



RESEARCH QUESTION

"How do Indian courts decide child custody between separated parents, what is the welfare of the child principle under the Guardians and Wards Act and Hindu Minority and Guardianship Act, and what custody arrangements and visitation rights do courts order?"

# How do Indian courts decide child custody disputes between separated parents under the welfare of the child principle?

TL;DR

The Supreme Court in *Rosy Jacob v. Jacob A. Chakramakkal* (1973) established that the welfare of the minor is the single controlling consideration in custody disputes, completely overriding the statutory rights of natural guardians. Indian courts must adopt a holistic, child-centric approach rather than a legalistic or patriarchal one to determine where the child's physical, moral, and emotional needs are best met. Custody decisions are fact-specific and require courts to balance statutory preferences with the child's intelligent choice, environmental stability, and parent fitness.

| VERIFIED CASES        | STATUTES | LATEST RULING              |
|-----------------------|----------|----------------------------|
| 24                    | 4        | 2025                       |
| 18 High Courts · 6 SC |          | High Court Of Chhattisgarh |

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## I. Detailed Analysis

### KEY PRINCIPLES ESTABLISHED

#### 01 Welfare of the minor as the paramount consideration

Courts have firmly established that the child's welfare is the supreme consideration, overriding statutory preferences of the natural guardian under Section 6 of the HMGA, as seen in *Nil Ratan Kundu & Anr. v. Abhijit Kundu* (2008).

#### 02 Holistic interpretation of "welfare"

The concept of welfare is construed in its widest sense to encompass not only physical and material comfort but also moral, ethical, and psychological well-being, as articulated in *Gaurav Nagpal v. Sumedha Nagpal* (2008).

#### 03 Primacy of the child's preference

If the minor has reached an age where they can express an intelligent preference, the court is bound to consider and give due weight to their wishes, as held in *Col. Ramneesh Pal Singh v. Sugandhi Aggarwal* (2024).

#### 04 Maternal custody of tender-age children

The statutory presumption in Section 6(a) of the HMGA dictates that a child under five years should ordinarily remain with the mother to secure essential maternal care, as noted in *Master Atharva v. State of U.P.* (2020).

#### 05 Parens Patriae jurisdiction over strict legal rights

When determining custody, courts exercise parens patriae jurisdiction, placing themselves as wise parents to secure the child's best interests beyond rigid rules of evidence or statutory rights, as emphasized in *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari* (2019).

## 06 Ordinary residence as the jurisdictional test

Under Section 9 of the GWA, the primary test for custody jurisdiction is where the minor ordinarily resides, which is a question of fact and intention, as established in *Ruchi Majoo v. Sanjeev Majoo* (2011).

### HOW THE COURTS HAVE APPLIED THIS

#### SUPREME COURT POSITION

The apex court actively applies a child-centric positive test, assessing factors like socio-economic stability, education, and psychological safety over dry parental property claims, even returning children to foreign jurisdictions if it serves their educational and overall developmental growth, as demonstrated in *Rajeswari Chandrasekar Ganesh v. The State of Tamil Nadu & Ors.* (2022).

#### HIGH COURT VARIATIONS

High Courts have dynamically interpreted statutory provisions to advance gender-neutral custody rights; for instance, interpreting "after" in Section 6(a) HMGA as "in the absence of" the father rather than "after the lifetime" of the father, thereby elevating the mother's position to secure child welfare as in *Pratyush Shastri v. State of Rajasthan* (2024), and bypassing Section 19 of GWA's patriarchal preference to protect children from unfit fathers as in *Dr. Nithya Vidyaprakash v. B. Suresh Babu* (2010).

#### RECENT EVOLUTION

Recent decisions underscore the necessity of preserving a stable environment for the minor, highlighting that if a child is well-settled and happy in the custody of one parent or relative, courts should maintain that status quo to prevent emotional disruption, as illustrated in *Yadvesh Yadav v. Smt. Roshni Yadav* (2025).

## II. Statutory Provisions 4 PROVISIONS

### SECTION 13, HINDU MINORITY AND GUARDIANSHIP ACT, 1956 — WELFARE OF MINOR TO BE PARAMOUNT CONSIDERATION

This provision mandates that the welfare of the Hindu minor must be the paramount consideration for courts when appointing or declaring a guardian, overriding any contrary claims under guardianship laws.

"(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration. (2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor." *Cited in: Master Atharva v. State of U.P.*

### SECTION 17, GUARDIANS AND WARDS ACT, 1890 — MATTERS TO BE CONSIDERED BY THE COURT IN APPOINTING GUARDIAN

This section outlines the factors a court must consider when appointing a guardian, focusing on the welfare of the minor which includes evaluating their age, sex, religion, the character of the guardian, and the minor's own preference.

"(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor. In considering what will be for the welfare of the minor, the Courts shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property. If the minor is old enough to form an intelligent preference, the Court may consider that preference. The Court shall not appoint or declare any person to be a guardian against his will." *Cited in: Rosy Jacob v. Jacob A. Chakramakkal, Ruchi Majoo v. Sanjeev Majoo, Reeta Khare v. Manoj Khare*

**SECTION 6, HINDU MINORITY AND GUARDIANSHIP ACT, 1956 — NATURAL GUARDIANS OF A HINDU MINOR**

This section defines the natural guardians of a Hindu minor, specifying that the father is the primary guardian followed by the mother, while ordinarily granting custody of children under five to the mother.

