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APHC010447852025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3558]**
(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION NO: 22723/2025

Between:

1. GADDE BALA YESWANTH, , S/O. RAMA MOHAN RAO, AGED ABOUT 41 YEARS, OCC SOFTWARE ENGINEER, NATIVE OF D.NO.1-794/2, BANK COLONY, CHILAKALURIPETA, GUNTUR DISTRICT, A.P-522616, PERMANENT RESIDENCE AT 9 BLANSHARDS LANE, NORTH CAVE, HU152LN, UNITED KINGDOM.

...PETITIONER

AND

1. THE STATE OF AP, REP. BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF HOME, SECRETARIAT BUILDING, VELAGAPUDI, GUNTUR DISTRICT, ANDHRA PRADESH.
2. THE DIRECTOR GENERAL OF POLICE, , STATE OF ANDHRA PRADESH, POLICE HEADQUARTERS, MANGALAGIRI, GUNTUR DISTRICT, ANDHRA PRADESH.
3. THE SUPERINTENDENT OF POLICE, , GUNTUR, GUNTUR DISTRICT.
4. THE DEPUTY SUPERINTENDENT OF POLICE, , WEST SUB-DIVISIONAL OFFICE, GUNTUR, GUNTUR DISTRICT.
5. THE STATION HOUSE OFFICER, PATTABHIPURAM POLICE STATION, GUNTUR, GUNTUR DISTRICT.
6. NANDIGAM VIJAY KUMAR, S/O. VENKATESWARLU, AGED ABOUT 67 YEARS, R/O.FLAT NO.3A, UVS GRAND APARTMENT, VIJAYAPURI COLONY, JKC COLLEGE ROAD, GUNTUR.
7. NANDIGAM MANGAMMA, W/O VIJAY KUMAR, AGED ABOUT 65 YEARS, R/O FLAT NO 3A, UVS GRAND APARTMENT, VIJAYAPURI

COLONY, JKC COLLEGE ROAD, GUNTUR.

8. GADDE KEERTHI, W/O.GADDE BALA YASWANTH, AGED ABOUT 39 YEARS,R/O.U.V.S.GRAND APARTMENT, F.NO.3A,VIJAYAPURI COLONY,NEAR J.K.C.COLLEGE, GUNTUR. RESPONDENT NO.8 WAS SUOMOTO IMPLEADED AS PER C.O.DT.02.09.2025 IN W.P.NO.22723 OF 2025.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased toprays that this Honble Court may be pleased to issue writ, order or direction more particularly one in the nature of Habeas Corpus or any other appropriate writ, directing the Respondent Authorities 3 to 5 to produce minor child Gadde Sitara (British Citizen), aged about 6 years, who is permanent resident and born citizen of UK before this Honble Court, who is at present in the unlawful custody of the respondent Nos. 6, 7 and 8, in compliance with the orders dated 18.07.2025 passed in case No.1751-3352-6208-7041, order dated 30.09.2025 passed in case No. 1756-2297-9027-9698 by the Honble Family Court of England sitting at Kingston upon Hull and order dated 02.10.2025 passed in case No. FD25P00600 by the Honble High Court of England respectively and further direct to immediately handover the custody of the said minor child to the petitioner father to enable him to take the minor child back to the jurisdiction of UK and to pass such other order or orders as this Honble Court may deems fit just and proper in the circumstance of the case. Main prayer was amended as per c.o.dt.11.12.2025 Vide I.A.No.3 of 2025 in W.P.No.22723 of 2025.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant Interim direction, directing the Respondent No.8 to enable the petitioner and his parents to interact with the minor child namely Sitara, aged about 6 years, by way of video conference on every 3 days, pending the above said writ petition and to pass such other order or orders as this Honble Court may deems fit just and proper in the circumstance of the case. Prayer in I.A.No.1 of 2025 was amended as per c.o.dt.11.12.2025 vide I.A.No.3 of 2025 in W.P.No.22723 of 2025.

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant permission for filing additional counter affidavit in W.P No.22723 of 2025 and to pass

IA NO: 3 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to order amendment of main prayer in WP.No.22723 of 2025 as below. In the light of the facts stated it is prayed that this Hon'ble Court may be pleased to issue writ, order or direction more particularly one in the nature of Habeas Corpus or any other appropriate writ, directing the Respondent Authorities 3 to 5 to produce minor child Gadde Sitara (British Citizen), aged about 6 years, who is permanent resident and born citizen of UK before this Hon'ble Court, who is at present in the unlawful custody of the respondent No's. 6, 7 & 8, in compliance with the orders dated 18.07.2025 passed in case No. 1751-3352-6208-7041, order dated 30.09.2025 passed in case No. 1756-2297-9027-9698 by the Hon'ble Family Court of England sitting at Kingston upon Hull and order dated 02.10.2025 passed in case No. FD25P00600 by the Hon'ble High Court of England respectively and further direct to immediately handover the custody of the said minor child to the petitioner father to enable him to take the minor child back to the jurisdiction of UK and to pass

Counsel for the Petitioner:

1. V V LAKSHMI NARAYANA

Counsel for the Respondent(S):

1. K S MURTHY ASSOCIATES
2. P VIVEK
3. THE ADVOCATE GENERAL

The Court made the following:

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

&

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION NO: 22723/2025

ORDER: *(Per Hon'ble Sri Justice Tuhin Kumar Gedela)*

Happy are those who have a heart of gold and no one can claim to own this purity except that it can only be seen in children. Children are the supreme assets of the nation and the rightful place of the child in the sizeable fabric is founded on the principle that public could promote proper growth of the children, who are the future of the nation, and are required to be treated as people of today and not people of tomorrow.

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Heard,

Mr.V.V.Lakshmi Narayana, learned counsel for the petitioner, learned Assistant Government Pleader attached to the office of the learned Advocate General appearing for respondent Nos.1 to 5, Mr.K.S.Murthy, learned Senior Counsel appearing for respondent Nos.6 and 7 and Mr.Posani Venkateswarlu, learned Senior Counsel appearing on behalf of Mr.P.Vivek, learned counsel for respondent No.8.

1. The Writ Petition is initially filed seeking a Writ of Habeas Corpus, directing respondent Nos.3 to 5 to produce the minor daughter (hereinafter called as "child") namely Sitara (British Citizen) aged about 5 years 11 months before this Hon'ble Court and *inter alia* direct to set her free from the respondent Nos.6 and 7 and handover the petitioner's daughter (child) to the petitioner.

2. Along side the Writ Petition, I.A.No.1 of 2025 is filed seeking interim direction to produce the petitioner's daughter, namely Sitara. On 02.09.2025, this Court *suo moto* impleaded the mother of the child and granted time, to file counter, to the respondent Nos.6 and 8. The respondent

No.8 has filed counter affidavit on 08.09.2025. Thereupon, refuting the said contentions, reply affidavit is filed by the petitioner to the counter affidavit filed by the respondent No.8 on 12.09.2025.

