HC-KAR
CNR: KAHC010803022025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 37759 OF 2025 (GM-FC)

C/W

WRIT PETITION NO. 38415 OF 2025 (GM-FC)

WRIT PETITION NO. 14682 OF 2026 (GM-FC)

IN WP NO. 37759/2025

BETWEEN:

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Location: HIGH COURT OF KARNATAKA

...PETITIONER

(BY SMT.B.V.NIDHISHREE, ADVOCATE)

AND:

...RESPONDENT

(BY SRI.ASHIKA GURUMATH, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 16.04.2025 PASSED BY THE HON'BLE FIFTH ADDITIONAL FAMILY JUDGE, BENGALURU IN M.C. NO. 4475/2020 AT ANNEXURE A AND REJECT THE PRAYER OF DIRECTING THE PETITIONER TO PROVIDE CONSENT FOR OBTAINING UK VISA FOR THE CHILD IN ORDER TO ENABLE THE RESPONDENT TO TAKE THE CHILD ALONG WITH HER TO THE UK OR PERMITTING HER TO UNILATERALLY APPLY FOR HIS VISA UNDER SECTION 26 OF THE HINDU MARRIAGE ACT READ WITH SECTION 151 OF CPC SOUGHT BY THE RESPONDENT IN MC NO. 4475/2020 IN HER INTERIM APPLICATION NO. 11.

IN WP NO. 38415/2025

BETWEEN:

...PETITIONER

(BY SMT.B.V.NIDHISHREE, ADVOCATE)

AND:

...RESPONDENT

(BY SRI.ASHIKA GURUMATH, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF

THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 13.10.2025 PASSED BY THE HONBLE FIFTH ADDITIONAL FAMILY JUDGE, BENGALURU IN M.C. NO. 4475/2020 AT ANNEXURE- A AND REJECT THE PRAYER OF DIRECTING THE PETITIONER TO CO-OPERATE WITH ALL THE FORMALITIES REQUIRED FOR THE VISA PROCESS OF THE MINOR CHILD UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE SOUGHT BY THE RESPONDENT IN MC NO. 4475/2020 IN HER INTERIM APPLICATION NO. 16.

IN WP NO. 14682/2026

BETWEEN:

...PETITIONER

(BY SMT. NIDHISHREE B.V., ADVOCATE)

AND:

...RESPONDENT

(BY SRI. ASHIKA GURUMATH, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 15.04.2026 PASSED BY THE COURT OF THE V ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, AT

BENGALURU ANNEXURE-A ON I.A NO. 18 FILED BY THE PETITIONER WITH REGARD TO SHIFT/CHANGE IN INTERIM CUSTODY OF THE CHILD FROM THE RESPONDENT TO THE PETITIONER HEREIN.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 16.09.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

W.P.No.37759/2025 has been filed by the father, questioning an order dated 16.04.2025 passed by the V Addl. Principal Judge, Family Court, Bengaluru, allowing I.A.No.11 in M.C.No.4475/2020 filed by the mother, whereby she sought a direction that the father be directed to deliver the original passport of the minor child to the mother and provide consent to obtain a Visa to the United Kingdom for the minor child in order to permit the mother to take the minor child along with her to the United Kingdom.

2. W.P.No.38415/2025 has been filed by the father seeking to set aside the order dated 13.10.2025 passed by the V Addl. Prl. Judge, Family Court,

Bengaluru, allowing IA No.16 in M.C.No.4475/2020 filed by the wife seeking the petitioner to co-operate with all the formalities required for the Visa process of the minor child. Since the said process is completed, nothing survives for consideration in this writ petition.

3. W.P.No.14682/2026 has been filed questioning the order dated 15.04.2026 passed by the V Addl. Prl. Judge, Family Court, Bengaluru, rejecting I.A No.18 in M.C.No.4475/2020 filed by the father, with regard to change of interim custody of the minor child from the mother's family to the father along with other consequential relief.

4. The parties in both the writ petitions are one and the same, and considering the issues that are involved, the writ petitions are disposed of by way of a common order. For the sake of convenience, the parties are referred to henceforth as father and mother.

W.P.No.37759/2025:

5. The Family Court by the order impugned directed the father to deliver the original passport of his

minor son to the mother, to give consent for the renewal of passport and permit the mother to unilaterally apply and execute the document necessary for renewal of his passport, to give his consent for obtaining the United Kingdom Visa before the UK Consulate in Bangalore for the minor, in order to enable the mother to take the child along with her to the United Kingdom or permit her to unilaterally apply for his Visa and to give consent for any other requirements from the passport and Visa Authorities for issuing the passport/ Visa of the Son, or permit the mother to unilaterally apply for his passport afresh and process his Visa to travel to / reside in UK without reference to him. The Court further observed that the mother shall facilitate the child to talk with the father through video or audio calls for about 15 minutes everyday at about 11:00 p.m. of Indian Standard Time. Mother shall bring the child to Bangalore once a year during his school summer vacations and hand over the interim custody of the child to the father for 10 days

during such summer vacation. The mother shall furnish the contact details of the child in UK to the father.

6. The Court, while passing the order, observed that perusing the entire material on record, the Court is of the view that for the best interest of the child and for the career progress of the mother, I.A.No.11 has to be allowed. The Court had also considered the judgments relied upon and the respective contentions of the parties.

W.P.No.14682/2026:

7. The Family Court had dismissed I.A.No.18 filed by the father. The Family Court has observed that the father is at liberty to exercise the visitation and video call access as per the earlier order passed in the case till the departure of the child to the U.K.

8. The Family Court while dismissing the application has observed that the admitted facts are that the respondent is the legally wedded wife of the petitioner and their marriage had taken place on 23.01.2013. On 29.12.2014, they were blessed with a

son and they were staying in Mumbai, since April 2019, parties have been living separately and their minor son is under the custody of the mother. On 19.11.2020, the husband filed the petition. As per the order dated 09.09.2001, the mother was directed to hand over the child to the father between 10:00 a.m. to 01:00 p.m. on 10.09.2021 to celebrate Ganesha Festival and on 11.09.2021 to celebrate the birthday of the father with a condition that the father shall not take the child beyond the jurisdiction of the court and shall keep the child in Aunt house in Sanjayanagar who is the petitioner's mother's sister during the above said period. On the aforesaid date, the advocate for the mother had undertaken to drop the child at the Sanjayanagar house and pick up the child from the said house. As per the order dated 21.12.2021, passed in IA No.3 filed by the father, father is permitted to exercise visitation on alternate Sunday's between 11:00 a.m. to 04:00 p.m. till the disposal of the petition. He is also permitted to make video call on alternate day for about one hour. It was

further ordered that the father shall consider the likes and dislikes of the child while exercising visitation and he is directed not to give any advice about the mother to the child while exercising the visitation rights and if necessary, mother may also join the father and the child in the interest of the child. On 19.03.2025, the court interacted with the child. On interaction, child stated that he is ready to go to London along with his mother and he will visit his father during vacation and talk to him through video calls. As per the order dated 16.04.2025 passed on IA.No.11 filed by the mother, the father is directed to deliver the original passport of his minor son and to give consent for the renewal and also the mother is permitted to take the child. In the said order, the court has also observed how the father can talk to the child and also when he can have the custody.

