

2024 SCC OnLine SC 847

In the Supreme Court of India
(BEFORE VIKRAM NATH AND SATISH CHANDRA SHARMA, JJ.)

Col. Ramneesh Pal Singh ... Appellant(s);

Versus

Sugandhi Aggarwal ... Respondent(s).

Civil Appeal No(S). of 2024 [Arising out of SLP (C) No(s). 28466 of
2023]

Decided on May 8, 2024

Advocates who appeared in this case :

For Petitioner(s) Mr. Prabhas Bajaj, AOR

For Respondent(s) Ms. Vandana Sehgal, AOR

Mr. Mohit Yadav, Adv.

The Judgment of the Court was delivered by

SATISH CHANDRA SHARMA, J.

Introduction

1. Leave granted.

2. The present appeal preferred by the Appellant seeks to assail the correctness of an order dated 11.10.2023 passed by a Division Bench of the High Court of Delhi at New Delhi (the “High Court”) in M.A.T. APP (F.C.) 132 of 2020 (the “Impugned Order”). *Vide* the Impugned Order the High Court partly allowed the appeal preferred by the Respondent against an order dated 22.08.2020 passed by the Learned Family Court, West, Tis Hazari Court (the “Family Court”) in GP No. 45/17 (Old GP No. 75 of 2015) whereby the Family Court granted permanent custody of minor children to the Appellant and provided visitation rights to the Respondent (the “Underlying Order”). Pertinently, *vide* the Impugned Order, the High Court set aside the Underlying Order; and accordingly granted the parties shared custody of the Minor Children (*defined below*).

Factual Background

3. The facts and proceedings germane to the contextual understanding of the present *lis*, are as follows:

3.1. The marriage between (i) the Appellant i.e., now serving as a Colonel in the Indian Armed Forces presently posted at Jalandhar, Punjab; and (ii) the Respondent i.e., now employed as a teacher in Delhi Public School, Gurugram - was solemnized on 22.12.2002 at Delhi, in accordance with *Hindu/Sikh* rites and rituals. Two minor children were born out of the wedlock i.e., (i) a 15 (fifteen) year old

daughter (hereinafter “SSU”); and (ii) a 12 (twelve) year old son (hereinafter “SSH”) (hereinafter, SSU and SSH shall collectively be referred to as the “Minor Children”).

3.2. In December 2013, the Appellant having been promoted to the rank of Colonel in the Indian Armed Forces, was posted to serve in the Jammu and Kashmir. Accordingly, it was decided that the Respondent together with the Minor Children would reside in New Delhi. The relationship between the Parties deteriorated significantly; and thereafter took a turn for the worst on 08.08.2015, forcing the Respondent to leave the matrimonial home for 1 (one) night. Upon returning the next day i.e., 09.08.2015, the Respondent found the residence locked, and the Appellant along with the Minor Children unavailable at aforesaid residence.

3.3. The Respondent was constrained to file (i) a missing children's report on 19.08.2015; and thereafter (ii) an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the “DV Act”) on 17.08.2015. Subsequently, the Respondent learnt that the Minor Children along with the Appellant were residing in Gulmarg, Jammu and Kashmir and were scheduled to move to Bikaner, Rajasthan in furtherance of the nature of the Appellant's service. Aggrieved, the Respondent filed a petition under Section 7, 9 and 25 of the Guardian and Wards Act, 1890 (the “Act”) before the Family Court seeking custody of the Minor Children on 21.11.2015. On the other hand, the Appellant filed a similar petition seeking custody of the Minor Children before the Learned Principal Judge, Family Court, Bikaner, Rajasthan.

3.4. This Court *vide* an order dated 29.03.2017, transferred the custody petition filed by the Appellant before the Learned Principal Judge, Family Court, Bikaner, Rajasthan to the Family Court in Delhi. Thereafter, *vide* an order dated 16.10.2017, the Family Court granted interim custody of the Minor Children to the Respondent (the “Interim Custody Order”). Aggrieved, the Respondent preferred an Appeal before the High Court. *Vide* an order dated 06.12.2017, the High Court initially stayed the operation of the Interim Custody Order; thereafter *vide* an order dated 19.04.2018 granted the Respondent custody of the Minor Children on alternative weekends; and finally *vide* an order dated 01.10.2019, dismissed the appeal and vacated the *interim* order(s) observing *inter alia* that the appeal was not maintainable.

3.5. Aggrieved, the Appellant preferred a writ petition under Article 227 of the Constitution of India before the High Court challenging the correctness of the Interim Custody Order (the “Writ Petition”). *Vide* an order dated 29.04.2020, the High Court formulated an *interim* custody arrangement between the parties

after interacting with the Minor Children. Pertinently, although an SLP was preferred against the aforesaid order, this Court did not interfere with the order passed by the High Court; and only directed the Family Court to decide the custody petition within a period of 1 (one) month.

3.6. In the aforesaid context, the custody petition came to be disposed of by the Family Court *vide* the Underlying Order as under:

“16.1 In view of the aforesaid discussion, it is directed that the permanent custody of minor children SSU and SSH shall remain with the respondent. However, the petitioner shall be entitled to have interaction with the minor children daily through audio-video call for half an hour, between 7 : 00 PM to 8 : 00 PM. The respondent shall facilitate the said call. She shall also be entitled to visit the minor children and take them out with her from 10 : 00 AM to 5 : 00 PM, on every second and fourth Sunday, at the station, where the minor children are staying, subject to their school/educational commitments. She can pick up the children from their residence at 10 : 00 AM and drop them back at 5 : 00 PM. If it is not possible to have visitation on any such day, it shall be compensated on the next Sunday i.e. third or fifth/first Sunday. Further, during the summer vacations and the winter vacations in the school(s) of the minor children, the petitioner shall be entitled to have the custody of the minor children for ten days and five days respectively. Such days can be mutually decided by the parties. Accordingly, the petition filed by the petitioner for seeking custody of the minor children SSU and SSH is dismissed, subject to contact/visitation/custody rights of the petitioner as aforesaid.”

3.7. Aggrieved by the Underlying Order, the Respondent preferred an appeal under Section 19 of Family Courts Act, 1984 before the High Court. During the pendency of the appeal, certain *interim* order (s) came to be passed from time to time, subsequently, *vide* the Impugned Order, the High Court granted the parties shared custody of the Minor Children as under:

“34. In view of the aforesaid discussion, the impugned order dated 22.08.2020 is set aside. We, accordingly, partly allow the appeal and direct that the appellant and the respondent will share custody of the minor children ‘SSU’ and ‘SSH’ in the following manner:

- (i) Till the start of the next academic session the appellant would be entitled to have overnight custody of the minor children on the second and fourth weekend of every month. For the said purpose, the appellant shall travel to the respondent's station of posting, on her own expenses on the second Friday of every

month. She shall either make her own arrangements for accommodation or request the respondent to arrange for her accommodation at a guest house in the Cantonment Area. The respondent will hand over the custody of the children to the appellant on the evening of Friday, after she has arrived. The children shall remain with the appellant till Sunday evening and thereafter, the respondent shall pick them up before the appellant leaves for Delhi. On the fourth Friday of every month, the respondent shall either bring the children to Delhi or send them by flight, while placing them in the care of the airline staff. In such a situation, the appellant will pick the children up from the airport. The children shall be returned by flight available on Sunday evening. The expenses for the to and fro journey of the children on such fourth weekend of each month shall be borne by the respondent.

(ii) Prior to the beginning of the next academic session, the appellant shall ensure that admission of the minor children is secured at the school where she is currently teaching, i.e., Delhi Public School, Gurugram, Haryana. The respondent shall fully cooperate in the admission process. Thereafter, the respondent shall hand over the custody of the minor children to the appellant. The children will stay with the appellant at her residence in Delhi. In such a situation, the respondent would be entitled to have overnight custody of the minor children on the second and fourth weekend of every month. For the said purpose, the respondent shall travel to Delhi, on his own expenses on every second Friday. He shall make his own arrangements for accommodation. The appellant will hand over the custody of the children to the respondent on the evening of Friday, after he has arrived. The children shall remain with the respondent till Sunday evening and thereafter, the appellant shall pick them up before the respondent leaves. On the fourth Friday of every month, the appellant shall either bring the children to the respondent's station of posting or send them by flight, while placing them in the care of the airline staff. In such a situation, the respondent will pick the children up from the airport. The children shall be returned by flight available on Sunday evening. The expenses for the to and fro journey of the children on such fourth weekend of each month shall be borne by the appellant.

(iii) In case the respondent is posted to a station in the NCT of Delhi, the appellant and the respondent will have custody of the minor children for two weeks each including the weekends, every month. The children shall stay with the appellant for the

first two weeks of every month and with the respondent for the next two weeks of every month. At the end of the second week of every month, i.e., on Sunday evening, the appellant shall drop the children at the respondent's accommodation. At the end of every fourth week, i.e., on Sunday evening, the respondent shall drop the children back at the appellant's residence.

- (iv) During summer vacations and winter vacations, the appellant and the respondent shall have custody of the minor children for an equal number of days. Such days can be mutually agreed upon by the parties. It is clarified that in case the children are required to travel as a result of the said arrangement during vacations, the expenses for their travel shall be borne by the parent who they are visiting. Therefore, if the children are travelling from the respondent's station of posting to Delhi, the expenses shall be borne by the appellant. If the children are travelling from Delhi to the respondent's station of posting, the expenses shall be borne by the respondent."

3.8. Aggrieved by the Impugned Order, the Appellant preferred SLP (C) No. 28466 of 2023 (the "SLP") before this Court i.e., now converted to this instant appeal. *Vide* an order dated 05.01.2024, this Court stayed the operation of the Impugned Order.

3.9. It would also be relevant to clarify that, up until this stage, the custody of the Minor Children has essentially remained with the Appellant despite (i) various interim order(s) passed by (a) the High Court; and (b) the Family Court in favour of the Respondent; and (ii) the initiation of contempt proceedings before the High Court.

Contentions of the Parties

4. Shri Vivek Chib, Learned Senior Counsel appearing on behalf of the Appellant, urged the following:

4.1. That the Minor Children have been residing with him happily since '15 i.e., for period extending to almost to 9 (nine) years and it is the desire of the Minor Children to continue to reside with the Appellant. In this regard, it was submitted that the aforesaid preference has been communicated by the Minor Children to various court(s) from time-to-time including *inter alia* the High Court.

4.2. That the High Court proceeded on an erroneous assumption that the prolonged period of separation between the Respondent and the Minor Children has subconsciously influenced the Minor Children against the Respondent.

4.3. That the Underlying Order passed by the Family Court was a detailed and well-reasoned order which has been passed after a thorough analysis of the copious evidence and material(s) on record

in favour of the Appellant.

4.4. Lastly, Mr. Chib relied on the following decision(s) of this Court to buttress the aforesaid submission(s):

- (a) *Jitender Arora v. Sukriti Arora*, (2017) 3 SCC 726;
- (b) *Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413;
- (c) *Mausami Moitra Ganguli v. Jayant Ganguli*, (2008) 7 SCC 673;
- (d) *Vishnu v. Jaya*, (2010) 6 SCC 733; and
- (e) *Lahari Sakhamuri v. Sobhan Kodali*, (2019) 7 SCC 311.

5. Ms. Vandana Sehgal, AOR appearing on behalf of the Respondent brought forth the following key contentions:

5.1. That the Appellant has forcefully retained the custody of the Minor Children for a prolonged period of 8 (eight) years in blatant disregard of various order(s) passed by the High Court and/or the Family Court directing *interim* shared custody of the Minor Children at different points of time.

5.2. That the Underlying Order granted the Appellant custody of the Minor Children proceeding on an erroneous and irrelevant consideration i.e., the alleged act of adultery.

5.3. That the Appellant has deliberately disenfranchised the Minor Children from their mother i.e., the Respondent herein, and accordingly it was vehemently contended that the present *lis* is a classic case of 'parental alienation syndrome' ("PAS").

5.4. That the Minor Children are at an impressionable age and require the presence of their mother i.e., the Respondent.

5.5. That the Court whilst exercising its *parens patriae* jurisdiction must not limit itself to the wish and/or desire of the Minor Children but must ensure the welfare of the Minor Children.

5.6. That the Respondent is employed as a teacher in a reputed school in Gurugram; and would be able to provide the Minor Children with a stable and conducive environment as opposed to Appellant i.e., a serving officer in the Indian Armed Forces, who is due to be transferred to a field station as opposed to a family station.

5.7. In regard to the aforesaid, Ms. Sehgal relied on the following:

- (a) *Vivek Singh v. Romani Singh*, (2017) 3 SCC 231;
- (b) *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42;
- (c) *Nil Ratan Kundu* (Supra); and
- (d) *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840.

Analysis and Findings

6. We have heard the learned counsels appearing on behalf of the respective parties at length and we have carefully considered and deliberated upon the submission(s) made on behalf of the parties.

7. In the instant appeal we have been called upon to decide the

guardianship of 2 (two) minor children i.e., (i) SSU; and (ii) SSH, till they attain the age of majority.

8. It is well settled that the principal consideration of the Court whilst deciding an application for guardianship under the Act in exercise of its *parens patriae* jurisdiction would be the 'welfare' of the minor children.¹

9. The aforesaid principle is also enshrined in Section 17 of the Act, the same is reproduced as under:

"17. Matters to be considered by the Court in appointing guardian. - (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

² * * * * *

(5) The Court shall not appoint or declare any person to be a guardian against his will."

10. In this context, it would be appropriate to refer to a decision of this Court in *Nil Ratan Kundu* (Supra) wherein parameters of 'welfare' and principles to be considered by courts whilst deciding questions involving the custody of minor children came to be enunciated. The relevant paragraph(s) are reproduced as under:

*"52. In our judgment, the law relating to custody of a child is fairly well settled and it is this : in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and wellbeing of the child. In selecting a guardian, the court is exercising *parens patriae* jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above*

physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

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55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents.

56. In Rosy Jacob [(1973) 1 SCC 840] this Court stated: (SCC p. 854, para 15)

"15. ... The contention that if the husband [father] is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading."

It was also observed that the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The father's fitness cannot override considerations of the welfare of the minor children.

57. In our opinion, in such cases, it is not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter that is relevant, but the "positive test" that such custody would be in the welfare of the minor which is material and it is on that basis that the court should exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian."

11. Furthermore, this Court in *Gaurav Nagpal* (Supra) undertook a comprehensive and comparative analysis of laws relating to custody in the American, English, and Indian jurisdiction(s) and observed that the Court must construe the term 'welfare' in its widest sense i.e., the consideration by the Court would not only extend to moral and ethical welfare but also include the physical well-being of the minor children.

12. Accordingly, in view of the aforesaid, not only must we proceed to decide the present *lis* on the basis of a holistic and all-encompassing approach including *inter alia* (i) the socioeconomic and educational opportunities which may be made available to the Minor Children; (ii) healthcare and overall-wellbeing of the children; (iii) the ability to provide physical surroundings conducive to growing adolescents but also take into consideration the preference of the Minor Children as mandated under Section 17(3) of the Act.³ Furthermore, we are equally

conscious that the stability of surrounding(s) of the Minor Children is also a consideration to be weighed appropriately.⁴

13. In the present factual matrix, the minor children i.e., SSU; and SSH have interacted with the Court(s) to express their preference of guardian on a plethora of occasions. Accordingly, we consider it appropriate to briefly delve into the observations of the Court(s) *vis-à-vis* the preference expressed by the Minor Children:

13.1. The Learned Single Judge of the High Court engaged with the Minor Children on 24.02.2020 i.e., SSU was approximately 11.5 (eleven and a half) years old; and SSH was approximately 8 (eight) years old. The Learned Single Judge in his order dated 29.04.2020 recorded that he found the Minor Children to be confident and well-groomed. Furthermore, it has been categorically stated no overt preference was indicated by the Minor Children in respect to one parent over the other.

13.2. Thereafter, the Family Court engaged in a personal interaction with the Minor Children on 11.08.2020 i.e., when SSU was approximately 12 (twelve) years old; and SSH was approximately 8.5 (eight and a half) years old. Pertinently, in Underlying Order, the Family Court observed that the Minor Children expressed their preference to reside with the Appellant. Additionally, it was observed that the Minor Children were doing well in the pursuit of their education and co-curricular activities whilst residing with the Appellant; and that the Minor Children were well-settled and progressing fine.

13.3. Subsequently, the Division Bench of the High Court interacted with the Minor Children on two occasions i.e., (i) 23.08.2021; and (ii) 17.08.2022. Pertinently, the Division Bench in an order dated 23.08.2021 observed that the children were intelligent and reasonably grown up. On the other hand, the Division Bench in the Impugned Order observed that the Minor Children expressed their clear desire to reside with the Appellant.

13.4. In the Supreme Court, we considered it necessary to interact with the Minor Children ourselves. Accordingly, *vide* an order dated 19.03.2024, we directed the Appellant to produce the Minor Children in Court so as to enable us to interact with them. On 05.04.2024, we interacted with both SSU; and SSH in chambers. We found the Minor Children to be intelligent, confident, cognisant of the *pros* and *cons* of their decisions and most importantly content/happy. During our interactions with the Minor Children, despite probing the issue of guardianship on more than one occasion, the Minor Children categorically stated that they were happy and wished to reside with their father only i.e., the Appellant.

14. The natural and consequential deduction from the aforesaid interaction(s) between the Minor Children and various Court over a period spanning over 4 (four) years, is the unwavering and strong desire of the children to continue to reside with the Appellant. The aforesaid desire/preference although in itself cannot be determinative of custody of the children, but it must be given due consideration on account of it being a factor of utmost importance.

15. Having settled the preference of the Minor Children, we turn towards, the next leg of the analysis to be undertaken by this Court in questions involving custody of children i.e., considerations of welfare of the children.

16. In the instant appeal, certain contentions were raised by Ms. Sehgal in relation to the nature of employment of the Appellant posing a challenge in the upbringing and welfare of the Minor Children. We find ourselves unable to subscribe to the aforesaid view, as we find that the Indian Armed Forces provides a robust support system to the *kin* of its officer(s) so as to ensure minimal disruption in the lives of the civilian member(s) of an officer's family. This support system includes residential accommodation, a network of army schools, hospitals and healthcare facilities. Moreover, various extra-curricular activities i.e., sport(s) facilities and recreational clubs; and other social and cultural functions are made available for the benefit of the *kin* of officers of the Indian Armed Forces - the aforesaid support system undoubtedly, aids in the mental stimulation, growth and overall development of personality of a child.

17. At this juncture it would also be relevant to deal with the main thrust of the argument put forth by Ms. Sehgal in relation to the preference indicated by the Minor Children i.e., it was contended that the present case is a classic case of PAS wherein the Minor Children have been influenced against the Respondent; and accordingly the preference indicated by the Minor Children ought not to be considered representative of the true emotions of the Minor Children. In view of the aforesaid, the decision of this Court in *Vivek Singh* (Supra) was heavily relied upon to substantiate her submission. The relevant paragraph is reproduced as under:

"18. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility. Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish

her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this end, it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time. This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are "right" in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent i.e. the mother and change her to agree with the appellant's viewpoint cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as perceived by the appellant. Psychologists term it as "The Parental Alienation Syndrome" [The Parental Alienation Syndrome was originally described by Dr. Richard Gardner in "Recent Developments in Child Custody Litigation", The Academy Forum, Vol. 29, No. 2 : The American Academy of Psychoanalysis, 1985]. It has at least two psychological destructive effects:

- (i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.*
- (ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality."*

18. The aforesaid submission found favour with the High Court. Pertinently, the High Court in the Impugned Order observed that the

possibility of the Minor Children having been influenced against the Respondent, could not be ruled out.

19. We find ourselves unable to agree with the High Court - in our considered opinion, the High Court has failed to appreciate the intricacies and complexities of the relationship between the parties and accordingly, proceeded to entertain allegations of PAS on an unsubstantiated basis.

20. PAS is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation. In our considered opinion, recognising and appreciating the repercussions of PAS certainly shed light on the realities of long-drawn and bitter custody and divorce litigation(s) on a certain identified sect of families, however, it is equally important for us to remember that there can no straitjacket formula to invoke the principle laid down by this Court in *Vivek Singh* (Supra).

