

---

**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 SUBMISSIONS ON THE BEHALF OF THE RESPONDENT**

<b>TABLE OF CONTENTS</b>
--------------------------

S.NO.	TOPIC	PG.NO.
1.	The Index Of Authorities	4-5
2.	The Statement Of Jurisdiction	6
3.	The Statement Of Facts	7
4.	The Statement Of Issues	8
5.	The Summary Of Arguments	9
6.	The Arguments Advanced	10-19
6 (I)	<p><b>Whether The Defence Claimed By Sakshi To Acquire Legal Guardianship Of Armaan Is Maintainable?</b></p> <p style="text-align: center;"><i>1.1 Maintainability Of Sakshi's Defence</i></p> <p style="text-align: center;"><i>1.2 The Hon'ble Court Is Adequately Empowered To Adjudicate The Matter</i></p> <p style="text-align: center;"><i>1.3 Grounds For Appointment Of Guardian</i></p>	10-13
6 (II)	<p><b>HAS AMBIKA ACTED NEGLIGENTLY TOWARDS ARMAAN AND HOW DOES IT AFFECT THE STATUS OF HER CUSTODY?</b></p> <p style="text-align: center;"><i>2.1 Duties Of A Guardian</i></p> <p style="text-align: center;"><i>2.2 Matters To Be Considered By The Court In The Appointment Of A Guardian</i></p>	14-17

6 (III)	<b>DOES THE WELFARE OF ARMAAN LIE WITH SAKSHI IN THE PRESENT DISPUTE?</b>  <i>3.1 Welfare Of The Minor Is The Paramount Consideration</i>	<b>18-20</b>
7.	The Prayer	<b>21</b>

### INDEX OF AUTHORITIES

S.NO.	CASES	PG.NO.
1.	GAURAV NAGPAL VS SUMEDHA NAGPAL AIR 2009 SUPREME COURT 557	10
2.	ROSY JACOB V. JACOB A. CHAKRAMAKKAL AIR 1973 SUPREME COURT 2090	11
3.	MCGRATH (INFANTS) RE, (1893) 1 CH 143	12
4.	SMT INDRAKUMARI V RAJKUMAR MAHANT, 1973CRILJ155	13
5.	SARASWATIBAI SHRIPAD VED VS SHRIPAD VASANJIVED AIR 1941 BOMBAY 103	14
6.	NIL RATAN KUNDU AND ANR VS ABHIJIT KUNDU (2008) 9 SCC 413	14
7.	GAYTRI BAJAJ V. JITEN BHALLA, AIR 2013 SUPREME COURT 102	16
8.	SHEOLI HATI VS SOMNATH DAS (2019) 7 SCC 490	17
9.	LEKHA V P. ANIL KUMAR 2006 AIR SCW 6358	17
10. .	LAHARI SAKSHAMURI V. SOBHAN KODALI, AIR 2019 SUPREME COURT 2881	18
11.	VIVEK SINGH V. ROMANI SINGH AIR 2017 SUPREME COURT 929	18
12.	RAJESWARI CHANDRASEKAR GANESH V. THE STATE OF TAMIL NADU & ORS. [WRIT PETITION (CRIMINAL) NO. 402 OF 2021]	19
13.	ELIZABETH DINSHAW V. ARVAND M. DINSHAW AIR 1987 SC 3	19
14.	CHAKKI VS AYYAPPAN AIR 1989 KERALA 89	19
15.	MAUSAMI MOITRA GANGULI V. JAYANT GANGULI, AIR (2008) SC 2262	20

<b>S.NO.</b>	<b>BOOKS</b>
1.	Modern Hindu Law By Dr. Paras Diwan 2018
2.	Family Law By B.M. Gandhi Volume I Second Edition
3.	"Hindu Law Of Adoption, Minority, Guardianship, And Custody" By Justice Raghbir Singh
4.	"Family Law Lectures: Guardianship And Custody Of Minor Children" By Sumeet Malik
5.	"Family Law: Hindu Law, Muslim Law, Christian Law, Parsi Law, And Special Marriage Act" By R.K. Bangia
6.	"Law Of Guardianship And Custody Of Children" By Paras Diwan

<b>S.NO.</b>	<b>STATUTES</b>
1.	THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956
2.	THE GUARDIANS AND WARDS ACT, 1890
3.	THE FAMILY COURTS ACT, 1984
4.	THE HINDU SUCCESSION ACT, 1956

<b>S.NO.</b>	<b>ONLINE DATABASES</b>
1.	EBC
2.	LexisNexis
3.	Manupatra
4.	SCC Online

**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 09<sup>1</sup> of the Guardians and Wards act of 1890, which could also be pleaded under Section 7<sup>2</sup> of the Family Courts act of 1984, but has not been availed.

