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**5 th Surana & Surana And Army Institute Of Law National Family Law Moot Court
Competition, Mohali, 2024**

BEFORE THE SESSIONS AND DISTRICT COURT OF KOLKATA

IN THE MATTER:

BETWEEN

AMBIKA PETITIONER

VERSUS

SAKSHI RESPONDENT

**UPON SUBMISSION TO THE HON'BLE JUDGES OF THE SESSIONS AND
DISTRICT COURT OF KOLKATA**

WRITTEN SUBMISSION ON THE BEHALF OF THE PETITIONER

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Statement Of Jurisdiction

The Counsel on the behalf of the Respondent, in the instant matter, hereby, humbly submits to the jurisdiction of the Hon'ble District and Sessions court of Kolkata under Section 09¹ of the Guardians and Wards act of 1890, which could also be pleaded under Section 7² of the Family Courts act of 1984, but has not been availed in the present case.

¹ **9. Court Having Jurisdiction To Entertain Application.**—“(1) If The Application Is With Respect To The Guardianship Of The Person Of The Minor, It Shall Be Made To The District Court Having Jurisdiction In The Place Where The Minor Ordinarily Resides. (2) If The Application Is With Respect To The Guardianship Of The Property Of The Minor, It May Be Made Either To The District Court Having Jurisdiction In The Place Where The Minor Ordinarily Resides Or To A District Court Having Jurisdiction In A Place Where He Has Property. (3) If An Application With Respect To The Guardianship Of The Property Of A Minor Is Made To A District Court Other Than That Having Jurisdiction In The Place Where The Minor Ordinarily Resides, The Court May Return The Application If In Its Opinion The Application Would Be Disposed Of More Justly Or Conveniently By Any Other District Court Having Jurisdiction.”

² **7. Jurisdiction.**—“(1) Subject To The Other Provisions Of This Act, A Family Court Shall— (A) Have And Exercise All The Jurisdiction Exercisable By Any District Court Or Any Subordinate Civil Court Under Any Law For The Time Being In Force In Respect Of Suits And Proceedings Of The Nature Referred To In The Explanation; And (B) Be Deemed, For The Purposes Of Exercising Such Jurisdiction Under Such Law, To Be A District Court Or, As The Case May Be, Such Subordinate Civil Court For The Area To Which The Jurisdiction Of The Family Court Extends-
(G) A Suit Or Proceeding In Relation To The Guardianship Of The Person Or The Custody Of, Or Access To, Any Minor. (2) Subject To The Other Provisions Of This Act, A Family Court Shall Also Have And Exercise—
(A) The Jurisdiction Exercisable By A Magistrate Of The First Class Under Chapter Ix (Relating To Order For Maintenance Of Wife, Children And Parents) Of The Code Of Criminal Procedure, 1973 (2 Of 1974); And (B) Such Other Jurisdiction As May Be Conferred On It By Any Other Enactment.”

