations may inflate the differences further and it would lead to other disputes either Criminal or Civil. Therefore, the attempt to reconciliate either under Hindu Marriage Act or the Family Court Act is only to a step in the process of adjudication to reconciliate under Section 9, the parties to settle the dispute amicably to live together, but reconciliation under Section 9 of the Act is not for separating them, but for uniting the couple to the matrimonial dispute to live together. Therefore, insisting of personal appearance on the date of reconciliation under the Hindu Marriage Act or the Family Courts Act is only to settle their dispute before the Court either due to intervention of the Court or the mediators or family counseling centers, but not to cause any inconvenience to either of the party. Therefore, the parties to the matrimonial dispute are bound to appear personally before the Courts either before the Family Court

or the Senior Civil Judge's Court on the date of reconciliation proceedings and such appearance on the date of reconciliation proceedings is indispensable. Thus, the parties are bound to appear on the date of reconciliation irrespective of distance.

Before a Family Court, the parties have to appear in person or through counsel, if permission is granted to appear through counsel. In fact, there is a clear interdict in engaging the services of an Advocate in Section 13 of the Family Court Act, which says that notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner: provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae. But, in principle, the Courts are not adverting to the bar under Section 13 of the Family Court Act and it becomes a regular practice to put their appearance by the Advocates. If Section 13 of the Act is strictly adhered to, the appearance of the parties to the matrimonial disputes before the Family Court cannot be dispensed with. If for any reason, the Family Court permits the assistance of legal expert as *amicus curiae,* exercising power under the proviso to Section 13 of the Act, the personal appearance of the parties can be dispensed with. Though the bar to engage advocates is explicit in the scheme of the Act itself with an intention to avoid conflicting issues due to intervention of legal practitioners i.e., by the counsel, the Courts are not adverting to the bar in its letter and spirit keeping in view the intention of the legislature in creating such bar and permitting the counsel to represent the parties. Therefore, in the event, the Courts permit any legal practioner to assist the party

as *amicus curiae*, the appearance of the parties in person can be dispensed with, except on the date of reconciliation and on the date of recording cross examination, since the examination in chief may be received by an affidavit under the provisions of Section 16 of the Family Court Act or under Order 18 Rule 4 (2) CPC and record cross examination by the Presiding Officer himself.

Under the Hindu Marriage Act or the Divorce Act, there is no similar prohibition from engaging counsel or insisting upon personal appearance of the parties on every day of adjournment. Therefore, such difficulty would arise only in case where the matrimonial dispute is pending before the Family Court, but not before the Senior Civil Judge's Court. Hence, dispensing with the appearance of the parties before the Senior Civil Judge in matrimonial disputes would serve the purpose and the parties are not required to appear before the Court on every date of adjournment and thereby the distance or inconvenience being caused to the parties will become irrelevant and the Court may also dispense with the appearance of the parties depending upon their age, health condition and other family conditions. Even before the Judge, Family Court, in case by exercising power under the proviso to Section 13, the parties are permitted to take assistance of legal practioner as *amicus curiae*.

Keeping in mind the various complications in deciding the matters with reference to the provisions of Family Courts Act, more particularly, it is for the Court to decide such applications filed under Section 24 of CPC for withdrawal of the case from one Court and transfer to another on any of the grounds referred supra.

As discussed above, convenience or inconvenience alone is not the ground and in view of my discussion in earlier paras with regard to dispensing with the appearance of the parties in matrimonial cases either before the Senior Civil Judge or the Judge, Family Court, the ground of inconvenience would eclipse or vanish and on the ground of inconvenience, the Court cannot withdraw and transfer the petitions as it does not amount to denial of access to justice, a fundamental right guaranteed under the Constitution of India.

The Apex Court laid down certain guidelines depending upon the facts of each case to exercise power under Section 24 of CPC and declined to exercise power to withdraw and transfer certain cases. A few of the cases, I would like to refer for better appreciation.