"The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-- (a) in the case of a boy or an unmarried girl--the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; (b) in the case of an illegitimate boy or an illegitimate unmarried girl--the mother, and after her, the father; (c) in the case of a married girl the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-- (a) if he has ceased to be a Hindu, or (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)." *Cited in: Sandeep Vaishnav v. Parmeshwari Vaishnav, Alekhya Yalamanchili v. State of A.P., Ramakrishna Balasubramanian v. Priya Ganesan, Reeta Khare v. Manoj Khare*

**SECTION 4, HINDU MINORITY AND GUARDIANSHIP ACT, 1956 — DEFINITIONS**

This section provides definitions for key statutory terms used in the Act, including 'minor', 'guardian', and 'natural guardian'.

"In this Act,-- (a) "minor" means a person who has not completed the age of eighteen years; (b) "guardian" means a person having the care of the person of a minor or of his property or of both his person and property, and includes-- (i) a natural guardian, (ii) a guardian appointed by the will of the minors father or mother, (iii) a guardian appointed or declared by a court, and (iv) a person empowered to act as such by or under any enactment relating to any Court of wards. (c) "natural guardian" means any of the guardians mentioned in section 6." *Cited in: raised in the research question*

III. Cases Discussed 24 CASES · SUMMARY TABLE

| #  | CASE TITLE                                                                  | COURT                            | YEAR | KEY HOLDING                                                                                           |
|----|-----------------------------------------------------------------------------|----------------------------------|------|-------------------------------------------------------------------------------------------------------|
| 01 | <i>Rakesh Kumar v. Ravinder Kaur</i><br>PHHC011090682017                    | HIGH COURT OF PUNJAB AND HARYANA | 2018 | Affirms child welfare over statutory parental rights, granting visitation to father.                  |
| 02 | <i>Bhavnaben v. State of Gujarat</i><br>GJHC240625562020                    | HIGH COURT OF GUJARAT            | 2021 | Habeas corpus is inappropriate for custody disputes between parents when child is safe.               |
| 03 | <i>Madhvi v. Pardeep Bhatia</i><br>PHHC012110212024                         | HIGH COURT OF PUNJAB AND HARYANA | 2024 | Upheld father's custody based on the child's strong preference and emotional attachment.              |
| 04 | <i>Sushila Devi v. Latoori Singh</i><br>UPHC010392472018                    | ALLAHABAD HIGH COURT             | 2019 | Awarded custody to mother over paternal grandfather based on child's welfare.                         |
| 05 | <i>Nasreen Bano v. Mohd. Suhail</i><br>UPHC011909152013                     | ALLAHABAD HIGH COURT             | 2019 | Rejects father's custody where court failed to assess welfare or interview daughters.                 |
| 06 | <i>Nil Ratan Kundu &amp; Anr. v. Abhijit Kundu</i><br>ESCR010000952008      | SUPREME COURT OF INDIA           | 2008 | Denies custody to father facing criminal trial, prioritizing child's welfare and preference.          |
| 07 | <i>Priti Dwivedi v. Dilip Dwivedi</i><br>UPHC010830002020                   | ALLAHABAD HIGH COURT             | 2020 | Custody remained with father based on children's clear preference and stable environment.             |
| 08 | <i>Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari</i><br>ESCR010009002019  | SUPREME COURT OF INDIA           | 2019 | Parens patriae jurisdiction directs child custody restoration to natural father after mother's death. |
| 09 | <i>Santosh Kumar Suryavanshi v. Vandana Suryavanshi</i><br>CGHC010276992024 | HIGH COURT OF CHHATTISGARH       | 2025 | Rejects custody change based on unsubstantiated claims of mother's mental instability.                |
| 10 | <i>Reeta Khare v. Manoj Khare</i><br>MPHC010220462019                       | HIGH COURT OF MADHYA PRADESH     | 2019 | Alleged parental moral conduct does not automatically disqualify them from child custody.             |
| 11 | <i>Col. Ramneesh Pal Singh v. Sugandhi Aggarwal</i><br>ESCR010002742024     | SUPREME COURT OF INDIA           | 2024 | Restored father's custody matching children's strong preference and military support system.          |