9. While dismissing I.A.No.18, the court had observed that in this petition the father is seeking a direction to the mother to immediately hand over the interim custody of his minor son to him along with his

current passport, he shall be entitled to take all decisions concerning the education, welfare, health and overall upbringing of the child, including but not limited to transfer the child from the current school in Bangalore to an appropriate school in Mumbai, without interference from the mother, the father to facilitate phone calls between the child and the mother at 07:30 p.m. to 07:45 p.m. IST which would be convenient for the child's schedule and the father to hand over interim custody of the child at a public place for the first 10 days of child's summer vacation from his Mumbai school, if respondents were to come to India the mother has to come to India during that period. The mother has been permitted to take the child to UK along with her, but due to the delay in visa process of the child, she alone left to UK leaving the child in India with her sister and father in Bangalore. Since now the mother is in UK and child is with his maternal relatives, the petitioner being his father has filed this application. Had the respondent taken the child along with her to UK, the petitioner would not have filed

this petition. The Court further observed that on perusal of the entire material on record, at this stage, the Court is of the opinion the earlier orders regarding the visitation and video access by the father over the child is ordered to be continued till the departure of the child to UK, it will meet the ends of justice. Hence at this stage the father is not entitled for the relief sought in the application. Accordingly, the court had rejected the application. Aggrieved thereby, the father is before this court.

10. The written submissions are placed before the court by the learned counsel appearing for the father. In one writ petition, the senior counsel represented the father, and in the other writ petition, Smt. Nidhishree B.V., learned counsel, represented the father.

11. It is the submission that, the trial court has exceeded its jurisdiction. It is submitted that a perusal of IA No.11 and IA No.16 and the pleadings of the respondent shows that the affidavits or the prayers of IA. No.11 does not seek permission for relocation of the minor child. The Family Court has passed order

mechanically and without application of mind, and the trial Court has proceeded to grant relief that has not been prayed for by the respondent. When the respondent's application itself does not seek the relocation, the Court could not to have granted relief of relocation, which far exceeds the trial court's jurisdiction. The respondent sought to complete visa formalities and not relocation of the minor child and such a substantial issue cannot be decided perfunctorily as an implied relief and has to be categorically granted. It is stated that as per the judgment of the Apex Court in the case of ***Akella Lalita V. Sri Konda Hanumantha Rao***[1] the Hon'ble Apex Court observed that the Court has the power to intervene only when a prayer specific to the effect is made and such prayer must be centered on the premise that child's interest is the primary consideration and it outweighs all other considerations. Therefore, there is no basis to traverse beyond pleadings and construe the said orders as conferring any permission, either express or implied, for relocation of the minor child. Any such relocation

[1] 2022 LiveLaw (SC) 638

attempted by the mother, purportedly founded upon the orders, will amount to a self-serving interpretation of the order which is impermissible. It is stated that the mother had not filed any proceedings seeking permanent custody of the minor child. The husband has initiated the proceedings on 21.06.2019. It is stated that the husband has filed the divorce proceedings. As a counter blast, thereto on 21.06.2019, the mother initiated proceedings under G & WC No.196/2019 before the Family Court seeking permanent custody. Then the husband had entered appearance on 22.08.2019 and filed a statement of objections as also an application seeking parenting time of the minor child. On the very next day, on 23.08.2019, the mother filed a memo requesting permission to withdraw the proceedings. The Family Court permitted the mother to withdraw G & WC. Thereafter, she has not filed any petition in the MC seeking permanent custody of the minor child. It is submitted that the Hon'ble Apex Court in the case of ***Gaurav Nagpal V. Sumedha Nagpal***[2] has held that Section

[2] (2009) 1 SCC 479

26 of the Hindu Marriage Act,1955 provides for custody of the children and declares that in any proceeding under the Act, the Court could make, from time to time, such interim arrangements and orders as it might deem just and proper with regard to custody, maintenance and education of minor children, consequently with their wishes wherever possible. It is stated that the impugned order is bereft of reasons. The concept of reasoned judgment has become an indispensable part of basic rule of law and, it is a mandatory requirement. There is misrepresentation by the wife to obtain orders and parental alienation. The mother has time and again placed inconsistent and contradictory material on record with regard to her alleged place of employment as well as with regard to the alleged school of accommodations in which she intends to place the minor child. It is stated that she was to be employed by the North Middlesex Hospital, North London Trust, in the City of London. Further, the mother provided the details of several relatives who lived in the City of London to support her

contention that she and the minor child would have a support system that they could rely on, should the need arise. However, in the affidavit dated 02.09.2026 filed by the Power of Attorney Holder of the mother, it is claimed that the respondent has secured employment at one Betsi Cadwaldr University Health Board at Ysbyty Gwynedd, Bangor, and not at North Middlesex Hospital, North London Trust, City of London as earlier stated. Further, in the affidavit dated 16.09.2024 filed in support of I.A. No.17 before the Family Court, it has been clearly stated by the mother that she had secured admission in Ysgol Hirael School for the minor child. It was only after the father brought it to the attention of the Court that the medium of instruction in the said institution was Welsh, that the mother attempted to take remedial steps to change the institution in which the minor child was enrolled. However, in the affidavit dated 02.09.2026 filed by the Power of Attorney holder of the mother, it is stated that the minor child was never enrolled in the Welsh school, named Ysgol Hirael, but the mother merely made

enquiries regarding the availability of a seat, though no admission was taken at the school. These statements of the respondents are contradictory and clearly demonstrate duplicitous nature of the respondent. It is stated that the documents produced by the mother are vague, ambiguous and lack requisite particulars. It is submitted that with regard to the employment, with regard to the school and with regard to the place of residence, there is ambiguity. It is stated that the competence of the father has not been questioned. There has been no finding by the Family Court whereby the petitioner has been deemed as an unsuitable guardian for the minor child. In fact, the father shares a very close attachment with the minor child and the same was stated by the child during the course of his interaction with the court on 02.09.2026. The father is a well qualified professional with adequate financial means to support the minor child. Furthermore, the petitioner resides in Bombay with his mother and sister, both of whom share a close bond with the minor child. Therefore, the father,

who is the legal guardian and biological parent of the child, is equipped with the necessary emotional and financial support system to take care of the minor child. No documents are placed before the court to show that how the father is not competent to have the custody of the child. It is stated that it is an alien environment for the minor child in Wales. If the child is relocated, the parenting time that is granted to the father will be breached. It is stated that the mother had violated the orders passed by the court whenever the parenting time was granted to the father.

12. The learned counsel for the petitioner/father relied on the following judgments:

i. ***Komal Krishan Arora and Others Vs. Sandeep Kumar and Others[3].*** He relied on para No.21, which reads as under:

> ***"21. With the above, we abstain from observing much about the conduct of the mother and the manner in which Master K was left by her at Sonipat with the grandparents. The factum of leaving the child with the grandparents could only be unveiled when the proceedings were***

[3] 2025 SCC Online SC 2008

set in motion on filing of the writ in the nature of habeas corpus, wherein the interim custody of the child had been directed to be handed over to the father looking to the best interest of the child. In such circumstances, where the mother is staying in London with Miss N and Master K is staying with grandparents, despite the availability of father, who has sufficient means of sustenance to undertake the well-being of the child, as reflected from affidavit dated 27.08.2025 filed by him in compliance of directions given by this Court, the best interest of Master K needs to be ascertained. On perusal of affidavit, it reveals that father is a qualified engineer having Master's degree in Computer Science with a post-graduate diploma in Business Administration. He was also employed in Singapore, United Kingdom and US for time being. Thus, his academic credentials and professional competence cannot be doubted. Similarly, looking to other factors, his earning is sufficient, and he is owner of residential flat in Sector-70, Noida and currently residing there with his mother and younger sister. In our considered opinion, Noida is more suitably located than Sonipat, having better educational institutes, therefore, in our view, welfare of the Master K, would be served if the interim custody of the child is given to the father who is also the natural guardian, subject to further orders by the competent Court of jurisdiction, wherein the proceedings for custody under the provisions of the Guardians and Wards Act, 1890 be initiated in this regard. The affidavit dated 27.08.2025 filed by the father shall be treated as an undertaking and the contents thereof be treated as part of this order."