In ***Jaishree Banerjee (Smt) v Abhirup Banerjee***[43]***,*** *where a petition was f*iled by wife against the husband/respondent where a matrimonial case under Section 13(1) (ia) of HM Act, 1955, is pending against her husband and sought for withdrawal of the same from the Court of Additional District Judge, Delhi, to the competent Court at Varanasi, on the ground that she is staying with a child aged about two and a half years and it is inconvenient for her to appear before the Court personally from Varanasi to Additional District Judge, Delhi, where matrimonial cases is pending. The Apex Court while exercising power keeping in view the inconvenience being caused to the wife allowed the petition.

[43] (1997) 11 SCC 107

In ***Mona Aresh Goel v Aresh Staya Goel***[44], wherein wife filed transfer petition for withdrawal and transfer of divorce proceedings taken by the husband to Delhi from Bombay, on the ground that she has no independent source of income and that her parents are not in a position to bear the expenses of her travel from Delhi to Bombay to contest the proceedings and that she averts that she is 22 years old and cannot travel and stay at Bombay alone and therefore, the Apex Court allowed the Transfer petition filed by the wife.

In ***Raj Laxmi Sharma v Dilip Kumar Sharma***[45]**,** a petition was filed by wife to transfer the suit filed by the husband for dissolution of the marriage before the Judicial Magistrate, Ranchi, to the competent Court at Agra, on the ground that she is staying with her father in Agra along with two children, who are aged eight and 10 years, and it will not be possible for her to travel alone from Agra to Ranchi, to defend her case and the cause shown by her is inconvenience and the Apex Court allowed the petition taking into consideration the inconvenience of the wife.

In ***Sumita Singh v Kumar Sanjay and another***[46]**,** wife sought transfer of matrimonial proceedings filed by her husband from Ara, Bhojpur, to the competent Court at Delhi on the ground that she is working at Delhi and she cannot travel to a distance of 1100 Km from Delhi and her parents are residents of Gurgaon and the Apex Court while taking into consideration the cause shown by her i.e., inconvenience, allowed the Petition.

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[44] (2000) 9 SCC 255
[45] JT 2000 (8) SC 150
[46] AIR 2002 SC 396

In ***Mangla Patil Kale v Sanjeev Kumar Kale***[47], wife filed a petition for withdrawal and transfer of matrimonial proceedings filed by the husband before Tis Hazari Court at Delhi, to the competent Court at Jalgaon, Maharasthra, where she resides, on the ground that she has a small daughter, she has filed a petition under Section 125 of Cr.P.C for maintenance, she cannot travel from Jalgaon to Delhi, covering distance of 1260 Km and the Apex Court while considering the request of the petitioner's inconvenience, allowed the transfer petition.

In ***Kanagalakshmi v A. Venkatesan***[48], wife filed a petition for withdrawal and transfer of matrimonial case from Family Court, Bandra, to Tirunelveli, Chennai, on the ground that it would be difficult for her to travel all the way to appear before the Family Court, Bandra , but the Apex Court dismissed the petition filed by the wife while accepting the plea raised by the husband that he would bear the travel and other incidental expenses of the wife and her companion.

In ***Meenakshi v Mukesh Kumar***[49], wife filed a petition for withdrawal and transfer the petition filed by the husband, on the ground that she is facing life threat when she attends the Court at Gurgaon, she cannot travel all way to Gurgaon, and the cause shown by her is inconvenience, but the Apex Court disallowed the petition filed by the wife while accepting the request of the husband that he would bear travelling and other incidental expenses when she attends the Court in connection with the case.

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[47] (2003) 10 SCC 280
[48] (2004) 13 SCC 405
[49] (2004) 13 SCC 497

In ***M.Sivagami v. R. Raja***[50], wife filed petition for withdrawal and transfer of the case filed by her husband on the ground that she cannot bare the expenses for her journey to appear before the Court, but the Apex Court dismissed the petition while directing the husband to pay her costs and expenses whenever she attends the Court and the person who accompanied her.

In **Preeti Sharma v. Manjit Sharma**[51], wife filed petition for withdrawal and transfer of the case filed by the Husband, on the ground that she is unemployed lady, totally dependent on her uncle and she cannot travel all the way to appear before the Court at Muzzafar Nagar, but the Apex Court dismissed the petition as there is no substantial ground to transfer the petition and directed the husband to pay the travelling and other incidental expenses.