21. The role of a Court *vis-à-vis* allegation(s) of PAS came to be considered recently by an English Court i.e., the High Court of Justice Family Division in *Re C* ('parental alienation'; *instruction of expert*), [2023] EWHC 345 (Fam). Pertinently, the Court reflected on the changing narrative in relation to PAS - placed before the Court therein, by an expert body i.e., the Association of Clinical Psychologists - UK ("ACP") and thereafter observed as under:

"103. Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:

'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact.'

It is not the purpose of this judgment to go further into the topic of alienation. Most Family judges have, for some time, regarded the label of 'parental alienation', and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest

to determine whether the label 'parental alienation' can be applied."

22. We find ourselves in agreement with the aforesaid position. Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and/or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.

23. Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of 'alienating behaviour' in order to invoke the principle of *parental alienation* so as to overcome the preference indicated by the minor children.⁵

24. In the instant appeal, the Family Court has categorically recorded that there was nothing on record to suggest that the interests and welfare of the Minor Children were in any manner affected during their stay with the Appellant. Additionally, the Learned Single Judge of the High Court interacted with the Minor Children on 24.02.2020 i.e., a period of close to 4.5 (four and a half) years after the alleged incident on 08.08.2015, and categorically recorded that the Minor Children expressed no overt preference amongst their parents - the aforesaid observation by the Learned Single Judge, is crucial as it underscores that while the relationship between the parties may have been strained; the Minor Children could not be said to have exhibited any indication of '*parental alienation*' i.e., there was no overt preference expressed by the Minor Children between the parents and thus, the foundation for any claim of parental alienation was clearly absent. The aforesaid position is also supported by materials on record to suggest that (i) the Minor Children are cognisant and aware of the blame game being played *inter se* the parties; and (ii) that the Minor Children did not foster unbridled and prejudiced emotions towards the Respondent. Accordingly, we find that the Appellant could not have been said to have engaged or propagated '*alienating behaviour*' as alleged by the Respondent.

25. Therefore, in our considered opinion, the High Court failed to appreciate the aforesaid nuance and proceeded on an unsubstantiated assumption i.e., that allegations of parental alienation could not be ruled out, despite the stark absence of any instances of '*alienating behaviour*' having been identified by any Court. In view of the aforesaid discussion, we find that the reliance placed on *Vivek Singh* (Supra) by the Respondent is misdirected and the High Court erred in law and in fact whilst relying on the said decision.

26. Accordingly, on an overall consideration, we are convinced that the High Court was neither correct nor justified in interfering with the

well-considered and reasoned order passed by the Family Court granting custody of the Minor Children to the Appellant for the reasons recorded above.

Directions & Conclusions

27. In view of the aforesaid discussion, we consider it just and appropriate that the custody of the Minor Children is retained by the Appellant, subject to the visitation rights of the Respondent as granted by the Family Court *vide* the Underlying Order i.e., the final order dated 22.08.2020.

28. The appeal is allowed in the aforesaid terms; the Impugned Order is set aside. Pending applications, if any, stand disposed of. No order as to cost(s).

¹ *V. Ravi Chandran (Dr.) (2) v. Union of India*, (2010) 1 SCC 174

² Sub-section (4) omitted by Act 3 of 1951, s. 3 and the Schedule.

³ *Lahari Sakhamuri* (Supra); and *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*, (2019) 7 SCC 42.

⁴ *Shazia Aman Khan v. The State of Orissa*, 2024 INSC 163.

⁵ Recognised by this Court in *Vivek Singh* (Supra).

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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. _____ OF 2025
(@Special Leave Petition (Criminal) No.14809/2024)**

VIVEK KUMAR CHATURVEDI & ANR.

...Appellants

VERSUS

STATE OF U.P. & ORS.

...Respondents

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The appellant, father of a minor child, assailed the order of the Writ Court in a Habeas Corpus Writ Petition which denied the custody of the child who was with his grand-parents; his mother having passed away.

3. The learned Single Judge who disposed of the Writ Petition interacted with the child who submitted that he is comfortably residing and pursuing his education at his maternal grandfather's house. It was also noticed that the father had re-married. On the basis of the above findings, it was opined that the welfare of the minor child; which is of paramount consideration, would be served by letting him continue with his grandfather; while the father was granted visitation

rights to meet the child regularly on the first day of every month at the venue fixed by the jurisdictional Station House Officer.

4. Mr. Gopal Jha, learned counsel appearing for the appellant-father would rely on the decision of this Court in ***Gautam Kumar Das Vs. NCT of Delhi and another***¹ which emphasizes the need of the minor child to be with the natural guardian; especially when the mother is no more. It is pointed out that the circumstances coming out in the above case are identical insofar as, after the death of the mother, the father being denied the company of the child. Obviously the child did not have any familiarity with the father, the death of the mother having occurred in the year 2021. It is also submitted that the paternal grandfather of the minor child has conveyed a property in the name of the minor child to ensure his welfare and also deposited an amount of Rupees Ten Lakhs in the child's name. The father who is an Administrative Service Officer of the State, though re-married, is confident that the second wife would look after the child as a mother and draw support from the affidavit of his second wife who undertakes to take care of the child as her own and endorses fully her husband's need and desire to have the child with them for the betterment of his future.

5. Mr. Rajeev Kumar Dubey, learned counsel appearing for the respondents relies on ***Nirmala Vs. Kulwant Singh & Ors.***² in which this Court had emphasized the requirement of a detailed enquiry regarding the welfare of the minor child and his preference; which exercise could be carried out only in the proceedings under the Guardian and Wards Act, 1890³. It is pointed out that the appellant-father has already filed a Guardian O.P. and in that circumstance, the prayer for production of the child by a writ of Habeas Corpus was not at all

¹ (2024) 10 SCC 588

² 2024 INSC 370

³ For brevity, "the Act".

maintainable. The fact that the father has re-married, soon after the death of the first wife was rightly considered by the High Court, in refusing the custody of the child to the father. It is argued that the appellant should be relegated to the remedy he has voluntarily invoked under the Act.

6. We have gone through the two decisions placed before us and ***Nirmala***², according to us, relies on the peculiar facts of that case in which the mother was found missing and later found dead in a canal. An accusation was made against the father; during investigation of which case the father himself has appointed the grandmother as the guardian of the minor child and caretaker of a property which was gifted by a maternal aunt to the minor child. The case against the father was closed and he approached the Child Welfare Committee⁴ on the ground that the appellant-grandmother had employed fraud in taking away the child. The CWC granted custody of the minor child to the father, which was interfered with by the High Court finding lack of jurisdiction on the CWC, which led to a Habeas Corpus petition being filed by the father. The High Court found the welfare of the child to be best served in the hands of the father and granted visitation rights to the grand-parents, while keeping open the remedy available to agitate the cause of custody. This Court, specifically, noticed the decision in ***Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others***⁵ to find that ordinarily in child custody matters, a Writ of Habeas Corpus is maintainable only when it is proved that the detention of the minor child by a parent or otherwise, was illegal or without any authority of law and hence, in the peculiar

⁴ For brevity, “the CWC”

⁵ (2019) 7 SCC 42

facts and circumstances of that case, the order of the High Court was reversed and the parties were left to agitate their cause in accordance with the Act.

7. It has to be specifically noticed that in ***Tejaswini Gaud and others***⁵, this court had permitted the invocation of the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India since the custody was sought by the father, the natural guardian of the minor child, from the sister and brother of the mother, who did not have any legal right to claim the custody of the child. ***Gautam Kumar Das***¹ relied on ***Tejaswini Gaud***⁵ to enable the natural guardian, the father, custody of a minor child, who was with the maternal aunts; in a petition under Article 226 of the Constitution of India. Quoting ***Nirmala***² it was also held that there can be no hard and fast rule insofar as the maintainability of a Habeas Corpus petition relating to custody of minor children; which would depend on the facts and circumstances of each case.

8. In the present case also, the father is seeking custody of the child from the grand-parents who were also looking after the child with the help of the siblings of the mother; admittedly. The grandfather had also initiated a proceeding for maintenance, claiming Rs.20,000/- (Rupees Twenty Thousand only) per month for the child; which makes it clear that the grand-parents are unable to look after the child by themselves.

9. On the other hand, it has been contended before us that there is conveyance of a land in favour of the minor child by the paternal grandfather who has also deposited an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) in the child's name. The grandfather has also taken out a life insurance policy of Rs.25,00,000/- (Rupees Twenty Five Lakhs only), the beneficiary of which is the

minor child. The father is an educated person and holding a responsible position having been appointed to the administrative services of the State. Though the father has re-married, it cannot stand against the claim for custody; especially since otherwise, there would have been a question raised as to how the child would be taken care of; the father being engaged in his work.

10. We cannot but observe that the learned Single Judge has not endeavored to elicit the child's attitude towards his father. Admittedly, the child, after his birth, was with his parents for about 10 years till the death of his mother. He was separated from the father in 2021 and has been living with his grandparents, who cannot have a better claim than the father, who is the natural guardian. There is no allegation of any matrimonial dispute when the mother of the child was alive nor a complaint of abuse perpetrated against the wife or son. The father, the natural guardian, we reiterate, is well employed and educated and there is nothing standing against his legal rights; as a natural guardian, and legitimate desire to have the custody of his child. We are of the opinion that the welfare of the child, in the facts and circumstances of this case, would be best served if custody is given to the father.

11. However, we cannot ignore the fact that the child did not have the company of the father for more than three years and the child is now with the grandparents and his academic year is coming to an end; pursuing the 7th standard in a school near the residence of the grandparents. In the above circumstances, to permit the child to complete the academic year, we direct the child to be retained in the custody of the grandfather till 30.04.2025. While the child is continuing in the custody of the grandparents, we permit him to be taken by the

father; the appellant-herein, on alternate weekends to reside in his paternal house. The child shall be taken on the evening of Friday or the morning of Saturday and returned on the evening of Sunday. This arrangement shall continue upto 30.04.2025 till the custody of the child is handed over to the father; on 01.05.2025 in the presence of the jurisdictional Station House Officer. The grand-parents shall also have visitation rights, post-handing over of custody and they shall be permitted to take the child to their residence on every weekend in which the second Saturday falls, starting from June, 2025; which arrangement shall continue for an year and then, as per the desire of the child. The Guardian O.P. filed before the jurisdictional Family Court shall stand closed.

12. The appeal stands disposed of and the parties to bear their own costs.

13. Pending application(s), if any, shall stand disposed of.

....., J.
[B.R. GAVAI]

....., J.
[K. VINOD CHANDRAN]

NEW DELHI;
FEBRUARY 07, 2025.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. /2025
[ARISING OUT OF SPECIAL LEAVE PETITION (CRL.)
NO.12458/2024]

POONAM WADHWA

APPELLANT(S)

VERSUS

AJAY WADHWA & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. We have heard learned counsel for the parties in the presence of their respective clients (i.e. the parties).
3. Upon hearing the learned counsel for the parties as well as the parties, we do not think that an amicable resolution of their differences is possible at this stage. Therefore, we propose to consider the matter on merits.
4. This appeal impugns an order of the High Court of Punjab and Haryana at Chandigarh¹ dated 1st July, 2024 in CRR No.2069/2022 (O & M) whereby the High Court allowed the Revision Petition of the respondent (father) and set aside the orders dated 30th July,

2022 and 23rd September 2022 by which the appellant (mother) was given the custody of Arjun Wadhwa (their minor son). While passing the impugned order, the High Court, left it open for the parties to avail their remedy for seeking custody of minor children in proceedings under the relevant statutes which are stated to be pending before the Family Court.

5. When the lower court had passed the custody order in favour of mother (i.e., the appellant) Arjun was below 5 years in age. However, during the proceedings before the High Court Arjun crossed 5 years. He was also produced before us on 21st August 2025. After interacting with him as well as his sister, and after hearing the learned counsel for the parties in the presence of their respective clients, we had passed a detailed order on 21 August 2025 which is reproduced below:

“1. On 25.11.2024 this Court had required the parties to explore the possibility of settlement through mediation under the aegis of the Supreme Court Mediation Centre. Unfortunately, no solution could be arrived at. Today, the petitioner (Poonam Wadhwa) and the first respondent (Ajay Wadhwa) had come with their daughter - Arushi Wadhwa and son-Arjun Wadhwa. After brief interaction with the children, we could notice that they desperately

wanted to be in the company of each other though they did not want to separate from their respective parents. Arushi is with her mother (Poonam Wadhwa) whereas Arjun is with his father (Ajay Wadhwa).

2. Having regard to the interest of minor children, we separately interacted with Poonam Wadhwa and Ajay Wadhwa. Thereafter, we interacted with them in the presence of each other.

3. From our interactions with them, it appears that their differences are not on account of any misconduct of one against the other but on account of attitudinal problem more so because both are working and financially independent.

4. In such view of the matter, we requested the couple to meet each other more often, particularly on weekends, along with their children so that the tension inter se them abates and they resolve their differences. More so, to ensure a bright future for the two young children.

5. We have been apprised of there being multiple proceedings inter se parties in various courts.

6. In such circumstances, to give the couple a chance to peacefully avail opportunity of resolving their differences, as an interim measure, we deem it appropriate to direct that all proceedings inter se parties pending in all courts shall remain stayed for a period of next three months. In the meantime, the visitation rights which the parties enjoy qua their respective children shall continue in terms directed earlier.

7. List this matter on 19 November 2025 in Chambers at 2.00 P.M. Petitioner and the first respondent shall be present on the next date.

8. In the meantime, we expect that the petitioner and the respondent shall meet each other more often along with their respective children and plan holidays, dinners or parties together, subject to their convenience.

9. We hope and trust that this arrangement results in a better life for the couple and their family."
(Emphasis supplied)

6. Today, when the matter was taken up, we were informed that the parties could not resolve their differences and are not able to live together. We were also told that the terms of settlement extended from appellant's side to the respondent side included divorce by mutual consent. However, the respondent (Ajay Wadhwa) is not agreeable to such a proposal. Consequently, we have observed above that there is no chance of a settlement between the parties at this stage.
7. While addressing us on merits, the learned counsel appearing for the appellant has pointed out certain observations in the order impugned to contend that the impugned order suffers from certain errors which may warrant an interference of this Court. Our attention was drawn to paragraph 38(i) wherein it is recorded

that Ajay Wadhwa who is employed with Oracle is discharging his duties by working from home whereas Poonam Wadhwa (his wife) has long working hours and is working as an Associate Manager at Virtusa, Gurugram. It is stated by the learned counsel for the appellant that the aforesaid observation creates an impression that better care could be provided by the parent who works from home than the one who works at the office. It is submitted that nature of the job of Poonam Wadhwa is such that she could also work from home and, therefore, this was not a relevant consideration for the High Court to place the minor son in the custody of his father.

8. The other point urged is regarding the distance of Heritage School at Vasant Kunj from the place where the mother resides as compared to the place where the father resides. It is the submission of the learned counsel for the appellant that the distance is almost equal or perhaps less from the place where mother resides and, therefore, the observation that the child would have to spend a lot of time travelling from mother's home to the school than what he would spend while travelling from his father's place to the school is erroneous.

9. Lastly, it was contended that it is clear from the counselor's report as well as observations in the impugned order that Arjun desperately seeks for his sister's company. Therefore, since his sister's custody is with her mother and there cannot be an issue on that because she is not willing to be with her father, the welfare of the child would be better served if the child is placed with his mother so that both the children are together. In addition to above, our attention was invited to paragraph 50 of the impugned judgment where it has been observed that the mother exhibited an irresponsible conduct of travelling abroad during peak Covid-19 period by leaving her children in the custody of their father. By highlighting the aforesaid fact, the High Court deemed it appropriate to place the custody of Arjun with his father till the issue is finally settled by a competent court dealing with custody of minor children under the relevant statutes. In this regard it is argued that appellant (i.e., mother) was fully vaccinated and if she had to travel in connection with her job, her conduct cannot be termed irresponsible or against the interest of minor.

10. *Per contra*, the learned counsel for the respondent has

supported the view taken by the High Court and also pressed an application for discharge of visitation rights that were accorded by this Court vide order dated 3rd May, 2024 passed in earlier round of litigation between the parties whereunder the custody of Arjun was placed with the mother from 12 noon on every Saturday till 6.00 p.m. on Sunday. It is the case of the respondent that a minor child cannot be shifted from one home to the other as it has an element of disturbing the psyche of the child which might be detrimental to his overall development. Accordingly, it is prayed that the visitation rights provided to the mother be discharged.

11. We have considered the rival submissions and have perused the materials available on record.
12. It is not in dispute that both parents are working parents and, therefore, it is expected that they cannot always be physically with their children. But this cannot be a ground to place the custody of the child with the one who may be temporarily working from home because it is a matter of common knowledge that to meet individual as well as family aspirations married couples have to work to build a proper home and most importantly to secure better education for

their ward which is getting costlier day by day. We, therefore, do not subscribe to the view that if one parent is working from home and the other not (i.e., has to visit his office for work) then it has to be inferred that child's interest would be better served if he is placed in the custody of one who does not go to office for work. Likewise, in our view, distance from home to school is not a relevant consideration particularly when both sides reside in National Capital Region and the child is required to travel some distance for better education. Moreover, it hardly matters whether travel time is few minutes less or more.

13. Similarly, the view taken by the High Court that mother exhibited an irresponsible conduct by travelling abroad during Covid-19 period may not be a relevant consideration particularly when, according to her claim, she was duly vaccinated and such travel was the requirement of her job. Though the claim of the respondent is that such travel was not in connection with her job but to celebrate her vacations.
14. Be that as it may, even vacations are important and necessary for a person to maintain a proper frame of mind. Therefore, no adverse inference could have been

drawn against the appellant on that ground.

15. However, though we may find that the aforesaid aspects ought not to have weighed with the High Court while determining the custody issue, we should not be oblivious of the fact that Arjun is a male child and is aged above 5 years by now. Moreover, the education of Arjun continues to be as a student at Heritage School and therefore, his education is not disturbed whether he remains in the custody of his father or mother. What is important is that from our interactions with Arjun we noticed that he was not willing to part company of his father. We also took notice of the fact that his father has few elder members at home including Arjun's grandfather who are giving company to the child. In such circumstances, having regard to the fact that the male child is now above five years old and he continues to be in the same school where he was studying earlier and he has no issues with his own father and is not willing to part company of his father, an interference with the order passed by the High Court is not required, particularly in view of the fact that the appellant has visitation rights as directed earlier by this Court vide order dated 3rd May, 2024 passed in SLP

(Criminal) No.836 of 2024. Further, the High Court has not closed the custody issue rather it gave appellant right to seek custody and pursue remedies under relevant statutes. Consequently, we do not find a good reason to disturb the operative portion of the impugned order. Subject to above, the appeal is dismissed. The application of the respondent seeking discharge of the visitation rights granted vide order dated 3rd May 2024 by this Court in SLP (Criminal) No.836 of 2024 is rejected.

16. Parties shall bear their own costs.

17. Pending application(s), if any, shall stand disposed of.

.....J
[MANOJ MISRA]

.....J
[UJJAL BHUYAN]

New Delhi
November 25, 2025

ITEM NO.12

COURT NO.13

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO.12458/2024

[Arising out of impugned final judgment and order dated 01-07-2024 in CRR No. 2069/2022 passed by the High Court of Punjab & Haryana at Chandigarh (O & M)]

POONAM WADHWA

Petitioner(s)

VERSUS

AJAY WADHWA & ORS.

Respondent(s)

[TO BE TAKEN UP IN CHAMBERS AT 2:00 PM]

Date : 25-11-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) : Ms. Preeti Singh, AOR
Mr. Sunklan Porwal, Adv.

For Respondent(s) : Ms. Tina Garg, AOR
Mr. Anuraj Jain, Adv.
Mr. M.K. Ghosh, Adv.
Ms. Preeti, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is dismissed in terms of the signed order which is placed on the file.
3. Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
ASTT. REGISTRAR-cum-PS

(SAPNA BANSAL)
COURT MASTER (NSH)

Arathy Ramachandran

v.

Bijay Raj Menon

(Civil Appeal No. 5680 of 2025)

29 April 2025

[Vikram Nath, Sanjay Karol and Sandeep Mehta,* JJ.]

Issue for Consideration

Issue arose as regards sustainability of the order passed by the High Court granting 15 days interim custody of the minor children to the father.

