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Child custody, guardianship, interim custody/visitation for fathers

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Here is a list of practical problems faced related to child custody and visitation by fathers:

1. In many cases, the child is taken by mother to her native place, and being far away the father is deprived not only of physical contact with child but he is usually not allowed to allow even telephonic or online communication with child by mother.
2. A general problem is that lawyers discourage fathers to file for child custody or visitation giving various reasons like "child is very small", "child custody is usually given to mother", "we will handle other cases right now", and so on. What is not informed to father is that the longer he delays (or doesn't file a case at all), at later stage the same can be used as a reason against him from giving him meaningful access/interim custody or visitation of child. However, the interesting thing is that if the situation is reversed in the sense that mother has left the child and father had been raising the child alone, the mother can approach court even after a gap of 1-2 years and be able to get full custody of child easily or get meaningful shared custody rights. It reflects the societal and judicial mindset of considering mother's presence as very important for child's upbringing and father's role being more important as a financial provider for family. That attitude is not going to change in a day, and possibly may not change at all. So the focus should be to consider those logical points where some sense can be hammered back into the legal system that keeping father out of child's life is not in paramount or any kind of interest of child's best welfare.
3. Many fathers assume that the separation between wife/child and them may get sorted out over a period of time, and combined with discouragement by lawyers they delay filing any case whatsoever. As pointed above, fathers are not given a sympathetic hearing which mothers get if they delay asking for child access or custody. Also a general scare factor is there that the "laws are in favour of women" so people are unable to understand that child custody law is not about women, it's just a myth (even if a convenient one) that custody decisions will automatically go in favour of women.

The fact is that the custody decisions are given in favour of mothers mainly because of the following reasons:

1. Due to practical reasons of mother/child in different city, they don't want father to meet or contact child, and all these combined with the fact that fathers are not filing GWC case asking for any kind of access with child, e.g. time during vacations where they can take child with them to their own city.
2. Even if child and mother are in same city as father, most fathers don't file a case in time, and that itself results in various other circumstances including possible alienation of child from father that it becomes a self-fulfilling prophecy. Later the same reasoning is used by courts that the child is not comfortable in presence of father (which can be 'arranged' too) so interim custody cannot be given to father. When a father is not being allowed to child, then merely hoping won't work and courts cannot grant any relief unless an appropriate relief is asked for under the appropriate act (Guardians and

Wards Act is the appropriate law for asking child custody or even proper visitation rights).

3. In cases there are other cases pending in court between the couple like CrPC 125, DV Act case, IPC 498A/406 etc, many fathers spend their energies to prove to court about ill-behaviour and false cases allegations made by wife, whereas the child custody decisions are not made based on what false allegations (since anyway as yet not having been deemed as false by court) and mental cruelty the wife has been inflicting on husband. Fathers need to highlight child welfare as the main focus of their arguments and bring in all specific wife's behaviours to notice of court to the extent that such behaviour is also against child's well-being and welfare. E.g. if wife is in habit of threatening suicide often, then the argument can be made in court that such behaviour patterns of wife will definitely make her not a fully fit parent, leave alone her being given responsibility of becoming a sole/single parent to child in case of sole custody given to her. The focus on child welfare has to be brought in, merely highlighting wife's irresponsible or cruel behaviour won't be enough for court to automatically grant reliefs. At least that is the current situation. In future maybe a framework can be evolved (preferably in law) where child custody decisions according to framework based on which facts are proven true about each parent. As of now the ad hoc process seems to be that by default child custody is with mother so that cannot be disturbed unless very strong evidence is brought against her fitness to be a sole custodian and guardian of child, but if a father has the custody of child, then mother can come at a later point of time and get meaningful custody of child based on the fact that she is a mother and courts deem it very important for mother to be part of child's life. This is also because of the current legal regime of child custody laws where there is no concept of shared guardianship of child, with the regime being that one parent gets full custody and other parent gets visitation rights. But it is already changing quickly based on what is seen in individual cases for those fathers who fight persistently in court for shared custody etc.

Further in the book we will consider the child custody aspect from various angles listed below:

1. Brief discussion on laws related to child custody and how child's welfare has emerged as the main point of deciding on child custody and guardianship. So the focus will be on highlighting how the point of child welfare gets decided by courts. For this reason focus will be mostly on judgments rather than bare acts related to custody since the judgment precedents are already set which tend to overrule the statutory points in custody/guardianship laws.
2. Judgments highlighting custody decisions whether in favour of mother, father, or both parents having joint custody, as has started to happen in last few years.
3. Come up with practical suggestions on how to get shared child custody, interim custody, visitation etc depending on various practical circumstances depending on child's

location, ongoing cases and allegations among couple, and so on.

4. How to retain child custody with father in case mother has left the child and/or is unfit for playing a role as good mother. If child's welfare is sole criterion, then this has to be a viable approach in appropriate cases, too.
5. Discuss the important of various HC guidelines on shared parenting plan, and how to utilize it in your state's courts whether the HC has already approved or not in your state.
6. Come up with practical points in filing GWC case, both with regards to points about father's role, as well as what kind of custody or shared custody to ask for.
7. Discuss law commission's report on shared parenting, and whether it already contains good recommendations or the laws of custody need further modifications before laws of guardianship and custody are amended by parliament.

Proposed Contents of book (please add new topics at bottom only)

1. Need for the book
2. Need for fathers having meaningful custody and access to children
3. Basics of laws related to custody and guardianship.
4. What is meant by custody of child
5. Meaning of guardianship - rights and responsibilities
6. Interim custody
7. Visitation
8. Shared Custody/Shared Parenting
9. Parental Alienation
10. Approach towards custody of child
11. Approach for guardianship of child
12. Using parenting plan approved by HC in various states
13. Proposed amendments to laws for reforming custody and guardianship laws

Definition of Guardian under Hindu law

Guardian of a minor (below 18 years of age) means any person who has responsibilities as well as certain rights that come with responsibilities, to take care of affairs and of welfare of the minor child.

Definition of guardian is below:

<https://indiankanoon.org/doc/110381761/>

Section 4(b) in The Hindu Minority and Guardianship Act, 1956

(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—

- (i) a natural guardian,
- (ii) a guardian appointed by the will of the minor’s father or mother,
- (iii) a guardian appointed or declared by a court, and
- (iv) a person empowered to act as such by or under any enactment relating to any court of wards;

Definition of natural guardian is below:

<https://indiankanoon.org/doc/39958047/>

Section 6 in The Hindu Minority and Guardianship Act, 1956

1. Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

For other clauses (b)-(c), read at webpage given above.

Though a father is considered natural guardian of a minor child, as of today for all practical purposes the guardian and parental or non-parental custodian of a child is decided by courts based solely on criteria of "welfare of child" and not as per statute above. Read Chapter on

Landmark Judgments for judgments pertaining to this concept.

Due to establishment of Family Courts as per Family Courts Act, 1984; wherever a family court is in existence, child custody and guardianship related matters are to be filed.

Courts of which Jurisdiction?

HMA - Hindu Marriage Act, 1955

GWA - Guardianship and Wards Act

Gitbook allows 5 collaborators for free, maybe we can add more later by removing existing ones

Here is list of judgments to analyze under various topics.

Suggested workflow is like this:

1. Find a judgment related to child custody, visitation, interim custody etc on <http://indiankanoon.org> or <http://bharatlaw.in>
2. Get link of judgment you are reading/working on and put it under your name below: choose only one category: (i) To analyze, (ii) analyzed and summarized in book, (iii) analyzed not useful for book.
3. If you find a judgment which you believe is useful but not reading it yourselves, then put it under Judgments to analyze. Someone else can put it into their list.
4. Each author to check that if someone else is already working on a judgment, then don't take it up. Just do a search/find on this page to confirm the link you want to read is not already there in someone's list.

Judgments to analyze

Here we give a webpage link of all judgments related to book's topic. Whether they are found useful or not is to be done by each author. Take a link from here and put it into To analyze under your name.

<https://indiankanoon.org/doc/1020239/>

(Umesh: Please go through the judgement. Its pretty long and need your expertize to summarize. Tx)

Vivek

(i) To analyze

Constitutional etc

U.N's CRC (Conventions on the rights of child) Article 9 states:

- “States Parties shall ensure that a child shall not be separated from his or her parents against their will.”
- “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”

AND Article 51©: foster respect for international law and treaty obligations in the dealings of organized peoples with one another

Argument: India has ratified and accepted UN CRC in 1992, and all member states are bound to honour international treaties and conventions, and it is also in agreement with Article 51©.

Indian Constitution Article 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Argument: Life and liberty of the child is affected when she doesn't have access to, presence, love, and affection of father.

Indian Constitution Directive Principle: 39(f): [(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

Argument: For a child having father and still not allowed to grow with father's care and upbringing is akin to forced moral abandonment of the child from one parent's care.

Judgment Citations

1. **Francis Coralie Mullin vs The Administrator, Union** ... on 13 January, 1981
Equivalent citations: 1981 AIR 746, 1981 SCR (2) 516

Judgment summary: Even detenu has a right to see his family.

1. **Maneka Gandhi vs Union of India 1978 AIR 597, 1978 SCR (2) 621**

Judgment summary: "Article 21 should be interpreted with the widest amplitude"

1. In **Kumar V. Jahagirdar v/s Chethana Ramatheertha, (2004) 2 SCC 688**, while dealing with the issue of child custody, the Supreme Court observed that mother cannot always claim superior custody rights.
2. In **R.V. Srinath Prasad v. Nandamuri Jayakrishna, (2001) 4 SCC 71**, it was observed "that custody of minor children is a sensitive issue. It is also a matter involving attachment. Such a matter is to be approached and tackled carefully. A balance has to be struck between the attachment and sentiments of the parties towards the minor children and the welfare of the minors which is of paramount importance."
3. In **Sumedha Nagpal v. State of Delhi, (2000) 9 SCC 745**, the Supreme Court while deciding the question of custody observed that what we have to bear in mind the welfare of the minor child and not decide such a question merely based upon the rights

of the parties under the law... During infancy and impressionable age, the care and warmth of both the parents are required for the welfare of the child.

4. In **Nil Ratan Kundu v/s Abhijit Kundu, (Civil Appeal No.4960 of 2008**, decided on 8th August 2008), Supreme Court, in paragraph 56 thereof held thus: ... 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.”
5. **Mohan Kumar Rayana vs. Komal Mohan Rayana IN THE HIGH COURT OF JUDICATURE AT BOMBAY APPELLATE JURISDICTION FAMILY COURT APPEAL NO.29 OF 2007**

para 47...If the order of access does not work in future the custody will have to be handed over to the father on being satisfied that the respondent-mother is responsible for poisoning the mind of Anisha against the appellant father.

para 48. We are aware that initially the access period may temporarily cause flutter and Anisha may not be able to immediately adjust herself at the home of the appellant-father, but it does not mean that mere willingness of Anisha would be decisive factor. Looking to her age and hostile attitude towards the appellant, her wish, insofar as access/visitation right is concerned, need not be given importance or any weightage. The Court is not supposed to act as executor of the wish expressed by the minor.

