

## Custody of Children/Guardianship/Visitation Rights

Sr. No.	Title	Citation	Question involved	Held
1	<b>Beata Agnieszka Sobieraj Versus State of Himachal Pradesh</b>	Criminal Appeal No. 787 of 2016 DOD : 22.08.2016 (SC)	Custody of Child to independent authority	<ul style="list-style-type: none"> <li>• Whether it is permissible to Hand over child custody to an Institution ignoring parent's claim.</li> <li>• Held – while depreciating the practice of handing over the custody of the child to an institution, by ignoring the claim of a parent, especially the mother of the child, as not acceptable,</li> <li>• Held- the handing over of custody of child to an Institution, while ignoring the claim of a parent, especially the mother of the child, is not acceptable.”</li> </ul>
2	<b>Bimla and others Vs Anita</b>	2015(3) RCR (Civil) 153 (SC)	Custody of the minor	<ul style="list-style-type: none"> <li>• Mother is the best person to bring up her minor son and to effectively take care of his interest and in indeed, the welfare of the child lies with his mother.</li> </ul>
3	<b>ABC (Karuna Purti) Vs State (NCT of Delhi)</b>	2015 (2) Apex Court Judgments (SC) 753	Hindu Minority and Guardianship Act	<ul style="list-style-type: none"> <li>• In a petition for appointment for guardian of child, it is not imperative for unwed mother to specifically give notice of such petition to putative father of child to whom she has given birth.</li> <li>• Under a guardianship petition laid before court- the concerned child ceases to be in exclusive custody of parents thereafter until attainment of majority-child</li> </ul>

				<p>continues in curial curatorship</p> <ul style="list-style-type: none"> <li>• This is in light of parens patri jurisdiction of court.</li> </ul>
4	<b>Surya Vadanam Vs State of Tamil Nadu</b>	2015 (2) SCC (Civil) 183 (SC)	Welfare of the Child	<ul style="list-style-type: none"> <li>• Hon'ble Supreme Court of India after discussing the cases of (a) Arathi Bandi Vs. Bandi Jagadrakshaka Rao 2013 (3) RCR (Civil) 968; (b) Dhanwanti Joshi Vs Madhav Und, 1998(1) RCR (Civil) 190; (c) Elizabeth Dinshaw Vs Arvind M.Dinshaw, 1987 (1) SC 42; (d) Mckee Vs Mckee, 1951 AC 352; (e) Ruchi Majoo Vs Sanjeev Majoo, 2011 (3) RCR Civil, 122, (f) Sarita Sharma vs Sushil Sharma, 2000(2) RCR (Civil) 367; (g) Mrs.Shilpa Aggarwal Vs. Mr.Aviral Mittal &amp; Anr., 2010(1) RCR (Civil) 231; (h) Smt. Surinder Kaur Sandhu Vs Harbax Singh Sandhu, 1984 (3) SCC 698 and (i) Dr.V.Ravi Chandran Vs. Union of India, 2010 (1) SCC 174.</li> <li>• Observed and held that the best interests and welfare of the child are of paramount importance.</li> </ul>
5	<b>Romann Sharma Vs Arun Sharma</b>	2015 (2) Apex Court Judgments (SC) 18; AIR 2015 SC 2232,	Custody of Child	<ul style="list-style-type: none"> <li>• In the above said case, Hon'ble Supreme Court of India after discussing the cases of (a) Mausami Moitra Ganguli Vs Jayant Ganguli,</li> </ul>

				<p>2008 (4) RCR (Civil) 551 and (b) Sarita Sharma vs Sushil Sharma, 2000(2) RCR (Civil) 367 has held that on account of dispute between husband and wife over the custody of the minor child.</p> <ul style="list-style-type: none"> <li>• The custody the child below the age of 5 years, was given to the mother, who was highly qualified than husband and had regular income from salary.</li> <li>• But visitation rights were given to the father.</li> </ul>
6	<b>Saroj Vs Sunder Singh and others</b>	2014(1) Apex Court Judgments (SC) 08	(Civil Law) – Cancellation of sale deed.	<ul style="list-style-type: none"> <li>• It was observed that prior permission of the court under Section 8 of the Hindu Minority and Guardianship Act, 1956 was required for such purpose and therefore the sale was set aside.</li> <li>• Disposal of immovable property by a natural guardian though for the proper benefit of the minor, their protection, education in contravention of Section 8(3) – would be voidable at the instance of minor.</li> <li>• Both the sale deed executed by the Respondent No.2 in favour of Respondent No.1 shall be voidable at the instance of minor.</li> </ul>
7	<b>Arathi Bandi Vs</b>	2013 (3) RCR (Civil) 968	Decree of Foreign Court	<ul style="list-style-type: none"> <li>• Hon'ble Supreme Court of India after discussing the</li> </ul>

