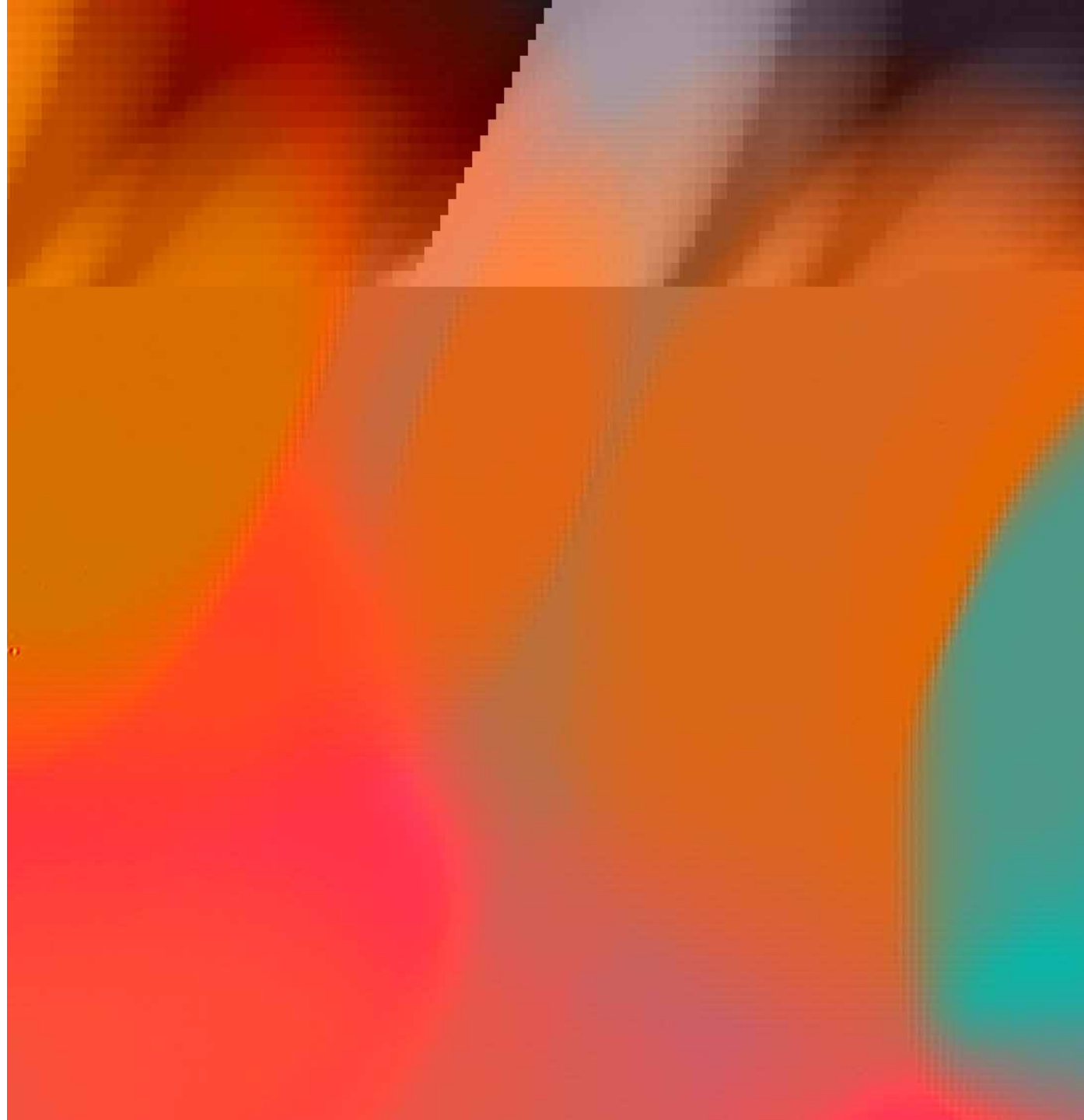


Session 1:

Determination of best interest of child in family disputes: Matters related to custody, guardianship, shared parentage and visitation

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A photograph of a family of three—a mother, a father, and a young child—walking away from the camera in a grassy field during sunset. The sun is low on the horizon, creating a warm, golden glow that silhouettes the family. The mother is on the left, the father is on the right, and the child is in the middle, holding hands with both parents. The background is a soft, hazy sky with some distant trees visible.