| #  | CASE TITLE                                                                                                                                                    | COURT                             | YEAR | KEY HOLDING                                                                                           |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|------|-------------------------------------------------------------------------------------------------------|
| 12 | <i>Ravi Kumar v. Mukesh Kumari</i><br>PHHC010351022025                                                                                                        | HIGH COURT OF PUNJAB AND HARYANA  | 2025 | Refused to disturb mother's custody where child expressed strong desire to remain.                    |
| 13 | <i>Master Atharva v. State of U.P.</i><br>UPHC010939902020                                                                                                    | ALLAHABAD HIGH COURT              | 2020 | Restores tender age child to mother, emphasizing maternal care for infant welfare.                    |
| 14 | <i>Dr. Nithya Vidyaprakash v. B. Suresh Babu</i><br>HCMA010990002010                                                                                          | MADRAS HIGH COURT                 | 2010 | Overrides Section 19 GWA patriarchal rights to prioritize minor's paramount welfare.                  |
| 15 | <i>Ruchi Majoo v. Sanjeev Majoo</i><br>ESCR010007102011                                                                                                       | SUPREME COURT OF INDIA            | 2011 | Jurisdiction under GWA is based on ordinary residence, overriding foreign court comity.               |
| 16 | <i>Smt. Komal v. Arvind Kumar</i><br>UPHC012111412017                                                                                                         | ALLAHABAD HIGH COURT              | 2019 | Affirms father's custody as children were well-settled and expressed preference for him.              |
| 17 | <i>Yadvesh Yadav v. Smt. Roshni Yadav</i><br>CGHC010393242024                                                                                                 | HIGH COURT OF CHHATTISGARH        | 2025 | Preserves status quo of mother's custody as child was well-settled since 2018.                        |
| 18 | <i>Pratyush Shastri v. State of Rajasthan</i><br>RJHC020765092022                                                                                             | HIGH COURT OF RAJASTHAN           | 2024 | Rejects habeas corpus for parent disputes, interpreting mother's natural guardian status dynamically. |
| 19 | <i>Ramakrishna Balasubramanian v. Priya Ganesan</i><br>HCMA010451782007                                                                                       | MADRAS HIGH COURT                 | 2007 | Refuses to enforce foreign interim custody order against the child's best interests.                  |
| 20 | <i>Rajeswari Chandrasekar Ganesh v. The State of Tamil Nadu &amp; Ors.</i><br>ESCR010004372022                                                                | SUPREME COURT OF INDIA            | 2022 | Directs repatriation of children to USA for education under parens patriae jurisdiction.              |
| 21 | <i>Sunil Podar v. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities</i><br>DLHC010207112022 | HIGH COURT OF DELHI               | 2023 | Citizenship rule for disabled person's guardianship is valid to ensure effective supervision.         |
| 22 | <i>Alekhya Yalamanchili v. State of A.P.</i><br>HBHC010408482011                                                                                              | HIGH COURT FOR STATE OF TELANGANA | 2012 | Family Court, not habeas corpus, is appropriate to decide final parenting issues.                     |
| 23 | <i>Sandeep Vaishnav v. Parmeshwari Vaishnav</i><br>CGHC010355052018                                                                                           | HIGH COURT OF CHHATTISGARH        | 2024 | Maternal grandmother retains custody over father as child was happy and well-adjusted.                |

| #  | CASE TITLE                                                     | COURT                  | YEAR | KEY HOLDING                                                                                |
|----|----------------------------------------------------------------|------------------------|------|--------------------------------------------------------------------------------------------|
| 24 | <i>Rosy Jacob v. Jacob A. Chakramakkal</i><br>ESCR010002921973 | SUPREME COURT OF INDIA | 1973 | Child welfare is the controlling factor under Section 25, GWA, overriding parental claims. |

## IV. Case Details 24 CASE FILES

### 01 Rakesh Kumar v. Ravinder Kaur

HIGH COURT OF PUNJAB AND HARYANA • 2018-04-04 • FA0/172/2017

This case involved a custody dispute where the father, Rakesh Kumar, challenged an order dismissing his petition for the guardianship and custody of his minor son. The High Court assessed the welfare of the child as the paramount consideration and noted the mother's pursuit of higher education, which provided a more favorable environment for the child's growth compared to the father's limited educational and employment background. Finding no infirmity in the trial court's decision, the High Court upheld the order granting custody to the mother. However, it granted the father specific visitation rights to meet the child once a month at the ADR Centre in Jalandhar.

**HELD** The High Court held that the welfare and betterment of the minor child tilts the scale in favor of a parent. It emphasized that while determining custody, the first and paramount consideration is child welfare rather than statutory parental rights. Accordingly, the court upheld the mother's custody but granted the father monthly visitation rights.

“In other words it is the consideration as regards welfare and betterment of the minor which would tilt the scales in favour of that parent. In *Mausami Moitra Ganguli v. Jayant Ganguli* (2008) 7 SCC 673, Hon'ble the Supreme Court has held 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.”

HIGH COURT OF PUNJAB AND HARYANA • 2018

SOURCE PHHC011090682017

### 02 Bhavnaben v. State of Gujarat

HIGH COURT OF GUJARAT • 2021-06-25 • SCR.A/9007/2020

The petitioner, a mother, filed a habeas corpus petition seeking the custody of her four-year-old daughter, alleging that her divorced husband, the respondent, had illegally detained the child. The parties had previously entered into a customary divorce where the father claimed custody was transferred to him in exchange for a significant monetary payment. The respondent argued that the custody was lawful, that the petitioner had voluntarily relinquished it, and that the child was being well cared for by his joint family.

**HELD** The High Court held that the welfare of the minor is the first and paramount consideration in custody disputes, aiming to ensure the child grows in the best possible environment. The court noted that 'welfare' must be taken in its widest sense, comprising both physical and moral/ethical wellbeing. Ultimately, the court found habeas corpus to be an inappropriate remedy when custody is with a natural parent, directing the parties to family court.

"The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical wellbeing. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases."