1. **[2010(1) Femi-Juris C.C. 169 (Raj)] Mangal Das Vaishnava and another (Appellants) Versus Jitendra Kumar Vaishnava and another (Respondent)**

Trial court directed appellants—maternal grand-father and grand-mother to handover custody of child to respondent father. Appeal against order by maternal grand-parents. Father charged with offence under Sections IPC 498a and 304 of IPC. Child expressed wish his willingness to live with his maternal grand-father and grand-mother. Held that no evidence that welfare of child is in any way in peril in the hands of father. Appeal dismissed.

Argument: IPC 498a case against father no bar for shared custody of child with father.

(ii) analyzed and summarized in book

<http://bharatlaw.in/doc/AViCVw7tdGcup1PUfyRD /judgments-where-full-custody-to-mother.md>

<https://indiankanoon.org/doc/1241462/ /mother-can-be-guardian-when-father-alive.md>

<http://menrightsindia.net/2014/06/6-month-child-custody-year-father-mother-karnataka-hc.html>

(iii) analyzed not useful for book

Umesh

(i) To analyze

<https://indiankanoon.org/doc/1143841/> (Supreme Court of India: Father wins the custody of Daughter, Parental Alienation Syndrome (PAS))

(ii) analyzed and summarized in book

<https://indiankanoon.org/doc/328533/> (Welfare of the child paramount consideration)

<https://indiankanoon.org/doc/57070529/> /visitation-rights-to-grandparent.md

<https://indiankanoon.org/doc/112269492/>(<https://indiankanoon.org/doc/112269492/>) (Joint parenting plan which is based on the report of the Law Commission submitted on 25.5.2015)<https://indiankanoon.org/doc/112269492/>(Joint parenting plan which is based on the report of the Law Commission submitted on 25.5.2015)

<https://indiankanoon.org/doc/161443015/> (Equal shared custody)

<https://indiankanoon.org/doc/42271077/>

<https://indiankanoon.org/doc/463034/>

<https://indiankanoon.org/doc/691247/>

(iii) analyzed not useful for book

Mahesh

(i) To analyze

(ii) analyzed and summarized in book

(iii) analyzed not useful for book

Yuvraj

(i) To analyze

<https://indiankanoon.org/doc/858575/>

(ii) analyzed and summarized in book

(iii) analyzed not useful for book

Paritosh

(i) To analyze

(ii) analyzed and summarized in book

<https://indiankanoon.org/doc/33634887/> Shaleen Kabra vs Shiwani Kabra Supreme Court
2012

(iii) analyzed not useful for book

Shyamrao Maroti Korwate vs Deepak Kisanrao Tekam on 14 September, 2010

<https://indiankanoon.org/doc/463034/>

Fact of the case

Appellant is grandfather of the child who is appealing in supreme court against the order of Bombay high court whereby the High Court reversed the judgment and order passed by the District Judge, Yavatmal, Maharashtra.

Marriage of the respondent (father of the child) was solemnized with the daughter of the appellant (grandfather of the child). Out of the said wedlock, a son was born on 23.03.2003. After giving birth to son, on the same day, the respondent's wife died. Son of the respondent is residing with the appellant-maternal grandfather and his family since his birth. After the death of his wife, the respondent contracted second marriage and also has a son from the second marriage.

On 07.08.2003, the appellant-maternal grandfather of the minor filed an application in the Court of District Judge II, Yavatmal, Maharashtra under Section 7 of the Guardians and Wards Act, appointing him as guardian of the minor grandson. The said application was opposed by the respondent (father) and, on 15.10.2003, he also filed an application under Section 25 of the GWA for the custody of his son. The District Judge by a common judgment dated 16.04.2007 in both the proceedings, allowed the application filed by the appellant (grandfather) herein and appointed him as a Guardian of grandson Vishwajeet till he attains the age of 12 years. The District Judge further directed the newly appointed guardian to allow the respondent-father to meet the minor once in a month.

Aggrieved by the said order, the respondent (father) appealed in the High Court of Bombay. On 17.10.2007 Judge of the High Court allowed the appeal filed by the respondent (father) and directed the appellant (grandfather) to hand over the custody of the child to the respondent (father). Challenging the said order, the appellant (grandfather) has preferred this appeal in Supreme court.

Points of law raised

In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration. No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor."

One thing is clear that in a matter of custody of a minor child, the paramount consideration is the "welfare of the minor" and not rights of the parents or relatives under a statute which are in force. The word "welfare" used in Section 13 of the Act 1956 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.

Facts held important in case

Though father is the natural guardian in respect of a minor child, taking note of the fact that welfare of the minor to be of paramount consideration.

child was all along living with the maternal grand-father and his family since birth, residing in a Taluka Centre where the child is getting good education.

At any point of time the respondent-father did not attempted to meet the child when he was in the custody of maternal grandfather.

SC Final Verdict

Permitted the appellant grandfather to have the custody of the child till the age of 12 years as ordered by the District Judge. The above conclusion is based on welfare of the minor as provided in Section 13 of the Act 1956 and visitation rights given to the father:

Comments

Though probably not the most important part of judgment but an opinion is expressed by judges:

"Within a period of one year after the death of Kaveri, daughter of the appellant herein, the respondent- husband married another woman."

"There is no material to show that at any point of time the respondent-father had attempted to meet the child when he was in the custody of maternal grandfather"

This tends to suggest that past actions of the parents in a child custody case can be considered important for any future amendments / appeals to the orders.

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Comments

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This tends to suggest that past actions of the parents in a child custody case can be considered important for any future amendments / appeals to the orders.

Anjali Kapoor vs Rajiv Bajjal on 17 April, 2009

<https://indiankanoon.org/doc/691247/>

Fact of the case

Appeal in Supreme Court by Grandmother against the judgment and order passed by the High Court of Indore, the High Court has directed that the custody of the child be handed over to the respondent/father.

The respondent (father), had got married to the appellant's daughter. Appellant's daughter went to Indore to the appellant's residence for delivery of the child and gave birth to a female child on 20.05.2001, but she did not survive to see the new born baby. As the child was born premature, she was kept in incubator in the hospital for nearly 45 days. After discharge from the hospital, the infant was brought to the residence of the appellant, and she was named Anagh.

The Respondent (father) filed an application under Guardian and Wards Act before the Family Court, inter-alia asserting that being the father of the child Anagh, he is her natural guardian and therefore, entitled to the custody of the child.

The Family Court, Indore in its order dated 18.3.2004 given priority to the welfare of minor child, and gave custody of minor child - Anagh to the respondent father. Aggrieved by the said order, the appellant (grandmother) had carried the matter to the High Court.

the High Court in its judgment has held, that there are no compelling reasons on the basis whereof the custody of the child should be denied to her father/respondent. Respondent has been making efforts right from the infancy of the child for guardianship of the child which was strongly resisted by his mother-in-law. For better upbringing and welfare of the child, her custody should be entrusted to her father. Aggrieved by the said judgment, appellant (Grandmother) is appealed the matter in Supreme Court

Facts held important in case

Under the Guardian and Wards Act, 1890, the father is the guardian of the minor child until he is found unfit to be the guardian of the minor female child. In deciding such questions, the welfare of the minor child is the paramount consideration and such a question cannot be decided merely based upon the rights of the parties under the law

This Court considering the welfare of the child also stated that, the children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children have, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society."

Court has observed that whenever a question arises before Court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child.

Reference of Madras High Court has observed, that, if a minor has for many years from a tender age lived with grandparents or near relatives and has been well cared for and during that time the minor's father has shown a lack of interest in the minor, these are circumstances of very great importance, having bearing upon the question of the interest and welfare of the minor and on the banafide of the petition by the father for their custody.

The welfare of a child is not to be measured by money only, or by physical comfort only. The word welfare must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.

SC Final Verdict

Ordinarily, under the Guardian and Wards Act, the natural guardians of the child have the right to the custody of the child, but that right is not absolute and the Courts are expected to give paramount consideration to the welfare of the minor child. The child has remained with the appellant/grandmother for a long time and is growing up well in an atmosphere which is conducive to its growth. It may not be proper at this stage for diverting the environment to which the child is used to. Therefore, it is desirable to allow the appellant to retain the custody of the child.

The court has mentioned that In spite of notices issued to father, he has not appeared before the Court personally or through his counsel which shows his lack of concern in the matter. Also he has got married for the second time and has a child too.

SC allowed the appeal and set aside the impugned order. Also permitted the appellant (grandmother) to have the custody of the child till she attains the age of majority.

[Githa Hariharan vs Reserve Bank Of India-SC 1999]

(<https://indiankanoon.org/doc/1241462/>)

Facts of case

1. When appeal came to SC, a divorce case was pending in district court of Delhi between spouses, and also mother had asked for custody of minor son in same petition.
2. The mother had applied to RBI (Reserve Bank of India) for bonds to be purchased in name of minor son, but RBI refused saying that father's signature on application form were a must (since that was presumably bank's policy that father is considered natural guardian of child).
3. RBI also gave an alternative that mother can produce a certificate of guardianship of child from a competent court.
4. Mother had challenged this requirement of signature of father stating that she was taking care of minor son, and on point of law, a challenge was made to the HMGA, 1956 provision which states that father is considered natural guardian of child, and thereafter mother. Read Section on Guardianship in Ch 1.

Points of law raised

1. Whether the provision in HMGA, 1956 that a father must be considered natural guardian and not the mother is as per the legislative intent of various guardianship laws, and whether such an interpretation violates the constitutional principle of equality before law to both genders.

Part of HMGA 1956, which was challenged for constitutionality:

Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

Points of law decided

1. SC held that the word "after" in above section of HMGA, 1956 should be interpreted in a wider sense to mean not only that mother becomes natural guardian of child after father

is no more; but also that mother can be considered natural guardian of child if father is alive but not involved in life of or taking care of the minor.

Points of law reiterated

1. Welfare of child is the main criterion.

Facts held important in case

1. It is not explicitly stated by court but it is presumed that court agreed that mother was primarily taking care of child and father was not involved much in child's life.