ii. Mausami Moitra Ganguli Vs. Jayant Ganguli[4]

He relied on paragraph Nos.19, 23 and 26, which read as under:

> ***"19. The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably, the provisions of law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor.***
>
> ***23. Having bestowed our anxious consideration to the material on record and the observations made by the courts below, we are of the view that in the present case there is no ground to upset the judgment and order of the High Court. There is nothing on record to suggest that the welfare of the child is in any way in peril in the hands of the father. In our opinion, the stability and security of the child is also an essential ingredient for a full development of child's talent and personality. As noted above, the appellant is a teacher, now employed in a school at Panipat, where she had shifted from Chandigarh some time back. Earlier, she was teaching in some school at Calcutta. Admittedly, she is living all alone. Except for a very short duration when he was with the appellant, Master has been living and studying in Allahabad in a good school and is stated to have his small group of friends there. At Panipat, it would be an entirely new environment for him as compared to Allahabad.***

[4] (2008) 7 SCC 673

> ***26. Under these circumstances and bearing in mind the paramount consideration of the welfare of the child, we are convinced that the 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, as noted above, also do not require any modification. We, therefore, affirm the order and the aforeextracted directions given by the High Court. It will, however, be open to the parties to move this Court for modification of this order or for seeking any direction regarding the custody and well-being of the child, if there is any change in the circumstances."***

iii. Gaurav Nagpal Vs. Sumedha Nagpal[5] He relied on paragraph Nos.42 and 43, which read as under:

> ***"42. Section 26 of the Hindu Marriage Act, 1955 provides for custody of children and declares that in any proceeding under the said Act, the court could make, from time to time, such interim orders as it might deem just and proper with respect to custody, maintenance and education of minor children, consistently with their wishes, wherever possible.***
>
> ***43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the "welfare of the child" and not rights of the parents under a statute for the time being in force."***

[5] (2009) 1 SCC 42

iv. Mrs.Akella Lalitha Vs. Sri Konda Hanumantha Rao and Anr[6], he relied on paragraph Nos.15 and 18, which read as under:

> ***"15. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/ son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.***
>
> ***18. In this case while directing for change of surname of the child, the High Court has traversed beyond pleadings and such directions are liable to be set aside on this ground."***

v. Smt. Sneha Harishchandra Sumithra Vs. Mr. Sudhir Das Venkata Das[7], he relied on paragraph Nos. 33 and 34, which read as under:

> ***"33. Coming to the facts of the present case, the boy is aged about 15 years and he wants to stay and spend time with the mother. Having spent these many years with the father, the boy is entitled to spend time with the mother. The present case is not merely a dispute between two litigating parents asserting their legal rights over the minor child but it reflects the tragic consequences of prolonged litigation in which innocent child becomes the silent sufferer. A mother's love and affection occupy a***

[6] (2022) SCC Online SC 928
[7] W.P.No.25901/2024 D.D 19.12.2025

unique and irreplaceable place in the emotional development of the child. The nurturing care, emotional warmth and psychological security a mother provides are fundamental to the balanced growth of the child. This kind of alienation from the mother, particularly at the tender age, leaves emotional consequences on the child which will have a long lasting effect. Childhood is a delicate phase of life in which emotional bonds play a very crucial role in shaping personality and emotional stability. A prolonged alienation from one parent, particularly from the mother may create feelings of confusion, insecurity and emotional deprivation. This Court cannot lose sight of the fact that the mother had to wage relentless legal battles over the past six years merely to regain the companionship and affection of her own child. This will inflict deep psychological distress upon the parent who is deprived of the company of the child. This Court is conscious of the fact that no judicial order can compensate the six long years of separation and the childhood years that have passed cannot be restored. Custody litigation, when prolonged, often degenerates into a contest of endurance between the parents, but the child becomes the victim of such conflict. The Courts must therefore guard against permitting the legal process to become an instrument that perpetuates emotional separation between a child and a loving parent. The Hon'ble Apex Court has repeatedly emphasized that custody disputes must not be treated as adversarial battles. The ultimate focus of the Court must always remain on psychological and emotional welfare of the child which includes preserving and nurturing the bond between the child and both parents.

34. The Courts must not permit circumstances where a parent, by retaining the child during the pendency of litigation is able to create a situation, whereby the passage of time itself becomes an argument against restoring the earlier position. Time spent in litigation should not become a weapon to defeat the legitimate emotional claims of a parent or to perpetuate the separation between a child and the parent who seeks only to nurture and care for him. This case is a classic example and a

reminder that custody disputes must be resolved with sensitivity. Urgency and a constant awareness that the true stake holder in such proceedings is the child, whose childhood continues to pass while the litigation persists. In the considered opinion of this Court, Bangalore is not the ordinary residence of the child and the Family Court at Bengaluru has no jurisdiction and the Family Court ought to have allowed the application."

vi. Mr. Jebin Mathew Varughese Vs. Mrs. Pamela Sansa Daniel[8], he relied on paragraph Nos.5, 6, 8 and 9, which read as under:

"5. Learned counsel for the petitioner contends that continued denial of visitation rights is causing irreparable harm to both the petitioner and the minor child and the parent-child relationship is being systematically damaged due to the prolonged separation and hence, there is necessity of urgent interim relief to protect the welfare of the child. He further contends that granting interim visitation rights to the petitioner will ensure that the minor child maintains a healthy relationship with both the parents during pendency of the custody proceedings and if the visitation rights is granted to the petitioner, no prejudice will be caused to the respondent whereas denial of such right will cause irreparable harm to the petitioner and the minor child. Hence, prays for allowing the petition and expeditious disposal of I.A.No.2 pending before the Family Court.

6. Learned counsel for the respondent contends that the interim relief sought by the petitioner is nothing but a grant of very final relief sought in the main petition and it is settled principle of law that no interim order can be granted which amounts to granting the final relief itself, as such an order would render the main petition

[8] W.P.No.2966/2026 D.D 24.03.2026

infructuous even before the main matter is adjudicated on merits. She further contends that a protective order has already been passed by the Family Court on 05.01.2025 in G & W.C.No.488/2024 in favour of the respondent, which restrains the petitioner from interfering with the custody, care and well being of the minor son. She further contends that respondent is the natural guardian and is presently taking care of the child's health, education, emotional and psychological well-being and there is no change in circumstances warranting a disruption of the status quo. Hence, prays for dismissal of the petition.

8. Upon hearing the learned counsel appearing for the parties and on perusal of the material on record, this Court finds that certain foundational facts are not in dispute, namely, the marital relationship between the parties, the birth of the minor child on 07.08.2016, the pendency of G & W.C.No.35/2025 and that the minor child is presently in the custody of the respondent-mother and pursuing his education. It is also not in dispute that the petitioner had filed I.A. No.2 before the Family Court under Section 12 of the Guardians and Wards Act, 1890 seeking interim custody of the minor child.

