

5th SURANA & SURANA AND ARMY INSTITUTE OF LAW

NATIONAL FAMILY LAW MOOT COURT COMPETITION 2024

15th March, 2024 to 17th March, 2024

IN THE HON'BLE FAMILY COURT OF KOLKATA

Original Jurisdiction

In the Matter of

Ambika

(Petitioner)

v.

Sakshi

(Respondent)

Filed under Section 7 of the Family Courts Act.

Upon Submission to the

Hon'ble Family Court

Memorandum on Behalf of the Petitioner

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2. Daniel R. Victor & Keri L. Middleditch, *When Should Third Parties Get Custody or Visitation*, 31 FAM. ADVOC. 34 (2009).
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LIST OF ABBREVIATIONS

Guardianship and Wards Act	GWA
High Court	HC
Hindu Marriage Act	HMA
Hindu Minority and Guardianship Act.	HMGA
Honourable	Hon'ble
Indian Succession Act	ISA
Supreme Court	SC

STATEMENT OF JURISDICTION

This Hon'ble Court has been approached for custodial right, legal guardianship for the minor and the properties of the minor through Section 7 of Guardianship and Wards Act. The minor child is residing at Kolkata for two years and thus the jurisdiction of the court is not contested by virtue of Section 7 of the Family Courts Act and Section 9 (1) of the Guardianship and Wards Act.

STATEMENT OF FACTS

DATES	EVENTS
2017	Sidhant and Ambika got married with families approval.
2018	Birth of Armaan and Siddant's parents passed away in an accident leaving behind an unregistered will directing their property to Sidhant, Armaan and Sakshi (sister of Sidhant).
July 2022	Ambika connected with Akash, her college peer and friend.
September 2022	Sidhant and Ambika left him with house help. Armaan slipped and was admitted to the Hospital.
20 November 2022	Sakshi suggested to Ambika that she would take care of Armaan.
3 December 2022	Ambika joined Akash's new venture at Delhi without informing her resignation and plan to Sidhant.
22 December 2022	Armaan was hospitalized for food poisoning and Sakshi took care of him the whole time. Sidhant recognized her as Armaan's true mother. He passed away six days later from substance consumption.
31 December 2022	To concentrate on work, Ambika asked Sakshi to keep Armaan with her.
11 March 2023	Sakshi extended Financial Help to Ambika and Ambika returned back to Delhi without Armaan as he refused to go with her.
June 2023	Akash proposed to Ambika for their marriage. They got married next month and Ambika is pregnant again in October.
10 February 2024	Ambika comes to Kolkata as Akash compelled her to get back Armaan. Case for custody was filed by Ambika.

ISSUES RAISED

I WHETHER PETITIONER IS ENTITLED TO BE IDENTIFIED AS THE NATURAL GUARDIAN AND POSSESS INHERENT RIGHTS CORRELATED WITH THE MINOR CHILDREN?

II. WHETHER THE CUSTODY OF A MINOR CHILD BE GRANTED TO THE PETITIONER CONSIDERING THE PARENTAL RIGHTS DOCTRINE THAT WOULD BENEFIT BOTH CHILD AND PARENT

III. . WHETHER THE APPOINTMENT OF RESPONDENT AS THE LEGAL GUARDIAN TO TAKE DECISION IS IN THE BEST INTEREST AND WELFARE OF THE MINOR CHILD?

SUMMARY OF ARGUMENTS

I. WHETHER PETITIONER IS ENTITLED TO BE IDENTIFIED AS THE NATURAL GUARDIAN AND POSSESS INHERENT RIGHTS CORRELATED WITH THE MINOR CHILDREN?

The child being a minor of 6 years can be provided with guardianship to the Petitioner in accordance with Section 6(a) of HMA. The Hindu Personal Laws has prioritized father more than the mother while the application of law no longer in the contemporary times degraded the rights of mother. In consequence to this, the testamatory oral of the father has no persuasive standing to neglect the Petitioner who is entitled to be legally identified as the natural guardian. Therefore, considering the argument, the Petition as a natural guardian has to be recognized as a guardian with inherent rights upon the minor child.

