

MOOT PROBLEM - 2

Shaheen, a shia Muslim married Sohail, a sunni Muslim on November 11, 2006 at Nakpur, Bundelia Pradesh in Republic of Industan. Shaheen is cousin sister of Afreen who is Sohail's cousin sister on the maternal side.

Both Shaheen and Sohail are graduates from a reputed college of Navi Dally University. Sohail is also a qualified chartered accountant. At the time of their marriage, which was an arranged marriage, Sohail was working with one of the big four accounting firms in Bangalore. Shaheen was working as a manager at a leading retail chain.

In January, 2009, Sohail relocated to Navi Dally with his wife Shaheen, and has set up a registered partnership enterprise Sohail & Sahil Associates with his college friend Sahil. Sohail and Shaheen live in a 1BHK apartment which is owned by his brother Amir in Greater Palash, but whose electricity charges, house tax, water tax and maintenance are all paid by Sohail. Amir is a permanent resident of United Kingdom and is a doctor with NHS Trust. Sohail and Shaheen had jointly applied for a flat in Navi Dally Development Authority Vikas Scheme, 2010 and have got a flat in lottery in Vistar Vihar Extension – Phase 3.

After moving to Navi Dally in January, 2009, Shaheen has been wanting to have a child and stay at home, to which Sohail does not agree. They have been having frequent heated arguments about this. Shaheen has discussed this with her mother, who has also tried to make Sohail understand the issue. Sohail, however, has been unrelenting and considers it too early. Since Afreen had played a vital role in getting them married, she also visited the couple, at Shaheen's mother's instance, at their residence in Greater Palash and unsuccessfully attempted to intervene between the two on September 29, 2010. It appears that Afreen being an ambition professional herself was inclined to support Sohail. On November 10, 2010, Sohail and Shaheen again had a heated argument over the same issue. After the argument, Sohail went downstairs for a walk. He returned after two hours and divorced Shaheen with three pronouncements of "*talaq*". Afreen was a witness to this development and till today continues to live in the said apartment.

Thereafter, Sohail has moved out of the house in Greater Palash where he lived with Shaheen, and has been living in a guest house which is available at nominal rent from his partnership firm.

On December 1, 2010, Shaheen filed an application under Protection of Women from Domestic Violence Act, 2005 ("**Domestic Violence Act, 2005**") before the Magistrate in Navi Dally seeking to restrain Sohail and Afreen from, directly or indirectly through agents, dispossessing her from the apartment in Greater Palash in Navi Dally. Shaheen had also approached the civil court seeking a declaration that divorce pronounced by Sohail not being in conformity with the Islamic law be declared as a nullity. In addition to defending the above arguments, Sohail has argued that Domestic Violence Act, 2005 to the extent that it gives rights to women beyond the period of *iddat* is against his fundamental right to practise his religion. Afreen has argued that being Shaheen's relative she cannot be made a respondent under the Domestic Violence Act, 2005.

In December, 2011, while Shaheen's application under the Domestic Violence Act, 2005 has been allowed, her civil suit for declaration has been dismissed. Thus, writ petitions have been filed both by Shaheen and Sohail before the Navi Dally High Court which have been connected by a court order and are listed together for final disposal.

The polity and societal structures of Republic of Industan are identical to that of Republic of India and the provision of the Domestic Violence Act, 2005 and the Constitution of Industan are in *pari materia* with the Protection of Women from Domestic Violence Act, 2005 and the Constitution of India.