---

**<sup>1</sup> 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*

**<sup>2</sup> 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.*

---

**WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT**

**STATEMENT 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 The Defence Claimed By Sakshi To Acquire Legal Guardianship Of Armaan  
Is Maintainable?**

---

**~Issue II~**

**Has Ambika Acted Negligently Towards Armaan And How Does It Affect The Status  
Of Her Custody?**

---

**~Issue III~**

**Does The Welfare Of Armaan Lie With Sakshi In The Present Dispute?**

---



---

**SUMMARY OF ARGUMENTS**

---

**~ISSUE I~ WHETHER THE DEFENCE CLAIMED BY SAKSHI TO ACQUIRE  
LEGAL GUARDIANSHIP OF ARMAAN IS MAINTAINABLE?**

The respondent humbly asserts the right to seek legal guardianship of Armaan under Section 7 of the Guardians and Wards Act of 1860, emphasizing the paramount importance of the child's welfare, as upheld by relevant case law. Sakshi's proximity, character, and adherence to the deceased parent's wishes are highlighted as compelling grounds for her appointment. The argument is fortified by the court's jurisdiction outlined in Sections 7 and 9, aiming to establish Sakshi as a compassionate and fitting guardian aligned with Armaan's best interests, grounded in both legal provisions and precedent.

**~ISSUE II~ HAS AMBIKA ACTED NEGLIGENTLY TOWARDS ARMAAN AND  
HOW DOES IT AFFECT THE STATUS OF HER CUSTODY?**

It is humbly argued that Ambika's care for Armaan is worrisome, advocating for his removal from an unhealthy environment. The respondent humbly submits that Sakshi has played a significant role in the child's well-being, as supported by Section 24 and legal precedents such as Gaytri Bajaj v. Jiten Bhalla. The petitioner's challenge to the fulfillment of Section 17 conditions is addressed, with instances of neglect cited. The respondent questions the assumption that a mother is always the well-wisher, emphasizing neglectful incidents. Furthermore, concerns are raised about the impact of the petitioner's remarriage and pregnancy on custody decisions.

**~ISSUE III~ DOES THE WELFARE OF ARMAAN LIE WITH SAKSHI IN THE  
PRESENT DISPUTE?**

The submission contends that Armaan's well-being is best served under the care of Sakshi, emphasizing legal precedents and the Hindu Minority and Guardianship Act's paramount consideration of the child's welfare in custody matters. It highlights Sakshi's stability, active involvement in Armaan's education, and the child's preference for her care, questioning Ambika's commitment due to her relocation and abandonment. Financial considerations, including Ambika's instability and reliance on Sakshi for support, further support the argument for Armaan to remain under Sakshi's care, where his best interests are more effectively addressed.

**ARGUMENTS ADVANCED****ISSUE I: WHETHER THE DEFENCE CLAIMED BY SAKSHI TO ACQUIRE  
LEGAL GUARDIANSHIP OF ARMAAN IS MAINTAINABLE?**

"Children are not mere chattels nor are they toys for their parents."<sup>3</sup>

**1.1 MAINTAINABILITY OF SAKSHI'S DEFENCE:**

1. It is humbly submitted before the Hon'ble court that Sakshi's defence to be appointed as the 'legal guardian' of Armaan is rightly maintainable under the Guardians and Wards Act of 1860: According to Section 07 of the Guardians and Wards Act of 1860, "***Power of the Court to make orders as to guardianship.***<sup>4</sup> - (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.*

*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.*

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

2. That it is submitted that Sakshi, a relative of Armaan holds the power to apply for an order of legal guardianship under section 7 of the Guardians and Wards act, 1860, in his best interest and welfare.