	<b>Bandi Jagadrakshaka Rao</b>	(SC)		<p>cases of (a) Dhanwanti Joshi Vs Madhav Und, 1998(1) RCR (Civil) 190; (b) Elizabeth Dinshaw Vs Arvind M.Dinshaw, 1987 (1) SC 42; (c) Ruchi Majoo Vs Sanjeev Majoo, 2011 (3) RCR Civil, 122, (d) Sarita Sharma vs Sushil Sharma, 2000(2) RCR (Civil) 367; (e) Mrs.Shilpa Aggarwal Vs. Mr.Aviral Mittal &amp; Anr., 2010(1) RCR (Civil) 231; (h) Smt. Surinder Kaur Sandhu Vs Harbax Singh Sandhu, 1984 (3) SCC 698 and (i) Dr.V.Ravi Chandran Vs. Union of India, 2010 (1) SCC 174.</p> <ul style="list-style-type: none"> <li>• Held that the decree of foreign court dissolving marriage between couple of Indian origin and who had acquired citizenship of US.</li> <li>• The courts in India should not set aside the decree on the ground that USA law was inconsistent with Indian Law.</li> </ul>
8	<b>Gaytri Bajaj Vs Jiten Bhalla</b>	AIR 2013 SC (Civil) 77	Custody of Minor Child	<ul style="list-style-type: none"> <li>• Held – that issue of custody of minor child is to be decided from the angle of welfare of child and not the better rights of parents as welfare of child is ultimate consideration.</li> </ul>
9	<b>Shaleen Kabra Vs Shiwani Kabra</b>	2012 (2) RCR (Civil) 974 (SC)	Family Law (Custody of Children)	<ul style="list-style-type: none"> <li>• Held – that the custody of elder son to the husband and that of younger son to the</li> </ul>

				<p>wife.</p> <ul style="list-style-type: none"> <li>• But the Hon'ble Supreme Court of India has held that it was not proper to separate both the brothers.</li> <li>• Who are admittedly close to each other and therefore the Hon'ble Apex Court of India set aside the impugned judgment and the custody of both the children was given to the father with visiting right to the mother at the expenses of father.</li> </ul>
10	<b>Ruchi Majoo Vs Sanjeev Majoo</b>	AIR 2011 SC 1952; (2011) 6 SCC 479	Custody of Child	<ul style="list-style-type: none"> <li>• Ratio: Interim order of custody in favour of parent should not insulate minor from parental touch and influence of other parent important for healthy growth of minor and development of his personality.</li> </ul>
11	<b>Vikram Vir Vohra Vs Shalini Bhalla</b>	AIR 2010 SC 1675	Custodial Rights & Visitation Rights of Minor Child	<ul style="list-style-type: none"> <li>• Custody of minor child.</li> <li>• Welfare of child is of paramount importance.</li> <li>• A child is not a chattel nor is he/she an article of personal property to be shared in equal halves.</li> <li>• Custody of minor child – welfare of child is of paramount importance and not the rights of parents under a statute.</li> </ul>
12	<b>Dr. V.Ravi Chandran Vs Union of India &amp; others</b>	2010 (1) SCC 174 (SC)	Custody of Child	<ul style="list-style-type: none"> <li>• That while granting divorce to NRI couple by U.S. Court handed over the joint custody of child to the couple.</li> </ul>

				<ul style="list-style-type: none"> <li>• But the wife brought the child in India, depriving the joint custody to father.</li> <li>• Supreme Court of India directed the parties to act as per consent order passed by the Family Court of U.S.A. and directed that mother shall take the child of her own to USA within 15 days of the order and if she fails to do so, minor child alongwith his passport shall be restored to the custody of the father as return of minor child to USA would be in the best interest of the minor child.</li> <li>• Ratio: Interest of minor child is paramount consideration in cases of custody.</li> </ul>
13	<b>Mrs.Shilpa Aggarwal Vs Mr.Aviral Mittal &amp; anr</b>	2010 (1) SCC (Civil) 650 (SC)	Custody of Child	<ul style="list-style-type: none"> <li>• Held that the husband and wife were permanent resident of UK and the wife came to India alongwith minor child.</li> <li>• When the husband filed petition for custody of child in the court, then</li> <li>• The Hon'ble Supreme Court of India allowed the same with the condition that the husband shall pay all the expenses of wife and child i.e. travel expenses, stay arrangement, medical expenses, legal expenses etc. to which the husband agreed.</li> </ul>