9. Having regard to the paramount consideration of the welfare of the minor child and the necessity of ensuring meaningful access to both parents, this Court deems it appropriate to direct the Family Court to consider and dispose of the application – I.A.No.2 as expeditiously as possible, in accordance with law, bearing in mind the welfare of the child and the settled principles governing visitation and shared parenting."

vii. Mr. Preetam A Eklaspur Vs. Smt. Vanishree[9], he relied on paragraph Nos.31 and 40, which read as under:

> ***"31. In view of the provisions of Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor, in the case of a boy or an unmarried girl is the father, and after him, the mother. The provisions of Section 19 of the G & W Act deals with when a guardian not to be appointed by the Court and as per the said section, nothing in the Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person of a minor who is married female and whose husband is not in the opinion of Court, unfit to be guardian of her person, or of a minor whose father is living and is not in the opinion of the Court, unfit to be guardian of the person of the minor, or of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor. Admittedly in the present case, the female child is aged more than ten years and is capable of understanding the things about her welfare and she has categorically stated before the Family Court as well as this Court that she prefers to stay with her father with whom she is more comfortable than mother.***
>
> ***40. For the reasons stated above, the 1st point raised in the present writ petitions is answered in the negative holding that the Family Court is not justified in passing the impugned order dated 30.10.2018 rejecting I.A. No.2 filed by the petitioner - father under Section 12 of the Guardians and Wards Act, 1890 for interim custody of minor child - Prisha, aged about 10 years. Consequently, Point No.2 is also answered in the negative holding that the Family Court is***

[9] (2019) SCC Online Kar 563

> ***not justified in passing the impugned order dated 7.11.2018 allowing I.A. No.5 filed by the respondent - mother directing the jurisdictional Police to assist the respondent in securing custody of minor child - Prisha from the petitioner. In view of the above and taking into consideration the paramount interest of the minor child- Prisha, who is aged more than 10 years, and the consistent wishes expressed by her before the Family Court as well as before this Court, the impugned orders passed by the Family Court cannot be sustained and are liable to quashed.***

viii. Vivek Kumar Chaturvedi and Another Vs. State of Uttar Pradesh and Others[10], he relied on relevant para 6 and 7, which read under:

> ***"6. It has to be specifically noticed that in Tejaswini Gaud and others5, this court had permitted the invocation of the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India since the custody was sought by the father, the natural guardian of the minor child, from the sister and brother of the mother, who did not have any legal right to claim the custody of the child. Gautam Kumar Das1 relied on Tejaswini Gaud5 to enable the natural guardian, the father, custody of a minor child, who was with the maternal aunts; in a petition under Article 226 of the Constitution of India. Quoting Nirmala2 it was also held that there can be no hard and fast rule insofar as the maintainability of a Habeas Corpus petition relating to custody of minor children; which would depend on the facts and circumstances of each case.***
>
> ***7. In the present case also, the father is seeking custody of the child from the grand-parents who were also looking after the child with the help of***

[10] (2025) 4 SCC 342

> ***the siblings of the mother; admittedly. The grandfather had also initiated a proceeding for maintenance, claiming Rs.20,000/- (Rupees Twenty Thousand only) per month for the child; which makes it clear that the grandparents are unable to look after the child by themselves."***

ix. Vivek Singh Vs. Romani Singh[11], he relied on para Nos.3,16 and 18, which read as under:

> ***"3. The appellant herein contested the said petition by filing the written statement wherein he took the stand that the respondent was not in a position to look after the child as there is nobody to look after her when the respondent goes for work. He also mentioned that respondent's parents are residing at NOIDA whereas she is working and living in Delhi. On the contrary, it is the appellant who had provided all necessary expenses for the maintenance of the child, and even the respondent. He even accused the respondent for invariably getting drunk on their visits to Army Officers Mess in the parties. The trial court framed the issue which touches upon the dispute that is whether the petitioner (the respondent herein) is entitled to custody of the child. Evidence was led by both the parties who examined themselves as PW-1 and RW-1 respectively. The Principal Judge, Family Court was of the opinion that the appellant is fit person to retain the custody of the child and, therefore, dismissed the petition filed by the respondent herein.***
>
> ***16. In the instant case, the factors which weigh in favour of the appellant are that child Saesha is living with him from tender age of 21 months. She is happy in his company. In fact, her desire is to continue to live with the appellant. Normally, these considerations would have prevailed upon us to hold that custody of Saesha remain with the appellant. However, that is only one side of the***

[11] (2017) 3 SCC 231

picture. We cannot, at the same time, ignore the other side. A glimpse, nay, a proper glance at the other side is equally significant. From the events that took place and noted above, following overwhelming factors in favour of respondent emerge.

16.1 For first 21 months when the parties were living together, it is the respondent who had nursed the child. The appellant cannot even claim to have an edge over the respondent during this period, when the child was still an infant, who would have naturally remained in the care and protection of the respondent - mother, more than the appellant – father. Finding to this effect has been arrived at by the High Court as well. This position even otherwise cannot be disputed.

16.2 The respondent was forcibly deprived by the custody of Saesha from August 04, 2010 when she was forced to leave the matrimonial house. As per the respondent, on that date the appellant in a drunken state gave beatings to her and threw her out of the house. The respondent had called the police. The police personnel called the military police and a complaint was lodged. The respondent had also called her parents who had come to her house from NOIDA. Her parents took hold of the child and the appellant and when they were about to leave, the appellant pulled out the child from the hands of her mother and went inside the house and locked himself. He was drunk at that time. The police suggested not to do anything otherwise appellant would harm the child. It was assured that the child would be returned to her in the morning. In any case, the respondent and the appellant were instructed to come to the police along with the child, next morning. The appellant did not bring the child and threatened that he would not give the child to her. Since then, she had been running from pillar to post to get the child back but respondent had been refusing. The respondent, therefore, cannot be blamed at all, if the custody of the child remained with the appellant, after the separation of the parties.

16.3 Within the few days, i.e. on August 26, 2010, the respondent filed the petition seeking custody of the child and for appointment of her guardian. She did not lose any time making her intentions clear that as a natural mother she wanted to have the custody of the child. It was her mis- fortune that the trial court vide its judgment dated December 07, 2011 dismissed her petition. Though, she filed the appeal against the said judgment immediately, but during the pendency of the appeal, the custody remained with the appellant because of the dismissal of the petition by the Family Court. The High Court has, by impugned judgment dated April 02, 2013 granted the custody to the respondent. However, the respondent has not been able to reap the benefit thereof because of the interim orders passed in the instant appeal. It is in these circumstances that child Saesha from the tender age of 21 months has remained with the appellant and today she is 8 years and 3 months. Obviously, because of this reason, as of today, she is very much attached to the father and she thinks that she should remain in the present environment. 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. Few years ago, when the High Court passed the impugned judgment, the ground realities were different.

18. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility.

Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this end, it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time. This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are 'right' in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent, i.e., the mother and change her to agree with the appellant's view point cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as perceived by the appellant. Psychologist term it as 'The Parental Alienation Syndrome'[4]. It has at least two psychological destructive effects:

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in

> ***the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts."***
>
> ***(ii) Second, the child is required to make a shift in assessing reality."***

Relying on these judgments, the learned counsel for the petitioner submits that both the orders needs to be set aside and the custody shall be shifted to the father.

13. The learned Senior Counsel representing the learned counsel for the mother had argued at length and also placed written submissions before this Court. It is the case that the mother and her minor son, who was aged 4 years, in May 2019, were thrown out of the matrimonial home, which is a 5-bedroom sea-facing apartment situated in Worli, Mumbai. By email dated 03.05.2019, the petitioner/father informed the mother that he had entered into a Lease and License Agreement for a 225 sq. ft apartment at Century Mill, MHADA Towards, Prabhadevi, which is a government slum rehabilitation project intended for mill workers. The father had initially filed petition No.A-1735/2019 seeking divorce before the Family Court, Bandra, Mumbai, which was

transferred to the Family Court at Bangalore in terms of the order of the Hon'ble Supreme Court of India on 01.10.2019. It is submitted that the mother has been the primary caregiver of the minor child since May 2019 and has shouldered the responsibility of his upbringing, education and day-to-day welfare. Despite having the means, the father has repeatedly failed to contribute towards the child's expenses. An order directing him to reimburse the child's school fee is also challenged by him in Criminal Revision Petition No.198/2025, which is pending before the Court. Even 50% of the school fees of the child had to be secured through repeated directions of the court dated 21.09.2022, 30.10.2022, 21.11.2022 and 04.05.2023, followed by a further direction dated 18.04.2024. The repeated necessity of Court intervention demonstrates that the respondent cannot reasonably be expected to depend upon the father's voluntary financial support for the child's future. The minor child and the mother were forced to take shelter at the maternal grandparents' house for the past 7 years. The mother