Comments

1. Though it is commonly argued point in legal proceedings that "*father is the natural guardian of child*", practically speaking that part of statute is more of theory than of real value in custody and guardianship cases. Courts primarily tend to see welfare of child as main criterion and merely stating "father is natural guardian" will be of ritualistic effect unless there is good evidence of father's contribution and role in child's upbringing and needs of child. This point can be there in petition and arguments but it has little value in absence of real evidence.
2. In this case too, it is alleged that father was showing total apathy to child and was merely stating his rights to be natural guardian. This judgment by SC set a precedent taking away effect of statutory law where father was considered primary guardian of child.

Supreme Court of India

Lekha vs P. Anil Kumar on 21 November, 2006

<https://indiankanoon.org/doc/328533/>

Facts of case

The appeal is directed against the order of the High Court of Kerala allowing matrimonial appeal for the custody of the child of the respondent by reversing the finding of fact arrived at by the trial Court. The trial Court, after considering the evidence on record and interviewing the child, came to the conclusion that for the welfare of the child the custody should be given to the mother and dismissed the original petition of the respondent-father filed under the Guardians and Wards Act holding that he is not entitled for the custody of the child. On appeal, the High Court reversed the finding of the trial Court and directed to give the custody of the child to the father without interviewing the child. The High Court also permitted the respondent to take the child to Gulf.

Wife files divorce on the ground of cruelty. The respondent (father) filed a petition for restitution of conjugal rights against the appellant and also filed an original petition under the Guardians and Wards Act for the custody of the 11 years old minor son. Allegation by father was that if the child is in the company of the appellant, it would affect the education of the child. The respondent also contended that he is financially better than the appellant and hence the custody of the child be given to him.

In the meantime, the Subordinate Judge passed an ex- parte decree for divorce in favour of the appellant and the petition for restitution of conjugal rights filed by the respondent was dismissed for default.

Against the order of the Family court, the respondent filed an appeal before the High Court of Kerala. The contention of the respondent was that contrary to the deposition made by the appellant before the trial Court that she would not re- marry, immediately after the judgment of the petition filed under the Guardians and Wards Act, she remarried. It is, therefore, contended that the continued custody of the child with the appellant would be detrimental to the interest, progress and welfare of the child.

The High Court, without giving an opportunity to express the willingness of the child, allowed the appeal only on the ground of remarriage of the appellant/mother of the child. The High Court also held that the respondent-father is a businessman in Saudi Arabia and the father is more apt and suitable to protect the interest of the minor child and also in imparting education to the required standard of the child.

Points of law decided

We are of the opinion that the remarriage of the mother cannot be taken as a ground for not granting the custody of the child to the mother. The paramount consideration should be given to the welfare of the child. As already noticed, at the interview, the boy has expressed his willingness and desire to live only with his mother and was admitted by him that the mother will provide him good education. The mother is also drawing pension of Rs.6,000/- p.m. and also having land and properties in her name. When the boy says he prefers to live with his mother, we are of the view that it will be beneficial for the boy and his education for a better future. The High Court, in our opinion, erred in allowing the appeal on the ground of remarriage of the appellant without considering the other aspects of the matter. It is a matter of custody of the child and the paramount consideration should be the welfare of the child. It is not in dispute the boy is living with his mother for the last several years and the separation at this stage will affect the mental condition and the education of the child and considering that the child himself attaches importance to his education if the custody is to be given to the father will now affect his academic brilliance and future.

The High Court, in our opinion, ought to have seen that the re-marriage cannot be taken as a ground for giving custody of the child. There is also no finding by the High Court that the remarriage has adversely affected the mental condition of the minor child.

The principles of law in relation to the custody of a minor appear to be well-established. It is well settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the court has a special responsibility and it is the duty of the Court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the Court has to be guided by the only consideration of the welfare of the minor.

The High Court committed a grave error in not ascertaining the wishes of the minor, which has consistently been held by the Courts to be of relevance in deciding grant of custody of minor children. We are, therefore, inclined to restore the order passed by the Family Court and to give custody of the minor boy to his mother, but as indicated hereinbefore, we do not want the child to grow up without knowing the love and affection of his natural father who too has a right to help in the child's upbringing. We are of the view that although the custody of the minor child is being given to the mother, the child should also get sufficient exposure to his natural father and accordingly we permit the respondent to have custody of the child from the appellant during Onam and other important festivals and during the school vacation. We make it clear that the appellant-mother shall hand over the child to the respondent-father during every mid summer vacation for about a month without adversely affecting the child's education. The appellant should not also prevent the respondent-father from coming to see

the child during weekends and the appellant should make necessary arrangements for the respondent to meet his child on such occasions. The appellant should not also prevent the child from receiving any gift that may be given by the respondent- father to the child.

Comments

High Court committed a grave error in not ascertaining the wishes of the minor, which has consistently been held by the Courts to be of relevance in deciding grant of custody of minor children

remarriage of the mother cannot be taken as a ground for not granting the custody of the child to the mother.

The principles of law in relation to the custody of a minor appear to be well-established. It is well settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor.

[6 months shared custody to father and mother-Karnataka HC 2013]

(<http://menrightsindia.net/2014/06/6-month-child-custody-year-father-mother-karnataka-hc.html>)

Facts of case

1. As stated by husband, wife had left husband's house during 5th month of pregnancy. She did not come back even after birth of their son.
2. A surgery of son when 1 year old was not disclosed to husband.
3. Wife got a job when son was 8 months old and works 10-12 hours a day leaving child in custody of her mother.
4. Father also said that the child needed medical care due to a congenital condition.
5. Husband had sent a legal notice to wife to come back, and had later filed a GWC case in 2004 for full custody of child.
6. Wife countered GWC case of husband by stating several allegation on him like he is irresponsible, in debt, steals things from house etc.
7. Wife said she got the child admitted to good school and has filed a divorce petition too in 2004.
8. Both mother and father had produced doctors to testify on health condition of child. Lot of doctors' reports were submitted from both sides.
9. The family court of Bangalore had given order to hand over custody to father. The order was made based on fact that mother who had custody of child neglected his health, and that she was trying to alienate child from father, and that failed to implement one order under IA (Interim Application).
10. Mother had appealed against family court's order to Karnataka HC. She retained custody of child apart from few instances of interim custody to father and visitation every month.
11. Karnataka HC decided to allow custody for first 6 months of year (Jan-Jun) to father and from Jul-Dec to mother. Court also allowed visitation to non-custodial parent on Sat-Sun, and telephonic/video access to child for both parents.
12. Since both parents were earning well, they were directed to maintain education and other expenditures of their son in equal proportion.

Points of law raised

1. Technical legal grounds were raised by both parties, however the sole decision in judgment was based on considerations of interest and welfare of child.

Points of law reiterated

1. Primary determinant of child custody decision is welfare and interest of child, and not father's right under GWA Section 25.

Facts held important in case

1. Though child expressed desire to be with mother, it was not considered too important also because he had been primarily in custody of mother all along, and was 12 years old.
2. That respondent father had a joint family and children of his brother and sister were also there to give company to his son.
3. Court also opined that numerous studies had found that children who live with their father are more likely to have good physical and emotional health to achieve academically and more likely to exhibit self control and pro-social behaviour.
4. Though child had been with mother till about 12.5 years of age, it was deemed that son needs guidance of father also at his age of adolescence.
5. Father had been fighting for custody of son since 8 years till case was decided by HC.

Comments

- 1.

[Vikram Vir Vohra vs Shalini Bhalla - SC 2010](<https://indiankanoon.org/doc/1064641/>)

Facts of case

1. Parents in the past were divorced after having agreed to a mutual consent divorce. As per terms of MCD, custody of child was to be with mother with twice a month visitation for father.
2. Mother decided to pursue job opportunity in Australia, and applied to court to modify visitation terms.
3. Trial court modified orders and granted visitation twice a year to father during child's vacations presumably.
4. Father objected and wanted full custody of child instead.

Points of law raised

1. Whether court can decide on child custody/visitation terms under Section 26 of Hindu Marriage Act(HMA) if the contention is that the divorce decree did not contain terms of child visitation and custody.

Points of law decided

1. HC and SC held that even if there was absence of the terms and conditions of child custody in the divorce decree that fact does not disentitle a parent (mother in this case) to file an application under Section 26 of the Act seeking revocation of the visitation rights.

Points of law reiterated

1. Child custody related orders and decisions are always interlocutory and can be modified as circumstances and needs of child evolve.

Facts held important in case

1. Child when interviewed by both HC and SC categorically said he wanted to be with mother. Child's age was 7 years and above.
2. Respondent mother cannot be denied opportunity to take up job opportunity and pursue her career in Australia, and develop herself.

Comments

1. Though probably not the most important part of judgment but an opinion is expressed by judges: "*The appellant-father, for all these years, lived without the child and got used to it.*" This tends to suggest that past actions of the parents in a child custody case can be considered important for any future amendments to the orders. At the time of MCD, had the father asked for and enjoyed more substantial amount of time with child, could the decision have been different? Probably not, but at least such an opinion will also will not be expressed in the judgment. Also, it could have led to higher interim custody during vacation times. However an alternative analysis of this sentence suggests that such an observation is actually not in tune with the principle of "welfare of child". The point here being made is that father has gotten used to living without the child, so it shouldn't really affect him so much if he gets deprived of child access even more. However, time and again the principle has been reiterated in judgments that it is not rights of parents but welfare of child that is important in child custody decisions. In light of that, this observation is at best superfluous and at worst biased against father.

Gaurav Nagpal vs Sumedha Nagpal on 19 November, 2008

<https://indiankanoon.org/doc/929793/>

Mausami Moitra Ganguli vs Jayanti Ganguli on 12 May, 2008

<https://indiankanoon.org/doc/858575/>

Facts of the case

1. Whether the father or the mother should have the custody of an almost ten year old male child is the short question which falls for consideration in this appeal.
2. The appellant-mother and respondent-father got married on 18th April, 1996.
3. On 28th May, 1998, a boy, namely, Master Satyajeet was born from the wedlock. However, within a short time, the relationship between the spouses came under strain
4. She was subjected to physical violence, due to which, on 16th August, 2001, she was forced to leave her matrimonial home at Allahabad, leaving the infant with the father.
5. On 5th April, 2003, the appellant moved a petition under [Sections 10](#) and [25](#) of the Guardians and [Wards Act](#), 1890 read with the provisions of the Hindu Minority and [Guardianship Act](#), 1956 before the Family Court, Allahabad seeking a declaration in her favour to be the lawful guardian of her minor son, Satyajeet and a direction to the respondent to hand over the custody of the child to her.
6. Resisting her claim, it was alleged that having left him when he was less than three years of age, the appellant had no emotional bond with the child; after leaving Allahabad, she had not even talked to the minor child over the telephone or enquired about his welfare; being the natural guardian of the child he was capable of and was, in fact, looking after the welfare of the child; the child was studying in a prestigious school at Allahabad for which he was paying a fee of Rs.25,000/- per annum and had also nominated him in his insurance policy.
7. As regards his financial position, it was stated that he owns a house, telephone and a motor car whereas the appellant has no house of her own and is living with her mother and brother in a two-room flat at Calcutta.
8. The family Court observed that the appellant was a highly qualified teacher drawing a salary of Rs.22,000/- per month whereas the respondent was only a private contractor without regular source of income and though the child was studying in a prestigious school in Allahabad, there was lack of constant care and protection of the child in the house of the respondent.
9. Finding the testimony of the appellant and her two witnesses to be credible, the Family Court held that for the welfare of the child, the custody should be with the mother.