In ***Priyanka Batra v Manish Batra***[52], wife filed petition for withdrawal and transfer of the case, on the ground that she had no source of income to travel, but the Apex Court while disallowing the petition filed by the wife held that no ground for transfer has been made out since husband was willing to bear all the travel and incidental expenses of the wife and her companion whenever she attends the Court in connection with the said case.

In ***Neetu Badarya v Prashant Kumar Badrya***[53] wife sought for transfer of the petition filed under Section 13(i) of the HM Act, 1955, withdrawing the same pending before the Family

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[50] (2005) 12 SCC 301
[51] (2005) 11 SCC 535
[52] (2005) 12 SCC 236
[53] Trl.P.No.280 of 2018 dt. 17.12.2008 (Apex Court)

Court, Jabalpur, to the Family Court at Kota, Rajasthan, on the ground that she cannot undertake journey to appear before the Court at Jabalpur as she has 10 years old minor girl and the main ground shown by her is inconvenience, and the Apex Court allowed the petition accepting the cause shown by the petitioner i.e., inconvenience.

In ***Durgesh Sharma v Jayshree***[54], the Court held that the power, authority and jurisdiction to transfer suits/appeals/other proceedings from one Court to other by the Courts subordinate to it was questioned. Husband filed petition under Section 13 of the Hindu Marriage Act in the family Court at Ujjain for dissolution of marriage on various grounds. Wife filed a petition under Section 125 Cr.P.C at Malegaon for maintenance as she also filed an application under Section 9 of the Act for restitution of conjugal rights before Civil Judge, Senior Citizen, Malegaon, but the Court held that if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer the case pending in any Court subordinate to that High Court to a Court subordinate to other High Court and it is only the Apex Court to consider the transfer petition.

In ***Arun Aggarwal v Reetam Aggarwal***[55], where husband filed a petition for withdrawal and transfer of the case filed by wife under Section 125 Cr.P.C. from Muzaffar Nagar to Chandigarh and the wife, on the other hand, sought for withdrawal and transfer of the divorce petition filed by the husband under Section 13 of HM Act and also Sections 7 and 8 of Guardians and Wards Act, on the

[54] (2008) 9 SCC 648
[55] Transfer Case (Crl) No.311 of 2003, dt. 26.04.2004

ground that her parents are living at Khatauli and she is permanent resident of Khatauli, District Muzaffarnagar, U.P., but the Apex Court after considering her inconvenience to appear before the Court, allowed the petition and transferred the case to the competent Court at Muzaffarnagar, UP.

In ***S. Durga Prasad v S. Raja Ramani***[56], where two transfer petitions were filed under Section 24 of CPC by both husband and wife and out of it, one petition was filed by the husband for divorce under Section 13 of HM Act in Rangareddy District and whereas wife filed another petition for restitution of conjugal rights under Section 9 of Hindu Marriage Act at Rajmundry. Wife seeks transfer of the petition filed by the husband, on the ground that she is residing with her old parents at Rajmundry and she cannot undertake journey as she is facing life threat, the Apex Court transferred the petition filed by the wife taking into consideration the inconvenience expressed by the wife, while negating the relief claimed by the husband.

In ***Eluri Raji Reddy and Others v State of Delhi and another***[57], where husband filed petition for withdrawal and transfer of the case filed by the wife at Delhi to the competent Court at Andhra Pradesh and the Apex Court while considering the request of the husband transferred the Petition from Delhi to Andhra Pradesh holding that wife had a house at Andhra Pradesh and her parents were living there and it would be proper to transfer the case.

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[56] (2003) 2 ALD 580
[57] 2004 Crlj 2555

At the same time, the distance to the husband from where he is residing shall also be taken into consideration to avoid denial of access to justice to the husband, since the husband will be put to same inconvenience which the wife complained in the event of withdrawing and transferring in matrimonial cases pending on the file of one Court to another at the instance of wife. Therefore, it is the duty of the Court to strike the balance between the right of wife and husband, keeping in view the principle of access to justice. It has become a common practice to the parties, either on account of low literacy or ill advice that, whenever husband files a matrimonial case under Sections 9 or 13 or under any other law, the wife starts filing petitions under various enactments like proceedings under Section 125 Cr.P.C, initiating proceedings under Section 12 of Protection of Women from Domestic Violence Act or even resorting to criminal litigation, lodging a complaint for the offence punishable under Section 498-A I.P.C and Sections 3 & 4 of Dowry Prohibition Act and sometimes, Section 406 I.P.C.