was doing a part-time job in a clinic near her house, as the minor child needed her care and attention and she was earning approximately Rs.30,000/- per month, while her elderly father aged about 76 years, who had been supporting the household and the child's essential expenses, is no longer financially or physically capable of continuing that burden. Due to several financial constraints, the mother was even compelled to discontinue all the child's extracurricular activities despite his high aptitude. The mother has a Master's degree in Ophthalmology and studied further and wrote licencing exam for over 3 years so she could give her son a better life. She then obtained the requisite licence to practice medicine in the United Kingdom. Her employment in the UK provides a substantially better and more secure financial position, enabling her to provide the child with stable housing, education, healthcare and extracurricular opportunities. The father had filed WP No.2749/2024 challenging the parenting time granted to him on IA No.3, in which the mother filed an application in IA No.2/2024

seeking relocation. The High Court remanded the matter to the Family Court to consider the prayer for relocation within one month pursuant to which the Family Court ordered in favour of the mother, which is again under challenge. It is stated that the mother filed an application in IA No.11 in MC No.4475/2020 along with an affidavit praying for directions against the father to deliver the original passport of minor child Master Reyansh, to give consent for the renewal of the passport, to give consent for obtaining Visa to United Kingdom, to enable her to take the child along with her to United Kingdom, to give consent for any other requirements from Passport and Visa authorities for issuing the passport and Visa. In her detailed affidavit in support of IA No.11, she narrated how the father had consistently failed to fulfil his responsibilities as a parent and had made no contribution whatsoever towards the upbringing and welfare of the child. It is stated that the mother has also placed on record the father's volatile and aggressive conduct, his attempts to malign her before the minor child, and his

pornographic and promiscuous conduct, which raised serious concerns regarding his suitability for custody and are relevant to the child's welfare and best interest. The mother's statement about the volatile and unstable nature of the father gets fortified by the father's conduct of attending the school class, on behalf of his son in the school at Bombay along with other children of ages 6 to 8 years. It is stated that the mother has consistently recognised the father's parenting time and has never sought to sever the father-child relationship. Since the child moved from Mumbai to Bangalore in May 2019, the father has not had custody of the child except during court-order parenting time and permitted video calls, which the respondent continues to facilitate in accordance with the orders. The proposed relocation is therefore not a whimsical or unilateral issue to remove the child from the father. It is a considered step necessitated by his mother's circumstances and undertaken to secure the child's long-term welfare. The mother's employment is also structured in a manner that permits her to personally

care for the child, with working hours from 09:00 to 05:00 p.m. Monday to Friday. It is stated that contribution of a supposedly most loving father in his penchant for challenging each and every order passed by the Family Court in favour of the minor's son, including the challenge to the order dated 23.10.2020 passed by the DV Court and confirmed by the Session Court on 16.11.2024 and now challenged before the Court in Criminal Revision Petition No.198/2025 to reimburse the school fee, of an amount of Rs.2,56,250/- and Rs.2,06,250/- for two terms of academic year 2019-2020, which is pending consideration by the Court. It is submitted that the father owns a huge residential apartment in Malabar Hill, Mumbai which is a posh locality, and also has a vacant bungalow at RMV 2nd Stage, Bangalore which has remained unoccupied for several years. Despite having access to such substantially better accommodation, he has never offered the said bungalow to the minor child as a residence or taken any comparable step to facilitate the child's education and

welfare in Bangalore, including at a reputed school such as Mallya Aditi. In fact, the father proposed that the minor child reside in 225 square feet apartment at The mother, who has been a child's primary caregiver has now herself secured employment and financial independence and has made concrete arrangements for the child's residence, education and overall welfare in the United Kingdom. It is stated that the Family Court had considering all the aspects and rightly passed an order.

14. An affidavit is filed before the Court along with the documents dated 02.09.2026 wherein it is stated that the child has been granted a Dependent Child-Skilled Worker E-Visa. It is stated that mother is presently employed by Ysbyty Gwynedd Bangor. The letter also confirms that she had been employed since 22.10.2025, she resides in the doctor's accommodation provided by the hospital and her working hours are from 09:00 a.m. to 05:00 p.m. from Monday to

Friday and she stated that her current address is 6, Llys Afallan, Ysbyty Gwynedd, Penrhosgarnedd, Bangor, LL57 2PN, United Kingdom. It is stated that the welfare and education of the minor children have always been the foremost consideration of the mother, who has secured admission for the minor child at a reputed and fully English-medium educational institution. The admission was confirmed by email dated 03.08.2026. She has also arranged for the minor child's transportation to and fro with available bus facility from Bangor. The documents clearly establish the present and actual position with respect to the mother’s residence, employment and the minor child's education and transportation in the United Kingdom. The earlier arrangements referred to by the father have changed and ceased to be relevant due to subsequent developments. It is stated that the mother has nothing to conceal from the court and has placed on record the current address, employment particulars, visa, education arrangements and transportation arrangements of the minor child with

complete transparency. The godliness attributed so eloquently to the father with a deep, emotive content is a complete hoax as it established by his own plan of shifting his own son from a 5 bed-room palatial sea facing apartment in South Bombay which was a matrimonial home to a rehabilitation housing unit for slum dwellers.

15. Learned counsel appearing for the mother has relied on the following judgments:

i. Vikram Vir Vohra Vs. Shalini Bhalla[12], he relied on paragraph Nos.14,19,23 and 24, which read as under:

> ***"14. The child categorically stated that he wants to stay with his mother. It appears to us that the child is about 8-10 years of age and is in a very formative and impressionable stage in his life. The welfare of the child is of paramount importance in matters relating to child custody and this Court has held that welfare of the child may have a primacy even over statutory provisions [See Mausami Moitra Ganguli vs. Jayant Ganguli - (2008) 7 SCC 673, para 19, page 678]. We have considered this matter in all its aspects.***
>
> ***19. Even though the aforesaid principles have been laid down in proceedings under the Guardians and Wards Act, 1890, these principles are equally applicable in dealing with the custody of a child under Section 26 of the Act since in both the situations two things are common; the first, being orders relating to custody of a growing child and secondly, the paramount consideration***

[12] AIR 2010 SC 1675

> ***of the welfare of the child. Such considerations are never static nor can they be squeezed in a strait jacket. Therefore, each case has to be dealt with on the basis of its peculiar facts.***
>
> ***23. Now coming to the question of the child being taken to Australia and the consequent variations in the visitation rights of the father, this Court finds that the Respondent mother is getting a better job opportunity in Australia. Her autonomy on her personhood cannot be curtailed by Court on the ground of a prior order of custody of the child. Every person has a right to develop his or her potential. In fact a right to development is a basic human right. The respondent-mother cannot be asked to choose between her child and her career. It is clear that the child is very dear to her and she will spare no pains to ensure that the child gets proper education and training in order to develop his faculties and ultimately to become a good citizen. If the custody of the child is denied to her, she may not be able to pursue her career in Australia and that may not be conducive either to the development of her career or to the future prospects of the child. Separating the child from his mother will be disastrous to both.***
>
> ***24. Insofar as the father is concerned, he is already established in India and he is also financially solvent. His visitation rights have been ensured in the impugned orders of the High Court. His rights have been varied but have not been totally ignored. The appellant-father, for all these years, lived without the child and got used to it."***

ii. Mrs. Ritika Sharan Vs. Mr. Sujoy Ghosh[13], he relied on paragraph Nos.14, 16 and 19, which read as under:

> ***"14. The primary consideration that must weigh with the Court is the welfare of the child. The respondent has asserted in the course of the submissions, that the child is in the custody of the parents of the appellant in Bengaluru and should***

[13] (2020)10 SCR 363

remain with them. Alternatively, he submitted that he would take charge of the child. While the parents of the appellant may have volunteered at least temporarily to relocate from NOIDA to Bengaluru to help the appellant in looking after the child, we are clearly of the view that the respondent cannot be heard to assert that the child must continue to remain in Bengaluru with the maternal grand-parents. For the respondent to insist that the court should direct the continued presence of the child under the care of the maternal grand-parents who have come to Bengaluru and stay in a rented accommodation obtained by the appellant, does not appear to be fair. Nor is there sufficient material before the Court to indicate that the respondent is in a position to look after the child on his own, by disturbing a position which has held the field since 2016. Before 2016, when the spouses were together, the child lived and grew up in the care of both the parents. Since 2016, the appellant has taken the responsibility for the welfare of the child.