Statements Of Facts

- Sidhant and Ambika got married in 2017 and had a son named Armaan, born in Dec 2018. Sidhant's parents died in September 2018, leaving an ancestral bungalow, palatial house, a showroom, all properties to Sidhant, Sakshi and Armaan. In August 2020, Armaan was diagnosed with Rickets. On September 2022, Ambika and Sidhant left Armaan with house help and in their absence, he had an accident. The next day Ambika took him to the hospital.
- On 23 October 2022, Sidhant went to Kolkata but did not return for two months. Sakshi tried to convince him to turn their ancestral bungalow into a boutique hotel. On 20 November 2022, Sakshi came to Bangalore and met with Ambika who shared her difficulty to handle everything and Sakshi suggested that she would take Armaan with her.
- On 3 December 2022, Akaash called Ambika offered her a job in Delhi. She accepted the offer. On 22 December 2022, Armaan had to be admitted to the hospital. Sakshi stayed at the hospital and took care of Armaan. Sidhant told Sakshi that she is Armaan's mother in the true sense and told Sakshi to always take care of his son, especially if he is not there. Later that night he took sleeping pills and drank heavily, resulting in his death.
- On 31 December 2022, Ambika requested Sakshi to take care of Armaan for a while as her job was new and she has to sustain herself for Armaan. Sakshi agreed to the same. On 11 March 2023, Ambika went to Kolkata to bring Armaan to Delhi for a short stay. She assured Sakshi that once she settled in Delhi, Armaan would permanently move with her. Sakshi, feeling sad, expressed how much Armaan meant to her. Ambika lightened the mood by thanking Sakshi for her support and referred to Armaan as "Bua's life." Ambika shared her job struggles and Akaash's venture's lack of profits. She surprised Sakshi by asking for financial help, to which Sakshi agreed and gave her Rs. 50,000.
- Ambika could not take Sidhant with her to Delhi as he cried unconsolably and wanted to stay with Sakshi. Akaash suggested Ambika to talk to Sakshi about giving her share out of the family's property. Sakshi became apprehensive and said she would talk to the lawyer about the matter. On 30 July 2023, Ambika marries Akaash and in October 2023, Ambika is expecting again. On 10 February 2024, Ambika went to get Armaan back to Delhi.
- Sakshi becomes furious and refuses to give Armaan back. She also alleges that Akaash wanted Armaan only because Armaan is the legal heir of the property.

Statement Of Issues

~ISSUE I~

WHETHER AMBIKA IS ENTITLED TO THE CUSTODY OF ARMAAN?

~ISSUE II~

**THAT AMBIKA IS ENTITLED TO A SHARE IN THE PROPERTY OF HER
DECEASED HUSBAND?**

~ISSUE III~

DOES THE WELFARE OF THE CHILD LIES WITH AMBIKA?

Summary of Arguments

~ISSUE I~ WHETHER AMBIKA IS ENTITLED TO THE CUSTODY OF ARMAAN?

It is humbly submitted that Ambika, acknowledged as the natural guardian under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, unequivocally asserts her custody rights over Armaan following his father's demise. Legal precedents, including *Githa Hariharan v. Reserve Bank of India*, reinforce her guardianship, while Sections 13 of the Hindu Minority and Guardianship Act; 7, and 17 of the Guardians and Wards Act emphasize the paramount consideration of the child's welfare. The irreplaceable nature of a mother's love, highlighted in *Vivek Singh vs. Romani Singh*, holds significant weight. Ambika's swift legal action and relocation for Armaan's better life underscore her unwavering commitment.

~ISSUE II~ THAT AMBIKA IS ENTITLED TO A SHARE IN THE PROPERTY OF HER DECEASED HUSBAND?

It is humbly stated that Ambika, as Sidhant's widow, asserts her rightful share in his property under the Hindu Succession Act, 1956, with Section 10 emphasizing the widow's entitlement among Class I heirs. Despite her remarriage, Ambika retains inheritance rights per the precedent set in *Sanjay Purshottam Patankar vs. Prajakta Pramnod Patil*, as the Hindu Succession Act supersedes the Hindu Widows' Re-marriage Act, 1856. Furthermore, Section 3 of the Hindu Women's Right to Property Act, 1937, supports Ambika's claim to the ancestral property, granting her an equal share as a son.

~ISSUE II~ DOES THE WELFARE OF THE CHILD LIES WITH AMBIKA?

It is humbly submitted that Ambika, in accordance with the Hindu Minority and Guardianship Act, 1956, rightfully claims custody of her minor son, Armaan. Legal precedents, including *Gita Hariharan v. Reserve Bank of India* and *Nirali Mehta vs. Surendrakumar Surana*, affirm her as the natural guardian, with a focus on the child's welfare. Ambika's unwavering commitment to Armaan's well-being, her primary caregiving role during the lockdown, and Sidhant's limited involvement due to personal challenges establish her suitability as the custodian. Emphasizing the positive test in *Vikram Vir Vohra v. Shalini Bhalla* and the significance of the child's best interests, Ambika's proactive caregiving, Sidhant's minimal contributions, and legal precedents support her rightful claim to custody, underscoring that the child's welfare is best served under her guardianship.