Parallelly, there are instances where the wives are resorting to file a petition under Section 18 of The Hindu Adoption and Maintenance Act, custody of child under Guardians and Wards Act, 1890, proceedings either Section 9 or 13 and claiming interim maintenance under Section 24, parallel to the proceedings under Section 125 and 18 of Hindu Adoption and Maintenance Act. Thereby, the litigation is multiplied for one reason or the other and taking advantage of filing of petitions, subsequent to filing of matrimonial cases by the husband, wife seeking withdrawal and transfer invoking Section 24 of C.P.C. The multiplication of litigation for one reason or the other depriving husband or the wife

whomsoever may be the parties, causing not only inconvenience to one, but to the other also. But, seeking relief under Section 24 C.P.C on the ground of other criminal cases and other cases under different enactments filed subsequently is nothing but an abuse of process of the Court to make the husband to roam around the Courts and such exercise or abuse of process of the Court should never form the basis for withdrawal and transfer.

The other ground urged in various petitions referred in the table is, inability to travel, leaving their old aged parents and young children. When a woman is married to another person, she ceases to be a member of her maternal family, except for succession of property subject to laws governing succession. Therefore, on the ground of taking care of her old aged parents, she cannot seek withdrawal of matrimonial cases from where it is filed and transfer to the place where she is residing. Sometimes, traveling with kids is a difficult task, but not always. If, the appearance of the wife in the proceedings pending before the Judge, Family Court is dispensed with on all dates of adjournment, except on the date of reconciliation and on the date of recording her cross-examination, purpose would be served and taking care of children and old aged parents will not be available, as a ground for seeking withdrawal and ground of transfer of cases from one Court to another Court under Section 24 C.P.C.

The other contingency is threat to life of parties to appear before a particular Court.

In most of the cases, it is a common ground being raised by the wife or husband that due to bitter enmity between the parties to the matrimonial dispute and their families, there is a possibility

of such threat to life. But, unless there is material to substantiate such serious allegation of threat to life, the Court cannot as a matter of routine exercise power under Section 24 C.P.C and withdraw the pending proceedings from one Court to another Court. In some of the petitions, even before their appearance immediately on receipt of notices, they file petitions under Section 24 C.P.C, complaining that there is a life threat at a particular station. But, such threat is not comprehended based on any circumstances. Moreover, the normal conduct of the parties is to give complaint to the police concerned about the threat or any pressure exerted on them or atleast to complain to the Presiding Officer of the court with a request to provide necessary protection whenever the petitioner appeared before the Court. Unless the material is produced to substantiate the ground of threat, the Court cannot exercise such power to withdraw such matrimonial cases pending in one Court and transfer the same to another Court.

When similar question came up for consideration before the Supreme Court in **Ranjit Singh v. Popat Rambhaji Sonawane**[58], where the petitioner sought transfer of a Session Case from Pune to Indore on the solitary ground that if transfer was not granted, his safety would be in danger. The Apex Court directed the Sessions Judge, Pune before whom the case is pending to release the petitioner on bail on furnishing security of Rs.1,000/- and a personal bond in the like amount, on the assurance given by the state counsel who undertook to extend all possible facilities to ensure safety and security. The Supreme Court rejected the

[58] AIR 1983 SUPREME COURT 292

transfer petition after issuing necessary directions for safety and security of the petitioner for the period required or recording of petitioner's evidence.

If, similar direction is issued to the Presiding Officer of the Court, to provide necessary police protection to the parties in matrimonial cases, whoever complains threat to life from the hands of respondents, or family members on receipt of any written request, subject to furnishing a copy of F.I.R, lodged with the police, complaining such life threat, the Courts need not withdraw and transfer matrimonial cases pending on the file of different courts on the ground of threat to life. Therefore, threat to life is not a ground, though access to justice without fear or favour to approach the Courts is a fundamental right. When the Court is directed to provide necessary protection to the parties whenever they appear before the Court in connection with the pending matrimonial cases, subject to bearing expenses depending upon the financial capacity of the parties, it is suffice to deny relief under Section 24 of C.P.C, since, such direction, ensuring protection does not amount to denial of right of access to justice.