HIGH COURT OF GUJARAT • 2021

SOURCE GJHC240625562020

### 03 Madhvi v. Pardeep Bhatia

HIGH COURT OF PUNJAB AND HARYANA • 2024-09-10 • FA0/4305/2024

This case involved a custody dispute between a mother and a father over their minor son. The mother had filed a petition for custody under the Guardians and Wards Act, alleging she was being kept away from the child. The Family Court dismissed the petition, citing the child's own strong expressed preference to live with his father and his physical/emotional attachment to the father's family. The court noted that the child was distressed at the prospect of being separated from his father. Finding that the child's paramount welfare was best served by remaining in the current environment, the court upheld the dismissal while confirming the mother's established visitation rights.

**HELD** The Court held that in deciding child custody, the sole and paramount consideration is the child's welfare. If a minor child is growing up in a safe environment with one parent and explicitly expresses a preference to stay there, that custody should not be disrupted. The court upheld the family court's decision maintaining custody with the father but allowed physical and video visitation rights to the mother.

"It is settled law that while deciding the custody of the minor children, the sole consideration is the paramount welfare of such children. If a child is living and growing in a safe environment with either of the spouses and expresses his/her desire to remain in the company of such spouse, the custody of such child should not be disturbed."

HIGH COURT OF PUNJAB AND HARYANA • 2024

SOURCE PHHC012110212024

### 04 Sushila Devi v. Latoori Singh

ALLAHABAD HIGH COURT • 2019-09-27 • FAPL/133/2018

This case concerned a dispute over the custody and guardianship of a minor child, Kuldeep, following the death of his father. The child's mother, Sushila Devi, filed a suit under the Guardian and Wards Act, 1890, against the paternal grandfather, Latoori Singh, who had retained custody. The defendant argued that the mother had voluntarily relinquished custody via a notarized agreement and questioned her fitness as a guardian. The trial court rejected these defenses and appointed the mother as the natural guardian, citing the child's welfare as the paramount consideration.

**HELD** The Court held that the paramount interest of the minor is the primary criterion for deciding custody, overriding parents' statutory claims. In the case of children below five years and minor girls, custody should ordinarily remain with the mother to allow healthy and balanced growth. The absolute right of parents has yielded to the welfare of children as human beings.

"While determining the question of custody of a minor child, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute."

ALLAHABAD HIGH COURT • 2019

SOURCE UPHC010392472018

## 05 Nasreen Bano v. Mohd. Suhail

ALLAHABAD HIGH COURT • 2019-08-09 • FAPL/8/2013

This appeal challenged a Family Court order that granted the custody of two minor daughters to their father, the respondent. The appellant mother argued that the court below failed to conduct a proper inquiry into the welfare of the children, ignored the father's remarriage and professional circumstances, and failed to interview the children before deciding on their custody. The appellate court emphasized that in matters of guardianship and custody, the paramount consideration must be the welfare of the minor rather than the statutory rights of the parents. Finding that the lower court decided the case without due diligence, failing to assess the relative suitability of the parents or consider the best interests of the children, the decision was found legally unsustainable.

**HELD** The High Court held that custody decisions cannot be made mechanically on statutory lines or documents alone without a "human touch". It ruled that a trial court must perform an active inquiry, which includes interviewing the children if they are of sufficient age and weighing the comparative circumstances of both parents. Because the trial court failed to interview the minor daughters, its order granting custody to the father was set aside.

"While determining the question of custody of a minor child, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute."

ALLAHABAD HIGH COURT • 2019

SOURCE UPHC011909152013

## 06 Nil Ratan Kundu & Anr. v. Abhijit Kundu

SUPREME COURT OF INDIA • 2008-08-08 • 2008 INSC 920

This case involved a custody dispute over a minor child between his father, who was facing a pending criminal trial for the alleged murder of the child's mother, and the child's maternal grandparents, who had been caring for him. The lower courts had granted custody to the father primarily based on his status as the natural guardian. The Supreme Court of India set aside these orders, emphasizing that in custody matters, the welfare of the child is the paramount consideration, not merely the legal rights of the natural guardian. The Court held

that the pending criminal charges against the father and the child's own expressed preference to remain with the grandparents were critical factors that the lower courts failed to properly evaluate.

**HELD** The Supreme Court held that the welfare of the child is the paramount consideration, which must be construed in its widest sense including physical, moral, and religious well-being. A child's wishes must be consulted if they have sufficient judgment. Statutory rights as natural guardian cannot supersede the child's welfare or comfort.

"The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of the child is not to be measured by money only nor merely physical comfort. The word 'welfare' must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical well-being. Nor can the tie of affection be disregarded."

SUPREME COURT OF INDIA • 2008

SOURCE ESCR010000952008

## 07 Priti Dwivedi v. Dilip Dwivedi

ALLAHABAD HIGH COURT • 2020-11-03 • HABC/443/2020

This habeas corpus petition was filed by a mother seeking the custody of her two minor children from their father. The court interacted with the children, who were aged seven and five, and observed that they were well-settled and happy in their father's home, supported by their grandmother and aunt. Both children expressed a clear preference to remain with their father. Emphasizing that the welfare of the minor is the paramount consideration, the court held that the children should remain in the father's custody. However, the court granted the mother visitation rights, allowing her to visit the children at the father's residence twice a month.