10. Being aggrieved, the respondent preferred Regular Appeal to the High Court. Vide order dated 28th February, 2007, the High Court has set aside the order of the Family Court and granted permanent custody of Satyajeet to the respondent.

Decision made by high court

the questions which were put to the child and answers thereto indicate that the child wants to study at Allahabad. Having regard to the prevalent circumstances and the fact that the child had received his education from primary stage with his father at Allahabad, the Court came to the conclusion that the welfare and development of the child and his future would be best served at present at Allahabad in the hands of the father. Accordingly, the High Court set aside the order passed by the Family Court and granted the custody of Master Satyajeet to the respondent.

During interview of the child by the High Court and this Court, the child has in very clear terms expressed the desire to stay with the father which shows that he is being looked after properly and is already studying in a good school at Allahabad. It was submitted that shifting of the child from Allahabad to Panipat in an absolutely new environment, all alone, with the mother, who had abandoned him when he was less than three years of age would not only adversely affect his studies, it will also affect him emotionally.

The dislocation of Satyajeet, at this stage, from Allahabad, where he has grown up in sufficiently good surroundings, would not only impede his schooling, it may also cause emotional strain and depression on him.

Under these circumstances and bearing in mind the paramount consideration of the welfare of the child, The high court is convinced that child's interest and welfare will be best served if he continues to be in the custody of the father. In our opinion, for the present, it is not desirable to disturb the custody of Master Satyajeet and, therefore, the order of the High Court giving his exclusive custody to the father with visitation rights to the mother deserves to be maintained. We feel that the visitation rights given to the appellant by the High Court,

Mohd. Irshad (Maternal Grandparents vs Mr. Nadeem (Father) on 4 March, 2013

<https://indiankanoon.org/doc/42271077/>

Fact of the case

Smt Kanwar Khan, daughter of the Mohd. Irshad & Smt. Anwari Begum (petitioners) was married to the respondent no. 1 as per Muslim rites and customs on 25.11.2007 and out of their wedlock Master Rehan was born on 24.11.2008.

On 21.11.2010, Smt. Kanwar Khan had died and on the allegations of the petitioners that, the respondent no. 1 killed Smt Kanwar Khan by throwing her from the fourth floor balcony of her matrimonial home an FIR was registered against the respondents (Mr. Nadeem (Father) Naimuddin (Grandfather)). All the respondents i.e. father and paternal grandparents of the minor child were arrested and remained in the custody as under trials.

The interim custody of the minor child Master Rehan was handed over to the petitioners (Maternal Grandparents) by the Court by order dated 03.07.2010 when child was 1 ½ years old and since then child is residing with the petitioners (Maternal Grandparents).

By judgment dated 07.11.2012 all the respondents (father and paternal grandparents) were acquitted of all the charges.

When the matter came up of the hearing there was three applications to consider under Section 12 of Guardian and Wards Act 1890. The first application was filed on 18.08.2012 by the respondent no. 2 and 3, paternal grandparents for the minor child praying for his interim custody. The second application dated 11.10.2012 was filed by the respondent no. 1, father of the minor child praying for an order for visitation rights. The third application dated 24.01.2013 was filed by the respondent no.1, father of the minor child praying for his interim custody..

Now the minor child is aged 4 years and 3 months. The minor child has been living with the petitioners since 3.7.2010 i.e. for almost 2 years and 8 months.

Points of law raised

What will be the effect of the acquittal of the respondents (Father & Paternal Grandparents) in relation to the charged leveled against them by the petitioners with respect to the custody of the minor child? Whether it is in the interest and welfare of the minor child to let him remain in the custody of the petitioners or to hand over his custody to his father? The minor child did not appear to be able to form an intelligent preference to the Court.

What should be the approach of the Court while arriving at a prima- facie conclusion regarding his interest and welfare which is of paramount consideration in these matters?

Points of law decided

In all the judgments cited by the counsel for the petitioner, the Courts have consistently held that pendency of criminal prosecution against the father of the minor child of charges under Section 498A/304B IPC is a relevant consideration. If the pendency of such charges is a relevant consideration, then the acquittal of the father and paternal grandparents of such charges after a fair trial would also be relevant consideration. The respondents will therefore be entitled to claim the benefit of their acquittal of these charges when it comes to deciding interim custody of the minor child.

Facts held important in case

It is clear that the role of a father is very important for the upbringing of a minor child. The Hon'ble Supreme Court has also observed that the hatred of a child towards a parent can be caused by constant poisoning of his mind by the other parent. In the present case the minor child has lost his mother. Allegations of his maternal grandparents that his mother was killed by his father have not been believed by the Trial Court. During chamber interaction, the minor child was not looking in the direction of his father. The reason for such behavior of a child of such a tender age is not far to be found. He must be under the influence of his maternal grandparents of to try and convince this Court that he does not wish to reside with his father.

The minor child has suffered tremendous amount of trauma at a very young age. He has lost his mother. In normal circumstances, the minor child would be left with one parent. The facts of the present case reveal that minor child is in danger of losing his father as well. It has been put to the minor child that his mother has been killed by his father.

Comments

Though probably not the most important part of judgment but an opinion is expressed by judges: "Though father is unemployed but court does not deem it proper to deny custody of the minor child to the father on this ground.

Shiwani Kabra vs Shaleen Kabra on 21 February, 2011 - Delhi HC

<https://indiankanoon.org/doc/71229052/>

Further SC judgment below of 2012 which gave custody of both children to father (PDF):

<http://judis.nic.in/supremecourt/imgs1.aspx?filename=39297>

Needs to be done: summarizing/comments of above SC judgment

Mother as custodial parent cannot be favoured as a general rule

Kumar v. Jahgirdar v. Chethana Ramatheertha, SLP (Civil) 4230-4231/ 2003, Supreme Court of India, Judgment dated 29 January, 2004.

<https://indiankanoon.org/doc/1388050/>

In a 2004 judgment, commenting on a judgment of the Karnataka High Court that reversed a Family Court order and allowed the mother to retain custody of the minor daughter, the Supreme Court noted:

We make it clear that we do not subscribe to the general observations and comments made by the High Court in favour of mother as parent to be always a preferable to the father to retain custody of the child. In our considered opinion, such generalisation in favour of the mother should not have been made.

Sau. Sarika W/O Sachin Palsokar vs Sachin S/O Suresh Palsokar on 15 September, 2016
(Equal shared custody)

<https://indiankanoon.org/doc/161443015/>

Facts of case

1. Family Court Appeal, the appellant (Wife) challenges the judgment of the Family Court, Nagpur dated 20.12.2011 allowing a petition filed by the respondent for a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. In the First Appeal filed by the appellant (wife), the respondent (husband) has filed a Cross Objection for seeking the custody of the minor child as the Family Court has held that the custody of the minor child, would remain with the appellant.

Facts held important in case

1. Who would be entitled to the custody of Anvesh (son). The wife has admitted in her cross-examination that her brother had threatened to kill Anvesh. She had also admitted in her cross-examination that though on 08.09.2011, she had telephoned the husband that Anvesh had a fall and had a bump on his head with a bleeding injury, she did not take Anvesh to a doctor.
2. Though the aforesaid admissions on the part of the wife would result in recording a finding that the wife was not taking proper care of Anvesh, we are not inclined to permit the husband to have the custody of Anvesh in the entirety. It is not in dispute that the husband is paying a sum of Rs.10,000/- to the wife and Anvesh and also paying the school fees, fees for the speech and development therapy and is bearing the other expenses for Anvesh. It is fairly stated on behalf of the husband that even if the custody of Anvesh is granted to the husband, the husband would still continue to pay a sum of Rs.10,000/- to the wife. We have found from the evidence of the husband and the statements made on his behalf in this Court at the time of hearing that the husband is conducting himself as a good father and is also desirous of giving a substantial amount to the wife towards her maintenance. It is also not disputed by the counsel for the wife that the husband used to drop and collect Anvesh from the school and the coaching classes, even after the parties had decided to share the custody-access to Anvesh, as per the terms of settlement executed on 19.09.2013. The husband and the wife had agreed in terms of the interim settlement that Anvesh would be in the custody of the wife from Monday to Friday and from Friday evening to Monday Morning, the custody-access of Anvesh would be with the husband. We find that the custody of Anvesh is

given to the wife by the Family Court only because the custody of a child should normally remain with the mother, if the child is below five years of age. Now, Anvesh is seven years of age and in the circumstances narrated hereinabove, it would be necessary in the interest of justice to permit the husband to have the custody of Anvesh for some more time during the school days and equally with the wife during the vacations. In the circumstances of the case, we are not inclined to grant the custody of Anvesh only to one of the parents as the child is a slow learner, and in our view, both the parents should be able to shower their love and affection on Anvesh so that the child remains attached with both of them.

HC Verdict

1. The terms of settlement executed between the parties on 19.09.2013 as an interim arrangement have worked to a great extent and in the circumstances of the case, we direct that the custody of Anvesh would be with the husband from Friday evening (after the School hours) till Tuesday morning, when Anvesh would be dropped to the school. It is needless to mention that the wife would have the custody of Anvesh from FCA 344/14 20 Judgment Tuesday evening (after the School hours) till Friday evening. We have arrived at this arrangement, with a view to give equal opportunity to both the parents to spend time with Anvesh who is just seven years of age and is a slow learner. The husband may continue to drop Anvesh to the school and classes and bring him back to the house of the wife even when Anvesh would be in the custody of the wife. During the vacations, the custody of Anvesh should be shared equally by the husband and the wife, that is to say that, if the vacations are for a period of twenty two days, Anvesh would remain with each of the parents for eleven days. This arrangement would apply to all the vacations including the Summer, the Winter and the Diwali vacations.

Important Points

1. Though probably not the most important part of judgment but an observation by judges: *"We have found from the evidence of the husband and the statements made on his behalf in this Court at the time of hearing that the husband is conducting himself as a good father and is also desirous of giving a substantial amount to the wife towards her maintenance"*
2. Anvesh is given to the wife by the Family Court only because the custody of a child should normally remain with the mother, if the child is below five years of age.