---

<sup>3</sup>GAURAV NAGPAL VS SUMEDHA NAGPAL<sup>3</sup> AIR 2009 SUPREME COURT 557

<sup>4</sup>Section 07, Guardians And Wards Act, 1860

3. That in the case of *Rosy Jacob v. Jacob A. Chakramakkal*<sup>5</sup> it was established that the aim and intent of the Guardians and Wards Act, 1890 extend beyond mere physical custody of minors to ensuring the proper safeguarding of their rights concerning health, upkeep, and education. While the natural guardianship of the father is acknowledged, the paramount concern remains the welfare of the minor. If entrusting custody to the father would not serve the children's best interests, he may be denied guardianship rights.
4. It was held in the case of *Gaurav Nagpal vs Sumedha Nagpal*<sup>6</sup> that “*Absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.*”
5. According to Section 08 of the Guardians and Wards Act of 1860, “***Persons entitled to apply for order***<sup>7</sup>.- *An order shall not be made under the last foregoing section except on the application of the person desirous of being, or claiming to be, the guardian of the minor, or any relative or friend of the minor, or the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or the Collector having authority with respect to the class to which the minor belongs.*”
6. That the Paragraph 25<sup>8</sup> clearly elucidates the desire of Sakshi to become the guardian of Armaan after having taken care of him for two years. There have been various instances of Sakshi taking care of Armaan without an ulterior motive that provides this court with a reasonable footing to provide Sakshi with the status of being a ‘legal guardian’ to Armaan.

---

<sup>5</sup>ROSY JACOB V. JACOB A. CHAKRAMAKKAL AIR 1973 SUPREME COURT 2090

<sup>6</sup> GAURAV NAGPAL VS SUMEDHA NAGPAL AIR 2009 SUPREME COURT 557

<sup>7</sup>Section 08 Of The Guardians And Wards Act, 1890

<sup>8</sup> Paragraph 25, Moot Proposition," Ambika Files A Case For The Custody Of The Armaan Being Him Natural Guardian"

## **1.2 THE HON'BLE COURT IS ADEQUATELY EMPOWERED TO ADJUDICATE THE MATTER**

7. It is humbly submitted that under section 07 and section 09 of the Guardianship and Wards Act, 1890, the Hon'ble is the competent authority to pass the order. According to Section 9 of the Guardians and Wards Act, 1890, "*Court having jurisdiction to entertain application*<sup>9</sup>- (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 the 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 on conveniently by any other District Court having jurisdiction."*

It is evidently established that the Hon'ble District and Sessions Court of Kolkata is the competent authority to appoint Sakshi as the *de facto* guardian of Armaan which serves the best interest of the minor's wellbeing according to the above stated section.

## **1.3 GROUNDS FOR APPOINTMENT OF GUARDIAN:**

8. That it was observed in *McGrath (infants) Re*<sup>10</sup>, "*The dominant matter for the consideration of the court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. 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 ties of affection be disregarded.*"

---

<sup>9</sup> Section 09 Of The Guardians And Wards Act, 1890

<sup>10</sup>MCGRATH (INFANTS) RE, (1893) 1 CH 143

According to Section 17 of the Guardians and Wards Act of 1860, "***Matter to be considered by the Court in appointing guardian***<sup>11</sup>.- (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.*

*(2) 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.*

*(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.*

*(5) The Court shall not appoint or declare any person to be a guardian against his will."*

9. That in accordance to the proposition, it is established that Sakshi satisfied

- nearness of kin,
- character and capacity to be a proposed guardian,
- wish of a deceased parent,

and therefore, should rightly be appointed as the legal guardian of Armaan

10. That in the case of **Smt Indrakumari V Rajkumar Mahant**,<sup>12</sup>, Section 17 outlines the factors the Court must consider when appointing guardians, emphasizing the paramount importance of the minor's welfare in such appointments. These sections underscore that minors are incapable of self-care, thus granting the State the authority to take necessary actions for their protection. Consequently, it is the Court's primary responsibility to determine what serves the minor's best interests and to appoint or declare guardians accordingly. Legal precedent dictates that "welfare" encompasses various aspects