3. In the interregnum period, I.A.No.3 of 2025 was filed by the petitioner to amend the main prayer as "*direct the respondent authorities 3 to 5 to produce minor child Gadde Sitara (British Citizen) aged about 6 years, who is permanent resident and born citizen of UK before this Court, who is at present in unlawful custody of respondent Nos.6 to 8, in compliance with the orders dated 18.07.2025 passed in case No.1751-3352-6208-7041, order dated 30.09.2025 passed in case No.1756-2297-9027-9698 by the Family Court of England sitting at Kingston upon Hull and order dated 02.10.2025 passed in case No.FD25P00600 by High Court of England and direct to immediately handover the custody of the said minor child to the petitioner-father to enable him to take the minor child back to the jurisdiction of UK".*

4. Instantaneously, the Amendment Petition filed by the petitioner seeking a direction in the nature of Writ of Habeas Corpus to implement the orders of the Family Court of England sitting at Kingston-upon-Hull, and order dated 02.10.2025 in case No.FD25P00600 passed by the High Court of England, is intrinsic.

5. Apropos, counters to the amendment petition were filed by respondent Nos.5 and 8 in the Writ Petition on 05.11.2025. Considering the averments contained in the petition and also the counters, this Court allowed the amendment petition on 11.12.2025. To the main petition, a counter was filed by respondent No.8 on 08.09.2025 and refuting the averments made in the counter, the petitioner filed reply affidavit on 12.09.2025. Additional counter affidavit was filed by respondent No.8 on 22.09.2025 to which again additional reply affidavit was filed by the petitioner on 24.10.2025.

6. As the multiplicity of filing petitions gained momentum, both the counsels appearing on behalf of the parties filed their citations relied upon by them and the same will be discussed at the later point.

7. Mr.V.V.Lakshmi Narayana, learned counsel appearing for the petitioner has drawn the Court's attention to the pleadings in the Writ Petition, tracing the manner in which the petitions came to be filed before the Family Court, UK, which are capsuled hereunder:

(i) The writ petitioner and respondent No.8 got married on 24.11.2017 at Tirupati and respondent Nos.6 and 7 are the parents of respondent No.8. Petitioner contends that he is a British citizen and prior to his marriage, he was staying in UK regarding job purpose and later the respondent No.8 joined him in the month of March, 2018 for leading marital life at UK. They are blessed with the daughter out of the wedlock, namely Sitara, born in UK and is a British citizen, presently aged about 5 years 11 months and thereafter their relationship became strained.

(ii) The counsel further placed on record through the arguments and documents that the daughter was admitted in North Cave Pre-School in the month of February, 2024. Thereafter joined the school in the month of September, 2024 for pursuing Early Years Foundation @ Reception, and Sitara completed the same. Regarding the marriage, the petitioner contends that after few months of the marriage, disputes have arisen due to the attitude and behavior of his wife and exhibited cruelty and harassment towards the petitioner and his family members. As the attitude of respondent No.8 is not changed albeit the intervention of elders of both the sides and further that due to his interest on his child and family, was benevolent with a hope that she could change. In the year 2023, respondent No.8 decided to move to Saudi Arabia for job purpose leaving behind the daughter and the petitioner in UK. The respondent No.8 later joined the marital home in the month of November, 2024 at UK and since then there is no change in her attitude and showed spasmodic harassment and the petitioner filed application for divorce on

15.01.2025 in the Family Court, United Kingdom, and the case was registered vide reference No.1736-9409-9016-3327, which is *sub judice*.

(iii) Mr.V.V.Lakshmi Narayana, learned counsel would submit that because of the intervening school holidays after completion of one year and before joining the new academic year and holidays being six weeks for which the petitioner intended to visit India along with his daughter and live for a period of two weeks and the same was informed to the respondent No.8, who with disposition did not give consent to visit India and having no option, the petitioner approached Family Court at Kingston-upon-Hull combined Court center seeking to visit India along with his daughter vide Case No.1751-3352-6208-7041.

(iv) After hearing, the Family Court of England sitting at Kingston-upon-Hull, on 18.07.2025, passed the *ex parte* order as follows:

> *"Schedule*
>
> *UPON the Court can only make an order today for the Specific Issue Order whether Applicant Father can take Sitara to India during the school's summer holiday.*
>
> *AND UPON the Respondent Mother had agreed previously in an email dated 10th January 2025 allowing Father to take Sitara to India during the Easter Holiday. Father has brought Sitara back safely.*
>
> *AND UPON The Applicant Father to take Sitara to visit maternal grandparents during the holiday in India.*
>
> *AND UPON the Court stating that it is always very important that Sitara have caring extended family*
>
> *AND UPON the Court stating the importance of maintaining cultural connections from Sitara.*
>
> *AND UPON Respondent Mother is worried that Father may not bring Sitara back to UK. Father is in possession of her passport.*
>
> *AND UPON the Applicant Father has informed the court that he is well established in UK and has been in his job for nine years. He has informed he has no job offers or property in India.*
>
> *AND UPON The Applicant Father confirms he has access of a car in India.*
>
> *AND UPON Applicant Father undertake to drive Sitara to the maternal grandparent's home for a two-night stay during the summer holiday.*
>
> *AND UPON AND UPON Applicant Father has confirmed he will travel with Sitara on 15th August 2025 and return on 31st August 2025. In time for Sitara to settle back into her routine in the UK before school starts.*
>
> *AND UPON the Court stating that if there are any further orders, the parties would need to make a fresh application to the Court.*

THE COURT ORDERS

1. Permission is given for the Applicant Father to travel with Sitara from 15th August 2025 to 31st August 2025

2. Applicant Father will drive Sitara to the maternal grandparents' home for a two-night stay during the holiday.

ORDERED BY: HONOUR JUDGE WIGIN

DATED: 18th JULY 2025"

(v) Mr.V.V.Lakshmi Narayana, learned counsel would contend that on the strength of the order of the Court, the petitioner visited India on 16.08.2025 for spending two weeks in India and in that pursuit, texted a Whatsapp message to his father-in-law on 16.08.2025 with an intimation that "I will drop off Sitara tomorrow for two night stay at your house". The father-in-law responded by texting message "OK Please inform time". In response, the reply message was given as "will be there around 10.30 A.M" i.e., on 17.08.2025. Accordingly, the petitioner's daughter was handed over to respondent Nos.6 and 7 at their residence in obedience to the orders passed. Petitioner informed to them that he will pick the daughter on 19.08.2025. As stated, on 19.08.2025, at 10.01 A.M., the petitioner texted a message to his father-in-law that "I'll come to pick up Sitara around 4:30 P.M today", however, there is no response from them.

(vi) Mr.V.V.Lakshmi Narayana, learned counsel proceeded to submit that on 19.08.2025, he went to the in-law's house around 05.00 P.M and found the house locked and later was enlightened by the watchman that they left the residence at around 04.00 P.M along with his daughter and despite several calls, there is no response from them. This persuaded the petitioner to lodge a complaint before the 5th respondent. But the 5th respondent did not show any interest, for which, the petitioner approached the 3rd respondent on 20.08.2025 and submitted a petition. In pursuance to which, the 4th and 5th respondents were directed to enquire and handover the child to the petitioner. As there was no response by the 4th and 5th respondents, the present Habeas

Corpus petition was filed, relying on the judgment of the Hon'ble Supreme Court in ***V.Ravi Chandran vs. Union of India and others***[1].