II. Whether the appointment of the Petitioner as the legal guardian to take decision is in the best interest and welfare of the minor child?

The Divided Property interest of the Minor child is subjected to potential risk in the context of the Respondent misappropriating funds for her private interest and is not in the interest of the minor child. The second part of the argument provides the need to appoint the Petitioner as the next friend and the curial curator to ensure that the interest of the minor not to be affected by the adverse party or any other person and the Petitioner is the person capable of understanding the child's interest and correlate with what would benefit the child.

III. Whether the custody of a minor child be granted to the Petitioner considering the Parental Doctrine that would benefit both the child and the parent?

This Argument emphasizes that the court shall consider the Parens Patriae jurisdiction in consequence of the Parental Alienation Syndrome and the Parental Rights Doctrine has always been regarded as the backbone of family laws. The Petitioner being the biological parent of the child assuming all the responsibility can not be denied custody on the grounds of being an employed woman or a remarried woman. Considering the determination of the custodial rights, the Petitioner has the 'Positive attributes' including financial capability to act in the best interest of the child. Therefore, it is argued that the awarding Petitioner with the custodial rights will be in the best interest of both the Petitioner and her child.

ARGUMENTS ADVANCED

I. WHETHER PETITIONER IS ENTITLED TO BE IDENTIFIED AS THE NATURAL GUARDIAN AND POSSESS INHERENT RIGHTS CORRELATED WITH THE MINOR CHILDREN?

The issue is argued in two phases, wherein the first part understands the legal position of the Petitioner and the second part provides for the rights of the Petitioner that there under follows the legal position.

I.I. Whether a Mother is titled as natural guardian of a minor 6 year old child?

1. Guardianship is a bundle of rights that a parent holds in relation to their child. Custody is one among the bundle of rights that the parents are provided with. Section 6(a) of HMA, provides for the mother to be the natural guardian of the minor child after the father and the proviso further extends to provide mother with the custody of the minor child under the age of 5. The fact that Armaan is aged 6, does not disqualify the Petitioner as she is his *de jure* natural guardian and can claim the custodial rights by way of section 6(a).
2. Though the Hindu Personal Laws had earlier prioritized the father over the mother, the application of law has accordingly changed in recent times to change with the evolving times. Courts have now acknowledged the rights of mothers, especially single mothers, as a natural guardian and exercised their power to provide legal identity to mothers. The Law Commission Report No.257 has also suggested the need to equal natural guardianship rights to both the parents. It goes as follows,
*"constitute both the father and the mother as being natural guardians jointly and severally, having equal rights in respect of a minor and his property."*¹
3. It was observed in the case of *Gita Hariharan (Ms) and Another v. Reserve Bank of India and Another* (1999)², it was observed by the court that the mother can act as a natural guardian in

¹ Law Commission of India, 133rd Report, August (1989).

² AIR 1999 SUPREME COURT 1149.

the absence of the father or even in his presence if he has not been interested in the affairs of the child.

“In view of Section 6(a) of the HMG Act, the mother could function as guardian only after the lifetime of the father and not during his lifetime. Such an interpretation would violate gender equality, one of the basic principles of our Constitution.”

4. The ideological changes have recognised mothers as natural guardians. In the case of *Ramdas Menon v. Sreedevi*³ and in the case of *Viswambhar & others v. Laxminarayan*⁴, it was observed by the court that mother is also a natural guardian and thus the transactions that she entered into are not void. This denotes the significance and rights provided to the mother that the Respondent is trying to deprive the Petitioner with.
5. It is submitted that in the case of *Lajwanti v. Priti Devi*⁵, the court held that the mother is the next person to have the natural guardianship and custody of the minor child post the death of the father. Thus it is submitted that the Petitioner is eligible to be the undisputed natural guardian identity.

I.II. Whether the testamentary oral will of the father is valid in the light of the mother’s right?