---

<sup>11</sup>Section 17 Of The Guardians And Wards Act, 1860

<sup>12</sup>SMT INDRAKUMARI V RAJKUMAR MAHANT, 1973CRILJ155

*including physical well-being, education, upbringing, happiness, and moral welfare, necessitating the Court to weigh all relevant circumstances.*

11. That the 'paramount consideration' was also established in the case of **Saraswatibai Shripad Vad v. Shripad Vasanji Vad**,<sup>13</sup> *"It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which is the paramount consideration."*
12. In **Mausami Moitra Ganguli v. Jayant Ganguli**<sup>14</sup>, the Supreme Court considered the provisions of the Guardians and Wards Act, 1890 and in particular Sec. 17 thereof which relates to the custody of the minor child. The Supreme Court in para 19 and 20 held as under:- In Para 19, the Court emphasized that the welfare and interest of the child are the paramount considerations when determining custody, surpassing the rights of the parents as outlined in statutes such as the Guardianship and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13). The Court highlighted that the welfare of the child is a vital factor that cannot be overlooked or disregarded by any relevant statute on the subject. In Para 20, the Supreme Court underscores that the question of a minor child's welfare must be evaluated based on the unique facts of each case. While statutes may presume the father's suitability, the court must prioritize the child's well-being in custody decisions. Factors like financial resources and parental love are relevant but not sole determinants. The court is obligated to exercise judicial discretion judiciously, considering all relevant circumstances and placing the welfare of the child as the paramount consideration.
13. In Paragraph 52 of the judgment rendered in the case of **Nil Ratan Kundu and Anr. v. Abhijit Kundu**<sup>15</sup>, the Supreme Court emphasized that, *"the principles governing the custody of a minor child extend beyond mere legal interpretations. The Court underscored that while not strictly bound by statutes or precedents, it places paramount importance on the child's welfare in custody determinations. The appointment of a*

---

<sup>13</sup>SARASWATIBAI SHRIPAD VED VS SHRIPAD VASANJIVED AIR 1941 BOMBAY 103

<sup>14</sup>MAUSAMI MOITRA GANGULI V. JAYANT GANGULI AIR 2008 SUPREME COURT 2262

<sup>15</sup> NIL RATAN KUNDU AND ANR VS ABHIJIT KUNDU (2008) 9 SCC 413

*guardian is guided by the parens patriae jurisdiction, focusing on factors such as the child's comfort, health, education, intellectual growth, and favourable environment. Additionally, moral and ethical considerations are deemed equally, if not more, significant in assessing the child's overall well-being."*

**ISSUE II: HAS AMBIKA ACTED NEGLIGENTLY TOWARDS ARMAAN AND HOW DOES IT AFFECT THE STATUS OF HER CUSTODY?**

14. It is humbly stated, Ambika's conduct towards Armaan raises concerns regarding her overall attentiveness and care for the child's well-being. The best way to serve the welfare and interest of the child will be remove the child from the unhealthy atmosphere which has caused strain on the nerves and affected the child's growth, to a place where the child can live a normal healthy life.

**2.1 DUTIES OF A GUARDIAN**

According to Section 24 of the Guardians and wards acts, 1890<sup>16</sup>, "**Duties of the guardian of the person** : 'A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.'"

15. The duties of the guardian of a person of a minor as Under Section 24 of the Guardians and Wards Act are performed by the respondent, rather than the petitioner. It is the Sakshi, who has been looking after the welfare of the child & under whose hard work the child's health showed a significant improvement. She admitted the child to a play school in Kolkata. The child developed close harmony and solidarity with her, than his own mother who has never visited him, who has never spoken to him which is very evident from the fact that child is reluctant to go with his mother and is leaning upon the respondent. It is submitted before the hon'ble court that it would hurt the interest of the child to snatch him away from the environment where he has lived for the past 2 years and to expose him to an unfamiliar environment since he has never interacted with the mother. If the custody of the child is given to the mother, it would wreck the child

---

<sup>16</sup> Section 24, Guardians And Wards Act, 1890

emotionally and psychologically. It may adversely affect the development of his personality. For in a totally strange environment, the children are likely to withdraw into themselves.