Headnotes[†]

Guardians and Wards Act, 1890 – Custody of children – 15 days interim custody to the father – Grant of – Appellant-mother sought permanent custody of children, one son and one daughter – Family court restrained respondent-father from forcibly removing the minor children from the custody of the mother – Family court granted visitation rights to the father – On petition of the father, High Court granted interim custody of the children to the father for 15 days – SLP by mother raising concerns regarding environment being provided to the daughter during the interim custody period of 15 days granted to the father – During pendency, this Court stayed the operation of interim custody granted to father in respect of minor son, and the interim custody of the daughter continued – Sustainability:

Held: Order passed by the High Court not sustainable – In cases of child custody, the paramount consideration should be the welfare of the child – Utmost sincerity, love and affection showered by either of the parents, by itself, cannot be a ground to decide the custody of a child – On facts, interim arrangement charted out by High Court, neither feasible nor conducive to the well-being, mental and physical, of the children – Directing the interim custody of the tender aged boy of three years to be assigned to the father, grossly unjustified, may have serious adverse effects, and is totally uncalled for – As regards the daughter, the intervening circumstances and the information provided by the child during interaction fortifies the

* Author

Supreme Court Reports

genuine concern of the mother that the environment being provided to the child by the father during the interim custody may not be conducive to her physical and emotional well-being – Child definitely requires nutritious home cooked food for overall well-being, growth and development and the father not in a position to provide such nutrition to the child – Also the child gets no company except that of the father during the interim custody period whereas the parents of the mother are staying with her – Emotional and moral support which the child gets at her mother's home is manifold than what is being provided by the father during custody period – Period of 15 days with the father would also lead to deprivation of her company to her sibling – High Court clearly erred in granting interim custody of the children to the father for a period of 15 days every month – Arrangement made by the High Court not arrived at by weighing the pros and cons of the situation – Periodic division of custody definitely adverse to the well-being; physical, mental and emotional, of the children – To provide the father fair and reasonable access to the children, the father entitled to interim custody of the daughter on alternate Saturdays and Sundays of every month, and on either of these two days, interim custody of the boy child for a period of four hours – Father to make sincere efforts to provide home cooked meals to the children during this period of interim custody – Impugned order set aside. [Paras 19-29, 32]

List of Acts

Guardians and Wards Act, 1890; Constitution of India.

List of Keywords

Child custody; Permanent custody; Interim custody of the minor children; Visitation rights; Welfare of child; Emotional and physical well-being of child; Adverse effects on emotional and physical well-being of child; Periodic division of custody; Forced separation from mother; Intervening circumstances; Nutritious home cooked food; Emotional and moral support; Health hazard; Mental trauma to children; Family bonding; Child counsellor; Utmost sincerity, love and affection showered by the parents; 15 days' interim custody.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5680 of 2025

From the Judgment and Order dated 11.12.2024 of the High Court of Kerala at Ernakulam in OPFC No. 682 of 2024

Arathy Ramachandran v. Bijay Raj Menon**Appearances for Parties**

Advs. for the Appellant:

Ms. Haripriya Padmanabhan, Sr. Adv., Santosh Krishnan,
Ms. Sonam Anand, Vishal Sinha.

Advs. for the Respondents:

Dr. Rajesh Pandey, Sr. Adv., Ms. Aswathi M.K.

Judgment / Order of the Supreme Court**Judgment**

Mehta, J.

1. Heard.
2. Leave granted.
3. The appellant¹ and the respondent,² who are both highly qualified professionals, tied the knot in the year 2014. From their wedlock, two children were born-the first being the daughter, on 23.07.2016, and the second being the son, on 05.07.2022. The custody of the children is the subject matter of the present *lis*.
4. We are informed that at present, the appellant-mother is employed in an IT company which allows her to work from home. The respondent-father is reportedly, working as a General Manager in a construction company at Singapore. It seems that the spouses faced marital discord in the year 2017 and accordingly, both started living separately with occasional attempts at restoring the matrimonial ties. In one of these attempts at reconciliation in the year 2021, the appellant again conceived and gave birth to the son, who is presently about three years of age.
5. The appellant-mother felt a threat perception that the respondent-father may try to forcibly remove the children from her custody. Thus, in June, 2024, she filed an original petition, bearing O.P. (G&W) No. 1185 of 2024, seeking permanent custody of the children under the provisions of the Guardians and Wards Act, 1890 in the Family

1 Hereinafter, being referred to as 'appellant-mother'.

2 Hereinafter, being referred to as 'respondent-father'.

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Court, Thiruvananthapuram.³ The said proceedings are still pending final adjudication.

6. The Family Court passed an order dated 7th June, 2024, restraining the respondent-father from forcibly removing the minor children from the custody of the appellant-mother.
7. On 22nd July, 2024, the respondent-father filed an application, bearing I.A. No. 02 of 2024, seeking interim custody/visitation rights of the children in the custody proceedings instituted by the appellant-mother. The Family Court *vide* order dated 7th October, 2024, granted visitation rights to the respondent-father, permitting him to visit and interact with the children from 10:00 a.m. to 01:30 p.m. on the second Saturday of every month at the Court premises. The respondent-father was also permitted to interact with the children *via* video calls from 07:00 p.m. to 07:20 p.m. (IST) on all Saturdays except second Saturday.
8. On 4th November, 2024, the respondent-father preferred an Original Petition under Article 227 of the Constitution of India, bearing OP (FC) No. 682 of 2024, assailing the order dated 7th October, 2024 before the High Court of Kerala at Ernakulam.⁴ The said petition came to be decided by the Division Bench of the High Court *vide* order dated 11th December, 2024, providing interim custody of the children to the respondent-father on the terms indicated below: -

“8. Considering the fact that the father also needs the custody of the children to have bonding with them till they attain the age of 18 years, we would not keep the father away from the interim custody of the children, as the children require the care and custody of both the spouses/parents. Accordingly, we grant fifteen (15) days of custody to each in a month till the disposal of the O.P pertaining to permanent custody with the following conditions:

1. Husband shall file an undertaking regarding taking of the flat on rent bearing No.5A SFS, City space, Thiruvananthapuram, which is fully furnished as well and **with regard to the**

3 Hereinafter, being referred to as 'Family Court'.

4 Hereinafter, being referred to as the 'High Court'.

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engagement of a Nanny within a period of one week from today.

2. He will also make arrangement of the vehicle for commutation of the children for drop on and drop off ie., to and from the flat and the school or another place.

3. He will not take the children away to Thrissur. He is at liberty to bring his mother to Thiruvananthapuram without the permission of this court.

4. He will ensure that the children are taken care healthy and congenial environment and there is no lacking in it.

9. We have been informed that every year there are summer vacations in the school from end of March, entire April and May and the school reopens on 1st of June. The similar arrangement will go on during the said period also.

10. However it is made clear that whenever there is examination, the custody of the children will be with the mother only and the custody will be given two weeks prior to the examination. The mother will give advance intimation to the husband either through whatsapp message or through any other mode, regarding the examination.

11. During the period when the children are in the custody of the husband/father, the husband/father will permit 15 minutes of video call, everyday, to the mother. This arrangement will also be carried on by the wife/mother when the children will be in the custody of the mother. In case of any violation, the liberty is granted to either of the parties to move an application. Petitioner-husband/father is also directed to undertake parental counselling.”

(Emphasis Supplied)

9. The appellant-mother has approached this Court through this appeal by special leave, assailing the said order of the High Court, granting periodical interim custody of both the children to the respondent-father.

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10. This Court, while issuing notice *vide* order dated 6th January, 2025, had stayed the operation of the impugned order passed by the High Court to the extent of interim custody granted to the respondent-father in respect of the minor son, and restored the arrangement made by the Family Court in this regard. However, the arrangement of interim custody granted to the respondent-father in respect of the daughter aged eight and a half years was directed to be continued as per the impugned order.
11. On the previous date of the hearing i.e., 2nd April, 2025, the appellant-mother appeared in the Court in-person whereas, the respondent-father appeared through video conferencing. At that point of time, the girl child was in the custody of the respondent-father. From 8th/9th April, 2025 onwards, the interim custody of the child has been restored to the appellant-mother.
12. After hearing both parties and the learned counsel appearing on their behalf, we felt that an interaction with the girl child would be essential to arrive at a just and fair decision in the matter. Accordingly, the matter was directed to be taken up in the Committee Room on 16th April, 2025, at 01:30 p.m. and the parties along with their daughter were directed to remain present in person.
13. We interacted '*in camera*' with the litigating parents and also had a healthy and satisfying dialogue with the girl child separately. Heard the arguments advanced by the learned counsel for the parties.
14. The appellant-mother has raised serious concerns regarding the environment being provided to the daughter during the interim custody period of 15 days granted to the respondent-father by the High Court. She submitted that though the respondent-father has taken a flat bearing No. 5A, SFS, situated in City Space, Thiruvananthapuram, on rent and travels from Singapore every 15 days to gain interim custody of the child, the other conditions of the High Court's order are not being adhered to by him. Her primary and genuine concern was that the respondent-father has not engaged a nanny in terms of the High Court's direction.
15. She further submitted that home cooked food was not being provided to the girl child in this period, and that all the meals were procured by ordering from restaurants/hotels, etc. She further submitted that the child does not have any company whatsoever other than the

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respondent-father and thus, her overall growth and emotional well-being is being adversely affected owing to this isolated atmosphere due to which the child may even suffer permanent emotional scars.

16. *E-converso*, the respondent-father has pleaded that he is taking care of the child with all the sincerity and intent of a caring parent. He travels from Singapore religiously adhering to the timeline fixed by the High Court so that he can spend quality time with the child and develop a stronger bond with her. He urged that his mother often visits the flat at Thiruvananthapuram to provide home cooked food to the child and to keep her company. However, the fact that a nanny has not been engaged in terms of the High Court order is not disputed.
17. He further submitted that he is unequivocally prepared to abide by any condition so as to restore the matrimonial ties with the appellant-mother. We refrain from adverting to this issue as it is for the spouses to find a mutual resolution to this issue.
18. During the course of interaction with the girl child, we found her to be very intelligent, expressive and composed. She gave mature and well-balanced responses to the queries put by us. She expressed her love and affection for both her parents. However, she seemed uncomfortable by the 15 days' periodic custody arrangement dividing her time between the father and the mother. She was candid in her stand that during the period for which she stayed with the respondent-father, all the food which was provided to her had been ordered from restaurants/hotels, etc. Not one meal was a home cooked one. She also expressed that there is no one to keep her company except for her father during this period of 15 days.
19. There are series of judgments by this Court wherein, it has been authoritatively held that in cases of child custody, the paramount consideration should be the welfare of the child. The utmost sincerity, love and affection showered by either of the parents, by itself, cannot be a ground to decide the custody of a child.
20. Keeping in view the aforesaid principles and adverting to the facts of the case at hand, we feel that the interim arrangement, as charted out by the High Court in the impugned order, granting 15 days' alternative custody of both the children to the parents, is neither feasible nor conducive to the well-being, mental and physical, of the children. The

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younger of the two children being the son aged about three years, has hardly lived with his father, who lives and works in Singapore. Thus, directing the custody of the tender aged boy to be assigned to the respondent-father, even on an interim basis for a period of 15 days each month, is grossly unjustified and may have serious adverse effects on the emotional and physical well-being of the child and may create a sense of deep insecurity in the boy owing to forced separation from the mother. The interim arrangement made by the High Court to the extent of the three-year-old son is totally uncalled for and unsustainable on the face of the record and is hereby set aside.

21. Now, coming to the aspect of interim custody of the eight years old daughter to the respondent-father. We feel that the intervening circumstances and the information provided by the child during interaction fortifies the genuine concern shown by the appellant-mother that the environment being provided to the child by the father during the interim custody period of 15 days may not be conducive to her physical and emotional well-being.
22. It cannot be gainsaid that continued consumption of food procured from restaurants/hotels would pose a health hazard, even to a grown-up person, what to talk of a tender aged child of eight years. The child definitely requires nutritious home cooked food for her overall well-being, growth and development. Unfortunately, the respondent-father is not in a position to provide such nutrition to the child.
23. We could even have considered giving an opportunity to the respondent-father to make suitable arrangements for providing home cooked food to the child but the fact that the child gets no company whatsoever except for that of the father during the interim custody period of 15 days is an additional factor which weighs heavily against his claim for the child's custody at this stage.
24. It cannot be expected that during the periodic custody arrangement, the father would be in a position to give continued attention to the child for the entire span of time during which he has access to the child. He would have to spare time for his job, daily pursuits etc. and during this period, the child would be left all alone without anyone to keep her company.
25. In contrast, the parents of the appellant-mother are staying with her. She has the advantage of the facility of working from home. That

Arathy Ramachandran v. Bijay Raj Menon

apart, the younger brother of the girl child is there to provide her healthy company. Hence, the emotional and moral support which the child gets at her mother's home is manifold than what is being provided by the father during the interim custody period. The period of 15 days during which the daughter would be with the father would also lead to deprivation of her company to her sibling, the boy child aged three years.

26. In this background, we feel that the High Court clearly erred in granting interim custody of the children to the respondent-father for a period of 15 days every month. The arrangement made by the High Court was not arrived at by weighing the pros and cons of the situation. The periodic division of custody is definitely adverse to the well-being; physical, mental and emotional, of the children. In a long run, this arrangement may prove extremely harmful and may cause irreversible mental trauma to both the children.
27. Hence, we are of the firm view that the impugned order passed by the High Court granting interim custody of the children to the respondent-father for a period of 15 days every month is unsustainable on the face of record.
28. However, at the same time, we cannot lose sight of the fact that the respondent is a doting father who has shown his keen desire to have an equal and effective parenting role in the upbringing of his children. Thus, depriving him of the custody of the children in entirety is neither acceptable nor justifiable and may destroy all chances of family bonding.
29. Hence, in order to provide the respondent-father fair and reasonable access to the children, we hereby direct that he shall be entitled to interim custody of the daughter on alternate Saturdays and Sundays of every month. On either of these two days, the respondent-father will be entitled to meet and have interim custody of the boy child for a period of four hours subject to the comfort of the child. This period of four hours interim custody of the boy shall be supervised by a child counsellor, who is to be engaged by the respondent-father with prior approval of the family Court. The respondent-father may either retain the same flat or take any other suitably furnished flat in Thiruvananthapuram town to facilitate the arrangements for interim custody. The respondent-father shall make sincere efforts to provide home cooked meals to the children during this period of interim custody.

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30. The respondent-father shall be entitled to make video call/s for 15 minutes to both the children on every Tuesday and Thursday, the schedule whereof may be fixed by both the parties, either after consulting with each other or with the assistance of their respective lawyers.
31. The Family Court shall expedite the decision of the Guardianship petition, bearing O.P. (G&W) No. 1185 of 2024, filed by the appellant-mother.
32. The impugned order dated 11th December, 2024, passed by the High Court is reversed. The appeal is allowed accordingly.
33. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Nidhi Jain



2025 INSC 1068

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 11332 OF 2025
(ARISING FROM SLP (C) NO. 25029 OF 2025
@ Diary No(s).60690 OF 2024)

MANOJ DHANKAR

...APPELLANT

VERSUS

NEEHARIKA & ORS.

...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. Delay condoned. Leave granted.
2. The present appeal arises from the order dated 04.10.2024 passed by the High Court of Punjab & Haryana at Chandigarh in FAO No. 2655 of 2023. The appellant is the father of the minor son, aged about 9 years. Respondent No. 1 is the mother of the child, and Respondents No. 2 and 3 are her parents.
3. The background of the case reveals a long-standing matrimonial and custody dispute between the parties.

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CHANDRESH
Date: 2025.09.02
18:26:21 IST
Reason:

- 3.1. The appellant and Respondent No. 1 were married on 26.11.2012. Their son was born on 18.01.2016.
- 3.2. In 2017, the respondent-mother left the matrimonial home. She subsequently filed a petition for divorce under Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955¹.
- 3.3. In 2018, the appellant initiated proceedings before the Family Court seeking custody of the minor child.
- 3.4. By order dated 19.03.2019, the Family Court partially allowed the application and permitted the appellant to meet the child twice a month, on Fridays, at the child's school.
- 3.5. The parties thereafter attempted a settlement, as the respondent-mother intended to travel to Ireland. They jointly filed for divorce by mutual consent and withdrew the earlier petitions. The first motion under Section 13-B of the HMA was recorded on 28.08.2019 along with an agreement regarding custody of the child.
- 3.6. However, the compromise fell through, and the mutual consent petition was withdrawn.

¹ For short "HMA"

- 3.7. The appellant then instituted a petition under Section 25 of the Guardians and Wards Act, 1890 seeking custody.
- 3.8. By interim order dated 03.02.2022, the Family Court granted the appellant custody every Saturday and Sunday, subject to the condition that the child would not be taken out of Rohtak, Haryana.
- 3.9. By final order dated 27.03.2023, the Family Court dismissed the petition on the ground that the appellant had violated the terms of the interim order dated 03.02.2022. The appellant challenged this decision before the High Court in FAO No. 2655 of 2023.
- 3.10. During the pendency of that appeal, the respondent-mother took the child to Ireland.
- 3.11. The appellant thereafter filed several applications in FAO No. 2655 of 2023. One was for disclosure of the child's travel itinerary, which he later withdrew. Another sought disclosure of the itinerary, arrangement of video interaction with the child, and the return of the child from Ireland to India.
- 3.12. By order dated 25.07.2023, the High Court issued notice only to the extent of disclosure of

the child's itinerary. That order was challenged before this Court, but the Special Leave Petition was dismissed. The appellant then filed an application for early hearing of his main appeal before the High Court.

3.13. By the impugned order dated 04.10.2024, the High Court dismissed the appeal. It relied on this Court's dismissal of the earlier Special Leave Petition, noted the appellant's breach of the Family Court's interim custody arrangement, and held that the child had been living with the respondent-mother since 18.08.2017 and no material was placed to show that she was incapable of caring for the child.

3.14. Aggrieved thereby, the appellant has approached this Court.

4. We have heard learned senior counsel for the appellant and learned counsel appearing for the respondents.

5. Before this Court, the appellant's senior counsel has pressed the appeal only to the extent of securing visitation rights through video-conferencing.

6. The present matter is sensitive because it concerns the future of a young child. When such disputes arise, the central question is not who is right or wrong as between the parents, but what arrangement will best serve the child. The emotional, mental, and physical well-being of the child must always come first.
7. It is also clear to us that the conduct of both parents has not been ideal. Their personal differences have grown into a long and bitter conflict. However, the Court cannot allow the child to become a casualty of this conflict. What matters most is that the child grows up in an atmosphere where he feels secure, loved, and cared for.
8. At present, the child is living with his mother in Ireland and seems to be settled there. It would not be in his interest to disturb that arrangement at this stage. The father has also limited his request before us as he is not asking for custody, but only for the chance to interact with his son regularly through video-conferencing.
9. We find this request to be both fair and necessary. Every child has a right to the affection of both parents. Even if parents live apart or in

different countries, it is important for the child to maintain a relationship with both of them. Denying such contact would deprive the child of the love, guidance, and emotional support of the father.

10. We are therefore of the view that the appellant's request for video interaction is reasonable. It balances the reality of the child's present living situation with the need to ensure that the father remains a part of the child's life.

11. We accordingly direct as follows:

- (i) The appellant shall be entitled to interact with his son through video-conferencing for two hours on every alternate Sunday from 10.00 AM to 12 noon (Ireland time).
- (ii) Both parties shall cooperate to ensure that the arrangement is carried out smoothly, in good faith, without obstruction or hostility.
- (iii) Any technical or logistical difficulties in arranging the video sessions shall be resolved mutually, keeping in mind that the interest of the child is paramount.

12. With the above directions, the appeal stands disposed of.

13. Pending applications, if any, are disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

**NEW DELHI;
SEPTEMBER 02, 2025**

**CHILD ACCESS
&
CUSTODY GUIDELINES**
ALONG WITH
PARENTING PLAN

CHILD ACCESS & CUSTODY GUIDELINES

PARENTING PLAN 2025

By

The Hon'ble High Court at Calcutta

PREFACE to the Guidelines

1. The birth of a child is one of the biggest miracles of God. However, unfortunately, in case of dispute between the parents and/ or care givers, the custody and care of the child becomes the biggest problem. This is acutely felt in divorce cases involving minor off-springs. It is the child, who bears the brunt of the entire legal battle. It is a common practice among couples to use offspring(s) as pawns, in the game of emotional chess. It amounts to irresponsible parenting which scars children emotionally, post separation.
 2. In due course, the parents move on in their lives. But the children carry the trauma on being manipulated and torn apart emotionally all their lives resulting in personality problems, conduct disorder, substance abuse, criminal and antisocial inclination, major depressive disorder etc., ultimately, resulting in loss of invaluable national wealth, i.e., the child and the nation is deprived of a future productive and a good citizen.
 3. Thus, for the child's lifelong emotional and mental health and stability, it is paramount that he must grow up with the feelings of love and respect towards both parents and all loved ones, especially grand- parents.
 4. A child is like a sapling to be nurtured and protected so that it can grow up to be a healthy and sturdy tree. The framers of the Constitution also felt the need to make special provisions to protect the interest of the child. Under Article 15(3) of the
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Constitution of India, the State is empowered to make special provisions for children.