6. The father was empowered to deprive the mother of her natural guardianship by making his own appointee who can be the guardian post the demise of the father. These injustices have been cured under HMGA, 1956 applications. Firstly, a mother can also appoint a guardian of her own choice under her will. Secondly, as long as she is alive, the testamentary guardian appointed by her husband will not become the guardian. In the case of *Chethana Ramatheertha v. Kumar V. Jahgirdar*,⁶ the Supreme Court held that the father cannot be ascribed to have a preferential privilege over the mother in the area of guardianship because both come within the same category.

³ AIR2004KER126

⁴ (2001) 6 SCC 163

⁵ 2023 SCC OnLine HP 725

⁶ 2003 (3) KarLJ 530

7. Section 9 of the HMGA is herein referred to prove the invalidity of appointment. Sub section 2 of Section 9 is as follows,

“An appointment made under sub-section (1) shall have no effect if the father predeceases the mother.”⁷

Thus the Petitioner being alive is a predominant reason for the testamentary will to be null and invalid.

8. The Petitioner, being the birth mother, has equal rights and interest in the minor child as the father. She cannot be deprived from being with the child with the invalid testamatory oral will of the deceased father. Moreover there is no concrete proof from such a conversation to have happened when the father was not intoxicated. Assuming arguendo that the claim made by the Respondent in this regard is true, the words of the father are to be construed as nothing but a word of gratitude and cannot be accorded as oral will as nothing related to guardianship or custody was confirmed to the Respondent.

II. WHETHER THE APPOINTMENT OF RESPONDENT AS THE LEGAL GUARDIAN TO TAKE DECISION IS IN THE BEST INTEREST AND WELFARE OF THE MINOR CHILD?

II.I Whether the Petitioner is eligible to be a guardian to protect and take decision on the property of the minor?

9. The Petitioner categorically denies the contention of the Respondent that she is seeking Armaan’s custody in order to gain the property that he is entitled to as the legal heir. Various judicial precedents have laid down that the property rights of the minor children cannot be relinquished by the mother on their behalf. Recently, this was upheld by the Telangana HC in the case of *T Vijaya v. Turkapalli Mahhiah*.⁸ Furthermore, in the landmark case of *Vineeta Sharma v. Rakesh Sharma & Ors.*⁹, the Apex Court had held that no relinquishment can be made orally, and can only be accepted when made by way of a registered instrument. In light

⁷ § 9, HMA.

⁸ Unreported case, SECOND APPEAL No.835 of 2008.

⁹ (2020) 9 SCC 1.

of this, the Petitioner seeks to draw attention to the fact that the will that the Petitioner's father-in-law made, that left the properties¹⁰ to Petitioner's husband, Respondent and the Minor child Armaan (who was in the womb of Petitioner when the will was made), is unregistered.

10. Despite it being unregistered, the petitioner submits that the Respondent harbors hope that due to the customary **Dayabhaga** school being followed in West Bengal, she would be able to usurp the property from Armaan, who becomes the legal heir to the property on his father's death, as per the dictates of the Dayabhaga practice.

11. It is submitted that the Respondent has had her eye on converting the ancestral bungalow into a boutique hotel for a long time, and had even tried convincing her brother Sidhant as far back as October 2022.¹¹ He had rejected her idea on the basis that the current rent they had been receiving from the property then was enough to sustain comfortably. Less than a month later, the Respondent met the Petitioner in Bangalore and when she casually mentioned about the difficulty of ensuring a work-life balance due to no proper support from her husband Sidhant, the Respondent, sensing an opportunity to modify the property according to her own wishes, had voluntarily suggested that she take Armaan back with her to Kolkata for some time. Now, with the death of Sidhant, the defendant is well aware that the only other heir to the property apart from herself is Armaan, and that in order to execute her plan of converting the ancestral bungalow into a boutique hotel, she needs Armaan on her side. Assuming *arguendo* that the Respondent is the *de facto* guardian of Armaan, it is humbly prayed that she is not entitled to dispose of or deal with the property of Armaan merely on the ground of being his *de facto* guardian, in accordance with the GWA.¹²

12. In the case of *Swarnalata Mishra v State of Odisha*¹³, the court held that,

“Parents are natural guardians u/s. 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred as the ‘Act, 1956’ for brevity). The status of the father and mother as natural guardians of a minor child in respect of their person as well as property is well

¹⁰ Moot prop. P. 3.