16. As held in the case of *Gaytri Bajaj V. Jiten Bhalla*<sup>17</sup>, "*The desire of the child, coupled with the availability of conducive and appropriate environment for proper upbringing and the ability and means of the parent concerned to take care of the child be considered in the best interest of the child.*"

## **2.2 MATTERS TO BE CONSIDERED BY THE COURT IN THE APPOINTMENT OF A GUARDIAN**

According to Section 17 of the Guardians and wards act, 1890<sup>18</sup>, "**Matters to be considered by the Court in appointing guardian:** (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.*"

(2) *In considering what will be for the welfare of the minor, the Court 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.*

(3) *If the minor is old enough to form an intelligent preference, the Court may consider that preference.*

(4) *The Court shall not appoint or declare any person to be a guardian against his will."*

17. In the present matter, before the Hon'ble court, it is evident that the conditions under Section 17 of the Guardians and Wards act, 1890 have not been met. Section 17 directs the court to assess the prevailing circumstances surrounding the minor child and ascertain the child's welfare as paramount consideration.

---

<sup>17</sup> GAYTRI BAJAJ V. JITEN BHALLA AIR 2013 SUPREME COURT 102

<sup>18</sup> Section 17 of the Guardians and Wards Act, 1890



18. That while taking a decision regarding custody or other issues pertaining to a child, “welfare of the child” is of paramount consideration as held in the case of *Sheoli Hati v. Somnath Das*<sup>19</sup>,
19. "*Children are not mere chattels nor are they toys for their parents. Absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them*" as established in the case of *Gaurav Nagpal vs Sumedha Nagpal*<sup>20</sup>.
20. It is humbly stated that presuming that “*a mother is always the well -wisher of the children*” does not stand true with the fact that instances reveal neglect at the part of petitioner. On September 20, 2022, despite Sidhant being out with friends, the petitioner left the child with the house help to meet Akaash and didn't return all night, ignoring calls. The petitioner had left the child with the respondent at the age of 4, just to manage her job life. After the death of the child's father, she didn't stay to grieve but left for Delhi the next day, prioritizing her job over the child's well-being. She disregarded the child’s illness and loneliness over the past two years.
21. Moreover, the fact that the petitioner remarried and is pregnant with the child of Akaash is a relevant factor to be considered while determining the custody of the child. In *Lekha v. P. Anil Kumar*<sup>21</sup>, it was observed by the court that "*remarriage can't be taken as a ground for not granting the custody of the child to mother but still is relevant factor that must be taken into consideration because the paramount consideration should be given to the welfare of the child*". In the instant case, the child will find it difficult to adjust with his stepfather and mother who has now baby with her second husband. The petitioner will also not be able to take full care of the minor child in her changed circumstances.

---

<sup>19</sup> SHEOLI HATI VS SOMNATH DAS (2019) 7 SCC 490

<sup>20</sup> GAURAV NAGPAL VS SUMEDHA NAGPAL (2009) 1 SCC 42

<sup>21</sup> LEKHA V P. ANIL KUMAR 2006 AIR SC 6358,

**ISSUE III: DOES THE WELFARE OF ARMAAN LIE WITH SAKSHI IN THE PRESENT DISPUTE?**

22. It is humbly submitted that the welfare of the child lies with the respondent. The principle of child welfare adopts a dual-focused approach when determining custody arrangements. Firstly, it prioritizes securing the optimal environment for the child's development, with their best interests taking precedence above all else. Secondly, it recognizes the public interest associated with the child's upbringing, acknowledging that the child represents the future of the nation and thus their proper growth is essential for the common good. This perspective was underscored by the Supreme Court in the case of *Vivek Singh v. Romani Singh*<sup>22</sup>. Hence, when deliberating on custody matters, the court emphasizes:

- *Creating the most conducive environment for the child's well-being.*
- *Ensuring their proper development for the betterment of society.*

**3.1 WELFARE OF THE MINOR IS THE PARAMOUNT CONSIDERATION**

According to Section 13<sup>23</sup> of the Hindu Minority and Guardianship Act, 1956-

**"Welfare of minor to be paramount consideration-**

*(1) no in the appointment of declaration of any person as guardian of a Hindu minor by court, the welfare of the minor shall be 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 the marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor. "*

23. The court established several considerations in the case of *Lahari Sakhamuri v. Sobhan Kodali*,<sup>24</sup> *"The courts must consider several important elements when determining the*