"Best Interest" of Child in Family Disputes

How does the court
determine what is in
best interest of the
child?

Principal Consideration - "Welfare"

- The principal consideration of the court whilst deciding such an application under the guardianship statute, in exercise of its *parens patriae* jurisdiction, would be the 'welfare' of the minor child/(children):
- **Per para. 8** of *Col. Ramneesh Pal Singh v. Sugandhi Aggarwal*, 2024 SCC OnLine SC 847.

How should "welfare" be construed?

- The word 'welfare' used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such cases – **para. 51** of *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42. ■

Importance of Section 17 of the 1890 Act

- Sub-section (1) of section 17 of the statute mandates that in appointing/declaring the guardian of a minor, the Court shall subject to the provisions of this section, be guided by what appears in the circumstances to be the for the welfare of the minor.
- Sub-section (2) mandates consideration of factors such as 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.
- **Sub-section (3) requires thoughtful consideration, which codifies, that if the minor is old enough to form an intelligent preference, the court may consider that preference.**

Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42 - FACTS

- Appellant and Respondent had an issue born out of their wedlock; bitter and acrimonious litigation followed with conciliation not possible. Accordingly, custody issue arose under Hindu Minority and Guardianship Act, 1956.
- Appellant father had flouted court orders which resulted in District Court transferring child custody to the Respondent Mother (without visitation rights to the father) as father had illegally detained the child flouting various court orders. High Court had sentenced the father in contempt proceedings.
- Principles regarding welfare of child discussed in successive slides but one important takeaway – whilst Appellant Father was granted visitation rights by the Hon'ble Supreme Court, Appellant had taken advantage of his own wrongs (keeping custody in violation of court orders) which was not permitted.
- Problematic observation: The Hon'ble Court agreed that taking the child out of the father's custody may cause some problems, but that it is bound to be neutralised – extremely MECHANICAL!

Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42 – Paras. 43, 46 and 47

- In determining the question as to who should be given custody of a minor child, the paramount consideration is the “welfare of the child” and **not “rights of the parents” under a statute for the time being in force.**
- The object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward’s health maintenance and education. The ***power and duty of the court under the Act is the welfare of the minor*** .
- In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship. Mature thinking is indeed necessary in such a situation to decide what will enure to the benefit and welfare of the child.

Viewing the matter from a 'humane' angle:

- When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. **The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues.** The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor.
- As observed in *Mausam Moitra Ganguli case* [(2008) 7 SCC 673], the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others (**para. 50** of *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42).

Adoption of holistic and all- encompassing approach

*Col. Ramneesh Pal Singh v. Sugandhi
Aggarwal*, 2024 SCC OnLine SC 847



Parameters to be considered:

- the socioeconomic and educational opportunities which may be made available to the Minor Children;
- healthcare and overall-wellbeing of the children;
- 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.
- Furthermore, we are equally conscious that the stability of surrounding(s) of the Minor Children is also a consideration to be weighed appropriately.

Participatory Case Studies (4 cases of 2025)

- 4 cases with short backgrounds will be presented.
- Please apply the principles that were iterated.
- Decisions of the Hon'ble Supreme Court will be revealed after a participatory discussion.



Issue: Petitioner father of a minor child seeks custody from the child's maternal grand-parents. The minor son's mother has passed away. Petitioner Father has re-married.

- **PETITIONER:**

- Father was seeking custody of his minor son;
- Father was holding a responsible position in the administrative services of the State;
- There was a conveyance of a land in favour of the minor child by the paternal grandfather and a deposit of ₹.10 lakhs in the child's name. In addition, the minor child was also a beneficiary of the life insurance policy of ₹.25 lakhs
- The father had remarried. From the facts, it remains unclear if he had any other issues from the second marriage.

- **RESPONDENT:**

- Minor child was being looked after by the maternal grandparents with the help of the siblings of the deceased mother of the child;
- Maternal grandfather has also initiated a proceeding for maintenance claiming ₹.20,000/- per month for the child, which makes it clear that the grandparents are unable to look after the child themselves.