ARGUMENTS ADVANCED**ISSUE I : WHETHER AMBIKA IS ENTITLED TO THE CUSTODY OF ARMAAN?**

The counsel for petitioner humbly submits that Mrs. Ambika, being the biological mother of Armaan, is entitled to the custody of the minor child.

1.1 That Ambika is the Natural Guardian of her Minor Child

It is submitted with utmost humility that Section 6(a)³ of the Hindu Minority and Guardianship Act, 1956, "**Natural guardians of a Hindu minor.**—*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). Explanation.—In this section, the expressions “father” and “mother” do not include a step-father and a step-mother."

³ SECTION 6 OF THE HINDU GUARDIANSHIP AND WARDS ACTS, 1956

1. That the statute unequivocally designates the father as the primary natural guardian for a male child, followed by a seamless transition of guardianship to the mother. **Githa Hariharan v. Reserve Bank Of India⁴ was heard together with Vandana Shiva v. Jayanta Bandhopadhaya⁵**, and the Bench presided over by Chief Justice A.S. Anand held in a 1999 judgment that under Hindu law, "*The mother is also the guardian of her minor children along with the father. The court held that the term "after" should not be taken to mean "after the lifetime of the father", but rather "in the absence of the father".*"
2. In the instant case, the father had gone out of the picture by his demise, so the petitioner is the sole custodian of her minor child. Moreover, the petitioner has not disqualified herself from being the natural guardian of her minor child. She has not ceased to be a Hindu and she has not completely and finally renounced the world by becoming a hermit or an ascetic so as to attract the provisions to Section 6 of Act of 1956.
3. In the case of **Lajwanti v. Priti Devi⁶**, the court also stated that, "*Unless or until the mother is declared incapacitated and incompetent or disentitled for custody of children, by the competent Court in the appropriate proceedings, in accordance with Section 6 of the Guardianship Act, the mother is entitled to have the custody of her minor children, after their father's death. "*"
4. It is humbly submitted that in cases where the minor is below the age of five years, custody is expressly directed to ordinarily rest with the mother u/s 6(a) of the act of 1956. But this does not mean that she is not entitled to the custody thereafter. In the case of **Baby v Vijaykrishnan⁷**, "*The ordinary rule is that the child below the age of*

⁴ GITHA HARIHARAN V. RESERVE BANK OF INDIA AIR 1999 SUPREME COURT 1149

⁵ VANDANA SHIVA V. JAYANTA BANDHOPADHAYA 1995(32)DRJ447

⁶ LAJWANTI V. PRITI DEVI CR.M.M.O NO.1164 OF 2022

⁷ BABY V VIJAYKRISHNAN AIR 1992 KERALA 277

*five years should be committed to the custody of the mother." In the case of **Madhu v Aruna**⁸, it was held that, "Children of tender years would not be given to their father and natural mother is preferable over the relations of the father."*

1.2 That Welfare of the Child is of Paramount Consideration

5. It is humbly contended that the guardianship of the minor takes the welfare of the child into consideration. **Section 13 of the Act of 1956**⁹, "Welfare of minor to be paramount consideration.—(1) In the appointment of 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."

Also, in Section 7¹⁰, "Power of the Court to make order as to guardianship.—(1) where the Court is satisfied that it is for the welfare of a minor that an order should be made— (a) appointing a guardian of his person or property, or both, or (b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act."

⁸ MADHU VS ARUNA 1987 DEL. 81.

⁹ SECTION 13 OF THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

¹⁰ SECTION OF 7 OF THE GUARDIANS AND WARDS ACT, 1890

That **Section 17¹¹ of Guardians and Wards Act, 1890**, it is construed that, "*The welfare of the child should be seen while appointing a guardian of a minor child. For this act, welfare of the minor is the most paramount consideration.*" In the instant case, the right of the petitioner to absolute custody of her minor child can't be challenged, keeping in view the best interest of the child. Having regard to the present age of the child, who was little more than 5 years of age, his welfare demands that he be under the care and protection of the mother who is in a better position to look after him.