14	<b>Gaurav Nagpal Vs Sumedha Nagpal</b>	(2009) 1 SCC 42 (SC)	Hindu Minority and Guardianship Act, 1956 and Custody of the minor child.	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
15	<b>Mausami Moitra Ganguli Vs Jayant Ganguli</b>	2008 (4) RCR (Civil) 551 (SC)	Welfare of a child	<ul style="list-style-type: none"> <li>• In the above said case, Hon'ble Supreme Court of India after discussing the case of Rosy Jacob Vs Jacob A. Chakramakkal, 1973 (1) SCC 840 has held that paramount consideration is the welfare of the child.</li> </ul>
16	<b>Nil Ratan Kundu and anr Vs Abhijit Kundu</b>	2008 (3) RCR (Civil) 936 (SC)	Hindu Minority and Guardianship Act, 1956 and Custody of the Minor Child.	<ul style="list-style-type: none"> <li>• Held that the controlling consideration governing the custody of the children is the welfare of the children and not the right to their parents.</li> </ul>
17	<b>Sheila B.Das Vs P.R.Sugasree</b>	2006 (1) RCR (Civil) 758 (SC)	Family Law (Custody of minor female child)	<ul style="list-style-type: none"> <li>• Held that the custody of minor female child was given to the father as per choice of the child with the observation that child was highly intelligent and was in</li> </ul>

				a position to make intelligent choice.
18	<b>Mamata Alias Anju</b>  <b>Vs.</b> <b>Ashok Jagannath Bharuka</b>	2005 (12) SCC 452; Law finder Id # 192313 (SC)	Custody of Child vis-à-vis Mutual Divorce	<ul style="list-style-type: none"> <li>• Hindu Marriage Act, 1955, Section 26 - Custody of Children.</li> <li>• Mutual divorce - before deciding the issue as to whether the custody should be given to the mother or the father or partially to one and partially to the other, the High Court must(a) take into account the wishes of the child concerned, and (b) assess the psychological impact, if any, on the change in custody after obtaining the opinion of a child psychiatrist or a welfare work.</li> <li>• All this must be done in addition to ascertaining the comparative material welfare that the child/children may enjoy with either parent.</li> </ul>
19	<b>Sarita Sharma Vs Sushil Sharma</b>	2000 (2) RCR (Civil) 367 (SC)	Custody of minor children and Constitutional Law Articles 226 and 136.	<ul style="list-style-type: none"> <li>• Held that in the present case husband and wife lived in America.</li> <li>• Where divorce petition was filed, the wife came to India with both the children and the American court granted decree of divorce and custody of the children to husband.</li> <li>• But in view of facts and circumstances of the case, the decree passed by the American court through a relevant factor, but the same cannot override the</li> </ul>



				consideration of welfare of the minor children.
20	<b>Bijay K.Prasad Vs Ranjana</b>	1999(9) SCC 544 (SC)	Custody of Child pending divorce	<ul style="list-style-type: none"> <li>• Hindu Marriage Act, 1955, Section 26 – Divorce proceeding – custody of child.</li> <li>• Held-During pendency of divorce proceedings Family Court ordered girl child to remain living with father and to spend holidays with mother – Child States her wish to stay with father in chamber of S.C. Judge-</li> <li>• Considering that child was living with father for past 8 years – Directions of Family court to stay with mother in holidays set aside.</li> </ul>
21	<b>Chandrakala Menon Vs Capt. Vipin Menon</b>	(1993) 2 SCC 6 (SC)	Custody of child	<ul style="list-style-type: none"> <li>• The question regarding the custody of a minor child cannot be decided on the basis of the legal rights of the parties.</li> <li>• The custody of a child has to be decided on the sole and predominant criterion of what would best serve the interest and welfare of the minor.</li> <li>• It would be in the interest and welfare of minor that she would be permitted to be in the custody of her mother.</li> </ul>
22	<b>Kirtikumar Maheshankar Joshi Vs Pradipkumar Karunashankar Joshi</b>	(1992) 3 SCC 573 (SC)	Custody of minor children	<ul style="list-style-type: none"> <li>• Hon'ble Supreme Court handover the custody of minor children to maternal uncle refusing the preferential right of the father to the custody of his</li> </ul>