The other ground urged in some of the cases mentioned in the table is, inability to meet the expenses. But, there are two divergent views in the principles laid down by the Apex Court various judgments referred supra.

In **Santhini v. Vijaya Venketesh** (referred supra) the Apex Court discussed the law declared in various judgments, where inconvenience of the wife alone is taking in to consideration and held as follows:

"In "Mona Aresh Goel v. Aresh Satya Goel (2000) 9 SCC 255"; the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition.

The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In Lalita A. Ranga v. Ajay Champalal Ranga (2000) 9 SCC 355" the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time.

A two Judge Bench in Krishna Veni Nagam v. Harish Nagam (2017) 4 SCC 150, while dealing with transfer petition seeking transfer of a case instituted Under Section 13 of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act') pending on the file of IInd Presiding Judge, Family Court, Jabalpur, Madhya Pradesh to the Family Court, Hyderabad, Andhra Pradesh, took note of the grounds of transfer and keeping in view the approach of the Court to normally allow the transfer of the proceedings having regard to the convenience of the wife, felt disturbed expressing its concern to the difficulties faced by the litigants travelling to this Court and,

accordingly, posed the question whether there was any possibility to avoid the same. It also took note of the fact that in the process of hearing of the transfer petition, the matrimonial matters which are required to be dealt with expeditiously are delayed. That impelled the Court to pass an order on 09.01.2017 which enumerated the facts including the plight asserted by the wife, the concept of territorial jurisdiction Under Section 19 of the 1955 Act, and reflected on the issues whether transfer of a case could be avoided and alternative mode could be thought of. Dwelling upon the said aspects, the Court articulated:

"In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

As the narration would exposit, the pivotal concern of the Court was whether an order could be passed so as to provide a better alternative to each individual who is compelled to move this Court."

The Apex Court took note of inconvenience being caused to the parties but not the inconvenience to the wife alone, considering the facts and

circumstances of the case adverting to the earlier judgment rendered in "Ram Gulam Pandit v. Umesh J. Prasad" and "Rajwinder Kaur v. Balwinder Singh" (as referred in the judgment) opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by the Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwell upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.

The Apex Court also laid down the following six guidelines.

"(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent."

Some of the petitioners in the table mentioned above made request to club M.Cs and H.M.O.Ps. But, the request of the petitioners cannot be acceded.

However, in **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma[59],** a Division Bench of this Court held that, as per Section 24(2) of C.P.C., special direction may be issued by the Court ordering the transfer either to order the trial *denovo* or to proceed with the suit from the point at which it was transferred or withdrawn. For whatever reasons, convenience or otherwise the order of transfer made under Section 24(2) of C.P.C not empower the court or contemplate any directions being given for the joint trial of the transferred suit. So, any violation or contravention of order of transfer and separate trial of the transferred suit do not render the proceedings invalid.

In some of the petitions, the petitioners are seeking withdrawal of matrimonial cases from the Court of Judge, Family Court and transfer the same to Court of Senior Civil Judge.

The Judge Family Court is vested with power to try matrimonial cases, specified in the Act, depending upon the jurisdiction and the Judge, Family Court is presided by a Senior Judicial Officer. Whereas, Senior Civil Judge's Court is presided by an officer inferior in rank.

According to Clause (5) of Section 24 C.P.C, a suit or proceeding may be transferred under this section from a Court

[59] AIR 1958 (A.P.) Page 218

which has no jurisdiction to try it and it is substantiated by Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976).