In the case of **Vivek Singh vs Romani Singh¹²**, The court granting the custody of the child to the mother observed that, "*The role of the mother in the development of a child's personality can never be doubted. A child gets the best protection through the mother. It is a most natural thing for any child to grow up in the company of one's mother. The company of the mother is the most natural thing for a child. Neither the father nor any other person can give the same kind of love, affection, care and sympathies to a child as that of a mother. The company of a mother is more valuable to a growing up female child unless there are compelling and justifiable reasons, a child should not be deprived of the company of the mother. The company of the mother is always in the welfare of the minor child*".

It is humbly contended, even though as per the respondent, she is looking after the child but when the natural mother is there and has knocked the door of the court without any delay and has all love and affection for the child and is willing to do her duty with all love and affection and since the birth of the child she has been keeping the child. In these circumstances, she should not be deprived of her right especially considering the tender age of the child. The aunt cannot be a substitute for natural mother. There is no substitute for mother's love in this world.

In the instant case, Ambika, single handedly, took care of Armaan during COVID along with household and her job. Ambika's relocation to Delhi and her subsequent decision to take custody of Armaan were intricately tied to her unwavering commitment to securing a better life for the child. It is noteworthy that Ambika's initial departure was not a premeditated choice; rather, it stemmed from an arbitrary decision made only after Sakshi extended an

¹¹ SECTION 17 OF THE GUARDIANS AND WARDS ACT, 1890

¹² VIVEK SINGH VS ROMANI SINGH AIR 2017 SUPREME COURT 929

offer to care for Armaan. Sakshi, taking the initiative, expressed a genuine desire to be responsible for Armaan, finding solace in the child's presence, especially after the tragic death of Sidhant. This offer from Sakshi played a pivotal role in influencing Ambika's decision to relocate to Delhi, as she saw an opportunity for Armaan to have a stable and nurturing environment under Sakshi's care. However, Ambika's primary motivation remained the well-being of Armaan. Upon settling down in Delhi, Ambika made it abundantly clear that her intention was to take custody of Armaan and not leave him in the care of Sakshi. This emphasized Ambika's belief that, as Armaan's biological mother, she was determined to provide him with the best possible life.

**ISSUE II: THAT AMBIKA IS ENTITLED TO A SHARE IN THE PROPERTY
OF HER DECEASED HUSBAND?**

**2.1 THAT AMBIKA IS ENTITLED TO A SHARE IN THE PROPERTY OF HER
DECEASED HUSBAND**

It is humbly contended that in light of the provisions set forth in The Hindu Succession Act, Ambika unequivocally asserts her rightful entitlement to the custody of her deceased husband's property. Section 8(a) of the Hindu Succession Act, 1956 expressly dictates the devolution of property upon the heirs specified in Class I of the Schedule for a male Hindu dying intestate.

According to Section 8¹³ of the Hindu Succession Act 1856, "**General rules of succession in the case of males:** *The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-*

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased;
and

¹³ SECTION 8 OF THE HINDU SUCCESSION ACT, 1956

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

According to Section 09 of the Hindu Succession Act, 1956¹⁴, "**Order of succession among heirs in the Schedule:** *Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession."*

Also, Section 10 of the Hindu Succession Act, 1956 states that, "**Distribution of property among heirs in class I of the Schedule:** *The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—*

Rule 1-The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2-The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3-The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4-The distribution of the share referred to in Rule 3—(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion.

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions."

The heirs in Class I include the son, daughter, widow, mother, and other relatives mentioned, creating a hierarchy of succession notably, the Act establishes a clear order of succession among these heirs, prioritizing Class I heirs over others, as outlined in Section 9. Further elucidating this hierarchy, Section 10 delineates rules for the distribution of property among Class I heirs, explicitly granting the widow, in Rule 1, a rightful share. In the instant case, Ambika, being the widow of the deceased, falls directly within the definition of Class I heirs

¹⁴ SECTION 9 OF THE HINDU SUCCESSION ACT, 1956

as per section 8(a) of the Hindu Succession Act of 1956. Her relationship to the deceased husband positions her as a primary contender for the custody of the property.