				<p>minor children.</p> <ul style="list-style-type: none"> <li>• In one of the directions. Father is set at liberty to move before the court for modification of the order for the custody of the children if he wins the love and affection of his children.</li> </ul>
23	<b>Elizabeth Dinshaw Vs Arvind M.Dinshaw</b>	1987 SCR (1) 175 (SC)	Custody of the minor children	<ul style="list-style-type: none"> <li>• In the above case, Hon'ble Supreme Court of India after discussing the case of Re H.(Infants) 1966 (1) All England Reporter 886.</li> <li>• Held that when a question arises pertaining to the custody of a minor child.</li> <li>• The matter is to be decided not on considerations of the legal rights of the parties.</li> <li>• But on the sole and predominant criterion of what would best serve the interest and welfare of the minor.</li> </ul>
24	<b>Surender VS Sushma</b>	AIR 2016 P&H 199; Law finder ID # 790898	Custody of minor children	<ul style="list-style-type: none"> <li>• Held - Welfare of the children is the paramount consideration. Where mother is resided separately from minor children for many years and the children did not show any desire to go with her - father granted custody and mother granted visitation rights.</li> </ul>
25	<b>Maninderjit Kaur Attwal VS</b>	2016 (1) PLR 358;	Visitation rights	<ul style="list-style-type: none"> <li>• Held - Where marriage between the parents of</li> </ul>

	<b>Barinder Singh Pannu</b>	Law finder ID# 736836 (P&H)		<p>children was dissolved by USA Court and custody of children was given to the father with visiting rights to the mother during vacations.</p> <ul style="list-style-type: none"> <li>• Mother should be allowed to take the children to USA during vacations. Apprehension of the court and rejection of such prayer was held to be wrong.</li> <li>• Mother put to terms and condition to ensure their safety and safe return to India beside to bear travel expenses of children.</li> </ul>
26	<b>Neelam Vs Mann Singh</b>	2015 (2) RCR (Civil) 291; Law Finder id # 654950 (P&H)	Custody of minor child residing with grandparents where father is dead and mother is facing criminal prosecution U/s 306 IPC for abating suicide of her husband.	<ul style="list-style-type: none"> <li>• Held – Welfare and interest of the child is paramount.</li> <li>• A child who is residing with grandparents for the last several years become emotionally attached to them.</li> <li>• In such circumstances custody of the child should remain with grandparents.</li> <li>• Visitation rights to the mother also declined.</li> </ul>
27	<b>Mayank bhargava vs Jyoti Bhargava</b>	2015(2) PLR 15 (P&H)	Welfare of the Child	<ul style="list-style-type: none"> <li>• Even though the aforesaid principles have been laid down in proceedings under the Guardians and <a href="#">Wards Act, 1890</a>.</li> <li>• These principles are equally applicable in dealing with the custody of a child under <a href="#">Section 26</a> of the Act.</li> <li>• Since in both the situations</li> </ul>

				<p>two things are common;</p> <ul style="list-style-type: none"> <li>• The first, being orders relating to custody of a growing child.</li> <li>• Secondly, the paramount consideration of the welfare of the child.</li> </ul>
28	<b>Rajan Jairath Vs Mrs.Monita Mehta</b>	2013 (1) RCR (Civil) 546 (P&H)	Grant of Visitation Right under Hindu Marriage Act, 1955, S.26.	<ul style="list-style-type: none"> <li>• Interim Custody of child.</li> <li>• Court has also to take care of the wish of the minors.</li> <li>• Both parents claiming custody of children – minors and living with their mother at Chandigarh whereas father being Senior Manager in PSU is living at Faridabad.</li> <li>• Father would not be in a position to spare enough time to look after the education, health, study and maintenance.</li> <li>• The children being matured enough, had made statements before the Lok Adalat that they are not ready to go with their father as due to long separation they have lost interest in father.</li> <li>• Custody given to mother and visiting rights to father.</li> </ul>
29	<b>Shri Rajinder Kumar Mishra Vs Shrimati Richa</b>	AIR 2005 All 379	Appeal u/s 19 Family Courts Act Section 26, 27 Hindu Marriage Act, 1955	<ul style="list-style-type: none"> <li>• Held – It is well settled that welfare of the minor child is of paramount consideration while deciding the dispute about the custody.</li> <li>• If the custody of the father cannot promote the welfare of the minor child equally or better than the custody of the</li> </ul>

				mother then he should not be allowed to the custody as the same may adversely affect the welfare of the child.
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