Mr. Tushar Vishnu Ubale vs Mrs. Archana Tushar Ubale on 15 January, 2016 (Joint parenting Parenting)

<https://indiankanoon.org/doc/112269492/>

Facts of case

1. The order dated 27.5.2015 passed by the learned Judge of the Family Court, Mumbai, in respect of directing the joint parenting plan by handing over six months custody of the child to each parent is challenged in this appeal.
2. The petitioner/father is a Surgeon and the mother is working as a nurse.

Points of law raised

1. Counsel for the Petitioner (father), submitted that the Family Court in its order had directed the parents to submit a joint parenting plan. She argued that the adopting joint parenting plan is a voluntary act of the parents. She submitted that the correct method was not adopted by the learned trial Judge to take forward the idea of joint parenting plan which is based on the report of the Law Commission report no.257 In which it has recommended reforming the Guardianship and Child Custody laws in India
2. The learned Senior Counsel for petitioner (father) pointed out various sections of report of the Law Commission and submitted that though those are referred to, they are not properly considered by the learned Judge.
3. Counsel for the Petitioner (father) further submitted that the learned Family court Judge has shown concern about making financial provision for the child. The father is going to deposit Rs.10,000/- and the mother will deposit Rs.5,000/- per month and thus, the child will have Rs.15,000/- per month in her account and for withdrawal of the said amount, the parents will have to come to the Court and seek permission of the Court. She submitted that this is not workable.
4. Counsel for the respondent (mother) also relied on the report of the Law Commission. He submitted that the Family Court has relied not only on the Law Commission report but also a draft of the parenting plan which was approved by the High Court and which is put on the website of the Family Court.
5. In reply to Counsel for the respondent (mother), the learned Senior Counsel for petitioner (father) submitted that Joint Parenting is different from joint custody. The Law Commission's report is not only on joint parenting plan but the suggestions are given in respect of changes in Guardian and Wards Act and custody. The Law Commission has laid down a number of aspects which the Judge has to take into account in respect of

custody of a child and one of them is the joint parenting plan. However, she pointed out that in Clause no. 3.3.5 of the Law Commission Report, the Law Commission has expressed that they are not in favour of law placing presumption in favour of joint custody

HC observation and Points of law decided

Law Commission has mentioned and discussed the considerations for deciding child custody cases. These considerations are as follows:

- actors to consider for best interest and standard
- Determining the preference of the child
- Access to records of the child
- Grandparenting Time
- Mediation
- Relocation
- Decision making
- Parenting Plan
- Visitation
- These are the recommendations given by the Law Commission and that is not law and is not binding. The intention of the learned Judge of the Family Court to adopt these suggestions and also the High Court rules and chalk out a Parenting Plan is undoubtedly admirable. It shows that he was keen to experiment these new methods and apply to this case however, the learned Judge has used a mathematical formula in deciding the custody issue, which needs to be modified. The Law Commission wants the Judges working in the Family Court or handling the issues of guardians and wards to refurbish their fixed ideas and to have a makeover in their perceptions. In detail, various aspects are considered in the report.
- Joint custody is provided as an option. Therefore, the Judges, who are working on the family laws and the issue of custody, should not hold a view that once the Law Commission has given the suggestion of a Parenting Plan, it is binding in all the cases to adopt the same. The parties are not to be compelled to give such plan which amounts to illegality. Parenting Plan is an option for both the parties.

- Shared custody may be an option open for the court to offer parents and make them aware of not only their child's needs but also the child's rights. As argued by the learned Counsel for both the sides, the 257th report of the law commission is not only about shared parenting, but these are the recommendations on guardianship and custody laws in India, wherein under different chapters, the Law Commission has penned down its concept of joint custody, mediation in child custody cases and, also in chapter V, the considerations for deciding the child custody cases. Number of factors are to be taken into account in custody cases in the best interest of the child and parenting plan is one of these considerations.
- The Judge has to use his/her worldly wisdom to find out at the time of interviewing the child whether child is a victim of the attitude of blackmailing parents emotionally.
- One of the tests to ascertain a healthy and happy mind of a child is whether the child has love, affection and equal respect towards non- custodial parent or not. If it is found that a child is not willing to go to the non-custodial parent and complains continuously about the other parent, then it can be inferred that the child's mind might be poisoned and the child is tutored. This indicator can be applied to ascertain the healthy upbringing of the child. It is to be remembered that to have access to both the parents is the right of the child which prevails over the privilege of the parents to have custody or access. There is no statute granting any legal right upon any parent to have the child's custody in preference to or overriding the other. Therefore, the jurisprudence on the subject is taking into account the welfare of the "child" alone. In most of the cases, egos or incompatibility are the reasons for fights between the parents. They become selfish and the child is put to stake as a pawn by one parent to avenge the other. A person may be a bad husband or a bad wife, but he may not be a bad father or she may not be a bad mother. It is necessary for the fighting parents to understand and to bear in mind that the child loves both, needs both.
- Separation is a shock for the child that his family has been destroyed. It gives rise to fear of the future as well as anger in the mind of children and they do not understand who should be blamed. There is a possibility of self blame and a feeling of guilt also. A majority of the children want contact with both the parents on regular basis and if it is denied, then, the children become hostile to the once loved but now non- custodial i.e., absent parent. If a custodial parent speaks badly about the the absent parent, the child tends to identify with that sentiment. Gradually a feeling that I can do without the absent parent develops and this gradual parental alienation becomes a part of the child's life and which may lead to social alienation which is in fact a deep trauma and not a healthy or happy circumstance. Alienated children often show contempt and withdraw affection whenever they are in contact with the parent. Physical estrangement adds to emotional alilienation.

- Thus, Parenting Plan is a mutual arrangement of custody and access which is an outcome of matured parenting. The ideal situation is that joint parenting is a rule and single parenting is an exception. There may be a single mother or a single father left behind due to a blow of destiny, then, the child has no option. However, when both the parents are available, their association with the child cannot be artificially denied only due to fights and hatred and vindictive approach of the parents. Hence, though it is not mandatory that all the parents should adopt a Parenting Plan, it is advisable that the family Court to invite a Parenting Plan in the cases found suitable upon the Law Commission which has taken formal cognisance of the legal right involved in joint parenting. This, of course, may be attuned to circumstances and must account for the special needs of the particular child.
- It is necessary to buttress that the word used is "parenting plan" and not "custody plan". Custody is a narrow term and parenting is a wider terminology which implies joint responsibility. Hence, it does not only contemplate physical handing of the child 50% to one parent and the other 50% to the other parent. A parenting plan must therefore take into account the "parental responsibility" as opposed to "parental rights" which are not statutorily granted. The aforesaid recommendations of the Law Commission must be read in that light. In the case of Smt.Anjali Kapoor vs. Rajiv Bajjal (supra), the Supreme Court has referred to the observations of the New Zealand Court in Walker vs. Walker & Harrison reported in 1981 New Ze Recent Law 257, which are as under:
 - - ...Welfare is an all encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents."

Considering the totality of the circumstances, I am of the view that the custody of the child shall at present essentially remain with the father because in this case, the child has stayed and has been brought up in the 17 / 20 wp.5403.2015(R).doc house of the father. I found this case as the best wherein the order of shared custody can be passed and implemented without much fights and opposition by the parents. Since about past 7 months, both the parents are having a shared parenthood and more access is given to the mother time to time so that the daughter can get used to her mother's home. The mother is to be given a sufficient period of custody each month during which she would be responsible for the upbringing of the child. The mother shall pick up the child on the first day of each month and have custody of the child continuously for 9 days and on the 10 th day after lunch or the

school time drop the child at the father's house. The child shall live with the mother continuously during such period. The mother shall attend to the needs of the child. On the last day of such period, the child shall be sent either directly to the school or to the father. Thereafter, the mother will take the child on the third Wednesday of the month after school hours and will drop the child at the house of the father at around 1/2 pm or after lunch on the third Sunday. Thus, the child will not feel disconnected from the mother and there shall be continuous and simultaneous association with the mother. The child shall have the love, care and company of both the prents she loves for a reasonable stretch of days as also weekends. The school vacations shall, as is usual, be shared equally in this upon mutual arrangement and understanding between the parties. Besides absent parent may call the child on phone 18 / 20 wp.5403.2015(R).doc morning and evening and may talk for 5 to 10 minutes. The parents shall have equal say on attending school meetings and on deciding child's education, day schedule, hobby classes without taxing child. The birthday of the child is to be celebrated together in the presence of the parents. In respect of the meeting of the other family members of both the sides and celebrations of important events in the family the both the parents being quite mature, will take the decision accordingly, keeping in mind the best interest of their child. Thus, complete flexibility in taking decisions on such issues is left to both the parents. In the event of dispute, the other party can approach the Court for necessary orders. This arrangement to continue till there is any drastic change of circumstance or dependency of psychological need of the child.

- [] The arrangement of payment of Rs.10,000/- and Rs.5,000/- can be continued but there is no need to approach the Court for the purpose of withdrawal of the money. The amount can be withdrawn with the signature of both the parents. It should be a joint account under the joint guardianship, in the name of the child with both the parents as the first 19 / 20 wp.5403.2015(R).doc account holder. The amount can be withdrawn with the signature of the both the parents and only for the purpose of her education and maintainance if necessary. I do not think it is necessary to appoint a mediator in this case because I found the child mentally and physically healthy. If at all in future, if unfortunately, the necessity arises, then, the trial Court is always empowered to pass the required order.

AGAINST THE JUDGMENT IN O.P.(GUARDIAN) 1293/2012 of FAMILY COURT,
IRINJALAKUDA, Kerala

DATED 06-02-2016.

<https://indiankanoon.org/doc/57070529/>

Facts of case

1. When the trial was in progress, the 1st respondent (father) died in a motor accident and thereupon the 2nd and 3rd respondents (parents of father) were impleaded as additional petitioners and the trial continued in Family Court.
2. The family court had framed two main points for consideration:
 - (2.1) Whether grand-parents are entitled to get permanent custody of their minor grand daughter from daughter in-law?
 - (2.2) Who will be the proper custodian of the minor child?

Judgement of Family Court

1. As the natural guardian (father) of the child is no more, the respondent mother is declared as the natural guardian of minor child. However the Family court had granted visitation rights to grandparents every alternative 3rd Saturdays from 9 a.m., till 9 a.m. of the succeeding Sundays.
2. Apart from the above, 3 days interim custody was granted during 'Onam' and 'Christmas' holidays and 10 days during mid-summer vacation. Further the respondents 2 and 3 were provided with custody of the child on the death anniversary date of the 1st respondent and also on the 3rd Sundays after Easter, in connection with the festival of their Parish Church. Even while granting the said interim custody, a rider was added to the effect that they are entitled to get such interim custody only if they bear the entire educational expenses of child.
3. The said arrangement will continue till the child attains the age of 8 years.