¹¹ Moot proposition, p.

¹² § 11, GWA.

¹³ MANU/OR/0362/2019

protected under Law. Under the proviso, a natural guardian can be disqualified when he ceases to be a Hindu or completely and finally renounces the world becoming hermit. Noticeably, under explanation to section 6 of the Act, 1956, the father and mother do not include step father and step mother.”

13. The fear of Petitioner’s husband interfering to use the properties of Armaan is thus evaded. The father and mother are entitled to rights not only in relation to the child but also with regard to the property. There are no concrete factors to disqualify the Petitioner from not being appointed as legal guardian for his property.

14. As judicially recognised in various cases¹⁴, the 2 main systems of inheritance amongst Hindus in India are the Mitakshara system which is applicable to other parts of India except Bengal, and Dayabhaga system which prevails in Bengal. As per Sir Dinshaw Fardunji Mulla, The main difference between both is that under Dayabhaga, the guiding principle is the “doctrine of religious efficacy”, which focuses on the capacity for conferring spiritual benefit while Mitakshara has no such definite guiding principle.¹⁵ The property of a deceased Hindu governed by Dayabhaga law passes by succession, including his share in undivided property. Meaning, sons under the Dayabhaga law do not inherently possess any claim to ancestral property upon birth; their rights materialize only upon the demise of the father.¹⁶ In the present case, the minor’s share in the undivided property worth several crores has been passed to him on his father Sidhant’s untimely demise. The Respondent is an adverse party, manipulative to take charge of the entire property. The Respondent is keen in investing the funds in new ventures like boutique which is her private interest. Thus it wont lead to the benefit of the child considering the above said apprehension.

II.II. Whether the Petitioner is entitled to other additional rights other than being a guardian?

15. It is humbly submitted that the Petitioner is entitled to be the curial curator for the minor child and be entitled to act on behalf of the minor child for the apprehended misappropriation of the

¹⁴ *Vineeta Sharma v. Rakesh Sharma & Ors.*, (2020) 9 SCC 1.

¹⁵ SIR DINSHAW FARDUNJI MULLA, MULLA HINDU LAW 109-110 (LexisNexis 2015).

¹⁶ SIR DINSHAW FARDUNJI MULLA, MULLA HINDU LAW 432 (LexisNexis 2015).

property by the Respondent¹⁷. Thus in the best interest of the child, the Petitioner should be appointed as the curial curator.

16. Considering that the minor child by virtue of the age factor can be considered to be appointed a next friend to represent before the court of law. Considering the Petitioner's ability to act in the best interest of the child, it is hereby humbly submitted that the Petitioner be appointed as the next friend of the minor child to represent his legal interest in the court of law.

17. In the case of *Nagaiah and Ors. v.. Chowdamma (dead) by L.Rs. and Ors*, it was emphasized by the court that,

*There is no hurdle for a natural guardian or duly constituted guardian as defined under Hindu Guardianship Act to represent minor Plaintiff or Defendant in a lawsuit.*¹⁸

18. It is also submitted that the Petitioner acts in the best interest and does not have an adverse interest on the minor and his property. Thus it is humbly prayed that the Petitioner be appointed as the 'next friend' of the minor child.

III. WHETHER THE CUSTODY OF A MINOR CHILD BE GRANTED TO THE PETITIONER CONSIDERING THE PARENTAL RIGHTS DOCTRINE THAT WOULD BENEFIT BOTH CHILD AND PARENT?

III.I Whether the custody of the minor child with the Petitioner is for the welfare of the child?

19. A mother is an inseparable person from the life of her child. In the case of *Rajeswari Chandrasekar Ganesh v. The State of Tamil Nadu and Ors*,¹⁹ it was observed that,

"The role of the mother in the development of a child's personality can never be doubted. A child gets the best protection through the mother. It is the most natural thing for any child to grow up in the company of one's mother. The company of the mother is the most natural thing

¹⁷ § 195, ISA.