16. During the course of the interaction on the video-conferencing platform, Sattik indicated his desire to reside with his mother in Singapore. While the child is attached to the respondent, he has indicated, in no uncertain terms, his desire to live with his mother. The appellant is gainfully employed in Singapore and her desire that she should be allowed to take the child with her is not an artifice. The appellant, as the mother of the child, has been continuously with the child since his birth, despite the demands of her employment.

19. Ms Meenakshi Arora has submitted that the respondent has made no contribution for the maintenance of the child. On the other hand, the respondent in the course of his submissions, stated that he is bearing the expenses of servicing the loan which was undertaken by the parties for obtaining a residential flat in joint names. Be that as it may, we are of the view that the interests of the child require that the appellant be allowed to take the child with her to

> ***Singapore, where the appellant resides. At the same time, the ultimate directions that the Court issues must also address the apprehension of the respondent that the child should not be placed outside the control and jurisdiction of the Family Court, Bengaluru. Adequate arrangements for access and visitation to the respondent should be ensured.***

iii. Shipping Corporation of India Ltd. Vs. Machado Brothers and Others[14], he relied on para Nos.20, 22, 25 and 31,which read as under:

> ***"20. From the above, it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the courts have all the necessary powers under Section 151 CPC to make a suitable order to prevent the abuse of the process of court. Therefore, the court exercising the power under section 151 CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.***
>
> ***22. While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under Section 151 CPC for dismissing the pending suit on the ground the said suit has lost its cause of action. This Court in the case of Pasupuleti Venkateswarlu vs. The Motor & General Traders (1975 1 SCC 770 at para 4) has held thus:***
>
> ***"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-`-vis circumstances which come into being subsequent***

[14] (2004) 11 SCC 168

to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equality justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

> ***31.For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court and interest of justice requires such suit should be disposed of as having become infructuous. The application under Section 151 of CPC in this regard is maintainable."***

iv. R.N Gosain Vs. Yashpal Dhir[15], he relied on paragraph Nos.10 and 13, which read as under:

> ***"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd., (1921) 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury's Laws of England, 4th Edn.,Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).***
>
> ***13. We are, therefore, of the opinion that the petitioner, having given an undertaking in pursuance to the directions given by the High Court in the Judgment dated March 6, 1992, and having availed the protection from eviction on the basis of the said undertaking, cannot be permitted to invoke the jurisdiction of this Court under Article 136 of the Constitution and assail the said judgment of the High Court. In that view of the matter, we do not consider it necessary to***

[15] (1992) 4 SCC 683

> ***deal with the submissions urged by Dr. Singhvi that the respondent, being an employee of the University at the time of his retirement, was not a 'specified landlord' under section 2(hh) of the Act."***

v. Shephali Chakraborty Vs. State of West Bengal[16] , he relied on paragraph Nos.10, 12 and 14, which read as under:

> ***"10. The doctrine of parens patriae, translates to "parent of the nation", and emanates from the idea that the State bears a moral and legal responsibility towards those who are incapable of safeguarding their own interests. It emerges at the intersection of several strands of political and legal theory that challenge a purely formal conception of autonomy. In the liberal tradition, John Stuart Mill, in On Liberty [John Stuart Mill, On Liberty, John W. Parker and Son (1859).] famously articulated the harm principle, arguing that State interference with individual liberty is generally unjustified except to prevent harm to others. Crucially, however, Mill expressly excluded children and persons lacking full rational capacity from the scope of this principle, recognising that autonomy presupposes capacity. This implicit exception opens normative space for protective intervention. More recently, Martha Albertson Fineman [Robert W. Woodruff Professor of Law, Emory University School of Law, Georgia, USA] through works such as The Autonomy Myth: A Theory of Dependency [Martha Albertson Fineman, The Autonomy Myth: A Theory of Dependency, The New Press (2004)] and The Vulnerable Subject [Martha Albertson Fineman, "The Vulnerable Subject", 20 Yale Journal of Law and Feminism 1 (2008)] , has reframed the debate entirely by arguing that vulnerability is a universal and enduring feature***

[16] 2026 SCC Online SC 1064

of the human condition, and that the State has an affirmative obligation to design institutions that respond to this vulnerability. Here itself we may take note of the fact that in Indian classical tradition this doctrine was well established. We may only take one example as to what Kautilya has said: The king shall provide the orphans (bála), the aged, the infirm, the afflicted, and the helpless with maintenance. He shall also provide subsistence to helpless women when they are carrying and also to the children they give birth to. Elders among the villagers shall improve the property of bereaved minors till the latter attain their age; so also the property of Gods. [Kautilya's Arthashastra, translated by R. Shamasastry].

In the pages of history, it is found that this responsibility vested in the English Crown, which was regarded as the ultimate guardian of infants and persons of unsound mind or mental incapacity. Eventually, this function came to be in the domain of the courts where the modus operandi was not the usual adversarial method and instead, a continuing and supervisory jurisdiction, informed by considerations of welfare rather than strict legal entitlement. It is this equitable conception of judicial responsibility that travelled into colonial legal systems, including India, and continues to inform modern constitutional and statutory frameworks.

In Annie Besant v. G. Narayaniah [Annie Besant v. G. Narayaniah, 1914 SCC OnLine PC 40] , it was made clear that in matters concerning minors, Courts do not enforce parental or proprietary rights but act solely to secure the welfare of the child. This reasoning was reinforced decades later in McKee v. McKee [McKee v. McKee, 1951 AC 352] where the Privy Council held that a court exercising jurisdiction over a child cannot abdicate its responsibility by mechanically enforcing foreign custody orders. The decisive consideration, irrespective of comity or prior determinations, is the welfare and happiness of the child. These decisions illustrate the core parens patriae feature: the Court's obligation is

independent, non-deferential, and welfare-centric.
Post independence, this doctrine has acquired constitutional significance. The expansive interpretation of Article 21, read with Article 15(3), are substantive instances of the commitment to protection of dignity, development, and care. The Court's authority to do so is not a creation of statute but emanates from its constitutional role in giving practical meaning to fundamental rights where vulnerability undermines autonomy.

12. Considering all the above examples, a clear pattern can be discernible. Authority, held privately of whatever nature is never absolute. "Welfare" supersedes all else as the governing standard. Courts and statutory bodies do not merely adjudicate disputes; they assume responsibility. Philosophy, constitutional values, common law tradition, and statutory provisions show that parens patriae is not a doctrine of narrow application, but an important tool to protect interests wherever vulnerability displaces agency.