Appeal and Arguments in HC

1. It is aggrieved by the said visitation rights granted to respondents 1 and 2, by family court the appeal is preferred in HC.

2. Main contentions advanced by learned counsel for the appellant are that, the respondents 2 and 3, who are the grandparents are entitled only for a visitation right and they are not entitled to get interim overnight custody of the child, as ordered by the Family Court. That the order of the Family Court providing temporary custody to the grandparents is illegal and arbitrary, especially when there are no justifiable circumstances put forth by the respondents 2 and 3, in evidence before the Family Court to establish their claim for interim custody.
3. On the other hand, learned counsel for respondents 2 and 3 contended that, since their son is no more, they are entitled to have at least the interim custody of the child and to express their love and affection to the child, which will be conducive to the health, welfare, wellbeing and growth of the child.
4. Learned counsel for the appellant even though vehemently argued that the Guardian and Wards Act does not recognize an overnight custody of children to the grandparents, he could not point out any specific provision under the Act to sustain the said contention. On the other hand, the Act enables and recognises the right of others on securing permission from court

Final Verdict by HC

We find that the minor girl child was aged only 11 months at the time of filing the application in the year 2012 and at present the child is only at the most 4 years old. Therefore we are of the considered opinion that, if the custody of the child is handed over to respondents 2 and 3 all on a sudden, without there being any acquaintance and intimacy built up with the grandparents, it may not be conducive for the child to be in their custody and to spend time at the house of the respondents 2 and 3, that too on an overnight basis. Creating such a situation may not be within the interest, welfare and well being of the minor child. Therefore, we feel that overnight custody of the child can be stepped up in a slow pace and the day time custody of the child can be increased in a phased manner

The above said arrangements will continue for a period of two years and thereafter respondents 2 and 3 are entitled to take custody of the child on every 1st and 3rd Saturdays from 9 a.m. to 11 a.m. of the succeeding Sundays. Likewise, they are also entitled to get overnight custody of the child for a period of 5 days each during Onam and Christmas holidays and 15 days during first half of the mid-summer vacation, apart from the death anniversary date and 3rd Sundays after Easter provided above. The said arrangements will continue till the child attains the age of 8 years as directed by the Family Court. Arrangements with regard to the handing over of the child and resumption of custody, and other directions issued by the court below are sustained.

Parental Alienation Syndrome (PAS)

Sheila B. Das vs P.R. Sugasree on 17 February, 2006

<https://indiankanoon.org/doc/1143841/>

Vivek Singh Vs Romani Singh - CIVIL APPEAL NO. 3962 OF 2016 - SC Feb 2017

<https://indiankanoon.org/doc/48721287/>

Above SC judgment recognized the phenomenon of Parental Alienation Syndrome which children undergoing situation of separated/divorced parents can go through.

Excerpt from judgment below:

Psychologist term it as 'The Parental Alienation Syndrome' . It has at least two psychological 4 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.

In above case, it was the father who had custody of child. However, Supreme Court ruled that the mother had been trying for custody as well as regularly meeting child during visitations, and was awarded custody of 8 years old daughter for 1 year.

Comments:

1. Above judgment can be used in cases where father has been involved with child by meeting regularly during visitations etc, even though he does not have any more meaningful custody of child like overnight or few days custody.
2. The logic is that while the parental roles of custodial and non-custodial parent are reversed in above SC judgment, similar logic can very well apply in case where father is the non-custodial parent, but he has been regularly meeting the child and it can be clearly shown on record that he has shown interest in custody proceedings throughout.
3. It would be desirable that father files custody case without much delay after separation from child. In above judgment too, this factor was seen to be important that the mother who was non-custodial parent had filed for child custody immediately after separation from child.

Following are some relevant judgments on international child abduction by mother bringing child to India with a view to depriving father of child access/custody and using child as a leverage for her own interests. In many cases, the child abduction is against existing court orders in the foreign country where the couple and child were residing.

India is as yet not a signatory to Hague Convention on international child custody and abduction related issues. Till India ratifies it, judgments can be used to find precedents about similar situations.

Read judgment below.

Arathi Bandi vs Bandi Jagadrakshaka Rao & Ors on 16 July, 2013

<https://indiankanoon.org/doc/132346468/>

Anyone interested can analyze and summarize it here.

The concept of parenting plan in child custody/interim custody/child visitation decisions is relatively new in India. The main reasons are this are to do with both statute, and also how historical precedents in child custody cases have considered child custody to be a decision about whether sole custody of child to be given to mother OR to father, and the other non-custodial parent can at best get some visitation rights of few hours in a month to show child love and affection, as the expression goes. The concept of joint/shared custody being considered for welfare of child is something which is slowly percolating through courts.

Law Commission of India in its May 2015 report number 257 on **“Reforms in Guardianship and Custody Laws in India”** has recognized the need for amendment to both laws and guidelines related to custody and guardianship.

The report (PDF) can be downloaded from

<http://lawcommissionofindia.nic.in/reports/Report%20No.257%20Custody%20Laws.pdf>

OR at goo.gl/4m6W3z

Amendments to Custody/Guardianship laws and Objectives

Law Commission has laid down the following objectives in the report:

1.3 This report of the Law Commission reviews the current laws dealing with custody and guardianship, namely, the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956, and recommends legislative amendments to achieve the following objectives:

1. Strengthen the welfare principle in the Guardians and Wards Act, 1890 and emphasize its relevance in each aspect of guardianship and custody related decision-making
2. Provide for equal legal status of both parents with respect to guardianship and custody
3. Provide detailed guidelines to help decision- makers assess what custodial and guardianship arrangement serves the welfare of the child in specific situations.
4. Provide for the option of awarding joint custody to both parents, in certain circumstances conducive to the welfare of the child.

Pages 69-70 of Law Commission’s report provide objectives regarding proposed amendments to guardianship and custody laws. These are given below:

1. In the principal Act, after Chapter II, the following Chapter IIA shall be inserted, namely:–

“Chapter IIA: Custody, Child Support and Visitation Arrangements

19A. Objectives of the Chapter.

The objectives of this Chapter are to ensure that the welfare of a minor is met by:–

- (a) ensuring that the child has the benefit of both parents having a meaningful involvement in his life, to the maximum extent consistent with the welfare of the child;
- (b) ensuring that the child receives adequate and proper parenting to help achieve his full potential;
- (c) ensuring that the parents fulfil their duties, and meet their responsibilities concerning the care, welfare and development of the child;
- (d) giving due consideration to the changing emotional, intellectual and physical needs of the child;
- (e) encouraging both the parents to maintain a close and continuing relationship with the child, and to cooperate in and resolve disputes regarding matters affecting the child;
- (f) recognising that the child has the right to know and be cared for by both the parents, regardless of whether the parents are married, separated, or unmarried; and
- (g) protecting the child from physical or psychological harm or from being subjected to, or exposed to, any abuse, neglect or family violence.

19B. Applicability of this Chapter.

The provisions of this Chapter shall apply to all proceedings involving parents related to custody and child support, including such proceedings arising under the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, and the Hindu Marriage Act, 1955.

Shared Parenting Plan

Above are the objectives which provide reasons of “Why” reforms in custody and guardianship laws are needed. Parenting Plan document is the “How” about procedure and steps needed to arrive at a shared parenting arrangement which will be conducive for welfare of child.

So for example, Law Commission in report 257 has recommended addition of Schedule to Guardians And Wards Act regarding GUIDELINES FOR CUSTODY, CHILD SUPPORT AND VISITATION ARRANGEMENTS. Page 78-80 of the report gives information about Parenting Plan.

VIII. PARENTING PLAN

(1)The objectives of a parenting plan are to–

- (a) minimise the child’s exposure to harmful parental conflict; and
- (b)encourage parents to mutually agree on the division of responsibilities of the child’s

upbringing through agreements in the parenting plan, rather than by relying on court intervention.

(2) In designing a parenting plan, the parents must ensure that it is for the welfare of the child, and that—

- a. the day-to-day needs of the child are met;
- b. any special needs that the child may have are met;
- c. the child gets to spend sufficient time with each parent so as to get to know each parent, as far as possible;
- d. there is minimal disruption to the child's education, daily routine and association with family and friends; and
- e. transitions from one parental home to another are carried out safely and, effectively.

(3) A parenting plan may deal with one or more of the following, namely:—

- a. the parent or parents with whom the child is to live;
- b. the time the child is to spend with the other parent;
- c. the allocation of parental responsibility for the child;
- d. the manner in which the parents are to consult with each other about decisions relating to parental responsibility;
- e. the communication the child is to have with other persons;
- f. maintenance of the child;
- g. the process to be used for resolving disputes about the terms or operation of the plan;
- h. the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan;
- i. any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for the child.

(4) The parenting plan must be voluntarily and knowingly arrived at by each parent.

(5) The court shall not ordinarily interfere with the division of responsibilities between parents reflected in the parenting plan, unless they are ex facie inequitable.

(6) If the initial parenting plan does not cover certain issues, the parents may approach the court to modify the terms of the plan to address new subjects of decision-making.

Further, to get into more specifics and steps of arriving at parenting plan, the document on **“Child Access & Custody Guidelines Along with Parenting Plan”** created by Child Rights NGO can be used. The same document has have been approved by Bombay High Court, Madhya Pradesh High Court, and Himachal Pradesh High Court as a guidelines document to be used in decision on custody and visitation matters.

Download of PDF document is at

<http://cja.gov.in/Important%20Instructions/Child%20Access%20&%20Custody%20Guidelines%2001.06.2015.pdf>

OR at goo.gl/JLrSRY

Excerpt from the above document's Parenting Plan related guidelines is below:

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

Further, the Parenting Plan looks at areas which can be considered to determine best arrangement for child custody and visitation orders. Following points can be used as a checklist by parents and courts to arrive at a suitable parenting plan for child.

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:

1. Parenting Time (physical custody)
2. Major Decision Making (legal custody)
3. Visitation /Access
4. Transportation and Exchanges
5. School Holidays, Vacations and Festivals
6. Child Support / Maintenance
7. A Dispute Resolution Process
8. Schools Attended and Access to Records
9. Physical and Mental Health Care
10. Contact Information, Relocation
11. Activities and School functions
12. Overnights and Visitation

13. Communications and Mutual Decision-Making
14. Mediation
15. Medical Insurance
16. 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.