¹⁸ 2018/INSC/6

¹⁹ 2022/INSC/721

for a child. Neither the father nor any other person can give the same kind of love, affection, care and sympathy to a child as that of a mother. The company of a mother is more valuable to a growing up female child unless there are compelling and justifiable reasons, a child should not be deprived of the company of the mother. The company of the mother is always in the welfare of the minor child.”

20. We place further reliance on the concept of ‘**Parental alienation syndrome**’²⁰ which was recognised by the Hon’ble Apex Court in the case of *Vivek Singh v. Romani Singh*,²¹ where the father of the minor child was a drunkard similar to the present case. Emphasizing on the significance of the presence of the biological mother in the minor child’s life, the court had stated the following:

“The notion that a child’s primary need is for the care and love of its mother, where she has been its primary care giving parent, is supported by a vast body of psychological literature. Empirical studies show that mother infant ‘bonding’ begins at the child’s birth and that infants as young as two months old frequently show signs of distress when the mother is replaced by a substitute caregiver...Psychological theory hypothesizes that the mother is the center of an infant’s small world, his psychological homebase, and that she must continue to be so for some years to come.”

21. In the *Vivek Singh* case cited supra, it was stated in a given case, it may be shown that the father is better suited to have the custody of the child, but such an assessment is only possible after a **level playing field** is granted to both the parents. The court had observed the following:

“A child, who has not seen, experienced or lived the comfort of the company of the mother is, naturally, not in a position to comprehend that the grass on the other side may turn out to be greener. Only when she is exposed to that environment of living with her mother, that she would be in a position to properly evaluate as to whether her welfare lies more in the company of her mother or in the company of her father.As of today, the assessment and perception are one sided.”

²⁰ Dr. Richard Gardner in "Recent Developments in Child Custody Litigation", The Academy Forum Vol. 29 No. 2: The American Academy of Psychoanalysis, 1985.

²¹ AIR 2017 SUPREME COURT 929.

22. Applying the same reasoning, it is submitted that the assessment of the Petitioner as a mother is one-sided as the minor child has not spent much time with her and has grown to be attached to his aunt Sakshi.
23. It is humbly submitted that the decision of who should get the custody of Armaan is to be decided by the court only after taking into consideration all the factors that provide an idea of how uneven the 'playing field' or comparison between both Respondent and Petitioner is. As an unmarried woman with no child of her own, Respondent doesn't have the same lived experiences as Petitioner that drove her to take the decisions that she made. With a drunkard husband, and no other family member to support her in taking care of the child, when Respondent had offered to take care of Armaan "for some time", Petitioner had trusted Respondent, who had a stable career and was living alone after the death of her parents, with the custody of her minor son for a while as she was struggling in the initial phase of her career and didn't want Respondent to feel lonely in Kolkata. But now, with Respondent refusing to give Armaan back, Petitioner's heart is broken due to being forcefully separated from the son she gave birth to. To support this contention, we place reliance on a recent Kerala High Court case which recognised the difficulties of single working mothers as they have to "*fulfill the roles of two parents as a sole person and they often play multiple roles.*"²² It further stated that single mothers have to "*show extraordinary strength in balancing work, household responsibilities and nurturing of their children*" and thereby highlighted how imperative it is to have a support system, time management and resilience.
24. It is humbly submitted that the court considers the tendency of the minor child to be persuaded easily in their formative years, and thereby incapable of forming intelligent decisions that will affect their own future. In the case of *Smt. Meenakshi v State of UP*²³, the court was of the view that the child was in the tender years and thus is not capable to express any intelligent preferences regarding custody. The child is highly immature to make a decision especially regarding the issue in hand that permanently disables and affects the social bond and

²² The Commissioner V Nithya R Warriar, 2024 LiveLaw (Ker) 158.

²³ 2020 SCC OnLine All 1475

relationship with the biological mother. In the case of *Tejaswini Guad v Shekhar Jagdish Prasad Tiwari*²⁴, the court observed that,

“Taking away the child from the custody of the appellants and handing over the custody of the child to the first respondent might cause some problem initially; but, in our view, that will be neutralized with the passage of time.”