14. In such a case as the present one, at the core of the Court's duty is the responsibility to safeguard the welfare of the minor, a principle that goes beyond consent or convenience. While the approval of a guardian may indicate familial agreement which is well established to be a power of limited nature. In Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree30, the Privy Council observed: "...The power of the Manager for an infant heir to charge an estate not his own, is, under the Hindoo law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the

particular instance, is the thing to be regarded…". It cannot replace the Court's independent assessment of the minor's interests. The Court concerned needs to meticulously examine whether any proposed arrangement could compromise the child's present or future rights, taking into account that the minor cannot fully comprehend or appreciate the consequences of such transactions. The best interest of the child is not passive consideration but a vigorous principle that requires foresight, caution, and meticulous 1856 SCC OnLine PC 7 scrutiny in every matter affecting the minor's property-'for an evident advantage to the minor'.

In assessing the merits of any transaction, the Court must evaluate the likely advantages against the risks. It must determine whether the minor will receive benefits that are secure, measurable and enforceable. At the same time, it must remain vigilant to possible negative effects such as diminution of value, delay in realization of benefits, or exposure to ventures that could prejudice the minor's undivided share. This evaluation of risk and benefit ensures that sanction of any arrangement is on the basis of child's genuine welfare properly balanced against convenience of adult co-owners.

Even where a guardian consents to the arrangement, as in this case, the Court must ensure that adequate safeguards are in place to protect the minor's interests. Such safeguards are not intended to restrict the legitimate rights of adult co-owners but to preserve the minor's stake in the property in a manner.

At the same time, the Court should be aware that not only the child in question but also adult co-owners possess lawful rights to derive reasonable benefit from the property. The presence of a minor should not unduly limit the ability of adults to engage in productive or economically beneficial transactions. The task of the Court is to reconcile these interests carefully, enabling everyone including adults to utilize the property in ways that do not undermine or impair the minor's security or future options."

Relying on the above judgments learned Senior Counsel submits that the writ petitions are liable to be dismissed.

16. Having heard the learned Senior Counsel representing the learned counsel for the petitioner and learned counsel representing the respondent, perused the entire material on record.

THE APPROACH OF COURTS IN MATTERS CONCERNING CHILDREN:

7 Before examining the rival contention, it is necessary to consider how the approach of a court must be while deciding matters concerning children. Matrimonial proceedings may be adversarial in nature, with each spouse asserting rights and alleging misconduct against the other. A dispute concerning a child, however, cannot be approached in the same manner. The child is not responsible for the differences between the parents and cannot be made to suffer their consequences. In deciding permanent/temporary custody of the child, the Court is not concerned with determining which parent has a superior claim. The inquiry must be directed

towards identifying the arrangement that best serves the child's welfare. Custody is neither a reward for one parent nor a punishment for the other. It is a responsibility entrusted to the parent in accordance with the child's needs. In ***Gaurav Nagpal's case*** referred supra, the Hon'ble Supreme Court held that the welfare of the child is the paramount consideration and cannot be measured solely in terms of financial resources or physical comforts. In ***Mausami Moitra's case*** referred supra, It was reiterated that no fixed formula can govern custody disputes and that the child's circumstances must determine the appropriate arrangement. A parent may be financially secure, possess a suitable residence, and be willing to provide the best educational facilities. These are relevant considerations, but they do not necessarily establish that a change of custody would benefit the child. The emotional relationship developed with the primary caregiver, continuity of care, and the consequences of disturbing the existing arrangement are equally important. The court must also recognize that parental separation does not diminish the child's need for the love and companionship of both parents. The court's responsibility is to

ensure that the child does not become an instrument of the matrimonial conflict and that the arrangements made enable the child to maintain a meaningful relationship with both.

> ***"Whether the Family Court granted relief which was not sought by the mother?"***

18. The first objection raised by the petitioner concerns the scope of the application that is filed by the mother. According to the father, the Family Court could not have permitted relocation when the mother had not specifically sought for such a relief. Ordinarily, a court is required to decide the dispute within the framework of the pleadings and the relief sought. The importance of pleadings cannot be understated, since they inform the opposite party of the case that has to be met. However, whether a particular relief has been sought cannot always be determined by isolating the prayer clause from the remaining contents of the application. In the present case, the mother sought delivery of the original passport of the minor child and the father's consent for obtaining a visa to the United Kingdom and the necessary co-operation to enable her to take the child along with her. The purpose for which these

directions were sought was expressly disclosed. The application was not merely for obtaining a passport as an identity document or for undertaking an unspecified journey. The mother intended to take the child to the United Kingdom, where she proposes to reside and work. The father was therefore aware that the application concerned the child's proposed movement to the United Kingdom to reside with the mother. Indeed, his objections concerning are the child's removal from India, the consequences of living abroad, and the possible impairment of his parental relationship demonstrate that the substance of the controversy was understood and contested by him. In these circumstances, the absence of a separately worded prayer seeking permission for relocation cannot be treated as decisive. The Court must examine the relief in substance and not merely the terminology employed by the applicant. Particularly in matters concerning the children. A direction to furnish consent for a visa so as to enable the child to accompany the mother abroad necessarily required the court to consider that such movement would serve the child's welfare. Section 26 of the Hindu Marriage Act, 1955 empowers

the court, in proceedings under the Act, to pass interim orders concerning the custody, maintenance, and education of minor children. The provision recognizes the continuing responsibility of the matrimonial court to make arrangements appropriate to the child's circumstances. Such jurisdiction is not to be exercised without regard to the pleadings, but neither can it be reduced to a mechanical interpretation of the words used in the prayer clause. A distinction must be maintained between granting wholly new relief of which the opposite party had no notice and granting an order that gives effect to the very purpose for which the application was filed. In the former situation, considerations of procedural fairness may arise. In the latter, the Court is not exceeding its jurisdiction merely because it expresses the operative relief in terms more appropriate to the circumstances.

19. The learned counsel for the father has relied upon the judgment of the Apex Court in the case of ***Mrs.Akella Lalitha's case*** referred supra wherein the Hon'ble Supreme Court disapproved the grant of a direction concerning the surname of a minor child though no such relief had been

sought. The principle laid down is that a court cannot grant relief outside the pleadings, thereby depriving the opposing party of an opportunity to oppose it. The said decision is distinguishable. In ***Mrs.Akella Lalitha's case*** referred supra, the direction concerning the surname was an independent relief that had not been part of the controversy. In the present case, the respondent's application expressly sought to enable the child to accompany her to the United Kingdom. The father opposed the proposal, and the Family Court decided the question arising from it. No new controversy was introduced without notice to the father. The decision in ***Mrs. Ritika Sharan's case*** referred supra is also relevant. In that case, the mother sought the return of the child's passport and subsequently relocated to Singapore for employment. The Supreme Court, exercising the power under Article 142 of the Constitution of India, considered the substantive question of the child's welfare, notwithstanding the procedural objection raised in the proceedings, and permitted the child to accompany the mother. While the power exercised by the Hon'ble Apex Court under Article 142 of the Constitution of

India stands on a distinct constitutional footing, the decision reinforces the need to identify the real controversy affecting the child. In the present case, the Family Court derives its jurisdiction from Section 26 of the Hindu Marriage Act, and the proposed relocation was already the subject of the application and the father's objection. The mother's application clearly discloses the purpose of taking the child to the United Kingdom. The father opposed that proposal on its merits. The Family Court was consequently required to decide whether the child could accompany the mother. The determination of that question cannot be characterized as granting an altogether unclaimed relief. This Court therefore finds no merit in the father's contention that the order is liable to be interfered with merely because the mother did not incorporate an independent prayer using the expression relocation.