5. The Directive Principles of State Policy, in terms of Article 39(f) of the Constitution of India, mandates the State to direct its policy towards securing “that children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against moral and material abandonment”.
6. It is relevant to state that as per paragraph 3(xiv) of the National Policy for Children published by the Government of India, Department of Social Welfare at New Delhi on August 22, 1974, in all legal disputes whether between parents or institutions, the interest of children are given paramount consideration.
7. Child Rights have also been a subject matter of concern, even in the United Nations. The Universal Declaration of Human Rights has proclaimed that a child is entitled to special care and assistance, being convinced that the family as a fundamental group of society, and the natural environment for growth and well being of all its members, particularly children should be afforded the necessary protection and assistance so that they can fully assume their responsibility within the community.

They were also convinced that for the full and harmonious development of his or her personality, a child should grow up in a family environment, in an atmosphere of happiness, love and understanding.

The United Nations promulgated the Convention on the Rights of a Child, which was adopted and opened for signature, ratification and accession by the United Nation Resolution No.

44/25 dated November 20, 1989. The said Convention came into force on 2nd September 1990 in accordance with Article 49. Article 3 of the said UN Convention of 1990 reads as follows:

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Article 9 of the said UN Convention of 1990 reads as follows:-

“1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an

opportunity to participate in the proceedings and make their views known.

3. *States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*

4. *Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.”*

8. From a perusal of the above Articles, it is clear that the UN Convention on the Rights of a Child also emphasized the best interest of a child to be a primary consideration and for such interest being subserved, it entails that a child shall not be separated from both of his or her parents against their will, except when, competent authorities, subject to judicial review, determine, in accordance with applicable laws and procedure, that such separation is necessary for the best interest of the child.
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9. The United Nations Convention on the Rights of a Child of 1990 has been adopted by India. The said Convention has also been acknowledged and followed by the Hon'ble Supreme Court of India.
10. Thereafter, the Central Government framed National Charter for Children, 2003 (hereinafter referred to as the "2003 Charter"). The underlying intent of the Charter is to secure for every child

"its inherent right to be a child and enjoy a healthy and happy childhood to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse while strengthening the family, the society and the nation."

11. The National Charter for Children, 2003, recognizes the common responsibility of both parents in rearing their children. Being relevant for the present purpose, clauses 16, 17 and 18 of the Charter are set out hereinbelow:

"16. All children shall enjoy freedom of association and peaceful assembly, subject to reasonable restrictions and in conformity with social and family values.

17. Strengthening Family –

(a) Every child has a right to a family. In case of separation of children from their families, the State shall ensure that priority is given to re-unifying the child with its parents. In cases where the State perceives adverse impact of such a re-unification, the State shall make alternate arrangements immediately, keeping in mind the best interests and the views of the child.

- (b) *All children have a right to maintain contact with their families, even when they are within the custody of the State for various reasons.*
 - (c) *The State shall undertake measures to ensure that children without families are either placed for adoption, preferably intra-country adoption, or foster care or any other family substitute services.*
 - (d) *The State shall ensure that appropriate rules with respect to the implementation of such services are drafted in a manner that are in the best interest of the child and that regulatory bodies are set up to ensure the strict enforcement of these rules.*
 - (e) *All children shall have the right to meet their parents and other family members who may be in custody.*
18. *Responsibilities of Both Parents--The State recognizes the common responsibilities of both parents in rearing their children."*

12. In terms of the Convention on the Rights of the Child, it was incumbent upon the signatory States (Countries) to take steps for protection of Child rights enumerated in the Convention. Accordingly, the Parliament enacted the "Commissions for Protection of Child Rights Act, 2005" (hereinafter referred to as the "2005 Act"), inter alia, to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto. Section 2 (b) of the 2005 Act provides that "Child Rights" includes "the children's right adopted in the United Nations Convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992."
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13. The 2005 Act principally relates to offences against children and/ or violation of child rights and for constitution of commissions and children's courts. The 2005 Act did not take care of the joint custody or joint parenting or access of the child to the grand-parents or the issues relating to custody of child in case of separation of parents. Presently the laws governing Guardianship and Custody of minors are:

- (i) The Guardians and Wards Act, 1890, and
- (ii) The Hindu Minority and Guardianship Act, 1956

One is 132 years old, and the other is 66 years old and both the statutes require re-look and suitable amendments to sync with the modern-day scenario, especially in view of the fast-changing social environment and change in international conventions.

14. Presently, the basis on which the cases of custody of children are decided ostensibly is that of the "best interest and welfare of the child". The law is vague and there is no guideline, either judicial or administrative, to fill up the gap. There is an uncertainty and lack of judicial consensus on what exactly constitute welfare of the child. As a result, in fiercely fought custody battles, there are no ways to ensure that the interest of the child is actually protected. Judicial precedents vary, not from Court to Court only but vary from Learned Judge to Judge and there is no uniformity.

In such sea of uncertainty, Child Rights Foundation, an NGO established in Navi Mumbai, published a "Child Access and Custody Guidelines and Parenting Plan" in the year 2014 (hereinafter referred to as the **"said guidelines"**), inter alia, for emotionally distressed children, whose parents are going

through or have suffered a divorce. As the divorce of the parents of the child causes an irreparable scar to the emotion of the child, especially post separation of the parents, the said guidelines of joint parenting and visitation rights of both the parents, enhance the child's emotional health and stability and protect the interest of the child, which is of paramount consideration.

This Guideline is under Consideration by the Hon'ble Rule Committee.

15. This guideline has been implemented by several High Courts in India and has also been referred to before the Hon'ble Supreme Court of India.
 16. In this background, the Law Commission of India prepared its 257th report called "Reforms in Guardianship and Custody Laws in India May 2015" which was forwarded to the Hon'ble Minister of Law and Justice, Government of India on May 22, 2015, wherein the Law Commission takes into account the said Guidelines.
 17. The term "custody" is not defined in any family law, whether secular or religious. In the report, the Law Commission observed that in addition to uncertainty and lack of judicial consensus on what exactly constitutes best interest of the child, the legal framework is also silent as to how such custody issues are to be handled.
 18. The Law Commission, a body comprised of experts, has also referred to the said Guidelines namely "Guidelines for Custody Child Support and Visitation Arrangements" made by Child Rights Foundation as aforesaid. The said guideline clearly strives to ensure that a child is not deprived of love and
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affection of both his parents and near and dear ones including grandparents and also seeks to make both parents jointly liable and responsible for the welfare and wellbeing of the child including his/her mental and physical health as well as education.

19. The State of West Bengal and the Union Territory of Andaman & Nicobar Islands presently lack appropriate guidelines that would assist the Courts.
 20. In the above factual matrix, a Public Interest Litigation being **WPA (P) No. 257 of 2021 was filed by Dr. Ratul Roy and Ayushman Initiative for Child Rights. Subsequently another writ petition being** WPA (P) No 166 of 2022 (Antara Vs The Hon'ble High Court At Calcutta) was filed for a direction to frame appropriate Guidelines for child access and child custody along with parental plan in accordance with the said Guidelines made by said Child Rights Foundation.
 21. By an order dated 19.07.2022 The Hon'ble Division Bench presided over by The Hon'ble Chief Justice and Hon'ble Justice Rajarshi Bharadwaj referred the matter relating to framing of Guidelines on the issue of Child Access and Custody Guidelines along with Parenting Plan to the Hon'ble Rule Committee of this Hon'ble Court.
 22. By an order dated 25.01.2023 The Hon'ble Rule Committee invited objections and suggestions from Learned District Judges, Director, Judicial Academy, State of West Bengal, Child Psychologists and other relevant stake holders.
 23. The addressees submitted their objections and suggestions, which were included in a Paper Book and circulated by the Hon'ble Rule Committee.
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24. The Rule Committee held several meetings where deliberations were made on the suggestions. By an order dated April 4, 2023, the Hon'ble Rule Committee was pleased to appoint a Sub-Committee to *"formulate a draft guidelinesin line with discussions held in the meeting..."*.
25. On August 24, 2023, the Sub-Committee submitted its first report, which was discussed by the Hon'ble Rule Committee in its meetings.
26. In the meeting held on 9.04.2024, the Hon'ble Rule Committee requested the Sub-Committee to prepare a modified Guideline incorporating the suggestions received subsequently. It was directed that new insertions are to be marked in Red ink and deletions are to be marked in Green Ink. The Report was to be filed by April 30, 2024 and the next meeting was fixed on May 10, 2024. However, due to unavoidable circumstances the Sub-committee prayed for extension of time which was granted till June 14, 2024.
27. In May 2024, Japan amended its law of child custody introducing **Joint Custody (or shared parenting)**. Japan was the last of **the G-7** Countries, namely Canada, France, Germany, Italy, Japan, UK and USA, to introduce Joint Custody also called "shared custody" which the proposed guideline aims at.
28. Hon'ble Supreme Court in the meantime has passed judgements recognizing and approving joint/shared custody of children including the judgement passed in SLP (C) No 28466 of 2023 (Col. Ramneesh Pal Singh Vs. Sugandhi Aggarwal) dated May 8, 2024.

The Sub-Committee had meetings on 26th May, 2024, June 8,

2024, June 9, 2024 and June 11, 2024 and finalized the modified Guidelines in accordance with the direction of the Hon'ble Rule Committee.

29. The modified Guideline was sent by e-mail to the Learned Registrar (Judicial Service) of this Hon'ble Court on June 12, 2024.
30. The Rule committee acknowledges the extensive work done by the members of the Sub-Committee, who have strived to suitably modify the Guidelines so that the best interest of the child is sub-served in matters of child custody, joint parenting and access before the Courts of competent jurisdiction in State of West Bengal and Union Territory of Andaman & Nicobar Islands.
31. In a meeting of the Rule Committee held on September 24, 2024, the Guidelines were finally approved along with the Preface thereto.

SOUMEN SEN, J. (PRESIDENT)

ARIJIT BANERJEE, J.

SUVRA GHOSH, J.

CHILD ACCESS & VISITATION GUIDELINES
BY
CHILD RIGHTS FOUNDATION

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CHILD ACCESS & CUSTODY GUIDELINES

Along with Parenting Plan

By

The Hon'ble High Court at Calcutta

A serious need is felt for approaching the Hon'ble Principal Judge Family court to set proper guidelines for the Family Courts regarding access, visitation and custody, as this will help in disposing off the cases quickly in a scientific manner ensuring that the right of the child to be showered with the love and affection of both the parents is not lost or delayed.

I. Under Section 10(3) of the Family Courts Act the Principal Judge has the powers to frame rules.

II. When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child While determining the best interests of the child:

III. The primary considerations are:

a. Ensuring benefit to the child of having spend equal or substantial or significant time to develop a meaningful relationship with both the child's parents and to ensure an implement of overnight access so that the child gets love and affection of not only both the parents but also of grandparents, uncles , aunties, cousins etc thereby ensuring that the family heritage is maintained; and

b. Ensuring the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

INTRODUCTION:

The recent trend in the society is seeing a paradigm change in the matrimonial relationship. The numbers of divorce cases are rising, particularly in the last decade, more and more middle and lower-middle class couples have been approaching family court for divorce, resulting in rise of bitter child custody battles. Often, the innocent children are used as tools of vengeance by vindictive litigants who inflict severe emotional and psychological abuse on the child thereby seriously affecting the child in his/her later part of life . Failure in marriages is sometimes due to lack of awareness or realization among the litigants where often one of the partner suffers from a personality disorder and/or adjustment disorder which can be easily diagnosed through psychological evaluation.

A serious need is felt for approaching the Hon'ble court as well as HC to set proper guidelines for the Family Courts, as this will help in disposing off the cases quickly in a scientific manner rather than on speculation.

In family disputes, litigants often make false and vindictive allegations against each other, wasting & consuming enormous court's time which can be reduced considerably.

Further it would also help to some extent in reconciliation of marital disputes.

Presently, even the Legal system, bureaucrats, politicians, statutory agencies for child welfare, NGO's etc., have forgotten or missed to appreciate or understand child rights as well as the immense emotional trauma that innocent children undergo in the process of custody litigation and parent separation due to lack of love and affection from both the parents.

Depriving love & affection of both parents, more particularly due to alienation of the child by the custodial parent and or denial of proper access to the non-custodial parent by the courts without realizing the serious consequences caused in the later part of the child's life such as drug abuse, deteriorating educational achievement, premature sexuality, mental/personality disorder, chronic depression, suicidal tendency, out of wed-lock birth, and often a major force behind serious crimes.

There is an urgent need to establish well defined framework and guidelines for family courts and the counselors to implement while deciding the custody of the children.

Delay in action or callous approach, what kind of future society/generation are we going to create.

Needless, to say today's youth are going to be leaders & thinkers of tomorrow. The Nation's future depends upon today's children. Hence, immediate intervention of higher courts must.

Presently these issues are being decided in an absolutely subjective fashion by the family court seriously affecting the mental health of the tender children as well as specific violations of UN Convention on rights of the Child.

One of the fundamental rights of the children is to get love and affection from both the parents (irrespective of parent's conflict), right to quality of life and survival, and right to be cared, right to develop a sense of belonging, right to participate fully in family, cultural and social life.

We would like to bring specific focus to Article 39(e) & (f), the state shall direct its Policy in such a manner that the tender age of children is not abused and children are given opportunities and facilities to develop in a healthy manner and childhood is protected against exploitation and against moral and material abandonment.

While framing guidelines a clear distinction needs to be made between the Rights of the Child versus the Rights of a Parent (which invariably ends up being interpreted as Rights of only the mother).

These guidelines should be followed by the Learned Civil Courts and Family Courts and wherever custody of child is involved including under The Protection of Women From Domestic Violence Act, 2005.

The Family Courts are free to make rules under Section 10(3) of the Family Courts Act, 1984.

In cases where allegations of child abuse (including under POCSO) are made and it appears to the court that such allegations are made with a view to manipulate custody arrangements or alienate the child, such matters must be prioritized for resolution on preferably day-to-day hearing basis. When allegations are found to be false, severe actions should be taken against the perpetrators including imposition of heavy costs and shift of the custody of the child to prevent lasting harm to the child parent relationship India and the *UNCRC

The UNCRC – United Nations Convention on the Rights of the Child (UNCRC) a clarion of worldwide movement and the pinnacle of international effort to promote the basic needs of children as fundamental human rights is a remarkable and wonderful gift to the children which is given a 'go by' by our current legal system. (India along with 193 countries has also agreed to undertake the obligations of the Convention by ratifying to it as on December 2008).

Child Custody Affidavit

Before deciding custody of any child, the concerned Court/Forum shall direct both the parties to file child custody affidavit in accordance with the format being Annexure “X” to this Guidelines. The format of Child Custody Affidavit is annexed as Annexure “X”. It is also made clear that all child custody applications must be accompanied by the Child Custody Affidavit as per Annexure “X” herein.

“The application should be made complying with Section 11 of the Guardians and Wards Act, 1890”

CHILD VISITATION GUIDELINES

The parent with primary custody of the child shall be referred to herein as the “custodial parent” and the other parent shall be referred to as “non-custodial parent” which expression shall include grandparents, siblings and other relatives or a “fit person” within the meaning of section 2(i) of the juvenile Justice (Care and Protection of Children) Act, 2000.

These guidelines shall apply to both interim and final child visitation rights.

Visitation shall mean and include regular visitations, weekend visitations, festivals, pujas, religious functions, birth day, anniversary celebrations, marriage in the family and medical emergencies of non-custodial parent.

The Courts will have the powers to appoint Amicus Curiae, Child Welfare Expert and Special Officers who will exercise powers under Section 12 of the Family Courts Act, Order 26 Rule 9, Order 32 Rule 3 and 4 and Order 40 Rule 1 of the Code of Civil Procedure, 1908 and emphasis may be given at interim custody stage

Immediately within one week from the date of service of summons or the first meeting with the counselor for mediation and conciliation, parties shall draw up an interim visitation plan.

The basic principles of the courts are to ensure that the child/children get(s) to spend equal or substantial and significant time to be showered with love and affection from both the parents irrespective of parent's conflict.

Efforts should be made by parties and if necessary, court should direct parties to mutually agree upon a visitation schedule to be drawn up along with the Marriage Counselor within a maximum period of 60 days. Pending, finalization of mutual final overnight visitation agreement, an interim access has to be worked out immediately.

If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Visitation is for the primary benefit of the child. Visitation should not be viewed as a privilege to be exercised at the whim of either parent, but as a responsibility that should be fulfilled as a necessary cause. The custodial parent is expected to provide access of each child at unscheduled times if requested and if to do so would not unreasonably disrupt prior planned activities of the child or the custodial parent.

Prior to referring the parties to mediation, the Court may, at its discretion make an interim arrangement for visitation in course of pendency of the mediation.

REINTRODUCTION OF ABSENT PARENT: The Guidelines assume that each parent has been a continuous presence in the children's lives. In the event that a parent has had limited or no contact with his or her children and wishes to be reintroduced into the children's lives, it is up to the parents to agree on the means by which this is to be accomplished. If the parents are unable to agree, the first alternative shall be to mediate the conflict. If mediation is unsuccessful, it shall be the responsibility of the Court to adopt a schedule to ease the reintroduction.

The Courts should grant visitation rights via a Parenting Plan within a given time frame of three months to foster continuous and meaningful child – parent relationships.

The Courts can shift custody of the child inter alia on the following grounds:-

- a) Repeatedly not allowing the contact between the non-custodial parent and the child thereby abusing the child.
- b) Alienation of affection of the non-custodial parent.
- c) Speaking in a derogatory or degrading manner about the other parent or using other tactics to demean the other parent.
- d) The custodial parent removes the child to a distance jurisdiction thereby the child being completely deprived of physical contact with the non-custodial parent.

The Court shall not pass a decree for divorce unless the child or children's maintenance, education and custody arrangement is made.

The parents should mandatorily file along with the pleadings a sworn detailed proposed parenting arrangement/plan for the children.

In the final decree, in the absence of agreement of parties the Learned Court should draw a parenting plan for the parents.

To prevent non-compliance and parental alienation, the following measures are recommended at the discretion of the Court concerned –

- a) *Awarding compensatory or substitute access for lost visitation days.*
- b) *Imposing heavy fines or costs for each breach of visitation orders.*
- c) *Directing the alienating parent to undergo counseling.*
- d) *Shifting of custody of child in severe cases at the discretion of the Court concerned.*

Visitation schedules can only be modified by approval of the Court concerned.

CHAPTER 1

INTERIM VISITATION

The following visitation guidelines should balance the needs of both the parents and the child, regardless of whether that child has older siblings that enjoy extended visitation with the non-custodial parent. Interim visitation shall be for at least three hours per week.

A. VISITATION (CHILDREN AGED BETWEEN 0 TO 36 MONTHS)

1. **WEEKENDS:** The Non-custodial parent shall be entitled to weekend visitation every week as per the discretion of the Court. While exercising such discretion, Court shall have due regard to the peculiarities of the facts on case to case basis.
2. **WEEKDAY VISITATION:** The Non-custodial parent may also be conferred upon a visitation right for such number of days every week between Monday to Friday as the Court may deem proper, while directing visitations on weekdays, the Court shall take into consideration, the activity schedule of the child and also the convenience and inconvenience of the parties amongst other factors.
3. **HOLIDAYS:** The non-custodial parent shall be entitled to spend at least 3 Three hours with the child on the holidays or on festival days including 15th August, 26th January, 1st May, 2nd October (Gandhi Jayanti), 14th November (Children's day) excluding the time of travel. Only where it is not possible to make such arrangements during the holidays or the festival days due to reasons of distance or otherwise, alternative arrangements can be made to ensure that the child gets the company of the non-custodial parent on any other day for an equivalent period. In odd-numbered years, the Non-custodial parent shall be entitled to spend holidays and festival days with the minor child and in even numbered years, the schedule shall be reversed. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated each year.