8. In sequel to the contentions raised in the affidavit by the writ petitioner, the 8th respondent recalcitrant to the contentions filed the counter which addresses as follows:

(i) The marriage between the writ petitioner and 8th respondent was accorded on 24.11.2017 and certain facts are not in dispute, such as consummation of marriage at UK and the birth of the child (Sitara) on 29.09.2019 and that she worked for some time in UK and thereafter she was sent by the writ petitioner forcibly to India in the month of December, 2019. Further the averment advanced by the learned Senior Counsel, Mr.K.S.Murthy, is that the writ petitioner has not taken any steps to bring 8th respondent or Sitara back to UK and living in India since 2019 and despite several requests, the writ petitioner did not choose to renew the spouse visa and refused to take care of the 8th respondent and Sitara and having no other option, the 8th respondent joined in TCS in the year 2022 and later part admitted Sitara in the Little Steps International School, Guntur, in the year 2022. The writ petitioner did not also care about her or Sitara's maintenance.

(ii) Countering the contention regarding leaving to Saudi Arabia, 8th respondent stated that she left Sitara with her parents as Sitara is acquainted with her parents since childhood and the period spent was a short duration and retaliated the contentions of the writ petitioner. Further, in the year 2024, she came to know that the writ petitioner went to her parents' place and has forcibly taken Sitara to UK without her consent. The 8th respondent further refuted the averments made in the Writ Petition regarding the arrangement of spouse visa to her by the petitioner to reside in UK along with the daughter for which it was necessitated to apply for tourist visa which took considerable time for approval and ultimately 8th respondent reached UK on 08.11.2024. During

[1] (2010) 1 SCC 174

the brief period, she had to stay in the petitioner's house, who treated her in disposition and very cruel manner and having no other option endured all the pain, insult and cruelty owing to Sitara's future.

(iii) The 8th respondent in her counter further underlined that taking advantage of her jobless position and individual place in a gullible situation in UK, the writ petitioner purposefully filed divorce petition in UK. Knowing that she was not having any permission to go back to India, the writ petitioner wantonly took advantage of the situation, filed the petition to take Sitara to India during the school vacations and that UK Court, on 18.07.2025, granted permission to the writ petitioner to travel to India along with Sitara. The 8th respondent came to know through the 6th respondent that on 16.08.2025, the writ petitioner himself texted a message that he would hand over Sitara for two-night stay at 6th and 7th respondent's place to which they have accepted readily and the child was handed over to parents on 17.08.2025, and in the interregnum period, she received permission to travel back to India and so she travelled on 28.08.2025 back to India and taking custody of Sitara and, thereafter, came to know that the Writ Petition was filed. She further stated that she lodged FIR against the writ petitioner and her in-law's for harassment, which was registered as Crime No.357 of 2025 under Sections 318(4), 351(2), 79, 85 read with 3(5) of Bharatiya Nyaya Sanhita (BNS), and Sections 3 and 4 of Dowry Prohibition Act.

(iv) At paragraph No.9 of the counter, the 8th respondent reiterates her stand that having no financial capacity, she remained in India and took care of Sitara and that she is in a better position than the petitioner, especially, in view of Sitara being a girl child, biological and special needs to be attended. She also adverts that the writ petitioner will not be in a position to take good care of the child since he stays alone in UK and often need to work late nights which may lead to neglecting the child, thereby affects the child, both physically and mentally, and reiterates that the mother will be in a better position to take care of the girl child and finally maintains that the Writ Petition cannot be

entertained much less Habeas Corpus, as the custody cannot be tasselled as illegal and unlawful.

9. Concomitant to the counter averments of the 8th respondent, the writ petitioner thereafter filed reply affidavit more or less reiterating the facts/contentions raised in the Writ Petition. In the reply affidavit, he repeated certain contentions that the contention raised by the 8th respondent that return tickets were booked and left India for UK is utterly false.

10. At paragraph D of the reply, the petitioner contends that the company where the 8th respondent was working, granted maternity leave for a period of one year and the 8th respondent chose to stay in India with an intention to return to UK in April, 2020 for which return tickets were also booked before leaving to India. He further states that he was compelled to return back to UK in January, 2020 for the work purpose and due to Covid-19 pandemic, international travels were blocked and return tickets of respondent No.8 and Sitara were cancelled and he, in the month of August, 2020, came to India to join respondent No.8 and Sitara. Again, the petitioner inevitably had to visit UK for the work and personal reasons, which he described as follows:

a) 03.04.2021 to 11.09.2021 (British citizenship ceremony and passport)
b) 08.02.2022 to 23.06.2022 (work and vacate UK rental property)
c) 11.10.2022 to 24.12.2022 (purchasing suitable family home with garden and proximity to a good school)

11. For these purposes narrated, the writ petitioner returned back to UK on 04.03.2023. He further reiterates that the petitioner in order to lead cordial conjugal life with the 8th respondent, he, while travelling to India, visited Saudi Arabia to meet the 8th respondent and convince her that the steps taken by her will be against the interest of the child, for which she has not agreed and having no other option, he travelled to India after intimating the parents of the 8th respondent.

12. As could be seen, both the parties filed multiple Interlocutory Applications with the intention to improve their cases. The fact remains that the future of the child, Sitara, is lost in the battle of supremacy over each other. In custody battle, the question of custody of child becomes a “tug-of-war”, and it is the child, who has to bear the cost of unprecedented and unwelcomed situations.

13. On 08.01.2026, upon submissions made by the petitioner to interact with his minor daughter, Sitara, as he could not interact with her daughter for the last three months’ period, this Court, considering the paramount welfare of the child, permitted the petitioner to talk to her minor daughter and to interact with her once in a week i.e., every Thursday between 06.00 P.M to 09.00 P.M. In pursuit for reconciliation, this Court ventured to directly interact with the petitioner, who was available online on 29.01.2026. The petitioner expressed that all efforts made failed and had no interest for any further relationship with the 8th respondent.

14. Basing on the facts and circumstances of the case and after demystifying, this Court framed the following issues:-

i. Whether a Writ of Habeas Corpus can be maintained for implementation of foreign Court orders?

ii. Whether this Court *dehors* the orders of the foreign Court in UK including the High Court of England decide the custody of the child invoking the doctrine of *parens patriae, vis-à-vis* decide the welfare of the child, which is paramount?

ISSUE NO.1:-

Contentions of the Petitioner:-

15. Mr.V.V.Lakshmi Narayana, learned counsel, in support of his contentions regarding the jurisdiction of this Court and the maintainability of a Writ of Habeas Corpus under Article 226 of the Constitution of India, strongly

relied upon the rulings of the Apex Court to substantiate. The law is no more *res integra* that Habeas Corpus is maintainable under Article 226 of the Constitution of India before this Court to evaluate the paramount consideration and welfare of the child. *Autem*, according to facts and circumstances of each case, the Courts are more concern with the safety of the child rather than the orders passed by the Foreign Courts, which must yield to the paramount consideration and welfare of the child.