> ***"Whether the mother's departure to the United Kingdom, leaving the child temporarily with the maternal grandfather/aunt, constitute sufficient grounds to transfer custody to the father?"***

20. The mother has been the child's primary caregiver. Her intention was to take the child with her, for which she approached the Family Court seeking the necessary directions. However, because the travel formalities could not be completed before she was required to leave India, the child was temporarily entrusted to the maternal grandfather. The father seeks to rely on the mother's physical absence or on a change of circumstances warranting a transfer of custody. Such a submission overlooks why the child continued to remain in India. The mother did not choose to leave the child behind as a permanent arrangement. She approached the court precisely because she wanted the child to accompany her. Where a parent seeks judicial assistance to facilitate the child's travel and, during the pendency of that request, is required to proceed abroad to fulfill professional commitments, the temporary separation cannot, without anything more, be treated as abandonment of parental responsibility. The assistance rendered by a grandparent does not, by itself, amount to a transfer of custody. In ***Mrs. Ritika Sharan's case*** referred supra the Hon'ble Apex Court considered substantially

similar question. The mother was employed in Singapore while the child remained in Bangalore under the care of the maternal grandparents. The court held that the assistance provided by the grandparents did not amount to transfer of custody from the mother to them and permitted the child to accompany the mother.

21. Learned counsel for the father has also relied on, ***Komal Krishan Arora's case*** referred supra, wherein interim custody of a minor child residing with her maternal grandfather was entrusted to the father. However, the circumstances in that case are materially different. The mother had taken the children abroad without informing the father, and the proceeding disclosed serious issues concerning concealment of their whereabouts, compliance with judicial directions, and the father's access to the children. In those circumstances, the Supreme Court found the father's interim custody appropriate. The said decision does not lay down that custody must necessarily be transferred to the father whenever the mother resides abroad and the child temporarily remains with grandparents. In the present case, the mother had disclosed

her intention to take the child abroad and sought the necessary directions from the Family Court. The child remained in India because the travel formalities were incomplete. The father contends that he is capable of taking care of the child and that his willingness to share parental responsibility is not in doubt. However, the question is not whether he can provide care but whether the circumstances warrant displacing the existing primary caregiver. The mother's temporary absence, arising from the circumstances noticed above, does not establish such a necessity. The mother's case is that the delay in completing the formalities prevented the child from accompanying her. The father was undoubtedly entitled to raise a genuine objection before the Family Court. Nevertheless, the delay occasioned in completing the travel formalities cannot, by itself, be a ground to transfer custody. To hold otherwise would allow circumstances arising during the litigation to determine custody without an independent assessment of the child's welfare. The Family Court was therefore justified in declining to transfer custody merely because the child was temporarily residing with the maternal grandfather/aunt.

MOTHER'S RIGHT TO PURSUE HER PROFESSION AND THE PROPOSED RELOCATION:

22. The mother's decision to pursue her professional career in the United Kingdom, where she is an ophthalmologist, must be considered in the light of her responsibility towards the child. Marriage and motherhood do not deprive a woman of the freedom to pursue professional opportunities or require her to remain confined to a particular place. A mother who has been raising a child cannot be compelled to choose between retaining custody and pursuing her profession merely because the opportunity available to her is in another country. Such an approach rests on the assumption that professional advancement is inconsistent with responsible motherhood. The constitutional guarantees of equality and professional liberty do not support such an assumption. Where the proposed relocation affects the relationship with the other parent, the court must examine the arrangements for the child's care, education, and emotional well-being. The mother's professional interests are relevant, but the child's welfare remains the governing consideration.

23. In ***Vikram Vir Vohra's case*** referred supra, the Hon'ble Supreme Court considered the proposed relocation of a child to Australia with the mother and declined to interfere with the order permitting the relocation. The ratio recognizes that custody arrangements must respond to changes in circumstances, subject always to the welfare of the child. In the present case, the mother seeks to continue her professional career while retaining the child's care. Sufficient material has not been placed before the Court to establish that she is incapable of providing a suitable environment in the United Kingdom or that the child's residence with her would be detrimental to the child's welfare. The father had relied on the fact of taking admission of the child in a school where English is not a medium of instruction and relocation to a foreign country is not in the interest of the child. The mother had been taking care of the child from 2019 and filed an affidavit before this Court, furnishing all details of her employment and child's education. This Court do not find any reason to disbelieve any of those aspects as stated before this Court. The fact that the father resides in India does not, by itself, create a superior

claim to custody. Residence in India or abroad is not a measure of parents' suitability. The Family Court's decision permitting the child to accompany the mother, therefore, does not call for interference.

THE CHILD'S PREFERENCE AND THE APPREHENSION OF PARENTAL ALIENATION:

24. The father had expressed concern that relocating to the United Kingdom would result in parental alienation. However, geographical separation and parental alienation are not synonymous. The fact that the child resides with one parent in another country does not, by itself, establish that the other parent is being excluded from the child's life. In ***Vivek Singh's case*** referred supra, the Hon'ble Supreme Court considered the adverse consequences of parental alienation. Subsequently, ***Col. Ramneesh Pal Singh v. Sugandhi Aggarwal***[17], the Hon'ble Supreme Court cautioned that such an allegation must be examined in the light of identifiable conduct and cannot be presumed merely because the parents are involved in a custody dispute. In the present case, the father has expressed

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apprehension about possible future alienation. No specific conduct on the mother's part has been established to justify such a stand. The child's express preference is also relevant. The child wishes to accompany the mother to the United Kingdom while spending holidays with the father. These wishes are not contradictory. They reflect the child's desire to maintain a relationship with both parents. A child should not be placed in a position where affection for one parent is perceived as rejection of the other. A child's preference, depending on age and maturity, is a relevant consideration, though not conclusive. In the present case, the child's wishes are consistent with an arrangement that preserves a relationship with both parents. The physical distance arising from relocation may require adjustments to the manner in which parenting time is exercised. Regular communication arrangements during the school vacation can ensure that the father continues to play a meaningful role in the child's upbringing. A parent does not become a visitor in a child's life merely because the child primarily resides with the other parent. In these circumstances, apprehension of parental alienation cannot be accepted as a

ground to prevent relocation. The child's relationship with the father can be protected through appropriate parenting arrangements.

SCOPE OF INTERFERENCE:

25. The orders under challenge have been passed upon consideration of the applications filed by both parents. The Family Court had permitted the child to accompany with mother and declined to disturb the existing custody arrangement. The judgments relied upon by the parties demonstrate that custody disputes are fact-sensitive. Hence, neither the father's willingness to assume responsibility nor the mother's professional relocation can be treated as independently decisive. The outcome must follow from the circumstances concerning the child. The petitioner has not established that the Family Court acted beyond its jurisdiction, ignored any material circumstances, or applied an incorrect legal principle. This Court, exercising supervisory jurisdiction under Article 226 of the Constitution of India, does not find any reason to interfere. In that view of the matter, this Court is passing the following:

ORDER

i. W.P.No.38415/2025 is ***dismissed as infructuous.***

ii. W.P.No.14682/2026 is ***dismissed***.

iii. WP.No.37759/2025 is ***disposed of*** with the following directions:

a. The mother is permitted to take the minor child along with her to the United Kingdom.

b. The mother shall facilitate regular communication between the father and the child through telephone and video calls, at mutually convenient times, having regard to the child's education schedule and the difference in time zones, at least for 20 minutes in a day.

c. The father shall be entitled to meaningful parenting time with the child during school holidays. Twice in a year during the child’s holidays, the mother shall send the boy to India and the boy shall spend 75% of the vacation with the father. If the father wants to go to United Kingdom and meet the child in the vacation, mother shall co-operate

and handover the custody i.e., for 75% of the holidays.

d. Both the parents shall co-cooperate in preserving the child's relationship with other parent and refrain from conduct intended to undermine the relationship.

e. The custody and parenting arrangements shall remain subject to modification by the competent court, if subsequent circumstances so warrant having regard to the welfare of the child.

iv. All I.As in these petitions shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

PKN
List No.: 1 Sl No.: 3
MR