B. VISITATION (CHILDREN 36 MONTHS AND OLDER)

4. WEEKENDS: The Non-custodial parent shall be entitled to one night visitation every weekend or as the Court may decide taking into account, the relevant factors.
5. WEEKDAY VISITATION: If the parties reside within fifty (50) Kilometers distance from each other, the Non-custodial parent shall have visitation two (2) evening per week, but shall exercise the weekday visitation in the locale of the child's primary residence. The preceding sentence shall not preclude occasional travels beyond the fifty (50) Kilometers for special weekday events. The weekday visitation shall be on the same evening each week and varied only if it conflicts with the holiday or vacation schedule. If the parties cannot agree on the weeknight and if there are no scheduled activities for Wednesday, it shall be Wednesday evening for 2 hours or as per discretion of the Judge concerned. If there are activities scheduled for Wednesday, the Non-custodial parent shall have first choice of an alternate weekday for weekday visitation.
6. HOLIDAYS: The non-custodial parent shall be entitled to spend at least Three (3) hours on holidays and festival day excluding the time of travel. Only where it is not possible to share during the holidays and festival day due to reasons of distance or otherwise. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated. In the absence of an agreement, the court shall allocate religious holidays between the parties.
7. CHILDREN COMPLEX ROOM: Where access even though either agreed by mutual consent or ordered by the court is not being granted to the non-custodial parent, Children's complex room situated in the premises of the Family Courts or such other place as either mutually agreed or directed by the court such as premises made available and approved by the Hon'ble Family court shall be used for purposes of counseling the child or the parent for a specific period and thereafter access can continue as per schedule set forth.
- 7A. Notwithstanding anything contained above, the Court may, by using its own discretion and keeping in mind, the factual matrix of each case, draw up a schedule of interim visitation if the mediation fails. However, the Court shall, while framing such schedule, consider the benefit of the child as the primary factor and shall also take into account, the convenience of the parents, as far as practicable. Notwithstanding anything contained in the foregoing provisions, the parties shall be at liberty to mutually agree upon variation of the schedule of interim visitation if circumstances so warrant, subject to approval of the Court.

- (i) The Court may also fix a minimum duration for every single visitation.
- (ii) The place of each of such visitations may be fixed by the parties prior hand, keeping in mind the child's comfort and interest. Efforts should be made by the Court to avoid the visitations from occurring at the Court premises or at any advocate's chamber or at any other place, which may not be conducive for the child.
- (iii) If, under any circumstance, a session of interim visitation is needed to be altered, the parties shall be at liberty to do so, subject to approval by the Court. However, if the Court chooses to appoint any special officer to oversee the interim visitation procedure, the parties shall immediately inform the special officer of the reason for such variation/alteration of the schedule and of the rescheduled date, when they want such visitation to be done.
- (iv) If any session of visitation is wanted to be avoided by any party on the ground of any unavoidable circumstances or discomfort of the child, that session can be rescheduled at the agreement of both the parties. However, if the Court chooses to appoint any special officer to oversee the interim visitation procedure, the parties shall immediately inform the special officer of the reason of the such variation/alteration of schedule and the Special Officer may personally see or talk to the child, and upon satisfaction, may allow the parties to reschedule the session to any date of their convenience.
- (v) **APPOINTMENT OF SPECIAL OFFICER DURING PENDENCY OF APPLICATION FOR VISITATION:** If the Court finds it necessary, the Court may, at any stage of the proceedings, appoint any special officer to oversee the entire visitation process. The Special Officer shall record his observations after every visitation and shall submit a report to that effect before the Court at regular intervals as the Court may deem fit.

The special officers to be appointed must have maturity or field experience. They may be child psychologist or social worker or mutual relative or friends of parties or a learned advocate. The role of the special officer shall be non intrusive and mediatory.

- (vi) Notwithstanding anything, if there is any allegation or complaint of trauma or mental suffering caused to the child owing to the presence of the non – custodial parent or otherwise, the Court shall appoint a fit and proper person as a special officer to oversee the visitation sessions and to file a report with his observations regarding the same. On the basis of such report, the Court may alter the visitation schedule and/or the place of visitation and may also impose such further or other terms, as the Court may deem proper for the welfare and benefit of the child.

CHAPTER – 2

FINAL CHILD VISITATION GUIDELINES PENDING CUSTODY ORDER OF THE HON'BLE COURT.

8. GENERAL PROVISIONS

The parent with primary custody (parent who is having custody of child since birth and is taking care of the day to day and hour to hour need of the child) shall be referred to herein as the custodial parent, and the other parent shall be referred to as the Non-custodial parent.

9. ACCESS VISITATION SCHEDULE:

i. If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Even if mediation does not work, then the court can pass an appropriate order in terms of the visitation schedule for parties to comply. Special reasons may exist to alter this visitation schedule such as: age of the child, health, special care needs, etc.

ii. Within a period of not more than 60 days parties shall draw up and finalize a final schedule of visitation as per chapter 3 below. Notwithstanding anything contained in the foregoing and following provisions, the parties shall be at liberty to vary the schedule of visitation, subject to approval of the Court, or the Learned Judge may also, at his discretion, vary the schedule, if circumstances so warrant.

iii. On the visitation schedule being drawn and agreed upon between the custodial and the non-custodial parent the counselor shall have the same duly executed by the parties and the same shall be placed on record for the approval of the Learned Court. Parties shall comply with the agreement in full and any violation shall give rise to cause of action to the aggrieved party to seek appropriate directions from the Court. The place of each session may be fixed by the parties prior hand keeping in mind the child's comfort and interest. Efforts should be made by the Court to avoid the visitations from occurring at the Court premises or at any advocate's chamber or at any other place not conducive for the child.

A. The no-contact or limitation-of-contact provisions of any domestic violence case, injunction case, juvenile case, or criminal case supersede any contact provisions set forth in these guidelines. That is, the no-contact or limitation-of-contact provisions of any domestic violence case, injunction

case, juvenile case, or criminal case should be followed as set forth by the judge in that case. It may be necessary to seek a modification of the no-contact or limitation-of-contact provisions in order to facilitate visitation.

B. The term "local" shall apply to parties residing within 200 Kilometers of each other.

C. The term "non-local" shall apply to parties not residing within 200 Kilometers of each other.

10. ENFORCEMENT OF VISITATION SCHEDULE: If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Even if mediation does not work then the court can pass an appropriate order in terms of the visitation schedule for parties to comply.

11. MEDICATION, ILLNESS OR ACCIDENT: If medication or therapy has been prescribed for the child, then both parents shall without fail provide the child all medical prescription dosages, treatment and/or therapy as may be prescribed for the child. The parents shall share the health care professional's name and phone number as well as instructions for treatment. If the child becomes ill or is involved in an accident, and treatment by a medical professional is obtained, the parent who has the child at the time of the illness or accident shall notify the other parent as soon as practicable but no later than three (3) hours after the incident or diagnosis. Illness of the child shall not prevent visitation with the child, unless the child is hospitalized. Non-custodial parent can visit the child in hospital.

[If any session of visitation is wanted to be avoided by any party because of any unavoidable circumstances or owing to discomfort of the child, such session can be rescheduled at the agreement of both the parties. However, if the Court chooses to appoint any special officer to oversee the visitation procedure, the parties shall immediately inform the special officer of the reason of such variation/alteration of the schedule and the Special Officer shall personally see or talk to the child, and upon satisfaction, may allow the parties to reschedule the session to any date of their convenience or may refer the matter to the Court.]

12. COMMUNICATIONS: Provided that both parents have telephones in their homes, the child shall be entitled telephone communication at least once every day with both parents. Each parent shall immediately deliver to the child all letters, cards, e-mails, correspondence, telephone messages, gifts, toys, clothes and other items sent to that child by the other parent. Neither parent shall withhold, return, destroy, give away, sell or otherwise dispose of any such items. If either parent plans a vacation or trip out of town with the child for three (3) days

or more, that parent must provide the other parent with a general itinerary, a phone number where the child can be reached, and the dates of departure and return. Each Parent shall provide the other Parent promptly upon being requested to do so, with information concerning the well-being of said children including, but not limited to; monthly school attendance reports, reports concerning completion of homework, copies of report cards, school meeting notices, vacation schedules, class programs, requests for conferences, results of diagnostic tests, notices of activities involving said children, samples of school work, order forms for school pictures, communications from health care providers; the names, addresses and telephone numbers of all schools, preschools, regular day care providers, all health care providers, counselors, or other activity supervisor, and friends, schoolmates and relatives.

13. SCHEDULED EVENTS: Both parents shall be entitled and are encouraged to attend and participate in the child's special events, such as school programs, graduation, sports, recitals, and other extracurricular activities. When the child has extracurricular activities, the parent caring for the child when the activity is scheduled should assure the child's attendance. Each parent shall advise the other parent of extracurricular activities in which the child participates within twenty-four (24) hours of notification of an event or activity. Each parent shall make an effort not to schedule activities for the child that interferes with the other parent's visitation time with the child.
14. ADDITIONAL VISITATION: The Non-custodial parent shall be entitled to exercise other reasonable visitation in the locale of the child's primary residence or at other places like club, place of worship, shop, ground, mall, upon reasonable notice subject to a minimum of 12 hours notice to the custodial parent whenever. There may be need where the non-custodial parent may wish and desire that the child should be present on certain occasions such as poojas, religious functions, birthdays, anniversary celebration, inaugurations, marriage, or emergencies such as untimely death or hospitalization of a close relative such as grandparent/relations etc. In such circumstances the custodial parent shall allow access of the child immediately.
15. ADEQUATE AND CLEAN CLOTHING FOR VISITATION: Adequate and clean clothing shall be supplied by the custodial parent and all these clothes shall be returned in the same clean condition by the Non-custodial parent to the custodial parent after each visitation period.
16. INTENT TO RELOCATE: Neither party to the suit can relocate unless final visitation rights agreement as set out is signed and finalized.
17. NOTICE OF INTENT TO RELOCATE: In the event that either parent intends to relocate outside of local area of residence of the non-custodial parent, he/she shall provide the other parent with ninety (90) days written notice prior to any

relocation. This is a notice provision only and does not eliminate the need for court approval of such relocation if legally necessary. In the event such relocation does take place and the custodial parent is permitted to relocate and further if the non-custodial parent in order to be able to be near the child and for the sake of the child also chooses to relocate then under such circumstances the non-custodial parent on relocation shall enjoy the same access schedules as already decided and agreed without any alterations. In the event the non-custodial parent's status changes from 'Non-local' to 'Local' the access schedule shall also likewise change and the non-custodial parent shall be entitled to all provisions of local access.

18. CHANGES IN ADDRESS AND PHONE NUMBERS: Neither parent shall conceal the whereabouts of the child from the other parent. Each parent shall advise/disclose to the other parent at all times of the residence address and telephone number where the child will be as well as the parent's work telephone number. If a residence or telephone number changes, the parent making the change shall notify the other parent personally or by telephone within twenty-four (24) hours and in writing within seventy-two (72) hours of the change.
19. CHILD SUPPORT / MAINTENANCE: Non-payment or late payment of child support is NOT an acceptable reason to deny or interfere with visitation. Conversely, denial of visitation is NOT justification for non-payment or late payment of child support. Child support and child visitation are separate and independent issues and are not to be manipulated by either parent to gain leverage over the other parent with regard to visitation or child support. Child support shall NOT stop during visitation periods, unless provided by court order.
20. FLEXIBILITY AND THE BEST INTERESTS OF THE CHILD: The parents may agree to change this schedule to meet the needs of their child. The parents are encouraged to put such changes in writing. If the parents do not agree to visitation schedule changes, they must adhere to these guidelines, or a parent in violation may be held in contempt of court.
21. SHIFT OF CUSTODY: FOR REASONS OF CHILD ALIENATION / TUTORING / MIND POISONING / BRAINWASHING / PARENTAL ALIENATION SYNDROME : In the event it is observed or alleged by concrete substantive evidence or material placed on record enumerating instances as listed below the court shall proceed to seriously entertain and decide that the custody of the child be shifted from the custodial parent to the non-custodial parents on their being conclusive evidence to substantiate either any one or more of the following :

A custodial parent who unjustifiably punishes her divorcing or divorced Non-

Custodial parent by:

- i. Attempting to alienate their mutual child(ren) from the Non-Custodial parent.*
- ii. Any act, deed done or caused to be done by the custodial parent which may lead to the infringement of the right of the non-custodial parent's visitation.*
- iii. Involving others in malicious actions against the Non-Custodial parent.*
- iv. Engaging in excessive litigation.*
- v. The custodial parent specifically attempts to deny her child(ren) regular uninterrupted visitation with the Non-Custodial parent.*
- vi. Uninhibited telephone access to the Non-Custodial parent.*
- vii. Obstructs or causes any obstruction in the Non Custodial parents participation in the child(ren)'s school life and extracurricular activities.*
- viii. The pattern is pervasive and includes malicious acts towards the Non-Custodial parent including:*
- ix. Lying to the children*
- x. Lying to others*
- xi. Violations of law Or Making False Complaints*
- xii. The disorder is not specifically due to another mental disorder although a separate mental disorder may coexist.*

22. NEW SPOUSE OR COMPANION: The parents shall not encourage the child to call a new spouse or companion "Papa" "Mummy" "Father", "Dad", "Mother", "Mom", or similar names, as such is detrimental to the child's relationship with his/her natural parents and may confuse and adversely affect the child. A substitute name may be suggested or encouraged. Each parent shall encourage a new spouse or companion not to confront or to interfere with the other parent's contacts or visitation with the child and each parent is expected to prevent any such confrontation or interference. The other parent shall not be adversarial or hostile to a new spouse or companion but shall be courteous, polite, respectful, and non-threatening. Unless otherwise ordered or agreed by the parties, the parents are expected to speak directly with each other concerning all matters related to a divorce or separation judgment or order.

23. NAME OF THE CHILD & SURNAME: The custodial parent shall not be entitled to change the name or the surname of the child which has been given to the child as

per either a ceremony performed for the same or the name along with the father's surname as it appears in the birth certificate.

24. CHANGE OF SCHOOL OR DAYCARE CENTRE: The custodial parent shall not be entitled to admit, change the school or the daycare centre of the child without written consent and/or agreement between the parties. If the issues is not being resolved then such admission, change of school/daycare centre of the child shall be as per the order of the court.

25. REMOVAL OF CHILD FROM DAYCARE OR SCHOOL: In the absence of prior agreement between the parties and proper notification of the daycare or school - except in the event of an emergency - the Non-custodial parent shall not remove the child from daycare or school for visitation or otherwise. This paragraph shall not be applied to preclude the Non-custodial parent's participation as a parent in school activities and access to the child at school, to the same extent as afforded the custodial parent, nor to prevent the Non-custodial parent from picking the child up after school or daycare if such pickup is pursuant to the parties' visitation arrangement.

26. CANCELLATION BY NON-CUSTODIAL PARENT

A. Local (parties residing within 200 Kilometers of each other)

- i. Twelve (12) hours' notice shall be given by the parent entitled to visitation with the child if visitation will not be exercised for the weekday or weekend.
- ii. A minimum of Three (3) days notice shall be given by the parent entitled to visitation for a holiday if visitation will not be exercised.
- iii. A minimum of Fifteen (15) days' notice shall be given in writing by the parent entitled to visitation for a period of one week or greater if visitation will not be exercised.
- iv. The parent seeking cancellation shall arrange and pay for babysitting, childcare or other appropriate visitation of the child for the visitation period; to the extent such expense is due to the cancellation. Any visitation cancelled by the non-custodial parent shall be forfeited, unless the parties agree to substitute visitation. The required cancellation notice is given; the custodial parent shall not unreasonably withhold substitute visitation.

27. NOTICE - NON-LOCAL (PARTIES NOT RESIDING WITHIN 200 KILOMETERS OF EACH OTHER):

- i. A minimum of three days (3 days) notice shall be given by the parent entitled to visitation for a holiday or special occasion if visitation will not be exercised.

A minimum of Fifteen (15) days' notice shall be given in writing by the parent entitled to visitation for Diwali, Christmas, Summer vacations or an annual visitation period of one (1) week or greater if visitation will not be exercised. If the cancellation is NOT agreed to by both parents, the parent seeking cancellation must arrange and pay for child care or other appropriate supervision of the child for the visitation period, to the extent such expense is due to the cancellation. Any visitation cancelled by the non-custodial parent shall be forfeited, unless the parties agree to substitute visitation. If the required cancellation notice is given, the custodial parent shall not unreasonably withhold substitute visitation.

- ii. ADDITIONAL VISITATION: The Non-custodial parent shall be entitled to exercise other reasonable visitation in the local of the child's primary residence upon reasonable notice to the custodial parent.

28. TRANSPORTATION

- A. Local (parties residing within 200 Kilometers of each other): The Non- custodial parent shall pick up the child for visitation and the custodial parent shall pick up the child after visitation. A third party, agreed to by both parents, may substitute for one of the parents in transporting the child to and from visitation. The parties should reasonably consider a parent's current spouse or a family member of the child as a substitute. A party who moves and thereby causes an increase of more than thirty (30) Kilometers in distance between the two parents, shall bear responsibility for transportation in absence of Court intervention. The place of pick up and drop of the child shall be agreed to in writing by both the parents. However, the place of pick up and drop shall either be the residence of the custodial parent or the family court children's complex or as ordered by the Hon'ble court.
 - B. Non-local (parties not residing within 200 Kilometers of each other): The court shall decide the issue of transportation on a case by case basis of absence of an agreement by the parties.
29. WAITING: A child shall be picked up or delivered within thirty (30) minutes of the scheduled time of exchange. If the Non-custodial parent is more than thirty (30) minutes late to pick up the child for visitation and creates a hardship as a result, visitation shall be forfeited for that visitation period. If legitimate reasons exist for delay in picking up the child for any weekend or longer visitation, and beginning the visitation the next day does not create a hardship on the custodial parent, the Non-custodial parent may pick up the child at a mutually agreed upon time later in the visitation period. The Non-custodial parent shall give the custodial parent

as much notice as reasonably possible of any delay in picking up the child.

30. AMENDMENTS: Parties can vary; alter the interim access schedule as per convenience within a period of one week from the date of presentation of the petition before the Hon'ble court or within one week from the date of their meeting with the counselor for mediation whichever is earlier. In the event parties fail to arrive at a decision and conclude on the interim visitation schedule then the counselor shall draw up an interim visitation schedule and place the same before the Hon'ble court to be made final by an order of the court.

31. OVERNIGHT ACCESS: *Courts are under obligations to consider the child spending equal time, or substantial and significant time, with each parent and if necessary and/or possible, with the grandparents.* In making a parenting order the court 'must consider' making orders that the child spend equal time, or if not equal then substantial and significant time, with each parent. 'Substantial and significant time' is defined to mean, essentially, weekdays and overnight weekends and holidays, times that allow the parent to be involved in the child's daily routine as well as occasions and events that are of particular significance to the child or the parent child to maintain or consolidate a secure attachment with a parent whose behavior is oriented only to 'visiting' rather than 'care-giving'.

Children have the right to know and be cared for by both their parents, regard - less of whether their parents are married, separated, divorced, have never married or have never lived together; and

Children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other immediate family members & relatives); and

Children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

Over Night Access at home of the non-custodial parent should be encouraged at an early stage so that the children have a close and continuing relationship and get the love, affection of not only parents but also of grandparents and other immediate family members like uncle, aunties, cousins etc. The healthy emotional development of children depends upon their early experience of a continuous, emotionally available care-giving relationship, through which they are able to form an organized attachment, and to develop their human capacities for thought and relationships essentially,

Children have their right to childhood of hopeful existence free of exploitations,

neglect. Children need consistent support system as well as love, hope and encouragement, all these things and more are required in order to experience childhood to the fullest and to eventually develop into a healthy, capable adult for the full and hormonal development of his or her personality children should grow up in a family environment in an atmosphere of happiness, love and understanding which is very important for their overall growth and well being. The children should be fully prepared to live life in society, in the spirit, dignity tolerance, freedom, equality and solidarity. However young children are subjected to exploitation especially in a broken marriage where the court has to intervene to protect the rights of the child. Children have to be ensured that the their right to parental access, right to quality of life, right to be cared for, and right to freedom of expression is not compromised and children get love and affection from both parents and grandparents and immediate family members. They should have a sense of belonging to a healthy family environment maintaining their heritage so that the genealogy of the child is not lost after attaining adulthood and they are able to be linked with their ancestors. Overnight access should therefore be encouraged at an early stage.