16. It is also an established principle that even in the case where the petitioner who moved the foreign Court is a citizen of that particular country and acquired a citizenship of that country. In the present case, the petitioner acquired British citizenship through a ceremony as admitted by him. In one or two occasions, the petitioner has emphatically pleaded that he is a citizen of UK and so also Sitara, who was born in UK as a permanent citizen of UK and noticing the said fact, the UK Family Court passed the orders.

17. Now, a close scrutiny of the legion arguments advanced by the learned counsel, Mr.V.V.Lakshmi Narayana, reveals that the petitioner, being a citizen of UK and necessarily the child, Sitara, need to be handed over to the petitioner to go back to UK in consonance with the directions of the Family Court, UK. A direct judgment on this point is rendered by the Hon'ble Supreme Court in ***Government of Andhra Pradesh vs. Syed Mohammad Khan***[2] a Constitutional Bench, which, at paragraph No.6, emphasized on citizenship as follows:

> *"That, raises the question about the proper order to be passed in the present appeals. It has been urged before us by Mr. Tatachari for the appellant that the effect of oar decision in the case of Izhar Ahmad Khan is that as soon as it is shown that a person has acquired a passport from a foreign Government, his citizenship of India automatically comes to an end, and he contends that in such a case, it is not necessary that the Central Government should hold any enquiry and make a finding against the person before the appellant can issue an order of deportation against him. In our opinion, this contention is clearly misconceived. In dealing with the question*

[2] AIR 1962 SC 1778

about the validity of the impugned section and the Rule, this Court has, no doubt, stated that "'the proof of the fact that a passport from a foreign country has been obtained on a certain date conclusively determines the other fact that before that date he has voluntarily acquired the citizenship of that country." But in appreciating the effect of this observation, it must be borne in mind that in all the cases with which this Court was then dealing, the question about the citizenship of the petitioners had been expressly referred to the Central Government and the Central Government had made its findings on that question. It was after the Central Government had recorded a finding against the petitioners that they had acquired the citizenship of Pakistan that the said writ petitions came before this Court for final disposal and it is in the light of these facts that this Court proceeded to consider the contention about the validity of the impugned section and the impugned rule. It is plain, therefore, that the observations on which Mr. Tatachari relied were not intended to mean that as soon as it is alleged that a passport has been obtained by a person from a foreign Government, the State Government can immediately proceed to deport him without the necessary enquiry by the Central Government. Indeed it is clear that in the course of the judgment, this Court has emphasised the fact that the question as to whether a person has lost his citizenship of this country and has acquired the citizenship of a foreign country has to be tried by the Central Government and it is only after the Contrul Government has decided the point the State Government can deal with the person as a foreigner. It may be that if a passport from a foreign Government is obtained by a citizen, and the case fall3 under the impugned Rule, the conclusion may follow that he has acquired the citizenship of the foreign country ; but that conclusion can be drawn only by the appropriate authority authorised under the Act to enquire into question. Therefore, there is no doubt that in all cases where action is proposed to be taken against persons residing in this country on the ground that they have acquired the citizenship of a foreign State and have lost in consequence the citizenship of this country, it is essential that that question should be first considered by the Central Government. In dealing with the question, the Central Government would undoubtedly be entitled to give effect to the impugned r. 3 in Sch. III and deal with the matter in accordance with the other relevant Rules framed under the Act. The decision of the Central Government about the status of the person is the basis on which any further action can be taken against him. Therefore, we see no substance in the argument that the orders of deportation passed by the appellant against the respondents should be sustained even without an enquiry by the Central Government about their status. That is why we think,,

in substance$ the direction of the High Court is right, though the High Court was in error in holding that the Central Government should hold the enquiry without reference to r.3."

18. Even otherwise, the law operating the custody of the child, is entirely different and stands on a different footing and the citizenship or nationality will be secondary and the paramount consideration and welfare of the child need to be addressed.

19. Learned Counsel, Mr.V.V.Lakshmi Narayana, has filed compilation of judgments, supporting his arguments, that Writ of Habeas Corpus is certainly maintainable when it is regarding custody of child. A three-Judge Bench of the Hon'ble Apex Court in the case of ***Nithya Anand Raghavan Vs State (NCT of Delhi) and Another***[3], considering the principles laid down in ***Dhanwanti Joshi vs. Madhav Unde [(1998) 1 SCC 112]*** discussed elaborately regarding the maintainability of Writ of Habeas Corpus and the same is extracted below:

"44. The present appeal emanates from a petition seeking a writ of habeas corpus for the production and custody of a minor child. This Court in Kanu Sanyal v. District, has held that habeas corpus was essentially a procedural writ dealing with machinery of justice. The object underlying the writ was to secure the release of a person who is illegally deprived of his liberty. The writ of habeas corpus is a command addressed to the person who is alleged to have another in unlawful custody, requiring him to produce the body of such person before the Court. On production of the person before the Court, the circumstances in which the custody of the person concerned has been detained can be inquired into by the Court and upon due inquiry into the alleged unlawful restraint pass 14 (2001) 5 SCC 247 appropriate direction as may be deemed just and proper. The High Court in such proceedings conducts an inquiry for immediate determination of the right of the person's freedom and his release when the detention is found to be unlawful.

45. In a petition for issuance of a writ of habeas corpus in relation to the custody of a minor child, this Court in Sayed Saleemuddin v. Dr. Rukhsana & Ors. 15, has held that the principal duty of the Court is to ascertain whether the custody of child is unlawful or illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. While doing so, the paramount consideration must be about the welfare of the child. In the case of Mrs. Elizabeth (supra), it is held that in such cases the matter must be decided not by reference to the legal rights of the parties but on the sole and predominant criterion of what would best serve the interests and welfare of the minor. The role of the High Court in examining the cases of custody of a minor is on the touchstone of principle of parens patriae

[3] 2017 8 SCC 454

jurisdiction, as the minor is within the jurisdiction of the Court (see Paul Mohinder Gahun Vs. State of NCT of Delhi & Ors.16 relied upon by the appellant). It is not necessary to multiply the authorities on this proposition.

46. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign Court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign Court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child.