**HELD** The High Court held that in deciding child custody, the court is not strictly bound by legal provisions, precedents, or evidence rules, but must apply a "human touch". Relying on the child's preference and welfare parameters, the court decided that the children should remain with the father but granted the mother structured visitation rights.

"A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings."

ALLAHABAD HIGH COURT • 2020

SOURCE UPHC010830002020

## 08 Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari

SUPREME COURT OF INDIA • 2019-05-06 • 2019 INSC 630

This case concerned a father's petition for a writ of habeas corpus to recover custody of his minor daughter from her maternal aunt and uncle. The child had come into the appellants' custody due to the severe illness and

eventual death of the mother and the father's own debilitating medical condition. The Supreme Court held that while habeas corpus is an extraordinary remedy, it is maintainable in child custody matters when the detention is by a person without legal authority. Affirming the father's status as the natural guardian under the Hindu Minority and Guardianship Act, the court ruled that the child's welfare is the paramount consideration and directed that custody be restored to the father, while granting visitation rights to the relatives.

**HELD** The Supreme Court held that the welfare of the child is the supreme consideration in custody disputes, and courts are not bound by the mere legal rights of parents or guardians. While special statutes govern parents' rights, Section 6 of the HMGA cannot override what is conducive to the child's development. Consequently, the court ordered restoration of custody to the father as natural guardian.

"The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child."

SUPREME COURT OF INDIA • 2019

SOURCE ESCR010009002019

## 09 Santosh Kumar Suryavanshi v. Vandana Suryavanshi

HIGH COURT OF CHHATTISGARH • 2025-03-22 • FA(MAT)/274/2024

This case concerns a dispute over the custody of two minor children. The father appealed a Family Court order that granted custody to the mother. The father alleged that the mother suffered from mental health issues and argued that the welfare of the children was better served in his care. The High Court reviewed the principles regarding child custody, emphasizing that the welfare of the minor is the paramount consideration, overriding strict legal rights. The Court found that the father failed to produce any medical evidence to substantiate claims of the mother's mental instability and noted that the children, who were very young at the time of the application, were being raised by grandparents while the father worked away.

**HELD** The High Court affirmed that the child's welfare serves as the sole guiding parameter in custody disputes. The court ruled that child custody cannot be decided purely on documents or legal assertions without considering a "human touch." Because the father had failed to prove the mother's alleged mental illness, custody was maintained with the mother.

"The Hon'ble Supreme Court has reiterated time and again, that the welfare of the child would be of paramount consideration. In a judgment Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and Others reported in (2019) 7 SCC 42, it has been held that the court while deciding custody cases of the child, it is not bound by the mere legal right of the parents or guardians."

HIGH COURT OF CHHATTISGARH • 2025

SOURCE CGHC010276992024

## 10 Reeta Khare v. Manoj Khare

HIGH COURT OF MADHYA PRADESH • 2019-07-24 • MA/2462/2019

This appeal concerned a custody dispute over two minor children between their parents. The Family Court had granted custody to the father, primarily basing its decision on allegations that the mother was involved in an illicit relationship, which it deemed detrimental to the children's moral development. The High Court, however, found the lower court's reasoning insufficient. Emphasizing that the paramount consideration in custody matters is the welfare of the child, the High Court held that the alleged moral conduct of a parent should not automatically disqualify them from custody. It directed that the trial court must instead conduct a holistic assessment of the financial capacity, circumstances, and overall best interests of the children.

**HELD** The High Court held that the child's preference must be considered under Section 17 of the GWA if they are of intelligent age. It further noted that Section 6(a) of the HMGA must be read dynamically to avoid gender inequality. The court directed a holistic evaluation of parent fitness rather than dismissing a parent based on unproven moral conduct.

"Section 6(a) uses the words, "the father and after him, the mother". This phrase on a cursory reading, does give an impression that the mother can be considered to be natural guardian of the minor only after the lifetime of the father. If the section is so understood the section has to be struck down as unconstitutional as it undoubtedly violates gender equality, one of the basic principles of our Constitution."

HIGH COURT OF MADHYA PRADESH • 2019

SOURCE MPH010220462019

## 11 Col. Ramneesh Pal Singh v. Sugandhi Aggarwal

SUPREME COURT OF INDIA • 2024-05-08 • 2024 INSC 397

This case involved a custody dispute over two minor children between their father, an Indian Army officer, and their mother. While the Family Court initially granted permanent custody to the father with visitation rights for the mother, the High Court later ordered shared custody based on an assumption of potential parental alienation. The Supreme Court set aside the High Court's order, restoring the Family Court's decision. The Court emphasized that the welfare of the children is the paramount consideration, noting the children's strong preference to remain with their father and the robust support system provided by the Armed Forces for the children's development. It further clarified that allegations of parental alienation require specific, identified instances of alienating behavior rather than unsubstantiated assumptions.

**HELD** The Supreme Court held that the court must apply a positive test—whether granting custody to a parent promotes child welfare—rather than a negative test of parental unfitness. It confirmed that courts must evaluate socioeconomic, educational, and healthcare opportunities, and must respect the children's preference under Section 17(3) of the GWA.