Supreme Court's decision: *Vivek Kumar Chaturvedi & Anr. V. State of U.P. & Ors.*, 2025 INSC 159 - [2J]:

- Remarriage of the father cannot stand against the claim for custody; especially since otherwise there would have been a question as to how the child would be taken care of with the father engaged in his work.
- The Supreme Court observed that the Ld. Single Judge had not endeavoured to elicit the child's attitude towards his father (Para. 10).
- The child had lived with his parents for 10 years before his mother passed away. Separated in 2021, the child was living with his maternal grandparents – the Hon'ble Court had ruled that grandparents cannot have a better claim than the father, who is the natural guardian.
- There is not allegation of any matrimonial dispute when the mother was alive/ complaint of abuse perpetrated against the mother or minor son;
- In the facts and circumstances, bearing welfare of the child in mind, custody was granted to the father. Maternal grandparents were granted visitation rights post handing over custody of child to the Appellant father (Para. 11). **Integration was done in stages – mindful of the academic year of the child, visitation rights were granted to the father until 30.04.2025, till then custody was with the maternal grandparents. From 1.05.2025, custody was transferred to the father, whilst ensuring visitation rights for the maternal grandparents.**

First born, minor daughter was with the Petitioner Mother; second born, minor son was with the Respondent Father. Parties had separated due to attitudinal issues. Mother seeking custody of the minor son from the Father.

- **PETITIONER**

- Mother has long working hours and is an Associate Manager at Virtusa, Gurugram. █
- Distance of the Heritage School, Vasant Kunj from the place where the mother resides as compared to where the father resides. █
- Minor son desperately craves for his elder sister's company. Custody of the minor daughter, who is the first born, remains with the Petitioner mother.

- **RESPONDENT**

- Father is employed with Oracle and discharges his duties by working from home;
- Father contends that Mother exhibited irresponsible conduct of travelling abroad during peak Covid-19 pandemic, leaving custody of children with the father. Based on this, father was granted custody of minor son until competent family court settled the issue under relevant statute.
- Father had custody of minor son.

**The Court has interacted with the minor son, and the following impression has emerged:
Minor son does NOT want to part company of his father.**

Supreme Court's decision:

Poonam Wadhwa v. Ajay Wadhwa & Ors., SLP (CRL) No. 12458 of 2024

- Since both parents were working, and it is common knowledge that to meet individual as well as family aspirations, married couples have to work to build a proper home, to secure better education for their ward which is getting costlier day by day.
- The Court did not subscribe to the view that if one parent is working from home and the other is not (going to office for work), then it is to be inferred that child's best interest would be to be placed with the parent who does not go to office.
- Distance of commute from the school was also not considered to be of relevant consideration since both parties were resident in Delhi NCR (Para. 12). Vaccination during pandemic was also considered as being not relevant.
- **Application of Section 17(3): The Court had noticed in its interactions with minor son that he was not willing to part company of his father (Para.15). Child also had the company of grandparents at home. Education at Heritage School should remain undisturbed.**
- In the facts and circumstances, bearing welfare of the child in mind, since the minor son was 5 years old, and did not wish to part with the company of his father, the Court considered that Appellant mother was granted visitation rights as directed earlier vide order dated 3.05.2024 in another SLP. Since the High Court had not foreclosed the right of the appellant to seek custody through remedies available in law, operative portion of the impugned order remained undisturbed.

Issue: Shared custody of children – 2 issues born on 23.07.2016 and 05.07.2022, and shared parenting. Parties are highly qualified professionals.

- **PETITIONER:**

- Mother employed in an IT Company which permitted work from home.
- Perceiving a threat of forcible removal of custody by the father, in June 2014, mother filed an original petition under 1890 statute seeking permanent custody.

- **RESPONDENT:**

- Father employed as a General Manager with a construction company in Singapore.
- Father filed I.A. seeking interim custody/visitation rights in the custody proceedings – 15 days per month, i.e. 15 days with the Father, and 15 days with the Mother, and offered to take up a flat at Thiruvananthapuram and not being a flight risk.
- Precedents cited by the Respondent in support of his case, before the High Court, had shown that in similar cases, 15 days shared custody could be granted.