Report No.257 by Law Commission of India proposes important Reforms in Guardianship and Custody Laws in India. Refer to Appendix II to find link to the report.

Background

On 10th Nov, 2014 Law Commission of India had floated a consultation paper on adopting a Shared Parentage System in India. Refer to Appendix I to find link to the consultation paper.

No studies have been done in India on what is the effect of divorce/separation of parents on child(ren). The default mindset and mode of deciding about custody so far in India is to grant it to the existing custodial parent parent with whom child is already settled, and so mostly custody gets awarded to the mother since that in most cases, a wife who starts living separately takes child with her. In rare cases, a mother may leave the house without taking the child. In those, cases father's case for custody becomes stronger with passage of time as the child gets acclimatized to live with father, just similar to the reverse case where child is with mother.

The supposed 'secret' argument which is not being used by fathers is that if the sole and paramount principle to decide custody is "welfare of child", then unless there is substantial research/studies which show that single parenthood/single motherhood is better for children, by default awarding sole custody to mother is against principle of welfare of child.

Needless to say, the the evidence from studies done in US and other countries is overwhelming against sole custody being beneficial to children as opposed to joint/shared custody.


In India, however no such studies have been done, as evidence from reply to RTI below. This is from 2010 but even till date, no such studies have been undertaken.

File No.C-12011/59/09 *7864*

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
5th Floor, Chandernagore Building, Janpath, New Delhi-110001
Phone: 011-23724027/30, Fax: 011-23724026/23731584
Website: www.ncpcr.gov.in, E-mail: rti.ncpcr@gmail.com

Date: *06*/01/2010

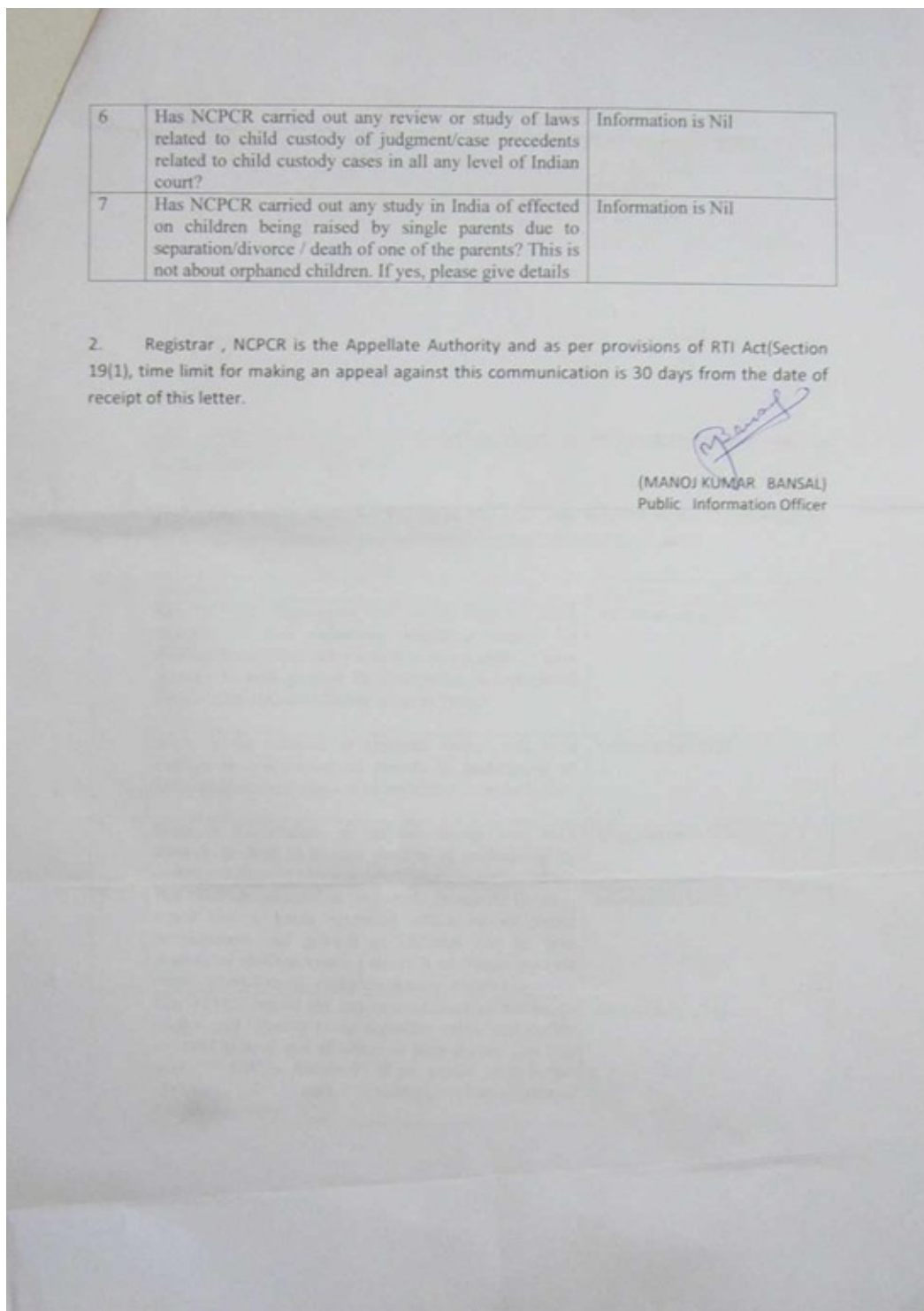
To

Sh. Vivek Deveshwar,


Sub: Information under RTI Act 2005 as sought by Sh. Vivek Deveshwar, vide his application dated 15/11/2009.

Please refer to your letter No. Nil dated 15/11/09 and received in this Commission on 14/12/2009 on the above subject above and find the desired information as under

S.No	Question	Answer
1	Has NCPCR undertaken any study, inquiry, field, research or data collection regarding number of children living with sole custody to one parents or joint custody to both parents in undergoing or completed divorce cases in court/family court in India?	Information is Nil.
2	What is the number of children living with joint custody to one biological parents in undergoing or completed divorce cases in court/family court in India?	Information is Nil
3	What is the number of children living with joint custody to both biological parents in undergoing or completed divorce cases in court/family court in India?	Information is Nil
4	Has NCPCR undertaken any study, research, inquiry, report etc in India regarding effect on all round development and growth of children due to sole custody of children to one parent? If so, please provide details of such study, research, inquiry, report etc.	Information is Nil
5	Has NCPCR issued any recommendations/guidelines to High Court / Family Court regarding rights and access of child to love and affection of both parents in line with UN CRC's Article 9? If so, please provide the details of such notice/circular/guidelines/recommendation	Information is Nil



In that scenario, it can be argued that studies done in foreign countries on effects on children of single parenting can be relied upon to draw conclusions which should have validity in Indian scenario too. This argument can neutralize the single custody mindset which is prevalent, since one will not be able to argue against the overwhelming data and statistics which are already available from studies done about children in other countries as covered in next section.

Western research points to worse outcomes for children raised in single parent/mother families. There is ample amount of research and studies done in Western countries about effects on children on being raised in single parent families (especially single mother families since 83% of single parent households in US are single mother households) (source:<https://singlemotherguide.com/single-mother-statistics/>). There is no study which suggests that a child does better when raised by a single mother/parent as compared to a two biological parents intact family. However almost all studies indicate worse outcomes for child (whether boy or girl) raised in a single mother/parent household. References and conclusions of many such studies are given below (following citations are selected more from point of view of bad outcomes/effects on girl children, for citations [of following and other studies refer to this page](#)):

Viktor Gecas, "Born in the USA in the 1980's: Growing Up in Difficult Times," *Journal of Family Issues* 8 [December, 1987], 434- 436; epitomized in *The Family in America: New Research*, July, 1988: "What are the consequences of these family trends [rising levels of divorce, illegitimacy and maternal employment] for child rearing? Not good. At the very least, these trends suggest decreasing contact between parents and children, and decreasing parental involvement in child rearing....Poor cognitive and emotional development, low self-esteem, low self-efficiency, antisocial behavior, and pathologies of various kinds are some of the consequences.'

"Professor Gecas blames family breakdown for the disturbing levels of drug use, teen pregnancy, teen suicide, delinquency, and academic failure now found in America. Nothing, he urges, could be more important than to strengthen the family 'if the next generation is to have much of a chance.'"

Sara S. McLanahan, "Family Structure and Dependency: Reality Transitions to Female Household Headship," *Demography* 25, Feb., 1988, 1-16: "Daughters from female-headed households are much more likely than daughters from two-parent families to themselves become single parents and to rely on welfare for support as adults....[L]iving with a single mother at age 16 increases a daughter's risk of becoming a household head by 72 percent for whites and 100 percent for blacks. The contrast becomes even sharper if the comparison is between daughters continuously living in two-parent families with daughters living with an unmarried mother at any time between ages 12 and 16: 'Exposure to single motherhood at some point during adolescence increases the risk [of a daughter's later becoming a household head] by nearly 1-1/2 times for whites and...by about 100 percent for blacks.' The public costs of this differential emerge in figures showing that a daughter living in a single-parent household at any time during adolescence is far more likely (127 percent more likely among whites, 164 percent among blacks) to receive welfare benefits as an adult, compared to daughters from two-parent households."

Gary Bauer, "Report to the President from the White House Working Group on the Family," quoted in Phyllis Schlafly Report, February, 1988: "A study by Stanford University's Center of the Study of Youth Development in 1985 indicated that children in single-parent families headed by mothers have higher arrest rates, more disciplinary problems in school, and a greater tendency to smoke and run away from home than do their peers who live with both natural parents—no matter what their income, race, or ethnicity."

Anthony L. Pillay, "Psychological Disturbances in Children of Single Parents," *Psychological Reports*, 61, [October, 1987]: 803-6; excerpted in *The Family in America: New Research*, April, 1988: "Children raised in a single-parent household are much more likely to suffer psychological disturbances and break the law than children from intact families....[Of 147 children taken to a psychological clinic] 89 of them—six out of every ten—came from nonintact families....[C]hildren—both male and female—are more likely to turn to drugs when they have only one parent. But problems are most serious among fatherless boys, who 'exhibited less self-control, delay in gratification, and internalized standards of moral judgement than did boys whose families remained intact,' and were 'more antisocial, impulsive and likely to belong to delinquent groups.' Because 'boys reared without their fathers appear to be substantially disadvantaged' by the 'lack [of] a significant model for sex-appropriate behavior, the current trend in awarding custody almost automatically to mothers' should be reexamined."