Ambika, as the widow of Sidhant, is entitled to his share in the ancestral property under the categorisation of Class I heirs. Her late father-in-law left an unregistered will, dividing the ancestral property among Sidhant, Sakshi and the child of Sidhant and Ambika, i.e. Armaan. Upon the death of Sidhant, Ambika and Armaan are entitled to his share, as they fall within the ambit of Class I heirs that has been elucidated above.

2.2 THAT BY RE-MARRYING, AMBIKA HAS NOT BEEN DISQUALIFIED FROM INHERITING HER SHARE AS SIDHANT'S WIDOW FROM THE ANCESTRAL PROPERTY

It is humbly submitted that Remarriage by Ambika has not been disqualified from claiming her share in the property of her deceased husband. In the case of *Sanjay Purshottam Patankar vs. Prajakta Pramnod Patil*¹⁵, the court ruled that, "*The Hindu Succession Act, 1956 prevails over the repealed Hindu Widows' Re-marriage Act, 1856. The widow, even after remarriage, retains her rights as a Class I heir, and her deceased husband's kin remain Class II heirs. This decision reinforces that a woman does not lose her rights over her late husband's properties, both movable and immovable, even if she chooses to remarry. The court emphasized the primacy of the modern succession law, ensuring widows' inheritance rights regardless of their marital status.*"

That it is humbly submitted before the Hon'ble court that under Section 03 of the Hindu Women's Right to Property Act, 1937, Ambika is adequately entitled to a share in the ancestral property according to the Devolution of Property as Sidhant's widow.

Section 03¹⁶ of the Hindu Women's Right to Property Act, 1937: "**Devolution of property-** (1) *When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow, all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect*

¹⁵ SANJAY PURSHOTTAM PATANKAR VS. PRAJAKTA PRAMNOD PATIL, AIR 2015 SC3487

¹⁶ THE HINDU WOMEN'S RIGHT PROTECTION ACT, 1937

of property in respect of which he dies intestate to the same share as a son: Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a sons son if there is surviving a son or sons son of such predeceased son: Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu widow's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925, applies."

It was held in the case of **Lakshmi Ammal v. Anantarama Aiyangar**¹⁷, "The widow is in more than one sense heir of the last male holder and she completely represents the estate during her lifetime including the right to exercise nearly all the attributes of ownership of the estate. In a way the estate might come to an end in her hand leaving nothing for the reversioners to succeed to because for legal necessity the widow is authorised to alienate the estate. To speak of such an heir as a person in whom the estate is not vested at the date of the death of the male owner might not be quite correct. Therefore, having regard to the fundamental principles that succession is never in abeyance, the estate must vest in some heir as soon as the owner of the estate dies. In this case it vested in the widow."

¹⁷ LAKSHMI AMMAL V. ANANTARAMA AIYANGAR, ILR (1937) MAD 948 : AIR 1937 MADRAS 699

ISSUE III: DOES THE WELFARE OF THE CHILD LIE WITH AMBIKA?

It is humbly submitted that the welfare of Armaan, who is a minor child lies with his mother, Ambika and not with Sakshi. under clause (a) of section 6 of the Hindu minority and guardianship act,1956, "*Natural guardians of a Hindu minor.—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;"

In the two landmark cases **Gita Hariharan v. Reserve Bank of India and Vandana Shiva v. Jayanta Bandhopadhaya**, the Supreme Court held that, "*During some circumstances the mother can act as a natural guardian of the minor even if the father is alive. the meaning of the word 'after him' was interpreted as 'in the absence of'. The word 'absence' means that father's absence from the minor's property or person whatsoever.*"

Therefore, it is implied that Ambika holds the status of the natural guardian of Armaan. The custody case initiated does not challenge her natural guardianship. Her status as the natural guardian remains intact throughout the proceedings, entitling her to custody of Armaan, akin to the legal precedent set in the case of **Nirali Mehta vs Surendrakumar Surana & Anr**¹⁸ it was held that, "*No one can claim to be guardian of any child when the child has a natural guardian present and able to act as such. The appointment of a person as the guardian of the child in the foundation of such right. The ground for such appointment is only when the child is bereft of a natural guardian (as specified in [Section 6](#) of the HMG Act). Amongst the persons who may be the guardians of the child - the father, and in his absence, the mother - only may have not the parental responsibility but only the care of the child. None else would have such a seminal right when the guardian of the child is already available for the child and has accepted parental responsibility.*"