"In our opinion, in such cases, it is not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter that is relevant, but the "positive test" that such custody would be in the welfare of the minor which is material and it is on that basis that the court should exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian."

SUPREME COURT OF INDIA • 2024

SOURCE ESCR010002742024

## 12 Ravi Kumar v. Mukesh Kumari

HIGH COURT OF PUNJAB AND HARYANA • 2025-03-05 • FA0/1469/2025

The appellant sought the custody of his minor son from the respondent, alleging the respondent was unfit due to criminal antecedents and an unstable environment. The Family Court dismissed the custody petition, prioritizing the child's welfare and his express desire to remain with his mother, while granting the father visitation rights. On appeal, the High Court of Punjab and Haryana upheld the lower court's decision, emphasizing that the child's welfare is the paramount consideration in custody matters. The Court noted that forcing the child to relocate against his wishes would be detrimental to his psyche, and affirmed that the appellant may seek remedies before the Family Court if his visitation rights are not honored.

**HELD** The High Court held that the paramount consideration in child custody disputes remains child welfare and not statutory parental rights. It noted that the court has a duty under the GWA to protect the child's health, maintenance, and education. If a child expresses a clear preference to stay with one parent, that environment should not be disturbed.

"It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1, had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed."

HIGH COURT OF PUNJAB AND HARYANA • 2025

SOURCE PHHC010351022025

## 13 Master Atharva v. State of U.P.

ALLAHABAD HIGH COURT • 2020-10-19 • HABC/430/2020

This habeas corpus petition was filed by a mother seeking the custody of her two-year-old son, who had been taken from her by the child's father following a domestic dispute and separation. The court examined the principles of child custody under the Hindu Minority and Guardianship Act, 1956, noting that the statute provides that the custody of a minor under five years of age should ordinarily remain with the mother. The court held that, absent any evidence of the mother's unfitness, the child's welfare is best served in her care. Consequently, the court allowed the petition and directed that the child be returned to the mother's custody, emphasizing that the minor's welfare is the paramount consideration.

**HELD** The High Court held that Section 6(a) of the HMGA preserves the mother's right to custody of an infant under the age of five years unless there are cogent reasons to show that her custody jeopardizes the child's welfare. The court emphasized that maternal care is indispensable for a child of tender years, and therefore restored the infant to the mother.

“The HMG Act postulates that the custody of an infant or a tender aged child should be given to his/her mother unless the father discloses cogent reasons that are indicative of and presage the likelihood of the welfare and interest of the child being undermined or jeopardised if the custody is retained by the mother.”

ALLAHABAD HIGH COURT • 2020

SOURCE UPHC010939902020

## 14 Dr. Nithya Vidyaprakash v. B. Suresh Babu

MADRAS HIGH COURT • 2010-03-15 • CMA/622/2010

This case concerns a custody and visitation dispute over a minor child following the parents' divorce. The parties had previously entered into a court-recorded compromise granting custody to the mother and visitation rights to the father. The mother sought to terminate these visitation rights, alleging the father's remarriage and change in attitude were detrimental to the child. The father simultaneously sought full custody. The Court emphasized that in all custody matters, the paramount consideration is the welfare of the child, overriding strict parental rights under the Guardians and Wards Act. The Court maintained the previous arrangement of maternal custody with modified visitation, reinforcing that judicial decisions regarding minors must prioritize their overall upbringing and stability.

**HELD** The High Court held that Section 13 of the HMGA empowers courts to override any provisions under the GWA (including Section 19's parental preference) to ensure child welfare. It ruled that guardianship is not a legal right or power, but rather a profound responsibility of parents toward the total upbringing of the child.

“Section 13 of H.M.G.Act is the most important Section of the Act. Section 13 gives a wide power and that the Courts have power to override all other provisions of the H.M.G.Act as well as G.W.Act. The only criterion for the exercise of the power is the welfare of a child.”

MADRAS HIGH COURT • 2010

SOURCE HCMA010990002010

## 15 Ruchi Majoo v. Sanjeev Majoo

SUPREME COURT OF INDIA • 2011-05-13 • 2011 INSC 395

This case concerns the jurisdiction of Indian courts in child custody disputes under the Guardian and Wards Act, 1890. The Supreme Court held that the 'ordinary residence' of the minor is the solitary test for jurisdiction under Section 9, which is a factual determination based on intent and circumstances. The Court ruled that the High Court erred in declining jurisdiction by deferring to a foreign court's order via the principle of comity. Indian courts are duty-bound to independently examine the welfare of the minor, using foreign judgments only as input. Furthermore, the Court emphasized that interim custody orders should not isolate the child from the non-custodial parent, ordering that visitation rights be granted to foster the minor's healthy development.

**HELD** The Supreme Court held that Section 9 of the GWA establishes "ordinary residence" of the minor as the sole jurisdictional test for child custody claims. The court ruled that the principle of comity of courts does not strip Indian courts of their duty to independently evaluate the child's welfare as *parens patriae* when the child is within their jurisdiction.