A Superior Court cannot make an order and transfer, unless transfer is sought to be made to the jurisdiction to try it. But, a case can be validly transferred to a Court when it has jurisdiction to try the case, even though it has know such jurisdiction. In that Court, when the case was instituted, it arises subsequently. But, in view of amendment to Section 24 C.P.C, inserting Clause (5) provides that a suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it. But, the law prior to 1976 cannot be applied to exercise power under Section 24 C.P.C, more particularly for transfer of cases from one Court to another having no jurisdiction. But, the jurisdiction referred in Clause (5) of Section 24 C.P.C is with reference to territorial jurisdiction, but not inherent or pecuniary jurisdiction. Therefore, in view of Clause (5) of Section 24 C.P.C, though matrimonial case/dispute is pending before the Judge, Family Court, the same can be transferred to any other competent Court vested with inherent jurisdiction.

Section 8 of the Family Court's Act, 1984 deals with exclusion of jurisdiction and pending proceedings according to it, where a Family Court has been established for any area-

> (a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

But, the question was whether general power of transfer conferred on the Courts by Section 24 C.P.C overrides the provisions in special enactment.

Similar question came up for consideration in **Smt. Dipika Sharma (Chakraborty) v. Shri Sudip Sharma**[60] and the Court concluded that the District Judge is equivalent to a Judge of Presiding Family Courts in its cadre and Section 24 C.P.C

[60] LAWS (TRIP) 2016 (9) 14 (DB)

authorizes the Court to withdraw and transfer one suit from one Court to another Court. The provision prescribed under Section 24 C.P.C authorizes the High Court to transfer any suit or proceeding from one Civil Court to another Civil Court under its jurisdiction. It is obvious that the High Court cannot transfer a case from one subordinate Court to another subordinate Court under different High Courts as such power is vested on the Supreme Court under Section 25 of C.P.C. While a Family Court is established as per the provisions of the Family Courts Act, it shall have jurisdiction to deal with the matters contained in Section 7 of the Act exclusively since the Act has overriding effect over any other law as prescribed in Section 20 of the Act.

The scheme of the Family Court has prescribed certain specific procedure such as taking of effort for settlement; taking of assistance of medical and welfare experts as well as consideration of the statement/document which is not otherwise admissible as per the Evidence Act. Those are some special features of the Family Courts Act. In the Family Court a representation by a legal practitioner is prohibited but the Family Court in the interest of justice may seek assistance of Amicus Curiae.

Order XXXII (A) of C.P.C has been inserted in the year 1976 incorporating therein the provisions relating to the matters concerning family. The procedure prescribed under XXXII (A) is almost similar to that of the procedure prescribed in the Family Courts Act so far as the proceedings to be held in camera, the duty of the Court to make efforts for settlement, to take assistance of welfare experts, duty to enquire into the facts etc. So, it cannot be said that once a proceeding from Family Court to a District Court

is transferred, the parties will be deprived of the special provisions of the Family Courts Act. Be that as it may, the Family Courts Act has not wholly excluded the application of C.P.C or Cr.P.C. The provisions of the procedural law prescribed in the C.P.C, Cr.P.C or in the Evidence Act which is not in conflict and/or inconsistent with the provisions of the Family Courts Act shall apply in respect of proceedings to which the Family Court exercises jurisdiction. Once, the Family Court is also a Court subordinate to the High Court, the High Court's power to transfer a proceeding from the Family Court to any other District Court or from the District Court to the Family Court cannot be said to have excluded or restricted. The High Court in exercise of power under Section 24 C.P.C, in my considered opinion has the power to transfer matrimonial proceedings from Family Court to Family Court or Family Court to District Court or District Court to Family Court. If, this principle is applied to the present facts of the case, the jurisdiction of this Court is unlimited and still the Court can exercise such power to withdraw and transfer matrimonial case from Family Court to District Court, but not to Senior Civil Judge's Court, which is inferior in the rank.

Persuaded by the judgment and considering the provisions, more particularly, Section 8 of the Family Courts Act, it is difficult to hold that the matrimonial matters pending before the Family Court can also be transferred to Senior Civil Judge's Court where there is no family Court established.

Even as per the discussion in the judgment referred supra, matrimonial cases pending on the file of Family Courts can be withdrawn and transferred to the District Courts where no Family Court is

established. Thus, it is explicit from the discussion in the judgment that, High Court has got power to withdraw and transfer matrimonial cases from one Family Court to another Family Court, not to the subordinate Court, since Family Courts are established in the State of Andhra Pradesh in all districts. Therefore, I am of the view that matrimonial cases from Family Courts cannot be transferred to Senior Civil Judge's Court, but can be transferred to another Family Court.