CHAPTER – 3
LOCAL GUIDELINES

(PARTIES RESIDING WITHIN 200 KILOMETERS OF EACH OTHER)

C. FINAL VISITATION (CHILDREN BETWEEN AGE 0–TO-36 MONTHS)

Minimum Visitation should be at least 4 hours per week.

The following visitation guidelines should balance the needs of both parent and child, regardless of whether that child has older siblings that enjoy extended visitation with the Non-custodial parent.

32. **WEEKENDS:** The non-custodial parent shall be entitled to weekend visitation every week as per the discretion of the Court. While exercising such discretion, Court shall have due regard to the peculiarities of the facts on case to case basis. One of the most important considerations is attachment with both the parents. It is important for visitation to provide opportunities to establish a bond between the child and the parent. Generally, frequency of visitation is given more consideration than duration of visitation. Making up for less frequent visits by increasing the length of time of visits is not recommended for infants recommended daily visits, but if this is impractical, then visits should be spaced no more than two days apart. There is research, however, to show that overnight visits with the parent can occur, provided that the parent has been a significant caretaker and a primary attachment figure. Where grandparents stay separately, the children may be allowed to stay with grandparents too, subject to approval by the Court on such terms, as the Court may impose for the welfare of the child.
33. **WEEKDAY VISITATION:** The Non-custodial parent may also be conferred upon a visitation right for such number of days every week between Monday to Friday as the Court may deem proper, while directing visitations on weekdays, the Court shall take into consideration, the activity schedule of the child and also the convenience and inconvenience of the parties amongst other factors.
34. **HOLIDAYS:** The non-custodial parent shall be entitled to spend at least 3 Three hours with the child on the holidays or on festival days including 15th August, 26th January, 1st May, 2nd October (Gandhi Jayanti), 14th November (Children's day) excluding the time of travel. Only where it is not possible to make such arrangements during the holidays or the festival days due to reasons of distance or otherwise, alternative arrangements can be made to ensure that the child gets

the company of the non-custodial parent on any other day for an equivalent period. In odd-numbered years, the Non-custodial parent shall be entitled to spend holidays and festival days with the minor child and in even numbered years, the schedule shall be reversed. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated each year.

Notwithstanding above the stay of the child during any long vacation exceeding 5 days whenever practicable, would be divided between the custodial parent and the non-custodial parent and also grandparents, as per agreement between the parents or as may be approved by the Learned Judge.

The Learned Judge concerned should see that the agreement between the custodial parent and the non-custodial parent should contain provisions to divide the stay of the child during holidays between the custodial parent, non-custodial parent and the grandparents, if they are willing, so far as possible in equal durations.

Note: For children aged between 0 to 36 months it shall be open for the custodial parent to remain present during visitation for such duration as may be decided by the Learned Court.

- i. Visitation shall be from 11:00 a.m. until 2:00 p.m. or from 4:00pm to 7:00pm on the official holiday or at the discretion of the Learned Court.
- ii. Mother's day Shall be spent with the mother every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 2:00 pm or 4:00pm to 7:00pm.
- iii. Father's day shall be spent with the father every year with priority over any other visitation schedule; visitation hours shall be from 11:00 am. until 2:00 p.m. or 4:00pm to 7:00pm
- iv. Diwali / Eid / Moharram / Makarsakaranti / Janmashtmi / Mahavir Jayanti / Mahashivratri / Ramnavami / Parsi New Year / Bijoya / Laxmipooja / Bhai Phota / Gurunanak Jayanti / Raksha Bandhan / Navratri / Ganesh Chaturthi / Anant Chaturthi / Holi visitation to the non-custodial parent shall be for a period of 3 three hours excluding travelling time and timings shall be decided between the parties mutually.

35. FESTIVALS WEEKEND OVERNIGHT ACCESS : Festivals which last for more than seven days especially Navratri, Ganpati and Ramzan and for which long

holidays are not available to the child the non-custodial parent shall be entitled to one weekend overnight stay during this stretch of festival. A party's entitlement to this festival weekend overnight stay overrides the other party's right to regularly scheduled weeknight or weekend visitation.

36. MOTHER'S BIRTHDAY: shall be spent with the mother every year. If the mother is the Non-custodial parent and the mother's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the mother's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.
 37. FATHER'S BIRTHDAY: shall be spent with the father every year. If the father is the Non-custodial parent and the father's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the father's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.
 38. CHILD'S BIRTHDAY: The child shall celebrate his or her birthday with the Non-custodial parent in odd-numbered years and the custodial parent in even-numbered years. In years that the child spends his or her birthday with the Non-custodial parent, if the child's birthday falls on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation shall be from 5:00 p.m. until 8:00 p.m.; if the child's birthday falls on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m.. The parent holding a birthday party for the child may wish to consider inviting the other parent.
 39. ANNUAL VISITATION FOR CHILDREN (UNDER AGED 0-TO-36 MONTHS): Unless otherwise agreed to by the parties, regular weekend and weekday visitation shall be maintained year round in lieu of a designated annual visitation period.
- D. FINAL VISITATION (CHILDREN 36 MONTHS AND OLDER)
40. WEEKENDS: The Non-custodial parent shall be entitled to weekend visitation every other weekend. Visitation shall begin Friday at 6:00 p.m. and end at 6:00 p.m. on Sunday. If parties wish to avail continuous every week access then every weekend access shall begin from Friday at 6.00 p.m. and end on Saturday 6.00 p.m. or Saturday 6.00 p.m. to Sunday 6.00 p.m. It is not the responsibility of the custodial parent to provide food or shelter for the child during the Non-custodial parent's visitation.
 41. WEEKDAY VISITATION: If the parties reside within thirty (30) Kilometers distance of each other, the Non-custodial parent shall have visitation two (2)

evening per week for 2 two hours between 6.00 p.m. to 8.00 p.m., but shall exercise the weekday visitation in the locale of the child's primary residence or within the radius of 10 ten kilometers. The preceding sentence shall not preclude occasional travel beyond the thirty (30) Kilometers for special weekday events. The weekday visitation shall be on the same evening each week and varied only if it conflicts with the holiday or vacation schedule. If the parties cannot agree on the weeknight and if there are no scheduled activities for Wednesday, it shall be Wednesday evening. If there are activities scheduled for Wednesday, the Non-custodial parent shall have first choice of an alternate weekday for weekday visitation.

42. HOLIDAYS: The non-custodial parent shall be entitled to spend at least 4 Four hours on the holiday or festival day including 15th August, 26th January, 1st May (Maharashtra day) , 2nd October (Gandhi Jayanti), 14th November (Children's day) excluding the time of travel. Only where it is not possible to share during the festival day due to reasons of distance or otherwise. In odd-numbered years, the Non-custodial parent shall be entitled to spend with the minor child; in even numbered years, the schedule shall be reversed. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If the parties celebrate religious holidays other than those defined in sections A and B below, those religious holidays shall be mutually agreed upon in writing, divided, and alternated each year. In the absence of an agreement, the court shall allocate those religious holidays between the parties..

- i. Visitation shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m. on the official holiday.
- ii. Mother's day Shall be spent with the mother every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m. Father's day shall be spent with the father every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m.
- iii. Diwali / Eld / Moharram / Makarsakaranti / Janmashtmi / Mahavir Jayanti / Mahashivratri / Ramnavi / Parsi New Year / Dussera / Laxmi poojan / Bhau Bheej / Gurunanak Jayanti / Raksha Bandhan / Navratri / Ganesh Chaturthi / Anant Chaturthi / Holi visitation to the non-custodial parent shall be for a period of 4 Four hours excluding travelling time and timings shall be decided between the parties mutually.

NOTE: Non-custodial parent shall be entitled to take the child at his residence

during this period of access.

43. **FESTIVALS WEEKEND OVERNIGHT ACCESS** : Festivals which last for more than seven days especially Navratri, Ganpati and Ramzan and for which long holidays are not available to the child the non-custodial parent shall be entitled to one weekend overnight stay during this stretch of festival. A party's entitlement to this festival weekend overnight stay overrides the other party's right to regularly scheduled weeknight or weekend visitation.
44. **FIFTY % VACATION**: The non custodial parent shall be entitled to 50% of each vacation during the year the child has vacations for Durga Puja, Christmas and Summer.
45. **MOTHER'S BIRTHDAY**: shall be spent with the mother every year. If the mother is the Non-custodial parent and the mother's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the mother's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.
46. **FATHER'S BIRTHDAY**: shall be spent with the father every year. If the father is the Non-custodial parent and the father's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the father's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.
47. **CHILD'S BIRTHDAY**: The child shall celebrate his or her birthday with the Non-custodial parent in odd-numbered years and the custodial parent in even-numbered years. In years that the child spends his or her birthday with the Non-custodial parent, if the child's birthday falls on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation shall be from 5:00 p.m. until 8:00 p.m.; if the child's birthday falls on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. The parent holding a birthday party for the child may wish to consider inviting the other parent.

E. CHILDREN IN DIFFERENT AGE GROUPINGS:

- i. If there are two (2) or more children whose ages span different age groupings entitling the children to different visitation periods with the Non- custodial parent, then the younger children shall get the benefit of the oldest child's visitation schedule.
- ii. This provision does not apply to children aged between 0 to 36 months. Parents of a child aged between 0 to 36 months must follow the visitation

schedule for that child regardless of whether or not the child has older siblings on a different schedule.

48. SCHEDULING ANNUAL VACATION:

- i. The Non-custodial parent shall have first choice of annual vacation visitation and shall designate such choice in writing no later than March 1 of each year. Subject to the Non-custodial parent's designated choice on or before March 1, the custodial parent shall designate in writing his or her choice for annual vacation by March 15th of each year.
- ii. The custodial parent's annual vacation shall be scheduled around the Non-custodial parent's annual vacation and may override no more than one (1) weekend and three (3) weeknight regularly scheduled visitation periods of the Non-custodial parent.
- iii. A parent's first choice of annual vacation shall not interfere with the other parent's entitlement to the child's birthday or the Durga Puja Holiday.
- iv. Unless specifically prohibited by Court order, either parent may temporarily remove the child from the jurisdiction of the court for purposes of annual visitation only if the parent travelling with the child provides the other parent with a written general itinerary and phone numbers where the child can be contacted during the vacation.
- v. Annual vacation shall not conflict with the school calendar.

CHAPTER - 4 NON-LOCAL GUIDELINES

(PARTIES NOT RESIDING WITHIN 200 KILOMETERS OF EACH OTHER)

49. VISITATION (CHILDREN AGED BETWEEN 0 TO 36 MONTHS)

Visitation for children under 36 months old shall be established by the court on a case-by-case basis.

50. ADDITIONAL VISITATION: The Non-custodial parent shall be entitled to exercise other reasonable visitation in the locale of the child's primary residence upon reasonable notice to the custodial parent.

51. VISITATION (CHILDREN AGED 36 MONTHS & OLDER)

52. WEEKENDS: The Non-custodial parent shall be entitled to at least one weekend visitation every week. Visitation shall begin either on Saturday and / or Sunday at 11:00 a.m. and end at 6:00 p.m. It shall be open for the parties to work out more than one visitation per week as per mutual agreement.

Notwithstanding anything, the Court may, having regard to the peculiarities of the facts of each case, also otherwise pass necessary directions for weekend visitations on such terms, as the Court may deem fit.

53. HOLIDAYS: If the parties celebrate religious holidays other than those defined in above paragraphs, those religious holidays shall be mutually agreed upon in writing, divided, and alternated each year. In the absence of an agreement, the Court shall allocate those religious holidays between the parties. The Court shall also look into the agreement of the parties and shall have power to alter or modify the same keeping in view the welfare of the child.

54. FIFTY % VACATION: The non custodial parent shall be entitled to 50% of each vacation during the year the child has, such as Durga Puja, Christmas and Summer vacation.

Note: In case the non-custodial parent is unable to avail vacation access during a particular year or a period for reasons beyond his/her control, he/she shall be entitled to compensatory access to the child in addition to his/her normal/usual entitlement to visitation for the next period/year, as the case maybe.

55. ANNUAL SUMMER VACATION: Visitation shall be as follows:

- A. CHILDREN IN DIFFERENT AGE GROUPINGS: If there are two (2) or more children whose ages span different age groupings entitling the children to different visitation periods with the Non-custodial parent, the younger children get the benefit of the oldest child's visitation schedule. This provision does not apply to children under aged between 0 to 36.

Parents of a child aged between 0 to 36 months must follow the visitation schedule for that child regardless of whether or not the child has older siblings on a different schedule.

56. SCHEDULING ANNUAL VACATION: The Non-custodial parent shall have first choice of annual vacation and shall designate such choice in writing no later than April 1 of each year. Subject to the Non-custodial parent /parent's designated choice on or before April 1, the custodial parent may plan an annual vacation and shall notify the Non-custodial parent of those dates by April 15th of each year.

- i. A parent's first choice of annual vacation shall not interfere with the other parent's entitlement to the child's birthday, unless the Non-custodial parent will be denied the full annual visitation period if the custodial parent exercises visitation on the child's birthday. If the child's birthday falls within the anticipated summer school break, and if the parties are unable to reach a specific agreement about an annual vacation schedule, the parties shall mediate the annual vacation scheduling issue before final hearing, unless mediation is excused by court order. If the parties are unable to resolve the annual vacation schedule issue through agreement or mediation, the parties shall present the issue to the court before entry of a final visitation order.
- ii. Unless specifically prohibited by Court order, either parent may temporarily remove the child from the State of Maharashtra for purposes of Annual Visitation only if the parent traveling with the child provides the other parent with a written general itinerary and phone numbers where the child can be contacted during the vacation.
- iii. Annual vacation shall not conflict with the school calendar.

CHAPTER – 5

JOINT CUSTODY

57. PRINCIPLE: The most fundamental principle underlying child rights is the inherent right of every child to be brought up in the secure comfort of a family environment and to enjoy the love and affection of both its parents. These are rights enshrined in the U.N. Charter for Child Rights, 1989, which has been adopted and ratified by India and also National Charter for Children 2003 made and published by the Central Government and also amendments suggested by the Law Commission of India in its 257th Report in the heading Reforms in Guardianship and Custody Laws in India, May 2015. Worldwide the G-7 Countries, namely, Canada, France, Germany, Italy, Japan, UK and USA have already recognized by law about joint custody. The last was Japan, who amended their Law in May 2024. Apart from the above, in many decisions, the Hon'ble Supreme Court has also recognized and approved joint custody in the latest being Judgment dated May 8, 2024 in SLP (C) No. 28466 of 2023.

58. RESIDE ALTERNATELY: That child may reside alternately, one week with the custodial parent and one week with non-custodial parent, and that both custodial and non-custodial parent share joint responsibility for decisions involving child's long term care, welfare and development;

Provided that, if the child is of very young age and require nourishment from the mother herself, the Court should discourage joint custody but should provide more importance on visitation rights of the father.

However, if the Court is of the opinion, or if it is apparent from the record as well as from the report of the special officer, if any, that one of the parents is violent or may be harmful to the child, in such cases, the Court might discourage joint custody.

Provided that, in all such cases, the Court shall keep a strong vigil over the incidents and may make alternative arrangements keeping in mind proper rearing and upbringing of the child in question. For such purpose, the Court may direct the child to be consulted by a psychiatrist for proper evaluation of his/her mind frame and the effect of the behavior of the parents.

45. JOINT ACTIVITIES: Keeping in mind the object of the welfare of the child and to ensure beneficial presence of every parent in his/her life, the Court might

frame some conditions of joint activities to be performed by both the parents together with the child, which might be both outdoor and indoor activities. The Court may also direct the custodial parent to ensure that the child is well engaged in co-curricular activities so as to ensure a proper and healthy mental growth of the child.

46. ALTERATION OF CUSTODY: The Court may, from time to time, for the benefit of the child, direct the custodian parent to present the child before an empanelled psychiatry expert, and upon his/her advice, may alter the custody of the child.

The Court may, also, upon an application from any of the parent alleging discomfort and/or deterioration of the physical and/or mental condition of the child or on other sufficient grounds, may reconsider the question of custody and may alter the same. However, before altering the terms of custody, the Court must remain extra cautious and shall only resort to such alteration of custody if and only if the Court is satisfied that all other remedies appear to be absolutely futile.

ACCLAMITIZATION IN NEW FAMILY: If the parents get married or get into relationship with any other partner, the Court must ensure that the child is given ample care and time to get acclimatized to the new family. In such cases, the Court may, suo motu or upon receiving an application from the other parent, enquire of the child through a psychiatric expert about his/her feelings and emotions towards the new spouse or partner of the concerned parent and may make alterations in the custody scheme, if found necessary.

CHAPTER 5 A

PARENTAL ABDUCTION AND INTERNATIONAL CUSTODY DISPUTES

Learned Courts/ Forums should impose stringent restrictions on a custodial parent relocating or removing the child to another country without the consent of the non-custodial parent and without prior approval of the Learned Court/ Forum concerned.

If deemed fit, the courts may require:

- a. Written undertaking from the custodial parent on matters relating to access rights and custody of the child to the non custodial parent.
- b. The custodial parent may be directed to furnish security at the discretion of the Learned Court/ Forum to prevent unlawful relocation or removal of child.
- c. Submission of travel details to the court before allowing any international travel.
- d. In case of removal of the child to another country in violation of written undertaking given to court , the Learned Court/Forum may initiate suitable penal measures including contempt of court and, compensation to the non-custodial parent.

CHAPTER - 6

59. PSYCHIATRIC AND PSYCHOLOGICAL EVALUATION OF PARENTS AND THE CHILD.

- A. Under Section 12 of the Family Courts Act, 1984, the Court is empowered to secure the services of medical experts; the scope of Section 12 envisages: For settling a problem the Judge of the Family Court cannot merely take his own personal decision. Under this section, he has to rely and consult an expert as while deciding the dispute between husband and wife, the fate and future of innocent children, if there are any, has to be kept in mind. The Judge therefore will have to act as all in one. If either or both litigants are quarrelsome, the altercations definitely lead to litigation on various grounds and their children will be the worst sufferers. In such cases the opinion of medical and welfare experts will be of much use.
- B. The family Court either on an application by one of the litigant or the court suo motto while exercising its discretion to conduct a psychiatric / psychological evaluation of both the parents including the child in order to ensure that custody is given to the emotionally and mentally fit parent, thus ensuring welfare of the child. Procedure for such psychological evaluation shall be as per procedure prescribed.
- C. Failure in marriages is sometimes due to lack of awareness or realization among the litigants where often one of the partner suffers from a personality disorder and/or adjustment disorder which can be easily diagnosed through psychological evaluation.
- D. The child/children are psychologically evaluated (by play therapy) to determine stress, depression level & also any bad tutoring or poisoning of mind to alienate the child from other parent. On diagnosis if confirmed the child is assisted through, intervention of psychological counseling.
- E. In fact Supreme Court has come down heavily for not using the services of medical experts by the lower courts as provided under sec 75e of CPC. (Ref: Sharda versus Dharampal (2003) 4 SCC 493))

60. PSYCHOLOGICAL EVALUATION:

This schedule provides for assistance of medical and welfare experts to be sought and taken by either of the parent either suo moto by the Family Court or on an application by either party; to secure the services of the medical expert or

such person including a person professionally engaged in promoting the welfare of the family as the court may think fit for the purposes of assisting the Family court.

I. PSYCHIATRIC AND PSYCHOLOGICAL EVALUATION OF PARENTS AND THE CHILD.

Under Section 12 of the Family Courts Act, 1984, the Court is empowered to secure the services of medical experts; however, the family Court rarely uses the same. The scope of Section 12 envisages: For settling a problem the Judge of the Family Court cannot merely take his own personal decision. Under this section, he has to rely and consult an expert as while deciding the dispute between husband and wife, the fate and future of innocent children, if there are any, has to be kept in mind. The Judge therefore will have to act as all in one. If either or both litigants are quarrelsome, the altercations definitely lead to litigation on various grounds and the children will be the worst sufferers. In such cases the opinion of medical and welfare experts will be of much use.

Should it not be mandatory for the family Court either on an application by one of the litigant or the court suo moto while exercising its discretion to conduct a psychiatric / psychological evaluation of both the parents including the child in order to ensure that custody is given to the emotionally and mentally fit parent, thus ensuring welfare of the child.