"Section 9 of the Guardian and Wards Act, 1890 makes a specific provision as regards the jurisdiction of the Court to entertain a claim for grant of custody of a minor. While sub-section (1) of Section 9 identifies the court competent to pass an order for the custody of the persons of the minor, sub-sections (2) & (3) thereof deal with courts that can be approached for guardianship of the property owned by the minor. A bare reading of Section 9 shows that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the 'ordinary residence' of the minor."

SUPREME COURT OF INDIA • 2011

SOURCE ESCR010007102011

## 16 Smt. Komal v. Arvind Kumar

ALLAHABAD HIGH COURT • 2019-10-23 • FAPL/739/2017

This appeal challenged a Family Court order rejecting a mother's application for the custody of her two minor children. The appellant argued that the children, being of tender age, should reside with their mother. The respondent father contended that he had been providing for their education and maintenance, and that the children were well-settled in his custody. The High Court, referencing settled legal principles, reiterated that the paramount consideration in custody matters is the welfare of the child rather than the legal rights of the parents. Finding that the lower court had appropriately considered the children's best interests and their own preferences, the court upheld the decision to maintain the children's current custody with the father.

**HELD** The High Court held that the welfare and interest of the minor is paramount in deciding custody, overriding the natural guardian's automatic entitlement. It ruled that courts must act like a "wise father" in selecting the custody arrangement best suited to ensure a balanced, healthy development.

"In deciding the question of custody, the welfare of the minor is the paramount consideration and the fact that the father is the natural guardian would not 'ipso facto' entitle him to custody."

ALLAHABAD HIGH COURT • 2019

SOURCE UPHC012111412017

## 17 Yadvesh Yadav v. Smt. Roshni Yadav

HIGH COURT OF CHHATTISGARH • 2025-06-26 • MA/138/2024

This appeal concerned a dispute over the custody of a minor child under the Guardians and Wards Act, 1890. The appellant, the father, sought legal guardianship and custody, arguing that as the father, he was the natural guardian and had a stable financial position to provide for the child's education and needs. The mother contested the application, alleging harassment and dowry demands, and emphasized that the child had been in her care since separating from the appellant in 2018.

**HELD** The High Court held that the child's welfare and preference are the ultimate considerations guiding custody determination, rather than parental legal rights. It noted that the child's comfortable and established surrounding is key to their proper growth.

"The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the parent concerned to take care of the child are some of the relevant factors that have to be taken into account by the Court while deciding the issue of custody of a minor."

HIGH COURT OF CHHATTISGARH • 2025

SOURCE CGHC010393242024

## 18 Pratyush Shastri v. State of Rajasthan

HIGH COURT OF RAJASTHAN • 2024-05-31 • HC/292/2022

This case concerns a habeas corpus petition filed by a father seeking the custody of his minor son, who was brought to India from Dubai by his mother following marital disputes. The father argued that the child is a natural resident of Dubai, where he had access to better education and stability, and that the mother's removal of the child was illegal and detrimental to his welfare. He further contended that the mother lacked financial independence. Conversely, the mother argued that the child is well-cared for in India and that the petition was a retaliatory move against criminal charges she filed for domestic violence and dowry. The court held that while the welfare of the child is the paramount consideration, a habeas corpus petition is not the appropriate remedy for custody disputes between parents, especially when the child is in the lawful custody of a natural guardian. The court concluded that the petitioner must seek his remedy through the competent Family Court under the Guardians and Wards Act, 1890, and dismissed the writ petition, allowing the mother to retain custody.

**HELD** The High Court held that the word "after" in Section 6(a) of the HMGA must be interpreted to mean "in the absence of" rather than "after the lifetime of" the father, ensuring constitutional gender equality in parenting rights. It held that the father's statutory status as a natural guardian is always subject to the paramount consideration of child welfare.

"Section 6( a) itself recognises that both the father and the mother ought to be treated as natural guardians and the expression 'after' therefore shall have to be read and interpreted in a manner so as not to defeat the true intent of the legislature."

HIGH COURT OF RAJASTHAN • 2024

SOURCE RJHC020765092022

## 19 Ramakrishna Balasubramanian v. Priya Ganesan

MADRAS HIGH COURT • 2007-03-27 • HCP/108/2007

This case involved a Habeas Corpus petition filed by the paternal grandfather seeking custody of a minor child who had been brought to India by her mother from the United States. The petitioner relied on an interim ex-parte custody order issued by a U.S. court. The Madras High Court declined to enforce the foreign interim order,

ruling that the paramount consideration in custody disputes is the welfare of the child, not the enforcement of foreign interlocutory proceedings. The court emphasized that Indian courts are not bound by such interim orders and must determine custody based on the child's best interests, particularly where local proceedings have already been initiated by the mother in India.

**HELD** The High Court held that even where a parent is armed with a foreign court order, Indian courts must prioritize child welfare as the sole and predominant criterion rather than strict legal rights or comity rules. It ruled that custody cannot be mechanically transferred based on an interlocutory order from another country.

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

MADRAS HIGH COURT • 2007

SOURCE HCMA010451782007

## 20 Rajeswari Chandrasekar Ganesh v. The State of Tamil Nadu & Ors.

SUPREME COURT OF INDIA • 2022-07-14 • 2022 INSC 721

This case involved a petition for a writ of habeas corpus filed by a mother seeking the custody of her two minor children. The children had been removed from the USA by their father and taken to India in violation of a shared parenting plan established by an Ohio court. The Supreme Court emphasized that in child custody cases, the primary consideration is the welfare of the child rather than strictly legalistic claims of guardianship. The Court found that the children were raised in the US cultural environment and had better educational prospects there. Consequently, the Court directed the father to return to the USA with the children to abide by the custody arrangements.