Hence, I am not inclined to issue any such directions to try both the suits jointly.

In view of my foregoing discussion, the following are few guidelines to exercise jurisdiction under Section 24 C.P.C in matrimonial cases, in addition to guidelines of Apex Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others** (referred supra).

1. When a petition is filed on the ground of inconvenience of the parties to appear before the Courts, the Courts are required to strike the balance between the right of the petitioner and respondent, to ensure access to justice to both parties.
2. The Court has to weigh the inconvenience being caused to both the parties and if, the inconvenience of one of the party outweighs the inconvenience of the other party, the Court may depending upon the facts and circumstances of the case, exercise power and withdraw the pending matrimonial case from one Court and transfer the same to the other Court.
3. When a petition under Section 13(1) and Section 9 or any other petition is pending between the same parties on the file

of two different Courts, the Court may depending upon the circumstances, exercise power under Section 21-A of Hindu Marriage Act, though Section 21-A would not confer general power of transfer under Section 24 C.P.C, in view of the law declared by the Supreme Court in **Guda Vijayalakshmi v. Guda Ramachandra Sekhara Sastry** (referred supra)**.**

4. In case, the transfer is sought on the ground of inability to meet the expenses for travel, the Courts are directed to follow the guidelines issued by the Supreme Court in **Santhini v. Vijaya Venketesh**" (referred supra).
5. When two petitions are pending between two parties to the matrimonial case, the parties are seeking a direction to the Courts under the control of High Court to club both the cases, such power cannot be exercised by the High Court or a District Court, while exercising power under Section 24(2) C.P.C and in such case, the Courts below shall follow the principle laid down by the Division Bench of this Court in **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma** (referred supra).
6. When a petition is filed under Section 24 C.P.C, complaining life threat or threat to personal property, the Courts have to follow the law laid down by the Apex Court in **Ranjit Singh v. Popat Rambhaji Sonawane** (referred supra).
7. The matrimonial cases pending on the file of Judge, Family Court shall not be withdrawn and transferred to the Senior Civil Judge's Court as the jurisdiction of Civil Court is ousted by Section 8 of the Family Courts Act and can be

transferred to any other Family Court subject to the guidelines referred supra.

These guidelines are not exhaustive, but they are illustrative and the Court may depending upon the facts and circumstances of the case, exercise its power only to do complete justice to the parties.

In view of my foregoing discussion, the result of Tr.C.M.Ps is tabulated hereunder:

	Transfer CMP No.	**Court where petition is pending – Court where petition is to be transferred**	**Transfer Petition by the wife or husband**	**Result**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1	809/2016	FCOP No.82/2016 **From** Family Court, Visakhapatnam **To** Family Judge, Srikakulam	Wife-Petitioner	Tr.C.M.P is allowed. Tr.O.P is withdrawn from Family Court, Visakhapatnam and transferred to Family Court, Srikakulam.
2	816/2016	HMOP No35/2016 **From** Principal Senior Civil Judge, Khammam **To** Principal Senior Civil Judge,Adilabad	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
3	848/2016	O.P.No.596/2016 **From** Family Court, Secunderabad **To** Family Court, Rajamahendravaram	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Judge, Family Court, Secunderabad is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
4	852/2016	O.P.No.179/2016 **From** Family Court, Warangal	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies

		To Family Court Nizamabad		the petitioner to the Court.
5	855/2016	O.P.No.345/2016 **From** Family Court, Vijaywada **To** Senior Civil Judge, Bapatla	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Judge, Family Court, Vijayawada is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
6	92/2017	FCOP No.2049/2016 **From** Family Court, Ranga Reddy **To** Family Court Anantapur	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
7	160/2017	O.P.No.153/2016 **From** Family Court, Karimnagar **To** Family Court, Secunderabad	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Judge, Family Court, Karimnagar is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
8	199/2017	O.P.No.874/2016 **From** District Judge, Elluru **To** District Judge, Rajahmundry	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
9	232/2017	HMOP No.53/2016 **From** Senior Civil Judge, Tanuku **To** Senior Civil Judge, Amalapuram	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. Petition is dismissed with a direction to frame an issue as to the territorial jurisdiction and try as principal issue.
10	239/2017	O.P.No.593/2016 **From** Principal District	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner,