25. The minor child is not capable enough to make life impacting decisions. Thus the best for the child considering the fact that the Petitioner is not disqualified by the law and circumstances, custody can be granted without worrying about the adjustment phase of the child with the custodial person. We thereby request the Court to exercise their *parens patriae* jurisdiction in an impartial manner, in deciding what will be the best course of action for the minor child.

26. A child has an inherent right to family and social relations. As held in the case of *Gaytri Bajaj v Jiten Bhalla*²⁵, alongside the child’s desire, the conducive and appropriate environment for proper upbringing of the child coupled with the ability of the parent to take care of the child is a relevant factor to consider. The Petitioner is now a part of a bigger family with her husband, in-laws and another child. The family has also shown their keen interest in welcoming Armaan to their family. Living with many social bonds is better than being isolated. Having a father figure will be better for the minor child who is a male, and by embracing his future younger sibling, the minor child can experience the joys of being an older brother and have the companionship of someone closer to him in age. In the *Smt. Meenakshi* case cited *supra*, it had been observed that:

“A young child ought to be and has a right to be in the care and company of his parents. The parents together are a young child’s world. It is together that they groom him into his youth. It is together that they ensure the overall development of his personality in its myriad facets.”

²⁴ AIR ONLINE 2019 SC 256

²⁵ (2012) 12 SCC 471

III.II. Whether the Petitioner is barred by remarriage or any other disqualification for claiming custodial rights?

27. Custodial jurisprudence has two diverse notions. The first notion is comparatively overt and emphasizes more on relational values to protect the interest of adults who have nurtured and cared for the child. Contrastingly, the implicit notion is based on the perception of the child.²⁶ This has provided the court with the discretion to decide on the manner of granting guardianship and custody. Thus, in contemporary times, custodial rights are equally children's rights, rather than being considered merely as adult rights that recognize the interest of the adults to maintain a relationship with the child in a legally protected manner.
28. In contemporary times, courts have regularly utilised the doctrine of *Parens Patriae* while deciding cases. However, Supreme Court in the case of *Shaheen Jahan v. Ashokan K.M.* (2018)²⁷ has held that the constitutional courts have the power to exercise *Parens Patriae* principle. Parental Rights Doctrine has always been regarded as the backbone of family laws. This has to be respected and adhered to not because parents are infallible, or because parents own their children.²⁸ Parental rights when properly understood denotes that they promote child well being. No parent would wish for the bad for their child. Respecting parental rights would be prominent as it would lead to stability of parent-child bond.
29. We place reliance on the case of *Nil Ratan Kundu v Abhijit Kundu*²⁹ where it was observed that the negative test should not be considered in determining if the mother is fit or disqualified to take care of the child. Rather, the 'positive test' is to be adhered to and would predominantly decide the custody based on welfare of the child by materially considering the ability of the parent.

²⁶ Daniel R. Victor & Keri L. Middleditch, *When Should Third Parties Get Custody or Visitation*, 31 FAM. ADVOC.34 (2009).

²⁷ AIRONLINE 2018 SC 1136

²⁸ Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371

²⁹ (2008) 9 SCC 413.

30. The previous attempts of the Petitioner to get back her minor child had been unsuccessful due to the non-cooperation of the Respondent and the minor's tender age which made him get attached to his aunt, in denial of his true mother. The Petitioner's visit to Kolkata in 12.03.23 proves that she took reasonable attempts to get Armaan back with her and has been consecutively failed in her attempts does not per se disqualify her custodial claim. In the landmark case of *ABC v. State (NCT of Delhi)*,³⁰ the Supreme Court had held that an "uninvolved parent is not precluded from approaching the Guardian Court to quash, vary or modify its orders if the best interests of the child so indicate."
31. It is pertinent to note that the child is 6 years old without enough maturity to decide his needs and interests or capable enough to express himself. The perspectives of the Petitioner and Respondent have to be equally respected and aligned with the objective of creating stable bonds for the child especially considering the fact that the Petitioner is not disqualified by the law, and that the welfare of the child is the paramount consideration that we are aiming to fulfill.
32. In the case of *Lekha v P Anil Kumar*³¹, the court observed that a second marriage of the mother cannot deprive the parental rights of custody and guardianship. It further held that, *"If the Court forms the impression that the mother is a normal and independent young woman and shows no indication of imbalance of mind in her, then in the end the custody of the minor child should not be refused to her or else we would be really assenting to the proposition that a second marriage involving a mother per se will operate adversely to a claim of a mother for the custody of her minor child."*
33. The Petitioner has always wanted the best for her child. The Petitioner, despite being a working woman, had considerably balanced household chores and took good care of Armaan, even when his father displayed 'parental unfitness' by not quitting his drinking habit and leaving them alone for months at a time under the garb of 'looking into some family affairs'.³² Considering the situation of having lost her husband, she had to work extra hard for raising