¹⁸ [NIRALI MEHTA VS SURENDRAKUMAR SURANA & ANR](#)¹⁸AIR 2013 BOMBAY 123, 2013 (4) ABR 787

In **J.Meena vs T.Manikandan**¹⁹ on 17 February, 2017," *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"*

Henceforth, notwithstanding the duration of Armaan's stay with Sakshi, the court should not overlook the fundamental necessity for a child to be with their mother. Ambika, who was employed, consistently sought the welfare of her child. Even when temporarily entrusting Armaan to Sakshi, her actions were solely motivated by his best interests. Ambika explicitly expressed her desire to retain custody of Armaan, demonstrating her commitment to his well-being. Her decisions were made with the intention of settling in Delhi to provide a stable environment for her child.

In the case of **Bimla and others v/s. Anita**²⁰ it was held that, "*Mother is the best person to effectively take care of child's interest and welfare of the child lies with the mother.*"

As established in the case of **Vikram Vir Vohra v. Shalini Bhalla**²¹, "*Each case must be handled on the basis of its unique facts. It is the "positive test" that such custody would be in the minor's best interests that is relevant, not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter. "*

Rather than focusing on Ambika's perceived inadequacies as a guardian for Armaan, the evaluation should centre on her suitability and demonstrated commitment to his welfare. Ambika has consistently acted in Armaan's best interests, evidenced by her primary caregiving role during the entirety of the lockdown period. Throughout this time, Sidhant,

¹⁹ J.MEENA VS T.MANIKANDAN AIR_2017 SC 10856

²⁰ BIMLA AND OTHERS V/S. ANITA AIR 2015 SCC 2469

²¹ VIKRAM VIR VOHRA V. SHALINI BHALLA AIR 2010 SUPREME COURT 1675

the other parent, provided no substantial contributions to Armaan's care. It is pertinent to note that Sakshi volunteered to take custody of Armaan.

Ambika's decision to relocate to Delhi for a new job opportunity was made with the understanding that Armaan would remain in Sakshi's care. Furthermore, Sidhant's testimony in favour of Sakshi lacks credibility, considering his historical neglect of Armaan and his struggles with clinical depression and alcoholism.

It is humbly submitted that Ambika's actions have consistently reflected her dedication to Armaan's well-being, whereas Siddhant's involvement in Armaan's life has been minimal and overshadowed by personal challenges.

In **Jijabai Vithalrao Gajre v/s Pathankhan and Others**,²² the mother and father were living separately, the minor daughter was under the care and protection of the mother. Supreme Court removed the natural guardianship of the father and held that mother to be the natural guardian of her minor daughter even though the father was alive, being natural guardian under section 6 of Hindu Minority and Guardianship Act, 1956, as father was not taking any interest in the affairs of the child. The natural guardian may be father or mother whoever is available for taking care of the child and interested in the welfare of the child.

Therefore, it is humbly submitted that if questioned, Sidhant's custody and later his testimony does not hold much ground. Hence the welfare of the child lies with the mother and she should be given the custody being his natural guardian.

²²JIJABAI VITHALRAO GAJRE V/S PATHANKHAN AND OTHERS,²² 1971 AIR 315, 1971 SCR (2) 1

PRAYER

Wherefore, may it please the Hon'ble District and Sessions Court, in the light of facts and circumstances of the case, issues raised, arguments advanced and authorities cited, the Petitioner prays that this Hon'ble Court may be pleased to **adjudge, rule upon, and declare:**

1. Ambika is entitled to the custody of Armaan being his Natural Guardian.
2. Ambika is also entitled to share in property of her deceased husband.

AND/OR

Pass any other order it may deem fit in the interest of Justice, Equity, and Good Conscience.

All of which is most respectfully prayed and humbly submitted.

(Signed)

Place:

Date

Counsel for the Petitioner