48. The next question to be considered by the High Court would be whether an order passed by the foreign court, directing the mother to produce the child before it, would render the custody of the minor unlawful? Indubitably, merely because such an order is passed by the foreign court, the custody of the minor would not become unlawful per se. As in the present case, the order passed by the High Court of Justice, Family Division London on 8th January, 2016 for obtaining a Wardship order reads thus:

> *"Order made by His Honour Judge Richards sitting as a Deputy High Court Judge sitting at the Royal Courts of Justice, Strand, London WC2A 2LL in chambers on 8 January, 2016*
>
> *IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF THE SENIOR COURTS ACT 1981*
>
> *The Child is Nethra Anand (a girl, born 7/8/09) AFTER HEARING Counsel paul Hepher, on behalf of the applicant father*
>
> *AFTER consideration of the documents lodged by the applicant. IMPORTANT WARNING TO NITHYA ANAND RAGHAVAN*
>
> *If you NITHYA ANAND RAGHAVAN disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized.*
>
> *If any other person who knows of this order and does anything which helps or permits you NITHYA ANAND RAGHAVAN to breach the terms of this order they may be held to be in contempt of court and may be imprisoned, fined or have their assets seized.*
>
> *You have the following legal rights:*
>
> *a) to seek legal advice. This right does not entitle you to disobey any part to this order until you have sought legal advice;*

b) to require the applicant's solicitors, namely Dawson Cornwell, 15 Red Lion Square, London WC1R 4QT, tel 020 7242 2556 to provide you with a copy of any application form(s), statement(s), note of the hearing;

c) to apply, whether by counsel or solicitor or in person, to Judge of the Family Court assigned to hearing urgent applications at the Royal Courts of Justice, Strand, London, if practicable after giving notice to the applicant's solicitors and to the court, for an order discharging or varying any part of this order. This right does not entitle you to disobey any part of this order until your application has been heard;

d) if you do not speak or understand English adequately, to have an interpreter present in court at public expense in order to assist you at the hearing of any application relating to this order.

The parties

1. The Applicant is ANAND RAGHAVAN represented by Dawson Cornwell Solicitors The Respondent is NITHYA ANAND RAGHAVAN Recitals

2. This order was made at a hearing without notice to the respondent. The reason why the order was made without notice to the respondent is because she left England and Wales on or about 2 July 2015 and notice may lead her to take steps to defeat the purpose of the application and fail to return the child.

3. The Judge read the following documents:

(a) Position statement

(b) C67 application and C1A form

(c) Statement of Anand Raghavan with exhibits dated 8.01.2016.

4. The court was satisfied on a provisional basis of the evidence filed that

(a) NETHRA ANAND (a girl born on 7/8/09) was on 2 July 2015 habitually resident in the jurisdiction of England and Wales.

(b) NETHRA ANAND (a girl born on 7/8/09) was wrongfully removed from England on 2 July, 2015 and been wrongfully retained in India since.

(c) The courts of England and Wales have jurisdiction in matters of parental responsibility over the child pursuant to Articles 8 and 10 of BIIR.

5. The Father has agreed to pay for the cost of the flights for the Mother and child in returning from India to England. He will either purchase the tickets for the Mother and child himself, or put her in funds, or invite her to purchase the tickets on his credit card, as she may wish, in order for her to purchase the tickets herself.

Undertakings to the court by the solicitor for the applicant

6. The solicitors for the applicant undertake;

(a) To issue these proceedings forthwith and in any event by no later than 4 pm 11 January 2016;

(b) To pay the ex parte application fee forthwith and in any event by no later than 4 pm 11 January 2016;

AND NOW THEREFORE THIS HONOURABLE COURT RESPECTFULLY REQUESTS:

7. Any person not within the jurisdiction of this Court who is in a position to do so to co-operate in assisting and securing the immediate return to England and Wales of the Ward NETHRA ANAND (a girl born on 7/8/09)

IT IS ORDERED THAT:

8. NETHRA ANAND (a girl born on 7/8/09) is and shall remain a Ward of this Court during the minority or until further order.

9. The respondent mother shall return or cause the return of NETHRA ANAND (a girl born on 7/8/09) forthwith to England and Wales, and in any event no later than 23.59 on 22 January 2016.

10.Every person within the jurisdiction of this Honourable Court who is in a position to do so shall co-operate in assisting and securing the immediate return to England and Wales of NETHRA ANAND (a girl born on 7/8/09) a ward of this Court.

11.The applicant's solicitor shall fax copies of this order to the Office of the Head of International, Family Justice at the Royal Courts of Justice, the Strand, London WC2A 2LL (DX4550 Strand RCJ: fax 02079476408); and (if appropriate) to the Head of the Consular Division, Foreign and Commonwealth Office Spring Gardens London SW1A 2PA, Tel: 02070080212, Fax 02070080152.

12.The matter shall be listed for directions at 10:30 am on 29 January 2016 at the Royal Courts of Justice, the Strand, London Wc2A 2LL,

with a time estimate of 30 minutes, when the court shall consider what further orders shall be made. The Court may consider making declarations in the terms of paragraph 4 above.

13.The respondent mother shall attend at the hearing listed pursuant to the preceding paragraph, together with solicitors or counsel if so instructed. She shall file and serve by 4 pm 27 January, 2016 a short statement responding to the application.

14.This order may be served on the respondent, outside of the jurisdiction of England and Wales as may be required, by way of fax, email or personally in order for the court to deem that it constitutes good service.

15. Costs reserved."

52. An application for grant of U.K. citizenship was made on behalf of Nethra in September 2012 which was subsequently granted in December 2012. The father (respondent no.2) then acquired the citizenship of the U.K. in January, 2013. After grant of citizenship of the U.K., Nethra was admitted to a primary school in the U.K. in September 2013 and studied there only till July, 2015. Since Nethra had acquired British citizenship, the U.K. Court could exercise jurisdiction in respect of her custody issues."

20. The petitioner moved the Court at Kingston-upon-Hull with case No.KH25P00465/1756-2297-9027-9698 which was heard on 30.09.2025, wherein directions were given for the relief prayed which read as follows:

*"**THE COURT ORDERS***

IT IS DECLARED THAT:

1. The Court in England and Wales has jurisdiction in relation to the child on the basis that the child was habitually resident in the jurisdiction of England and Wales immediately before they were wrongfully removed or retained, and they have not acquired a new habitual residence in another Member State and satisfied the conditions in Article 7(a) or (b) of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

Specific issue order

2. Keerthi Gadde must return the child to the Jurisdiction of England and Wales and to the care of Bala Gadde immediately upon service of this order.

Service of this order

3. The Court gives permission for this order to be served via email and Whatsapp (to telephone number 07301796231) and dispenses with the need for personal service.

4. The Court directs the father to attempt service by post at the mother's last known address in India (provided to the court by the father), via the process described in court through which he effected service in the ongoing (England and Wales) High Court proceedings.

Permission to disclose this order

5. The father has permission to share this order with Sitara's school and with the police on strict condition that neither agency is to further disclose this order without permission of the court.

Liberty to apply

6. The mother has permission to apply on notice to the father to vary or set aside this order. Any application in this regard must be made by no later than seven days after the date on which the court affects service by the means set out in paragraph 3 above.

Costs

7. There is no order for costs.

Dated 30 September 2025

SCHEDULE TO ORDER

1. The father attended court. The mother did not.

2. The father confirmed that the mother is now in India. She attended at a hearing before the High Court in India on 30 August 2025.

3. The father confirmed that he had attempted service of the current application and papers via email and Whatsapp.

4. The father further confirmed that he has a hearing before the High Court of England and Wales in the Royal Courts of Justice listed on 2 October 2025. That court had directed service on the mother. The father had attempted this by sending all documents via email to his brother who resides in India who had then arranged courier delivery to the mothers known address in the Andhra Pradesh region of India."