³⁰ AIR 2015 SUPREME COURT 2569.

³¹ 2006/INSC/872

³² Moot prop. P. 10.

Armaan. In the case of *Tripat Singh Bansal v. Jagant Kaur*³³, the court observed that Mother's dedication to work cannot be a reason to refuse custody. The work being demanding these days has to be considered. Justice Bharti Dangre on hearing a petition for custody has held that a woman cannot be put into a situation of choosing between her career and child and accordingly allowed custody with the mother who had got a career opportunity out of the country.³⁴ The fact that Petitioner moved to Delhi was to start an upgraded career that would further benefit Armaan and satisfy his needs. The Petitioner did not have the heart to leave behind her child and therefore entrusted her husband to look after Armaan with the firm belief that he will change for the better, and can look after Armaan with her moral support till she gets job stability.

34. The society operates in its own conservative morals and judgements on remarried women. However, this cannot be taken as a means of not awarding custody. In the case of *Akella Lalitha v. Konda Hanumantha Rao and Ors*³⁵, the court granted custodial rights to the mother who was remarried post the death of the first husband. In the case of *Shamsher Singh V.. Jasbir Kaur*³⁶, wherein the respondents argued that the mother should not be granted custody, the court observed that the remarriage of the mother cannot be taken as a ground for not granting the custody of the child to the mother.

35. The National Commission for Women (NCW) has recommended that the laws on natural guardianship should favor mothers, whether married, divorce, separated or single.³⁷ Considering this, the second marriage of the petitioner cannot be a bar for granting guardianship and custody of the minor child.

36. The Petitioner is now financially stable as being employed in Delhi. In the case of *Faruq Ibrahimhai Mulla v. Karishmabanu Anwar Hussain Qureshi*³⁸, the Court held that merely

³³ MAT.APP.(F.C.) 32/2023

³⁴ Pragya Malhotra, *Mother cannot be asked to choose between child and career: Bombay High Court, India Today*, 2022.

³⁵ 2022/INSC/759

³⁶ MANU/HP/0268/2012

³⁷ Amrita Madhukalya, "Review Child Guardianship Laws: NCW to Government", *Hindustan Times* (New Delhi, 12-10-2019).

³⁸ 2016 SCC OnLine Guj 2656.

because the mother is working, it cannot be assumed and/or presumed that she won't be in the capacity to take care of the minor child as these days many mothers are working and still they are taking care of the children.

37. It is humbly submitted that the Petitioner is the most appropriate person to be granted with the custodial and guardianship rights of the minor child. Having not been disqualified by any factors, it is submitted that the custodial rights when granted to the Petitioner would serve justice.

Prayer For Relief:

Wherefore, in the light of the issue raised, arguments advanced, cases and authorities cited above, the Petitioner humbly requests the Hon'ble Family Court of Kolkata to adjudge and declare that:

1. The natural guardianship be granted to rest with the Petitioner.
2. The custodial rights as guardian shall be granted to the Petitioner.
3. The Petitioner's claim to the property be upheld.

AND/OR

Pass any other order, direction, or relief that it may deem fit in the best interests of justice, fairness, equity, and good conscience.

And for this, the Petitioner shall be duty-bound, forever pray.

All of which is humbly prayed by,

Counsels for the Petitioner