In fact Supreme Court has come down heavily for not using the services of medical experts by the lower courts as provided under sec 75e of CPC. (Ref: Sharda versus Dharampal (2003) 4 SCC 493))

A common practice followed in US courts while deciding child custody by conducting Psychological evaluation tests such as MMPI, Rorschach ink blot test etc., which reveals any litigant suffering from any mental/personality disorder, drug abuse, alcoholic, manipulative, tendency to speak lies, tendency to abuse/physical attack towards spouse etc.

However, if in the event both the parties/litigants are refusing or do not find necessary to be evaluated, then the court should follow the Primary caretaker principle as detailed in para III below. And if either one of the litigant (child's father or mother) refuses then as per law adverse inference shall be drawn.

The child/children are psychologically evaluated (by play therapy) to determine stress, depression level & also any bad tutoring or poisoning of mind to alienate the child from other parent.

On diagnosis if confirmed the child is assisted through, intervention of psychological counseling.

Often Indian courts fail to differentiate between psychosis & mental disorders. Individuals suffering from mental disorders are often intelligent but with very poor emotional state, (high intelligent quotient but poor emotional quotient), who tend to suffer from uncontrolled rage & temperament, violent, aggressive, manipulative, & often speak lies. This can be diagnosed only through specific psychological tests. Hence, merely interviewing litigants by the court will never give a clue whether the individual is suffering from mental/personality disorder except psychosis.

In fact Family Courts should resort to referring litigants for diagnosis to such reputed and high caliber psychologists/psychiatrists identified/appointed by the Family Courts / High Court.

While referring litigants for the conduct of psychiatric and psychological evaluation, Courts need not be concerned as regards the expenses involved as Rule 21 of The Family Courts (Maharashtra) Rules, 1987 provides for the same, wherein expenses (including travelling expenses) are to be paid out of the revenues of the State Government. However, if the litigants are willing the same may be born by the respective litigants.

61. GENERAL

- a. The parent with primary custody (parent who is having custody of child since birth and is taking care of the day to day and hour to hour need of the child) shall be referred to herein as the custodial parent, and the other parent shall be referred to as the Non-custodial parent.

62. CHILD'S WISHES:

Often the Family court decides the child's custody based on the wishes of the child during an interview which the court conducts on the child of tender age who is not his own master and is not capable of forming any intelligent, prudent or well reasoned preference of a parent.(in other words if child expresses he/she is unwilling to go to school, will the Family court honour the wishes,).

The court has to ensure the welfare and the best interest of the child's upbringing and not to be influenced by the mere wish of the child especially in some cases where the child is heavily tutored or brainwashed or poisoned against the non-custodial parent while deciding custody.

THE GENESIS OF FALSE ACCUSATION

An award winning book published by the American Psychological Association shows just how easily children can be manipulated to give false accounts that bad things have happened to them.

In one study children were simply asked to repeatedly think about whether different events had ever happened to them, such as getting their finger caught in a mousetrap and going to the hospital to get the trap off. After ten sessions, more than half the children told false stories about the fictitious events in their lives. In fact, their stories were so elaborately embellished with details that experts could not detect which events were real and which were not. Even more remarkable, after the researchers told the children that the events never really happened, many of the children continued to insist that they remembered the fictitious events occurring.

One four-year-old-boy had already been told by his parents that the whole mousetrap story was just in his imagination and that nothing like this ever happened. Yet when Stossel asked the boy if he ever got his finger caught in a mousetrap, with his parents beside him, this child said he remembered the event and then gave a detailed account. Stossel reminded him that his parents already said that it never happened, but the boy protested. "It really did happen, I remember it."

In another study, a stranger named "Sam Stone" visited a preschool classroom. He said hello, walked around the room for two minutes, then said good-bye and left. That was it. He touched nothing. During the next ten weeks, the children were interviewed four times and asked to describe Sam Stone's visit. One month following the fourth interview, another adult interviewed the children, this time asking about two events which did not occur, "Did Sam Stone do anything to a book or a teddy bear?"

The investigators learned that they could produce false reports of Sam Stone's behaviour both by bad-mouthing Sam Stone and by asking the children leading, suggestive questions. The bad-mouthing took the form of telling stories to the children, prior to Sam Stone's visit, about Sam Stone's clumsiness. For example:

"You'll never guess who visited me last night [pause] that's right. Sam Stone! And guess what he did this time? He asked to borrow my Barbie and when he was carrying her down the stairs, he tripped and fell and broke her arm. That Sam Stone is always getting in to accidents and breaking things.

The day after Sam Stone's visit, the children were shown a soiled teddy bear that had not even been in the room during Sam's visit. They were asked if they knew how the teddy bear had been soiled. An example of a suggestive question was

following: "Remember that time Sam Stone visited your classroom and spilled chocolate on that white teddy bear? Did he do it on purpose or was it an accident?"

By the time of the final interview, an astounding 72 percent of the youngest preschoolers falsely incriminated Sam Stone. Like the children in the mousetrap study, they embellished their stories with fabricated details, such as reporting that they saw Sam Stone on his way to the store to buy chocolate ice-cream. And, once again the children fooled the experts.

The investigators showed videotaped interviews of the children to specialists who interview children for purposes of criminal investigators and who treat children suspected of having abused. These experts were confident in their judgements about which events really occurred and which were made up. But the experts were wrong. In fact the very children they rated as most accurate were the children who were least accurate. Substitute Mommy or Daddy for Sam Stone and you begin to see how children can be manipulated to give convincing, yet false, negative reports about a parent.

False beliefs about abuse hurt children beyond the damage done by the alienation. A child who believes that she has been sexually abused by a relative can develop problems similar to those of a child who has actually suffered abuse. The child comes to distrust her caretakers in the same way she would if actually abused. Her view of sexuality is corrupted at an early age and this may lead to problems in sexual adjustment as an adult. Her ability to trust in close relationships is impaired. This may interfere with her relationships throughout her life.

Thus a child can be manipulated to create alienation.

As held by the Hon'ble Supreme Court in SLP (C) No. 28466 of 2023, in the Judgment dated May 8, 2024, that Parental Alienation Syndrome (PAS) is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation and there cannot be any straight jacket formula to invoke the principle of PAS as laid down in (2017) 3 SCC 231 (Vivek Singh – Versus – Romani Singh) and the Courts must endeavour to identify individual instances of "alienating behaviour" in order to invoke the principle of PAS so as to overcome the preference indicated by the minor children.

Interviewing Children with Parental Alienation Syndrome : As held by the Hon'ble Supreme Court in SLP (C) No. 28466 of 2023, in the Judgment dated May 8, 2024, Parental Alienation Syndrome (PAS) is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation and there cannot be any straight jacket formula to invoke the principle of PAS as laid down in (2017) 3 SCC 231 (Vivek Singh – Versus – Romani Singh) and the Courts must endeavour to identify individual instances of "alienating behaviour" in order to invoke the principle of PAS so as to overcome the preference indicated by the

minor children.

The opinion of the child or wish cannot determine overall welfare of the child or determine custody. To evaluate PAS the court shall take the view of child welfare officers or counsellors and in appropriate cases may evaluate the child by a professional child psychologist while interviewing or determining the phenomenon of PAS. The Courts must endeavour sufficient and adequate access (preferably unsupervised) of the child with the alienated parent to foster natural attachment and bonding.

Children suffering with a parental alienation syndrome may present the judge with a convincing picture. By the time the child reaches the judge, he or she has developed a well-rehearsed litany of complaints against the presumably hated parent. This can be quite convincing, especially because the script has probably been rehearsed many times over with the allegedly preferred parent. Also, by the time the child reaches the judge, he or she has probably presented the scenario to a variety of attorneys and mental health professionals. This has given them the opportunity to practice and sharpen their speeches. There have been a number of occasions when judges have been completely taken in and have not appreciated that they were being handed a "bill of goods." These children have a way of "snow balling" even experienced psychologists and psychiatrists, so one cannot be too critical of judges here. Present below are series of questions that judges should find useful when interviewing these children. It is important to appreciate that the questions provided here relate to the more common situation, the one in which the father is the hated parent and the mother the loved one. However when the situation is reversed (the mother the hated one and the father the loved one) One should obviously reverse the questions.

Describe your custodial parent (mother / father) to me. Children with parental alienation syndrome typically provide only positive responses. If any negatives are provided, they will usually be minimal. If asked to elaborate upon the negatives, only inconsequential criticisms will be provided. Children who are "normal" or suffer with other kinds of psychiatric disturbances will generally be able to list both positives and negatives about each parent. The complete idealization of a parent is a clue to the presence of this disorder.

Describe your non-custodial parent (mother / father) to me. The child with parental alienation syndrome will enumerate various criticisms at great length. These will be both present and past. Often the past indignities will be about experiences that other children would consider normal or would have forgotten long ago. Sometimes a complaint will be about an event which the child has not actually observed but which the mother has described. The child will accept as valid the mother's rendition and not give any credibility to the father's refutation. When it is pointed out to the child that few if any positives have been described, the child will

claim flatly that there are none. Inquiries into past good times between the child and the father will be denied as nonexistent or the child will claim that these events were painful and the child's professed enjoyment of them stemmed from the fear of punishment for not doing so. It is this complete one-sidedness of the response, the total absence of normal ambivalence, that should alert the interviewer to the fact that one is probably dealing with a child suffering with parental alienation syndrome.

How do you feel about your Non-custodial parent's (father / mother) family?

The child with a parental alienation syndrome will generally respond that all members of the father's extended family, even the child's own grandparents and previously loved aunts, uncles and cousins, are somehow obnoxious and vile. When asked for specific reasons why there is absolutely no contact at all with any of these individuals, no compelling reasons are provided. Often inconsequential reasons are given. Attempts to impress upon the child how important it is to have relationships with these loving relatives is futile. The child extends the noxious view of the father to the father's extended family. The child will describe no sense of loss or loneliness over this self-imposed removal from the father's extended family. If a potential or actual stepmother is involved with the father, this hatred will extend to her and her extended family as well.

Does your custodial parent (mother / father) interfere with your visiting with your Non-custodial parent (mother / father) ? Generally the child will describe absolutely no interference on the mother's part. Often the child will proudly describe the mother's neutrality and state that the decision is completely his or her own.

Why then don't you want to visit with your (Non-custodial parent) father / mother? The child may give very vague reasons. When asked to give specific reasons these children may describe horrible abuses in a very convincing way. In addition, they often provide gross exaggerations of inconsequential complaints. They make "mountains out of mole hills" and will dwell on frivolous reasons for not visiting. Often they will claim that they want absolutely no contact at all with the father for the rest of their lives, or at least not before they are adults. When it is pointed out to these children that the vast majority of other children would not cut their fathers off entirely, forever, for such "indignities:" they insist that their total rejection is justified.

Does your mother / father (custodial parent) harass or bother you? Healthy children generally will give some examples of "harassment" such as being made to turn off the television, do homework, or go to bed earlier than they want. Children with parental alienation syndrome describe no such harassments. They often will describe their (custodial parent) mother as being perfect and as never asking them to do things they don't want. This is obviously a fabrication and is a manifestation of the whitewash of the mother. You use the word harassment with these children because it is a common expression utilized by mothers of parental alienation

syndrome children. The father's (non-custodial parent's) overtures for involvement with the child are generally referred to as harassment by the mother (custodial parent). If the child is unfamiliar with the word harassment, It can be substitute by "bother you a lot."

Does your father (non-custodial parent) harass you? These children are likely to describe in great detail the (non-custodial parent's) father's "harassments." Generally, they involve attempts on his part to gain contact with the children. Letters, telephone calls, and legal attempts to gain visitation are all clumped under the term "harassments." Although the father's initial overtures may have been spaced reasonably, with mounting frustration over rejection and alienation, the father's overtures increase in frequency and intensity. The love and affection that is at the foundation of these overtures is denied completely by both the mother and the parental alienation syndrome child. Rather, they are viewed simply as onerous harassments. The above questions are general ones. The judge does well to ask more specific questions pertinent to the particular case. These might include questions regarding why the child wants to change his or her name back to the mother's maiden name, why the father's Presents were thrown in the garbage (usually in the mother's presence), why the child wants to have the father still contribute to his or her education even though he or she never wants to see the father again, what the brother's and sister's reasons are for not wanting to see the father (these too often prove inconsequential). and so forth.

Judges who interview children in chambers must be made aware of the fact that these children may be very convincing. They may be taken in by the litany of complaints and give such weight to the child's statements that they may go along with the child's stated preference. Judges must be alerted to the primary manifestations of this disorder, especially the complete lack of ambivalence, the dwelling on frivolous and inconsequential "indignities," the total removal from the extended family of the hated parent, the absolute denial of any positive input on the hated parent's part at any time in the child's life, and the definite statement that the child wishes never to see the hated parent again throughout the remainder of his or her life. It is hoped that judges will increasingly appreciate what is occurring when they see such children and rectify the situation in accordance with the guidelines to be presented. Under the circumstances of brainwashing, tutoring, poisoning, to alienate the child from the non-custodial parent, the Custody should be shifted from the custodial parent to the non-custodial parent who will ensure the child with love and affection of both the parents.

CHAPTER – 7

63. ROLE OF COUNSELORS

Court counselor is duty bound to counsel child to ensure access especially in case of bad tutoring against the non custodial parent rather than being indifferent or a mute spectator. Role of the counselor in family courts has to be proactive to succeed in effecting healthy access to the non-custodial parent

- a. Regular quarterly workshops has to be conducted to the counselors as well as to the Judges of the family court by the reputed psychiatrists and psychologists for continuous updation and orientation to handle the sensitive issues.
- b. Under Rule 27 of the Family Courts Rules 'counselor report' may be allowed to be supplied to the litigant.
- c. Counselor should be stopped from recommending their opinion to court in regard to whom the custody, court has to grant. (amounting to exercise of judicial powers by non judicial officer).
- d. Cost of the psychological evaluation shall be borne by the litigant urging the court seeking the evaluation of his or her spouse. Rules however provide that the expenses in this regard shall be borne by the state.
- e. It shall be the endeavor of the Counselor to ensure that a healthy bonding is developed between the child and the non-custodial parent and for this the counselor shall make every attempt to counsel and prevail upon the custodial parent to provide healthy, substantial and significant access of the child to the non-custodial parent.

SPECIAL PROVISIONS

64. *Cases when none of the parents are suitable for the custody of the child:*

(a) In situations, when none of the parents is found to be suitable or capable of having the custody of the child, the Court may, either on its own discretion or on an application, may put the child into the custody of a responsible next to kin, such as the grandparents or other near relatives. For such purpose, the Courts may also take into account the provisions laid down under the Juvenile Justice (Care and Protection of the Children) Act, 2015, if found appropriate and necessary.

Provided that, before giving the child into the custody of such next to kin, the Court must arrive at a definite finding that the welfare of the child shall not be under any threat by the said person. However, visitation rights shall always be available with the parents barring exceptional cases.

(b) In cases when no such next to kin is found available or eligible, the Court may entrust the custody of the child with a Foster home or similar institution by putting stringent and appropriate conditions for such custody so as to ensure that the welfare of the child is not hampered in anymanner.

(c) The Court may, in cases enumerated in clauses (a) and (b), appoint a special officer, who may visit the child in regular intervals to keep a track ofhis progress and welfare and shall submit a report to the Court to that effect.

65. CASES WHEN CUSTODIAN PARENT LIVES ABROAD: In situations when the custodian parent is not a resident of India, the Court may pass appropriate directions in accordance with law following the provisions of the Hindu Minority and Guardianship Act, 1956, that has extraterritorial operation.

66. CASES WHEN NON – CUSTODIAL PARENT LIVES ABROAD: In situations when the non – custodial parent is not a resident of India, the Court might put more focus on visitation, especially throughonline mode and should ensure that owing to such distance and situation, the child is not suffering from any parental alienating syndrome, either wilfully induced by the custodian parent or by natural manner. In such cases, if the Court feels so, the Court should immediately refer the child to an empanelled psychiatrist and ask the non – custodian parent to make more frequent visits, if possible, to ensure that the child is not deprived of his love and affection. The non-custodial parent shall also be entitled to custody during vacations of the child.

LIMITATION PERIOD: If any spouse chooses not to apply for custody within 90 days from the date when he or she has been deprived of the access to the child, the Court may draw an adverse inference against such parent as regards his/her bonafide and/or real urge to take proper care of the child and in such cases, the Court may refuse to admit such petition.

Provided that if sufficient cause can be shown by the applicant explaining the reason behind his or her delay in filing such application, the Court may condone such delay and hear out the application on merit.

PARENTING PLAN

Parenting Plan

The numbers of divorce cases are rising, more and more couples have been approaching family court for divorce, resulting in rise of bitter child custody and access matters.

A serious need is therefore felt for the introduction of a Parenting Plan which will help reduce the burden of courts and counselors to a great extent and will also help in speedy disposal of court cases. Parenting Plan shall also bring out an ease between the couples who are undergoing separation.

During the initial stage itself a copy of parenting plan can be provided to the couples by the court counselors making them aware and help the parents mutually draw a suitable parenting plan agreeable and acceptable to both the parents and which would cover aspects related to the child custody and access in the best interest and welfare of the child.

When children know that their parents have talked about what's best for them, and know that a plan is written down, they are likely to feel cared for and safer. Children can predict the shape of their lives and know that parents will keep the adult issues between adults (the allegations and arguments between the couple entering the parenting plan would be at minimum), Children will be able to manage the stresses and fears of the separation much better and they may not be required to visit court for access or for hearing that often.

The courts can direct the couple to draw a parenting plan (just like consent terms) within a period of sixty (60) days and also pass appropriate orders based on the parenting plan.

A **Parenting Plan** or **Custody Agreement** is required by the family court when parents divorce or separate. A Parenting Plan allows parents to avoid future conflicts in dealing with responsibilities relating to the children. Without specific agreements around these responsibilities disputes can arise and litigation may be needed to resolve these issues.

Divorce and separation are painful for everyone involved—particularly children. At this challenging time children need support, love and contact with both parents.

Some certainty about the future is also very important for everyone. A written parenting plan, worked out between parents, will help clarify the arrangements needed by the parents to put in place to care for the children. It will help everyone involved to know what is expected of them and it will be a valuable reference as time passes and circumstances change.

If the standard parenting plan by the court is agreed by parties before the court hearing, it is called "stipulated". Court can approve the stipulated parenting plan without court hearing.

A standard parenting plan by the Court puts the best interests of the child first. It is drawn up in good will with a shared commitment to the children and their future firmly in mind (just like consent terms).

In developed nations most of the states, there is a law required that court-ordered parenting plans must set forth the *minimum amount* of parenting time and access a noncustodial parent is entitled to have.

A parenting plan is a written agreement between parents covering practical issues of parental responsibility approved by the Court.

Parenting Plan will detail practical decisions about children's care in such areas as:

- Parenting Time (physical custody)
- Major Decision Making (legal custody)
- Visitation / Access
- Transportation and Exchanges
- School Holidays, Vacations and Festivals
- Child Support / Maintenance
- A Dispute Resolution Process
- Schools Attended and Access to Records
- Physical and Mental Health Care
- Contact Information, Relocation, Activities and School functions
- Overnights and Visitation
- Communications and Mutual Decision-Making
- **Mediation**
- Medical Insurance
- Contact with Relatives and Significant Others

Parents normally can make variations to the court standard parenting plan or develop a different custom plan if the judge approves the changes.

Parents later can modify the existing parenting plan by filing a new request with a court when circumstances have changed.

A parenting plan can take any form, however it must be made free from any threat, duress or coercion. It must be in writing and signed and dated by both parents.

If both parents agree on arrangements, Parents can submit parenting plan (just like consent terms) to the Family Court and Court can pass an appropriate order based on the parenting plan, giving it the same legal effect as an order made after a Court hearing. Parenting Plan approved by Court would be one form of consent order issued by the Court.

If parents cannot agree on arrangements for children they may need to have the Family Court decide and issue a Parenting Order.

In deciding parenting arrangements the Court must always consider:

- The best interests of the child
- ┆ The extent to which both parents have complied with their obligations in relation to the child, which may include those set out in a standard parenting plan (As follow).