- **RESPONDENT CONTINUED:**

- The Respondent offered to adhere to certain conditions, amongst which was the appointment of a nanny. However, he was unable to provide home cooked food.
- The elder daughter (girl child) was in the custody of the father; younger minor son was with the mother, as per order issued on the first date of hearing. However, in subsequent hearing which is *in-camera*, the Court has interacted with the daughter.
- The elder daughter has stated that a nanny had not been hired, and she was regularly fed food from outside eateries/restaurants. Not one meal was home cooked.
- **The Court has found her to be intelligent, expressive and composed, and mature. She expressed affection for both parents but expressed discomfort with the 15 days' arrangement every month.**

Supreme Court's decision: Arathy Ramachandran v. Bijay Raj Menon, 2025 INSC 587 – [3J]

- Applying principles as discussed, utmost consideration is welfare of the child. Utmost sincerity, love and affection showered by either parent, by itself, cannot be a ground to decide the custody of a child. (Para. 19).
- Interim arrangement *qua* the minor 3-year-old son was set-aside (Para. 20). *Qua* the 8-year-old daughter, the concerns raised regarding her physical and emotional wellbeing by the Appellant mother was found to be genuine. The child requires nutritious home cooked food for her overall well-being, growth and development. (Para. 22). ■
- The Bench did consider giving the Respondent father an opportunity to make some arrangements in this regard, but since nobody is there to keep the daughter company in his absence, this factor also weighed on the mind of the Court. Emotional support available with the Mother was better, with the company of her brother by her side. ■
- Periodic division of custody was found to be adverse to the wellbeing of the children. But depriving the father of custody was found unacceptable since he was doting and wanted an equal parenting role. Father was granted interim custody of the daughter on alternate Saturdays and Sundays of every month. Certain other safeguards were granted to ensure visitation rights with the younger son as well. (Paras. 29 and 30).

Manoj Dhankar v. Neeharika, 2025 INSC 1068 - [2J]

Issue: Visitation rights through videoconferencing

- **PETITIONER:**

- Father pressed the SLP only to the extent of securing visitation rights through videoconferencing to his 9-year-old son who was now resident with the mother in Ireland (Para. 5).

- **RESPONDENT**

- Case has a chequered and intricate history of matrimonial and custody disputes across all three levels of courts – Family court, High Court, Supreme Court (Para. 3).

Decision of the Court: Applying principles as discussed, utmost consideration is welfare of the child (Para. 6). Court cannot allow the child to become a casualty of matrimonial conflict (Para. 7).

Residency in Ireland was not disturbed. Father's request for visitation rights through videoconferencing was found to be fair and necessary (Para. 9 and 10). **Every child has a right to the affection of both parents.** Directions for regular videoconferencing were granted (Para. 11).

Case demonstrated the growing importance of shared parenting.



**Landmark Child
Access & Custody
Guidelines, 2025
Along with Parenting
Plan - formulated by
the Hon'ble High Court
at Calcutta**

And rapid adoptions by
Hon'ble High Courts of
Karnataka and Kerala

Landmark Child Access & Custody Guidelines, 2025 Along with Parenting Plan - formulated by the Hon'ble High Court at Calcutta

- Along with Parenting Plan - formulated by the High Court at Calcutta: The Hon'ble High Court adopted these guidelines vide its judgment dated 23.09.2025 passed in *Anatara v. High Court at Calcutta*, reported in 2025 SCC Online Cal 8286.
- Comprehensive guidelines framed under Section 10(3) of the Family Courts Act, 1984.
- These comprehensive guidelines lay down, authoritatively, aspects pertaining to custody, visitation and shared parenting plans to ensure cases are disposed of in a scientific manner without compromising on the right of the child to be showered with love and affection from both the parents. The Hon'ble High Court, in its order directed that until the Rule Making Committee approved the same, these guidelines are to be followed.
- The High Courts of Karnataka and Kerala also ordered that these guidelines be followed in their States, whilst Rules are drawn up in accordance with law.

Some Guidelines under the spotlight:

- **Chapter-2, SECTION 12:** 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.
- **Chapter-2, SECTION 22:** 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.
- **Chapter-5, SECTION 45:** 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.

Some Guidelines under the spotlight:

- **CHAPTER-5: 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, SECTION 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.

Thank you for a patient hearing!