21. Speaking order was issued and the Court made specific direction, which is labelled as Important Warning to Keerthi Gadde, which reads as follows:

> *"If you Keerthi Gadde disobey paragraph 2 of this order, you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized."*

22. Yet again, upon a petition filed by the petitioner before the High Court of Justice, Family Division, sitting at Royal Courts of Justice, the Court passed orders on 31.10.2025. The Court noted as follows:

*"**The parties***

*1. The applicant is **Bala GADDE**, the father, who appeared as a litigant in person.*

*2. The respondent is **Keerthi GADDE**, the mother, who did not appear.*

Recitals

3. The applicant was sworn.

4. The court noted that:

a. Prior to August 2025 the child was living in England.

b. On 7 February 2025 in divorce proceedings between the parents (Case number 1736-9409-9016-3327) the mother confirmed that the courts of England of Wales had jurisdiction in relation to matters relating to child arrangements and financial remedies.

c. On 18 July 2025 HIIJ Wigin sitting in the Family Court in Kingston-Upon-Hull in case number KH25P00373/1751-3352-6208-7041 made a specific issue order under the Children Act 2025 permitting the father to take the child to India on holiday for a two-week summer holiday from 15 to 31 August 2025, to include a two-night stay with her maternal grandparents. The mother was represented in those proceedings.

d. The father took the child to India and took her to stay with her maternal grandparents as directed by the court order.

e. The child was retained by the maternal grandparents in India and not returned to the father.

f. The mother is now understood to be in India with the child.

g. Orders directing the mother to return the child to England and Wales have previously been made by HHJ Brown sitting in the Family Court in Kingston upon Hull in case number KH25P00645 1756-2297-9027-9686 on 30 September 2025 and by Ms Hannah Markham KC sitting as Deputy High Court Judge in case number FD25P00600 on 2 October 2025.

h. The mother has failed to comply with the said return orders.

i. The mother remotely attended the hearing before Ms Hannah Markham KC sitting as Deputy High Court Judge in case number FD25P00600 on 2 October 2025. On that occasion the mother was directed to file a statement setting out her case by 16 October 2025. She was aware that the matter was listed for a further hearing on 31 October 2025.

j. The mother sent an email to the Court on 16 October 2025 attaching evidence in response. documents relating to a UK visa application but did not attach her evidence in response.

k. The father has brought a habeas corpus petition in India in the High Court of Andhra Pradesh (No 22723/2025) seeking the return of the child to his custody. The next hearing in that petition is on 5 November 2025.

l. The mother has also issued proceedings in India in relation to the child in the Family Court at Guntur (case GWOP 649 of 2025/FCOP 649 of 2025).

23. As outlined in the earlier paragraphs by this Court, there is no *res integra* regarding maintainability of Writ Petition. Curiously, both the learned Counsel appearing relied upon the same judgments of the Hon'ble Apex Court to substantiate that Writs are maintainable and *vice versa.*

24. Learned counsel for the petitioner, in *auxilium*, relied upon the judgment of the Hon'ble Supreme Court in the case of ***Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others***[4], wherein it was held as follows:

> *"14. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction."*

[4] (2019) 7 SCC 42

25. Learned counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of ***Kanika Goel vs. State (NCT of Delhi) and Another***[5], wherein it was held as follows:

> *"34. …… For the purpose of habeas corpus petition, the Court ought to focus on the obtaining circumstances of the minor child having been removed from the native country and taken to a place to encounter alien environment, language, custom, etc. interfering with his/her overall growth and grooming and whether continuance there will be harmful…."*

26. Learned counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of ***Lahari Sakhamuri vs. Sobhan Kodali***[6], wherein, at paragraph 38, it was held as follows:

> *"38. …..This Court applied the principles of (i) "the first strike", i.e the UK Court had passed effective and substantial order declaring the children of the parties as wards of that court, (ii) the comity of courts and (iii) the best interest and welfare of the child. It also held that the "most intimate contact" doctrine and the "closest concern" laid down in Surinder Kaur Sandhu's case(supra) are very much alive and cannot be ignored only because their application might be uncomfortable in certain situations. The Court also reiterated that the best interest and welfare of the child are of paramount importance which shall always be kept in mind by the courts while adjudicating the disputes."*

27. Learned counsel further relied upon the judgment of the High Court of Telangana in the case of ***Sara Bhayaraju vs. State of Telangana and others***[7], wherein, at paragraph 51, it was held as follows:

> *"51. The sum and substance of the aforesaid judgments is as follows:*
>
> *i. Proceedings in writ of Habeas Corpus are summary in nature.*
>
> *ii. Writ of Habeas Corpus is maintainable in child custody matters.*
>
> *iii. Welfare of minor is the paramount consideration while deciding matters with regard to child custody and it will prevail over Principle of Comity, Principle of First Strike.*
>
> *iv. Since the proceedings in writ of Habeas Corpus are summary in nature, the same have to be decided basing on the affidavits filed by the parties.*
>
> *v. Each case has to be examined basing on its own facts and circumstances and on case to case basis."*

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[5] (2018) 9 SCC 578
[6] (2019) 7 SCC 311
[7] 2025 (1) ALT 426 (DB) (TS)

28. Strengthening his arguments, learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of ***Nilanjan Bhattacharya vs. The State of Karnataka and Others***[8], wherein, while considering ***Nithya Anand Raghavan***'s case (supra 3), the Hon'ble Supreme Court, at paragraph 10, held as follows:

> *"…..This Court observed that in cases where the child is brought to India from a foreign country, which is their native country, the Court may undertake a summary inquiry or an elaborate inquiry. The court exercises its summary jurisdiction if the proceedings have been instituted immediately after the removal of the child from their state of origin and the child has not gained roots in India. In such cases, it would be beneficial for the child to return to the native state because of the differences in language and social customs. The Court is not required to conduct an elaborate inquiry into the merits of the case to ascertain the paramount welfare of the child, leaving such inquiry to the foreign court."*

29. Learned counsel further relied upon the judgment of the Hon'ble Supreme Court in ***V.Ravi Chandran***'s case (supra 1), wherein it was observed as follows:

> *"29. …..whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case."*

30. Learned counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of ***Ruchi Majoo vs. Sanjeev Majoo***[9], wherein it was held as follows:

> *"The conduct of a summary or elaborate inquiry on the question of custody by the court in the country to which the child has been removed will depend upon the facts and circumstances of each case. For instance, the conduct of an elaborate inquiry may depend*

[8] (2021) 12 SCC 376
[9] (2011) 6 SCC 479

> *upon the time that had elapsed between the removal of the child and the institution of the proceedings for custody. This would mean that longer the time gap, the lesser the inclination of the court to go for a summary inquiry."*

Contention of the Respondents:-

31. Learned Senior Counsels made strenuous effort to convince the Court that a Writ under Habeas Corpus for custody of child cannot be maintained. To accept the arguments so advanced, this Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person. For considering that issue, it is to be noted that the Writ Petition is filed against respondent No.8, who is none other than the biological mother and the custody of child with the biological mother cannot be termed as 'unlawful custody'. At the same time, this Court need to visualize the fact that the petitioner, who filed the Writ Petition for custody of child, is none other than the father, who is a natural guardian. The other mitigating fact is that the petitioner himself handed over the child to the respondent Nos.6 and 7, who are the grandparents, which is a clear admission in the pleadings of the petitioner. When it is the case that the child was left with the grandparents, the custody cannot be termed as illegal and unlawful. The Hon'ble Supreme Court, in the case of ***Nirmala vs. Kulwant Singh and Others***[10], at paragraph 27, has categorically observed as follows:

> *"27. It can thus be seen that no hard-and-fast rule can be laid down insofar as the maintainability of a habeas corpus petition in the matters of custody of a minor child is concerned. As to whether the writ court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India or not will be depend on the facts and circumstances of each case."*

32. The Hon'ble Supreme Court, at paragraph Nos.29 and 30, held as follows:

> *"29. It can thus be clearly seen that according to the case of the respondent father himself, in the peculiar facts and circumstances of the case, a family environment was required for the child especially from the grandparents and that he had placed the custody of the minor child with the appellant grandmother for taking his care. It can*

[10] (2024) 10 SCC 595

> *thus clearly be seen that it is not a case that the appellant grandmother had illegally kept the custody of the minor child. It is the respondent father who had placed the custody of the minor child with the appellant grandmother.*
>
> *30. We are of the considered view that in the peculiar facts and circumstances of the case, the High Court ought not to have entertained the habeas corpus petition under Article 226 of the Constitution of India. Since a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890."*

Conclusion:-

33. It can thus be clearly seen that according to the *lis* on hand, akin to the observations above, the petitioner himself pleaded before the Family Court of England sitting at Kingston-upon-Hull that the child needs family environment especially with the grandparents and pursuant to the orders of that Court, the petitioner himself placed the custody of the minor child with the grandparents. Therefore, in view of the peculiar facts and circumstances of this case, we hold that the Habeas Corpus petition, filed under Article 226 of the Constitution of India, cannot be entertained and hence, is liable to be rejected. Accordingly, this issue is answered.

ISSUE NO.2:-

34. The principal laconic submission made by Mr.V.V.Lakshmi Narayana, learned counsel for the petitioner, is that the Comity of Courts doctrine to be adhered and Court having '**FIRST STRIKE**'. He further contended that, in order to avoid multiplicity of proceedings, the principle of Comity of Courts is to be taken note of and be precisely implemented among the Courts at the State, Federal, and international levels, and not as a matter of obligation but out of deference and mutual respect. This is also referred as Judicial Comity or Comity of Courts.

35. Mr.V.V.Lakshmi Narayana, learned counsel, emphasizes that the principle of Comity of Courts is to be given paramount consideration when it comes to custody and welfare of the child. In this regard, to defend his

arguments, he strongly placed reliance on the judgment of Hon'ble Supreme Court in ***Yashita Sahu vs. State of Rajasthan and Others***[11], wherein it is observed as follows:

> *"We are of the considered view that the doctrine of comity of courts is a very healthy doctrine. If courts in different jurisdictions do not respect the orders passed by each other it will lead to contradictory orders being passed in different jurisdictions. No hard-and-fast guidelines can be laid down in this regard and each case has to be decided on its own facts. We may, however, again reiterate that the welfare of the child will always remain the paramount consideration."*

36. Apropos to, Mr.V.V.Lakshmi Narayana, learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court in ***Prateek Gupta v. Shilpi Gupta***[12], wherein it was held as follows:

> *"49. …Though the principle of comity of courts and the aforementioned doctrines qua a foreign court from the territory of which the child is removed are factors which deserve notice in deciding the issue of custody and repatriation of the child, it is no longer res integra that the ever-overriding determinant would be the welfare and interest of the child. …..*
>
> *50. The doctrines of "intimate contact" and "closest concern" are of persuasive relevance, only when the child is uprooted from its native country and taken to a place to encounter alien environment, language, custom, etc. with the portent of mutilative bearing on the process of its overall growth and gromming."*

37. Mr.V.V.Lakshmi Narayana, learned counsel would further reiterate his stance that the Courts in the United Kingdom had the intimate contact and closest concern over the child and are of persuasive relevance. The child in the present case is uprooted from her native country and taken to a place to encounter alien environment, language, custom, etc., with portent of mutilative bearing on the process of her oral growth and grooming. He also annexed the photographs to discern the concern shown on the child, Sitara, and submitted that the Court should cogitate the looming effect on the child if allowed to stay in India.

38. *Inter alia*, refuting the arguments of the learned counsel for the petitioner, both the learned designated Senior Counsels, Mr.Posani Venkateswarlu and Mr.K.S.Murthy, orchestered that the Hon'ble Supreme

[11] (2020) 3 SCC 67
[12] 2017 INSC 1195

Court in a three-judge Bench decision in ***Nithya Anand Raghavan***'s case (supra 3), divulged and succinctly observed, extensively discussing all the points argued by the petitioner's counsel relating to the Comity of Courts, First Strike, intimate contact and closest concern with the child. The relevant paragraphs read as follows:

> *"39. We must remind ourselves of the settled legal position that the concept of forum convenience has no place in wardship jurisdiction. Further, the efficacy of the principle of comity of courts as applicable to India in respect of child custody matters has been succinctly delineated in several decisions of this Court. We may usefully refer to the decision in the case of Dhanwanti Joshi v Madhav Unde [(1998) 1 SCC 112]. In Paragraphs 28 to 30, 32 and 33 of the reported decision, the Court observed thus:-*
>
> > *"28. The leading case in this behalf is the one rendered by the Privy Council in 1951, in McKee v. McKee. In that case, the parties, who were American citizens, were married in USA in 1933 and lived there till December 1946. But they had separated in December 1940. On 17-12-1941, a decree of divorce was passed in USA and custody of the child was given to the father and later varied in favour of the mother. At that stage, the father took away the child to Canada. In habeas corpus proceedings by the mother, though initially the decisions of lower courts went against her, the Supreme Court of Canada gave her custody but the said Court held that the father could not have the question of custody retried in Canada once the question was adjudicated in favour of the mother in the USA earlier. On appeal to the Privy Council, Lord Simonds held that in proceedings relating to custody before the Canadian Court, the welfare and happiness of the infant was of paramount consideration and the order of a foreign court in USA as to his custody can be given due weight in the circumstances of the case, but such an order of a foreign court was only one of the facts which must be taken into consideration. It was further held that it was the duty of the Canadian Court to form an independent judgment on the merits of the matter in regard to the welfare of the child. The order of the foreign court in US would yield to the welfare of the child. "Comity of courts demanded not its enforcement, but its grave consideration". This case arising from Canada which lays down the law for Canada and U.K. has been consistently followed in latter cases. This view was reiterated by the House of Lords in J v. C. [1970 AC 668]. This is the law also in USA (see 24 American Jurisprudence, para 1001) and Australia. (See Khamis v. Khamis [(1978) 4 Fam LR 410])*
> >
> > *29. However, there is an apparent contradiction between the above view and the one expressed in H. (infants), and in E. (an infant), to the effect that the court in the country to which the child is removed will send back the child to the country from which the child has been removed. This 13 (1998) 1 SCC 112 apparent conflict was explained and resolved by the Court of Appeal in 1974 in L. (minors) (wardship : jurisdiction), and in R. (minors) (wardship : jurisdiction), It was held by the Court of Appeal in L., that the view in McKee v. McKee is still the correct view and that the limited question which arose in the latter decisions was whether the court in the country to which the child was removed could conduct (a) a summary inquiry or (b) an elaborate inquiry on the question of custody. In the case of (a) a summary inquiry, the court would return custody to the country from which the child was removed unless such return could be shown to be harmful to the child. In the case of (b) an elaborate inquiry, the court could go into the merits as to where the permanent welfare lay and ignore the order of the foreign court or treat the fact of removal of the child from another country as only one of the circumstances. The crucial question as to whether the Court (in the country to which the child is removed) would exercise the summary or elaborate procedure is to be determined according to the child's welfare. The summary jurisdiction to return the child is invoked, for example, if the child had been removed from its native land and removed to another country where, maybe, his native language is not spoken,*