Standard Parenting Plan

STATE _____	COURT _____	<i>Place</i> OTHER _____
PERMANENT PARENTING PLAN ORDER ☐ PROPOSED ☐ AGREED ☐ ORDERED BY THE COURT DATE : _____		PETITION No: _____ DIVISION _____
PETITIONER <i>(Name: First, Middle, Last)</i> _____ ADDRESS : _____ ☐ Mother ☐ Father		RESPONDENT <i>(Name: First, Middle, Last)</i> _____ ADDRESS : _____ ☐ Mother ☐ Father

The mother and father will behave with each other and each child so as to provide a loving, stable, consistent and nurturing relationship with the child even though they are separated / divorced. They will not speak badly of each other or the members of the family of the other parent. They will encourage each child to continue to love the other parent and be comfortable in both families.

This plan ☐ is a new plan.
 ☐ modifies an existing Parenting Plan dated _____
 ☐ modifies an existing Order dated _____ of Family / High Court

Child's Name	Date of Birth

Parenting Plan Note:

☒ Tick that is applicable / Strike out -----what may not be applicable.

I. RESIDENTIAL PARENTING SCHEDULE

A. RESIDENTIAL TIME WITH EACH PARENT

The Primary Residential Parent (Custodial parent) is

Under the above schedule each parent will spend the following number of days with the children:

Mother _____ days

Father _____ days

B. DAY-TO-DAY SCHEDULE

The mother / father shall have responsibility for the care and access of the child or children except at the following times when the other parent shall have responsibility and access :

From _____ to _____
Day and Time Day and Time

☐ every week ☐ every other week ☐ other: _____
☐

(Advisable two days weekday access 2 hours each during the week at locals of the child)

The other parent shall also have responsibility for the care and access of the child or children at the additional parenting times specified below:

From _____ to _____
Day and Time Day and Time

☐ every week ☐ every other week ☐ other: _____
☐

This parenting schedule begins ☐ _____ or ☐ date of the Court's
Order. *Day and Time*

(Overnight weekend access Advisable every week Friday 6pm to Saturday 6pm Or Saturday 6pm to Sunday 6pm)

Or (every other weekend Friday 6pm to Sunday 6pm)

C. HOLIDAY SCHEDULE AND OTHER SCHOOL FREE DAYS

Indicate if child or children will be with parent During FESTVLS EVERY year:

	MOTHER (tick)	Timings	FATHER (tick)
Parsi New Year			
Dussera			
Diwali			
26 th Jan Republic Day			
Holi			
Mahashivratri			
Janmasthan			
Rakshabandhan Day			
Mother's Day			
Father's Day			
15 th August Independence Day			
Bhaubeej			
Ganpati			
Navratri			
Eid			
Mother's Birthday			
Father's Birthday			
Child's Birthday			

(Advisable to Choose any 9 days during the year)

Other School-Free Days_____

Other Significant Family_____

Occasions: _____

(Choose any 3 days during the year)

A weekend access / holiday shall begin at 6:00 p.m. on the night preceding the holiday and end at 6:00 p.m. the night of the holiday, unless otherwise noted above.

D. Long Festival Weekend Holidays

(If applicable ☐ Ganpati / ☐ Navratri / ☐ Ramzan / ☐ Diwali / ☐ Christmas)

The day to day schedule shall apply except as follows:_____

_____ beginning_____

E. Other agreement of the parents: _____

F. CHRISTMAS VACATION

The day-to-day schedule shall apply except as follows: _____
_____beginning _____

G. SUMMER VACATION

The day-to-day schedule shall apply except as follows: _____
_____ beginning _____

Is written notice required? ☐ Yes ☐ No. If so, _____ number of days.

Note: The access denied / deprived by the custodial parent shall be compensated within _____ days of receiving the notice / request from the non custodial parent.

H. TRANSPORTATION ARRANGEMENTS

The place of meeting for the exchange of the child or children shall be: _____

Payment of long distance transportation costs (*if applicable*):

☐ mother ☐ father ☐ both equally.

Other arrangements: _____

A parent he or she must make reasonable transportation arrangements to protect the child or children while in the care of that parent.

I. SUPERVISION OF PARENTING TIME (*if applicable*)

☐ **Check if applicable**

Supervised parenting time shall apply during the day-to-day schedule as follows:

☐ Place: _____

☐ Person or organization supervising: _____

☐ Responsibility for cost, if any: ☐ mother ☐ father ☐ both equally.

J. OTHER

The following special provisions apply :

II. DECISION-MAKING

A. DAY-TO-DAY DECISIONS

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

B. MAJOR DECISIONS

Major decisions regarding each child shall be made as follows:

Educational decisions ☐ mother ☐ father ☐ joint

Non-emergency health care ☐ mother ☐ father ☐ joint

Religious upbringing ☐ mother ☐ father ☐ joint

Ext racurricular activities ☐ mother ☐ father ☐ joint

_____ ☐ mother ☐ father ☐ joint

NAME OF THE CHILD & SURNAME: The custodial parent shall not be entitled to change the name or the surname of the child which has been given to the child as per either a ceremony performed for the same or the name along with the father's surname as it appears in the birth certificate without the court order or written consent of the non-custodial parent.

REMOVAL OF CHILD FROM DAYCARE OR SCHOOL: The non-custodial parent will be informed 60 days in advance incase if the child is being removed from the day care or school.

MEDICATION, ILLNESS OR ACCIDENT: If the child becomes ill or is involved in an accident, and treatment by a medical professional is obtained, the parent who has the child at the time of the illness or accident shall notify the other parent as soon as practicable but no later than three (3) hours after the incident or diagnosis. ILLNESS OF THE CHILD SHALL NOT PREVENT VISITATION WITH THE CHILD, UNLESS THE CHILD IS HOSPITALIZED. NONCUSTODIAL PARENT CAN VISIT THE CHILD IN HOSPITAL.

NOT stop during visitation periods, unless provided by court order.

B.HEALTH AND INSURANCE

Reasonable health insurance on the child or children will be:

- ☐ maintained by the mother
- ☐ maintained by the father
- ☐ maintained by the both

III. FINANCIAL SUPPORT / MAINTENANCE

A. CHILD SUPPORT

Father's gross monthly income is Rs. _____

Mother's gross monthly income is Rs. _____

1. The final child support order is as follows:

- a. The ☐ mother ☐ father shall pay to the other parent as regular child support the sum of Rs. _____ monthly.

The Child Support / Maintenance / Worksheet / Order shall be attached to this Order as an Exhibit.

2. Payments shall begin on the _____ day of _____, 20__.

This support / maintenance shall be paid:

- ☐ directly to the other parent.
☐ to the Family Court
☐ by direct deposit to the other parent at _____
Bank for deposit in account no. _____
other: _____

The parents acknowledge that court approval must be obtained before child support can be reduced or modified.

CHILD SUPPORT / MAINTENANCE: Non-payment or late payment of child support is NOT an acceptable reason to deny or interfere with visitation. Conversely, denial of visitation is NOT justification for non-payment or late payment of child support. Both parents agree that the Child support and child visitation are separate and independent issues and are not to be manipulated by either parent to gain leverage over the other parent with regard to visitation or child support. Child support shall

IV. PRIMARY RESIDENTIAL PARENT (CUSTODIAN) FOR OTHER LEGAL PURPOSES

The child or children are scheduled to reside the majority of the time with the ☐ mother ☐ father. This parent is designated as the primary residential parent also known as the custodian, **SOLELY** for purposes of any other applicable state laws. If the parents are listed in Section II as joint decision-makers, then, for purposes of obtaining health or other insurance, they shall be considered to be joint custodians.

THIS DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS OR RESPONSIBILITIES UNDER THIS PARENTING PLAN.

V. DISAGREEMENTS OR MODIFICATION OF PLAN OR NON COMPLIANCE

Should the parents disagree about this Parenting Plan or wish to modify it, or in case of the non-compliance they must make a good faith effort to resolve the issue by the process selected below before returning to Court.

- ☐ Mediation by a neutral party chosen by the parents or the Court.
- ☐ The Court DUE TO ORDER OF PROTECTION OR RESTRICTIONS.

It must be commenced by notifying the other parent and the Court by

- ☐ written request ☐ registered mail.
- ☐ other: _____.

In the dispute resolution process:

- A. Preference shall be given to carrying out this Parenting Plan.
- B. The parents shall use the process to resolve disputes relating to implementation of the Plan.
- C. A written record shall be prepared of any agreement reached, and it shall be provided to each parent.
- D. If the Court finds that a parent willfully failed to appear without good reason, the Court, upon motion, may pass appropriate order.

Non-Compliance of the parenting plan may amount to breach of trust and parents are required to approach court for appropriate action.

VI. RIGHTS

RIGHTS OF CHILD

Both Parents recognize child's / children's right to:

- ◆ Emotional and physical safety, stability and security
- ◆ Feel loved by both of us and significant family members
- ◆ Know and be cared for by both parents and significant family members
- ◆ Develop independent and meaningful relationships with each parent.

RIGHTS OF PARENTS

Both parents are entitled to the following rights:

- (1) The right to unimpeded telephone and web cam conversations with the child at least twice a week at reasonable times and for reasonable durations;
- (2) The right to send mail / gifts to the child which the other parent shall not open or censor;
- (3) The right to receive notice and relevant information as soon as practicable but within three (3) hours of any event of hospitalization, major illness or death of the child;
- (4) The right to receive directly from the child's school any school records customarily made available to parents. (The school may require a written request which includes a current mailing address and upon payment of reasonable costs of duplicating.) These include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;
- (5) The right to receive copies of the child's medical health or other treatment records directly from the physician or health care provider who provided treatment or health care. (The keeper of the records may require a written request which contains a current mailing address and the payment of reasonable costs of duplication.) No person who receives the mailing address of a parent as a result of this requirement shall provide such address to the other parent or a third person;
- (6) The right to be free of unwarranted derogatory remarks made about the parent or his or her family by the other parent to the child or in the presence of the child;
- (7) The right to be given at least forty-eight (48) hours notice, whenever possible, of all extra-curricular activities, and the opportunity to participate or observe them. These include the following: school activities, athletic activities, and other activities where parental participation or observation would be appropriate;

- (8) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than two (2) days, an itinerary including telephone numbers for use in the event of an emergency;
- (9) The right to access and participation in education on the same basis that is provided to all parents. This includes the right of access to the child for lunch and other activities. However participation or access must be reasonable and not interfere with day-to-day operations or with the child's educational performance.
- (10) Right to share the names and contact details of the friends of the child.

VII. NOTICE REGARDING PARENTAL RELOCATION

If a parent who is spending intervals of time with a child desires to relocate outside the state or local jurisdiction from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

- (1) Statement of intent to move;
- (2) Location of proposed new residence;
- (3) Reasons for proposed relocation; and
- (4) Statement that the other parent may file a petition in opposition to the move within sixty (60) days on receipt of the notice.

Sharing Emergency numbers

Compiled a list of emergency numbers for children.

Father	Mother
Home:	Home:
Cell :	Cell :
Email:	Email:
Relatives	Relatives
Name 1:	Name 1:
Relation:	Relation:
Home:	Home:
Cell:	Cell:

Relatives	Relatives
Name 2:	Name 2:
Relation:	Relation:
Home:	Home:
Cell:	Cell:
School Contact No. :	School Contact No. :
Doctor's Name & No. :	Doctor's Name & No. :

The Parents hereto have executed this Parenting Plan the day and year first herein above written.

Sign Mother

Sign Father

lawyer for Mother

lawyer for Father

Address of Mother

Address of Father

Phone

Phone

APPROVED By Counselor : Name: _____ Sign: _____

Note: The judge may sign below or, instead, sign a Final Decree or a separate Order incorporating this plan as Exhibit _____.

COURT COSTS (If applicable)

Court costs, if any, as follows: _____

It is so ORDERED this the _____ day of _____,

Judge

CHILD CUSTODY AFFIDAVIT

I _____ d/o or s/o or w/o _____ aged about _____ years resident of _____, do hereby solemnly affirm and declare as under:

PART I: DETAILS OF DEPONENT

A. Personal Information of Deponent

1. Name:
2. Age:
3. Sex:
4. Relationship to the child:
5. Date of marriage:
6. Date of separation:
7. Name, age and custodial guardian of any other children of Deponent (from this or other marriages/relationships):
8. Address of Permanent Residence
9. Address of Current Residence:
10. Date since residing at current residence
11. Whether Current Residence is matrimonial house/ parental home/ separate residence:
12. Ownership details of Current Residence:
13. Details of other persons staying at the Current Residence (name, age, relationship with Deponent):
14. Details of dependants, if any, of Deponent:
15. Qualifications (Education and Professional):
16. Occupation:
17. Work timings (including travel time):
18. Whether frequent work travel is required:

B. Details of Income of Deponent

1. Name of employer:
2. Designation:
3. Monthly income after TDS:
4. If self-employed professional or entrepreneur, provide a brief description of nature of business/ profession/ vocation/ self-employed work activity and whether the business/profession/self-employment is carried on as an individual, sole proprietorship concern, partnership concern, LLP, company or association of persons, HUF, joint family business.

5. If engaged in government service, furnish latest salary certificates or current pay slips or proof of deposit in bank account, if being remitted directly by employer.
6. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person, and Form 16 for the relevant period of current employment.
7. If any perquisites, benefits, house rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment.
8. Whether assessed to income tax?
9. If yes, submit copies of the Income Tax Returns for the periods given below:
 - a. One year prior to marriage
 - b. One year prior to separation
 - c. At the time when the application for custody is filed
10. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDRs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, along with TDS in respect of any such income.
11. Furnish copies of bank statement of all accounts for the last 3 years.

C. Assets of the Deponent

1. Self-acquired property, if any:
2. Properties jointly owned by the parties after marriage:
3. Share in any ancestral property:
4. Other self and joint properties of the parties (accounts/ investments/ FDR/ mutual funds, stocks, debentures, etc.), their value and status of possession:
5. Status of possession of immovable property and details of rent, if leased:
6. Details of loans taken or given by the Deponent

D. Liabilities of the Deponent

1. Loans, liabilities, mortgage, or charge outstanding against the Deponent, if any:
2. Details of any EMIs being paid:
3. Date and purpose of taking loan or incurring any such liability:

4. Actual amount borrowed, if any, and the amount paid up to date of filing the Affidavit:
5. Any other information which would be relevant to describe current liabilities of the Deponent:

E. Deponent or other party being Non-Resident Indians, Overseas Citizens of India, Foreign Nationals or Persons living abroad outside India

1. Details of Citizenship, Nationality and current place of residence of both parties:
2. If Indian citizenship is acquired by naturalization, descent, registration, or any other method except by birth, provide details:
3. Details of current employment and latest income in foreign currency of both parties, duly supported by relevant documentation of employment and income from such foreign employer or overseas institution by way of employment letter or testimonial from foreign employer or overseas institution or latest relevant bank statement:
4. Details of household and other expenditure of both parties in foreign jurisdiction:
5. Details of tax liability of both parties in foreign jurisdiction:
6. Details of income of both parties from other sources in India/foreign jurisdiction:
7. Details of expenses incurred or contribution made on account of spousal maintenance, child support or any other educational expenses, medical treatment of spouse or children:
8. Any other relevant detail of expenses or liabilities, not covered under any of the above headings and any other liabilities to any other dependent family members in India or abroad:
9. Furnish copies of bank statement of all accounts for the last 3 years.

F. Details of Legal Proceedings

1. Particulars of any ongoing or past civil and criminal and other legal proceedings with respect to Deponent before any fora in any jurisdiction including arbitration?
2. If so, provide particulars thereof, along with a copy of the order(s) passed.
3. If proceedings for divorce / maintenance / other litigations filed by opposite party are pending, please attach the pleadings of both parties in such proceedings.

G. Medical Details of the Deponent

1. Whether Deponent is suffering from any physical disability or any other ailment. If yes, produce medical records.
2. Whether the physical disability or ailment prevents or otherwise inhibits the Deponent from performing tasks or earning a livelihood?

H. Mental Health Details of the Deponent

1. Whether Deponent has been diagnosed with any mental health issues?
2. Whether Deponent was ever advised to be diagnosed for mental health issues but has not been examined?
3. Name of the Psychiatrist:
4. Name of the Institution associated with the Psychiatrist:
5. Name of the Psychologist:
6. Name of the Institution associated with the Psychologist:
7. Whether the diagnosis prevents or otherwise inhibits the Deponent from performing tasks or earning a livelihood?

PART II: DETAILS OF CHILD / CHILDREN (TO BE FILLED IN SEPARATELY FOR EACH CHILD)

I. Basic Information pertaining to Child

1. Name:
2. Age:
3. Sex:
4. Natural/Ordinary Residence:
5. Permanent Residence :
6. Current Residence:

7. If relocated, reason for relocation of Child:
8. For how long has Child been residing at current residence?
9. Whether current residence is an independent house or flat?
10. Name of School:
11. Year of Enrolment into School:
12. Current Class of Child:
13. Distance from Current Residence to School:
14. Distance from Previous Residence to School:
15. Whether Child attends any day care centre?
16. Details of Day Care including distance from current and previous residence?
17. Annual vacation of Child as per School notified calendar:
18. Whether transport arrangements can be changed based on visitation?
19. In whose custody are the documents related to Child such as passport, birth certificate etc.
20. Who has been named as the first point of contact in the School?
21. Whether name and details of other parent has been included as alternate contact in school?
22. Who receives all information from the School regarding Child?

J. Assets of the Child

1. Whether Child has an insurance policy on his/her name or is covered under a family insurance policy? If any, who has undertaken to make payments towards the insurance policy or under whose name has the insurance policy been taken under? Who is covered under the policy? (Mention the type of insurance policy).
2. Whether Child has any other accounts/investments/FDR/ mutual funds, stocks, debentures, etc., their value and status of possession: under his/her name? (Mention the Number, Principal Amount, Interest, Lock in period, Name of the Bank)
3. Brief description of jewellery and ornaments of Child.
4. Immovable Property in the name of Child, if any:
5. Status of possession of immovable property and details of rent, if leased
6. Properties of Child that have been sold/alienated etc

K. Medical Details of the Child

1. Whether Child is suffering from any physical disability or any other ailment. If yes, produce medical records.
2. Whether the physical disability or ailment prevents or otherwise inhibits Child from performing tasks or attending school?
3. Whether assistance of any Third-Party is provided to aid the Child in performing tasks? If so, who is providing for the Third-Party assistance to enable the Child. Please provide details regarding the nature of services of each Third-Party assistance.

L. Mental Health Details of Child

1. Whether Child is diagnosed with any mental health issues. If yes, produce medical records.
2. Name of the Psychiatrist:
3. Name of the Institution associated with the Psychiatrist:
4. Name of the Psychologist:
5. Name of the Institution associated with the Psychologist:
6. Whether the diagnosis prevents or otherwise inhibits Child from performing tasks or attending school?
7. Whether assistance of any Third-Party is provided to aid the Child in performing tasks? If so, who is providing for the Third-Party assistance to enable the Child. Please provide details regarding the nature of services of each Third-Party assistance.

M. Day to Day Activities of Child

1. Details of tutorials/ remedial classes taken by Child including location and timings
2. Details of co-curricular activities taken by Child including location and timings
3. Details of extra-curricular activities taken by Child including location and timings
4. Whether any third-party is looking after Child such as grandparents, nanny etc.,

N. Expenses Incurred for Child

1. School Fee per Year:
2. Transport Fee:
3. Estimate of Expenses towards books, stationery etc:
4. Expenses towards Tuitions:
5. Fee towards Extra-Curriculars:
6. Any other recurring expenses or fees:
7. Medical expenses:
8. Estimated expenses for Child towards clothes, food, leisure etc:
9. Estimated financial contribution of Deponent to the expenses of Child:
10. Contributions made by the parents in the name of Child towards investments for the benefit of Child:

O. Any other details pertaining to Deponent, Child or other party relevant for determining custody and visitation? Serious concerns such as domestic violence, substance abuse, verbal and sexual abuse, serious mental health issues against the other party may be detailed here.

Declaration

1. I declare that I have made a full and accurate disclosure of all the information recorded in this Affidavit. I further declare that I have not suppressed any information in this affidavit.
2. I undertake to inform this Court immediately with respect to any material change in the information included in this affidavit.
3. I understand that any false or misleading information may be viewed seriously and I may be met with penal consequences for such false or misleading information including that the same may become material in determining custody or visitation rights with respect to the child.

DEPONENT

Verification

Verified at _____ on this the _____ day
of _____ that the contents of the
above Affidavit are true to my personal knowledge, no
part of it is false and nothing material has been concealed
therefrom, whereas the contents of the above Affidavit are
based on information believed to be true on the basis of
record. I further verify that the copies of the documents
filed along with the affidavit are the copies of the originals.

DEPONENT