**HELD** The Supreme Court held that the primary object of a habeas corpus proceeding for child custody is to determine where the child's best interests lie under *parens patriae*. Welfare must be decided by balancing educational prospects, physical surroundings, and psychological, spiritual, and emotional stability.

"Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father."

SUPREME COURT OF INDIA • 2022

SOURCE ESCR010004372022

## 21 Sunil Podar v. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities

HIGH COURT OF DELHI • 2023-02-13 • W.P.(C)/8359/2022

The petitioner, an Overseas Citizen of India, challenged regulations that restricted the appointment of legal guardians for persons with disabilities to Indian citizens only. He contended that the parent Act, the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, did not impose a citizenship requirement and that the subordinate legislation was therefore ultra vires. The court examined the Act's mandate to safeguard the welfare and continuous monitoring of persons with disabilities. The court ultimately upheld the regulations, reasoning that the citizenship requirement is a reasonable and necessary qualification to ensure effective oversight, protect the ward's interests, and prevent jurisdictional challenges regarding the care and supervision of vulnerable individuals.

**HELD** The High Court held that the *parens patriae* doctrine represents the supervisory duty of the State to protect those who cannot protect themselves. It confirmed that the statutory rights of legal guardians are always respected but controlled by evaluating the real welfare of the ward.

“The doctrine of *parens patriae* has its origin in the United Kingdom in the 13th century. It implies that the King as the guardian of the nation is under obligation to look after the interest of those who are unable to look after themselves.”

HIGH COURT OF DELHI • 2023

SOURCE DLHC010207112022

## 22 Alekhya Yalamanchili v. State of A.P.

HIGH COURT FOR STATE OF TELANGANA • 2012-04-19 • WP/27739/2011

This case involved a dispute over the child custody of a minor daughter between parents who were formerly residents of the United States. Following marital breakdown and conflicting custody proceedings in U.S. and Indian courts, the mother filed a writ of habeas corpus in the Andhra Pradesh High Court to secure the production and custody of the child, alleging the child was held in wrongful custody by the father. The court examined the jurisdictional scope of the Family Court and the High Court in matters of child custody, affirming that Indian courts retain jurisdiction when the child ordinarily resides in India, regardless of previous foreign proceedings. The court determined that the Indian legal system, specifically the Family Court, was the appropriate forum to resolve the dispute.

**HELD** The High Court held that gender equal parenting rights are safeguarded under Section 6(a) of the HMGA, as the father cannot claim a preferential right over the mother based on gender. The court ruled that the child's relocation cannot defeat a court's *parens patriae* jurisdiction to determine the best interests of the child.

“Applying the principle of purposive interpretation, the apex Court ensured gender equal parenting rights while interpreting Section 6(a) of the Hindu Minority Act. The ratio therein is that father by reason of dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category and the word “after” in Section 6 shall have to be interpreted in terms of the constitutional safeguards and guarantees.”

HIGH COURT FOR STATE OF TELANGANA • 2012

SOURCE HBHC010408482011

## 23 Sandeep Vaishnav v. Parmeshwari Vaishnav

HIGH COURT OF CHHATTISGARH • 2024-11-28 • MA/92/2018

This appeal concerned a custody dispute between a father and a maternal grandmother over a minor child. The minor had been residing with the grandmother since the death of her mother, and evidence indicated the child was happy, well-educated, and well-adjusted in that environment. Conversely, the father lived alone, worked long hours, and lacked a support system to care for the child, despite his claims of superior financial means. The court held that while a father is the natural guardian, the paramount consideration in custody matters is the child's welfare, not the parent's legal rights. Finding the child's best interests were served by remaining with her grandmother, the court upheld the lower court's decision.

**HELD** The High Court held that better financial resources of a parent cannot be the sole determining factor for child custody. The court ruled that if a child is happy and well-adjusted in her maternal grandmother's home, that stable environment should not be disrupted simply because the father is the natural guardian.

“Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the child.”

HIGH COURT OF CHHATTISGARH • 2024

SOURCE CGHC010355052018

## 24 Rosy Jacob v. Jacob A. Chakramakkal

SUPREME COURT OF INDIA • 1973-04-05 • 1973 INSC 74

This case concerned a long-standing custody dispute between a separated couple over their three minor children. The central issue was whether the father's application for custody under the Guardians and Wards Act was maintainable and, if so, how to determine the best interests of the children. The Madras High Court had previously oscillated between awarding custody to the mother and the father.

**HELD** The Supreme Court held that the absolute right of parents over the destinies and lives of their children must yield to the considerations of child welfare. A father's fitness cannot override what is beneficial for the minor's health, education, and maintenance, and a parent cannot claim an indefeasible right under Section 25 of the GWA.

“The controlling consideration governing the custody of the children is the welfare of the children concerned and not the right of their parents.”

SUPREME COURT OF INDIA • 1973

SOURCE ESCR010002921973

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