		and Sessions Judge, Guntur **To** Family Court, Vijaywada		but also to the person who accompanies the petitioner to the Court. The Principal District and Sessions Judge, Guntur is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
11	240/2017	FCOP Noo.46/2017 **From** Family Court, Nellore **To** Senior Civil Judge, Machilipatnam	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Judge, Family Court, Nellore is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
12	242/2017	OP No.153/2016 **From** Senior Civil Judge, Warangal **To** Senior Civil Judge, Huzurabad	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
13	258/2017	FCMOP No.20/2017 **From** III Additional District Judge, Srikakulam **To** Senior Civil Judge, Kakinada	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The III Additional District Judge, Srikakulam is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
14	262/2017	FCOP No.40/2017 **From** Family Court, Khammam **To** Family Court, Guntur	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
15	273/2017	OP No.18/2016 **From** Senior Civil Judge at Sircilla, Karimnagar **To** Family Court, Hyderabad	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Senior Civil Judge, Sircilla is requested to provide necessary protection on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.

16	275/2017	OP No.96/2016 **From** Senior Civil Judge at Huzurabad, Karimnagar **To** Family Court, Sec'bad	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
17	284/2017	OP No.368/2016 **From** Senior Civil Judge, Kakinada, East Godavari **To** Family Court, Visakhapatnam	Wife-Petitioner	Tr.C.M.P is allowed. Tr.O.P is withdrawn from Senior Civil judge, Kakinada, East Godavari and transferred to Family Court, Visakhapatnam.
18	286/2017	OP No.93/2016 **From** Additional District Judge, Nizamabad **To** Principal Senior Civil Judge, Khammam	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Additional District Judge, Nizamabad is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
19	290/2017	OP No.18/2017 **From** Senior Civil Judge, Sangareddy **To** Senior Civil Judge, Gudivada	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Senior Civil Judge, Sangareddy is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
20	291/2017	FCOP No.607/2016 **From** Family Court, Sec'bad – **To** Family Court, Visakhapatnam	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
21	318/2017	HMOP No.88/2016 **From** Senior Civil Judge, Suryapet	Wife-Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.

		To Special Judge, Family Court, Khammam		The Senior Civil Judge, Suryapet is requested to provide necessary protection on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.
22	373/2017	FCOP No.296/2016 **From** Family Court, Ranga Reddy **To** Family Court, Visakhapatnam	Wife- Petitioner	Tr.C.M.P is allowed. Tr.O.P is withdrawn from Family Court, Ranga Reddy District and transferred to Family Court, Visakhapatnam.
23	389/2017	FCOP No.904/2016 **From** V Additional District cum Sessions Judge, Visakhapatnam **To** I Additional family court cum IV Additional District Judge, Ranga Reddy	Husband- Petitioner	Since, no substantive evidence is provided, the petition is dismissed, while directing the V Additional District-cum-Sessions Judge, Visakhapatnam to provide necessary protection on receipt of request in writing whenever he attends the Court in connection with Tr.O.P.
24	397/2017	DOP.No.41/2017 **From** Principal District Court, Kurnool **To** Family Court, Kadapa	Wife- Petitioner	Petition is dismissed with a direction to frame an issue as to the territorial jurisdiction and try as principal issue. Further, Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court.
25	421/2017	FCOP No.659/2016 **From** Family Court, Guntur **To** Family Court, Ranga Reddy	Wife- Petitioner	Tr.C.M.P is Dismissed. Respondent is directed to pay traveling and stay expenses, not only to the petitioner, but also to the person who accompanies the petitioner to the Court. The Judge, Family Court, Guntur is requested to provide necessary protection to the petitioner on receipt of request in writing whenever she attends the Court in connection with Tr.O.P.

Consequently, miscellaneous applications pending in all the transfer civil miscellaneous petitions shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:06-12-2018

Eha/SP