Robert Zagar, et al., "Developmental and Disruptive Behavior Disorders Among Delinquents," *Journal of the American Academy of Child and Adolescent Psychiatry*, 28 [1989]: 437-440, epitomized in *The Family in America: New Research*, September, 1989: "Psychotic delinquents rarely come from intact families. Officials documented a familiar pattern in a recent survey of almost 2,000 children and adolescents referred by the Circuit Court of Cook County—Juvenile Division for psychiatric evaluation. This group of troubled children included 84 orphans (4 percent), 1,272 from single-parent homes (65 percent), 269 from stepparent families (14 percent), and just 331 from intact two-parent families (17 percent)."

Suzanne Southworth and J. Conrad Schwarz, "Post-Divorce Contact, Relationship with Father, and Heterosexual Trust in Female College Students," *American Journal of Orthopsychiatry*, 57, No. 3 [July, 1987], 379-381; epitomized in *The Family in America: New Research*, October, 1987: "In surveying 104 female college students from divorced and intact families, Drs. Suzanne Southworth and J. Conrad Schwarz discover evidence that 'the experience of divorce and its aftermath have long-term effects on young college women's trust in the opposite sex and on their plans for the future.' Particularly, the [University of Connecticut, Storrs] team find that 'daughters from divorced homes are more likely to anticipate cohabitation before marriage' than are daughters of intact marriages. Among

daughters of intact homes it was found that 'only daughters who had a poor relationship with the father planned to cohabit,' while among daughters of divorced parents 'plans to cohabit were uniformly high and unrelated to the father's acceptance and consistency of love.'"

Susan Newcomer and J. Richard Udry, "Parental Marital Status Effects on Adolescent Sexual Behavior," *Journal of Marriage and the Family*, 49, No. 2 [May, 1987], pp. 235-40; epitomized in *The Family in America: New Research*, August, 1987: "Daughters in one-parent homes are much more likely to engage in premarital sex than are daughters in two-parent homes....Adolescent girls reared without fathers are much more likely to be sexually active than girls raised by two parents. Girls raised in single-parent homes are also much more likely to be involved in 'other age-graded delinquencies' than are girls in two-parent homes....The research team also found that the sexual activity of sons increases markedly when a two-parent home breaks up through divorce or separation."

Paul G. Shane, "Changing Patterns Among Homeless and Runaway Youth," *American Journal of Orthopsychiatry*, 59, April, 1989, 208- 214: "In general, homeless youth are more likely to come from female-headed, single-parent, or reconstituted families with many children, particularly step-siblings."

James Coleman, "Educational Achievement: What We Can Learn from the Catholic Schools," *Associates Memo*, Manhattan Institute for Policy Research, No. 15, November 4, 1988: "It is important to remember that schools as we know them have never been very successful with weak families. These days many more families have become weak, either because they are single-parent families or because both parents are working and the family cannot devote sufficient time and attention to children."

John Guidubaldi and Joseph D. Perry, "Divorce, Socioeconomic Status, and Children's Cognitive-Social Competence at School Entry," *American Journal of Orthopsychiatry* 54 (3). July, 1984, 459-68: "The direction of the relationships indicates that children from single-parent homes tended to have significantly lower academic and personal-social competencies than did children from two-parent families....This study provides evidence that children from divorced family homes enter school with significantly less social and academic competence than those from intact families....[S]ingle-parent status resulting from divorce predicts poor academic and social school entry competence in addition to and independent of SES [socio-economic status]."

Maxine Thompson, Karl L. Alexander, and Doris R. Entwisle, "Household Composition, Parental Expectations, and School Achievement," *Social Forces*, 67, Dec., 1988, 424-451; epitomized in *The Family in America: New Research*, April, 1989: "Married black couples expect better school performance from their children than do single black parents—and their

children respond accordingly. In a recent study conducted at the Johns Hopkins University and North Carolina State University, researchers found that black first-grade students from married-couple households outperform their peers from single-parent households....The researchers stress that these gaps cannot be explained by economic differences nor by any discernible differences in initial ability levels.”

Carol Z. Garrison, “Epidemiology of Depressive Symptoms in Young Adolescents,” *Journal of the American Academy of Child and Adolescent Psychiatry*, 28, 1989, 343-351; epitomized in *The Family in America: New Research*, November, 1989: “Teens living in single- parent or step-family households are more likely to suffer from depression than teens living in intact families.... Persistent symptoms of depression showed up significantly less often among young teens living with both natural parents than among peers living with only one parent or with one parent and a stepparent.”

Tony Campolo, “Too Old, Too Soon: The New Junior Higher,” *Youthworker*, 4, [Spring, 1987], 20-25; epitomized in *The Family in America: New Research*, August, 1987: “...Dr. Compolo observes that young Americans now ‘do things in their early teens that a generation ago were reserved for older high schoolers.’ The primary reason for this ‘transformation of junior highers,’ he believes, is the ‘diminishing presence of parents’ in the lives of young adolescents. Because many of them live in single-parent homes or in two-income homes where both parents are ‘out of their homes much of the time,’ young teenagers are ‘left with the freedom to do what they want to do.’...Dr. Campolo reports that many young teenagers become ‘emotionally disturbed and psychologically disoriented’ when given personal autonomy prematurely.”

Carolyn Webster-Stratton, “The Relationship of Marital Support, Conflict and Divorce to Parent Perceptions, Behaviors, and Childhood Conduct Problems,” *Journal of Marriage and the Family*, 51 [1989], 417-30, quoted in *The Family in America: New Research*, October, 1989: “Compared with the maritally distressed [households in which couples reported relatively unsatisfactory marriages] and supported [households in which mothers reported satisfactory marriages] mother groups, single mothers reported more parenting stress and perceived their children as having significantly more behavior problems.”

Heather Munroe Blum, et al., “Single Parent Families: Academic and Psychiatric Risk,” *Journal of the American Academy of Child and Adolescent Psychiatry*, 27 [1988], 214-219; epitomized in *The Family in America: New Research*, July, 1988: “The children of broken homes are frequently emotionally disturbed and academically incompetent. In a new study of nearly 3,000 Canadian children (ages 4-16), researchers found that ‘children with psychiatric disorder are 1.7 times more likely to be from a single-parent family than a two- parent family.’ One major disturbance—‘conduct disorder’—was found to be well over twice as common in

children of single parents. The same children who are suffering emotionally are also suffering educationally: 'single-parent children are 1.7 times as likely to demonstrate poor school performance as are two-parent children.'

Richard Polanco, Los Angeles Times, 7 May, 1989: "As of 1988, more than 35,000 adolescents nationwide were in psychiatric treatment in the private sector. This figure has doubled since 1980, and the numbers are growing....The absence of involvement of the father in so many post-divorce families, coupled with the overburdened state of many single mothers, seems at least partly responsible for the prevalence of externalizing, aggressive behavior problems among children of divorce."

Elyce Wakerman, *Father Loss: Daughters Discuss the Man that Got Away* (Garden City, N. Y: Doubleday, 1984), p. 109: "A study of teenage girls by Dr. E. Mavis Hetherington revealed that daughters of divorced parents had lower self-esteem than those of intact or widowed families. By aligning with mother's anger, they may have blunted the reconciliation wish, but it was at the cost of their own self-image. Describing the self-defeating pattern, Deidre Laiken writes, 'Being one with Mother means relinquishing our natural and necessary longings for Father...[But] low self-esteem is a natural and very evident result of a merger with the...parent who was left...' Identifying with the rejected female, as most daughters of divorce do, has two other, far-reaching influences on the young girl's developing attitudes. First, she may incorporate her mother's bitterness and distrust of men. And she is reluctant to succeed where her mother has failed. Having lost her father, she is acutely dependent on her mother's continued affection, and to surpass her in the romantic arena would be to risk separation from her one remaining parent."

Sara McLanahan and Larry Bumpass, "Intergenerational Consequences of Family Disruption," *American Journal of Sociology* 4 [July, 1988], 130-52; epitomized in *The Family in America: New Research*, October, 1988: "In a new study at the University of Wisconsin, sociologists found that daughters raised in single- parent households do not do well in building successful family life as adults. A particularly striking pattern emerged among white women who had lived in a single-parent family created through divorce or illegitimacy. Compared to white women raised in intact families, these women were '53 percent more likely to have teenage marriages, 111 percent more likely to have teenage births, 164 percent more likely to have premarital births, and 92 percent more likely to experience marital disruptions.' Overall, 'there appears to be some lower family orientation associated with one-parent childhood experience.'...The study concludes that the present upheaval in the American family is liable to have aftershocks which will be felt for generations to come: 'More than half of today's children will have had family experiences that are likely to have negative consequences for their subsequent marital and fertility life courses.'"

Irma Moilanen and Paula Rantakallio, "The Single Parent Family and the Child's Mental Health," *Social Science and Medicine*, 27 [1988], 181-6; epitomized in *The Family in America: New Research*, October, 1988: "The evidence mounts that children without two parents are much more likely to develop psychiatric problems....Finnish researchers found that children from single- parent homes were at significantly greater risk from most psychiatric disorders than children from intact homes. Those who had only one parent through the child's life were at greatest risk: boys were three times as likely to be disturbed as their counterparts from intact families, and girls were four times as likely to be disturbed. Nor was the harm strictly mental."

Education Reporter, December, 1986: "A study by Stanford University's Center for the Study of Youth Development in 1985 indicated that children in single-parent families headed by a mother have higher arrest rates, more disciplinary problems in school, and a greater tendency to smoke and run away from home than do their peers who live with both natural parents—no matter what their income, race, or ethnicity."

Girls have equally bad outcomes as boys who grow without father's presence. The conclusion of above studies amply demonstrate that there is bad effect and worse outcomes for children if they grow without presence of father, whether boys or girls. While these studies from US and not India, it would not be appropriate to dismiss them outright on the ground that cultural norms are different in the two countries. Child development and psychology including how these are affected by family dynamics is not something which is affected a lot by differing cultural norms.

Law Commission on India had floated a consultation paper on Nov 14th, 2014 to get inputs from public about reform of existing custody and guardianship laws and adopting a shared parenting system in India. Link to the paper is given below.

[Law Commission's Consultation Paper on Adopting a Shared Parentage System in India] (<http://lawcommissionofindia.nic.in/Consultation%20Paper%20on%20Shared%20Parentage.pdf>)

Above paper can be studied to understand motivations behind the proposed amendments to various custody and guardianship laws by Law Commission to in its Report number 257.

Subsequent to floating a consultation paper and getting feedback from public, Law Commission of India had submitted its report where it proposed various amendments to multiple Acts related to guardianship and custody of minor children.

[Law Commission's Report on amendments to custody and guardianship laws]
(<http://lawcommissionofindia.nic.in/reports/Report%20No.257%20Custody%20Laws.pdf>)