---

<sup>22</sup> VIVEK SINGH V. ROMANI SINGH AIR 2017 SUPREME COURT 929

<sup>23</sup> Section 13 of the Hindu Minority and Guardianship act, 1956

<sup>24</sup> LAHARI SAKSHAMURI V. SOBHAN KODALI, AIR 2019 SUPREME COURT 2881

*children's and parents' welfare, including Maturity and judgment, Mental stability, Ability to offer access to schools, Moral character, Ability to give continued involvement in the community, Financial sufficiency and last but not least the factors involving a relationship with the child, as opposed to characteristics of the parent as an individual."*

24. In the case of **Rajeswari Chandrasekar Ganesh v. The State of Tamil Nadu & Ors.**<sup>25</sup> and reiterated that, "*welfare of the child is of paramount consideration and the welfare of the child must be decided on a consideration of all relevant factors Including the general psychological, spiritual, and emotional welfare of the child.*"
25. In the case of **Elizabeth Dinshaw v. Arvand M. Dinshaw**<sup>26</sup> "*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 of what would best serve the interest and welfare of the minor*". In the case *Ambika vs Sakshi*, the welfare of the child is with Sakshi, she is the present caretaker of the child. she has supported the child through the trauma of losing his father.
26. In the case of **Chakki vs Ayyappan**<sup>27</sup>, "*The very extraordinary stand of the appellant that the mother lived with a stranger for over four years and begot a child without entering into marital relationship and that she would do it again if need be, is a matter which shall dissuade any Court -- till we reach that degree of sophistication -- from giving the custody of a minor girl to his mother.*" We are therefore satisfied that the trial Court was right in its conclusion that the welfare of the minor, which shall be the paramount consideration in custody proceedings fully justifies the entrustment of the child to the custody of the first respondent.
27. In the present case, it is pertinent to note that Ambika made a deliberate decision to prioritize her career over her responsibilities towards Armaan, her child. Despite the

---

<sup>25</sup> RAJESWARI CHANDRASEKAR GANESH V. THE STATE OF TAMIL NADU & ORS. [WRIT PETITION (CRIMINAL) NO. 402 OF 2021]

<sup>26</sup> ELIZABETH DINSHAW V. ARVAND M. DINSHAW AIR 1987 SC 3

<sup>27</sup> CHAKKI VS AYYAPPAN AIR 1989 KERALA 89

unfortunate demise of Armaan's father, Ambika chose to relocate to Delhi, leaving Armaan behind. This abandonment not only reflects a lack of emotional and physical presence during a critical period but also raises concerns about her commitment to Armaan's well-being.

28. Conversely, Armaan has thrived under the care of Sakshi, demonstrating remarkable progress and stability. His preference to remain under Sakshi's guardianship further attests to the positive environment she has provided. Additionally, Sakshi's proactive enrollment of Armaan in school underscores her genuine concern for his education and overall development.
29. It is evident that Ambika's actions have not consistently prioritized Armaan's best interests, whereas Sakshi has consistently demonstrated her dedication to his welfare. Therefore, it is in Armaan's best interest to remain under Sakshi's care, where he is thriving and receiving the attention and support, he deserves.
30. 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. It is here that a heavy-duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration, *Mausami Moitra Ganguli v. Jayant Ganguli*.<sup>28</sup>
31. In assessing Ambika's circumstances, it is evident that her financial situation is unstable. The recent transition to a new job, coupled with Akaash's struggling business, indicates a lack of financial security. This instability is further highlighted by Ambika's need to seek financial assistance from Sakshi. In contrast, Sakshi's financial stability is apparent, as evidenced by her capacity to aid Ambika. This capability underscores Sakshi's ability to ensure the welfare of Armaan. Considering Ambika's financial instability and her reliance on Sakshi for support, it is evident that Armaan's best interests are better served by remaining under Sakshi's care. Sakshi's financial capability provides a stable environment conducive to Armaan's well-being and development.

---

<sup>28</sup> MAUSAMI MOITRA GANGULI V. JAYANT GANGULI, AIR (2008) SC 2263

**PRAYER**

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

1. That the present application for appointment of Sakshi as the legal guardian of Armaan be passed.
2. That petition filed by Ambika for custody be dismissed as she has acted negligently towards Armaan.

**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 Respondent**