or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, -- for these are all acts which could psychologically disturb the child. Again the summary jurisdiction is exercised only if the court to which the child has been removed is moved promptly and quickly, for in that event, the Judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country on the expectation that an early decision in the native country could be in the interests of the child before the child could develop roots in the country to which he had been removed. Alternatively, the said court might think of conducting an elaborate inquiry on merits and have regard to the other facts of the case and the time that has lapsed after the removal of the child and consider if it would be in the interests of the child not to have it returned to the country from which it had been removed. In that event, the unauthorised removal of the child from the native country would not come in the way of the court in the country to which the child has been removed, to ignore the removal and independently consider whether the sending back of the child to its native country would be in the paramount interests of the child. (See Rayden & Jackson, 15th Edn., 1988, pp. 1477-79; Bromley, Family law, 7th Edn., 1987.) In R. (minors) (wardship : jurisdiction), it has been firmly held that the concept of forum convenience has no place in wardship jurisdiction.

30. We may here state that this Court in Elizabeth Dinshaw v. Arvind M. Dinshaw, while dealing with a child removed by the father from USA contrary to the custody orders of the US Court directed that the child be sent back to USA to the mother not only because of the principle of comity but also because, on facts, -- which were independently considered -- it was in the interests of the child to be sent back to the native State. There the removal of the child by the father and the mother's application in India were within six months. In that context, this Court referred to H. (infants), which case, as pointed out by us above has been explained in L. as a case where the Court thought it fit to exercise its summary jurisdiction in the interests of the child. Be that as it may, the general principles laid down in McKee v. McKee and J.v.C and the distinction between summary and elaborate inquiries as stated in L. (infants), are today well settled in UK, Canada, Australia and the USA. The same principles apply in our country. Therefore nothing precludes the Indian courts from considering the question on merits, having regard to the delay from 1984 -- even assuming that the earlier orders passed in India do not operate as constructive res judicata.

** * **

32. In this connection, it is necessary to refer to the Hague Convention of 1980 on "Civil Aspects of International Child Abduction". As of today, about 45 countries are parties to this Convention. India is not yet a signatory. Under the Convention, any child below 16 years who had been "wrongfully" removed or retained in another contracting State, could be returned back to the country from which the child had been removed, by application to a central authority. Under Article 16 of the Convention, if in the process, the issue goes before a court, the Convention prohibits the court from going into the merits of the welfare of the child. Article 12 requires the child to be sent back, but if a period of more than one year has lapsed from the date of removal to the date of commencement of the proceedings before the court, the child would still be returned unless it is demonstrated that the child is now settled in its new environment. Article 12 is subject to Article 13 and a return could be refused if it would expose the child to physical or psychological harm or otherwise place the child in an intolerable position or if the child is quite mature and objects to its return. In England, these aspects are covered by the Child Abduction and Custody Act, 1985.

33. So far as non-Convention countries are concerned, or where the removal related to a period before adopting the Convention, the law is that the court in the country to which the child is removed will consider the question on merits bearing the welfare of the child as of paramount importance and consider the order of the foreign court as only a factor to be taken into consideration as stated in McKee v. McKee unless the Court thinks it fit to

exercise summary jurisdiction in the interests of the child and its prompt return is for its welfare, as explained in L. As recently as 1996-1997, it has been held in P (A minor) (Child Abduction: Non-Convention Country), by Ward, L.J. [1996 Current Law Year Book, pp. 165-166] that in deciding whether to order the return of a child who has been abducted from his or her country of habitual residence -- which was not a party to the Hague Convention, 1980, -- the courts' overriding consideration must be the child's welfare. There is no need for the Judge to attempt to apply the provisions of Article 13 of the Convention by ordering the child's return unless a grave risk of harm was established. See also A (A minor) (Abduction: Non-Convention Country) [Re, The Times 3-7-97 by Ward, L.J. (CA) (quoted in Current Law, August 1997, p. 13]. This answers the contention relating to removal of the child from USA." (emphasis supplied)

40. The Court has noted that India is not yet a signatory to the Hague Convention of 1980 on "Civil Aspects of International Child Abduction". As regards the non-convention countries, the law is that the Court in the country to which the child has been removed must consider the question on merits bearing the welfare of the child as of paramount importance and reckon the order of the foreign Court as only a factor to be taken into consideration, unless the Court thinks it fit to exercise summary jurisdiction in the interests of the child and its prompt return is for its welfare. In exercise of summary jurisdiction, the Court must be satisfied and of the opinion that the proceeding instituted before it was in close proximity and filed promptly after the child was removed from his/her native state and brought within its territorial jurisdiction, the child has not gained roots here and further that it will be in the child's welfare to return to his native state because of the difference in language spoken or social customs and contacts to which he/she has been accustomed or such other tangible reasons. In such a case the Court need not resort to an elaborate inquiry into the merits of the paramount welfare of the child but leave that inquiry to the foreign Court by directing return of the child. Be it noted that in exceptional cases the Court can still refuse to issue direction to return the child to the native state and more particularly inspite of a pre-existing order of the foreign Court in that behalf, if it is satisfied that the child's return may expose him to a grave risk of harm. This means that the Courts in India, within whose jurisdiction the minor has been brought must "ordinarily" consider the question on merits, bearing in mind the welfare of the child as of paramount importance whilst reckoning the pre-existing order of the foreign Court if any as only one of the factors and not get fixated therewith. In either situation – be it a summary inquiry or an elaborate inquiry - the welfare of the child is of paramount consideration. Thus, while examining the issue the Courts in India are free to decline the relief of return of the child brought within its jurisdiction, if it is satisfied that the child is now settled in its new environment or if it would expose the child to physical or psychological harm or otherwise place the child in an intolerable position or if the child is quite mature and objects to its return. We are in respectful agreement with the aforementioned exposition.

41. Notably, the aforementioned exposition has been quoted with approval by a three-judge bench of this Court in Dr. V. Ravi Chandran (supra) as can be discerned from paragraph 27 of the reported decision. In that, after extracting paragraphs 28 to 30 of the decision in Dhanwanti Joshi's case, the three-judge bench observed thus:

> *"27…..…However, in view of the fact that the child had lived with his mother in India for nearly twelve years, this Court held that it would not exercise a summary jurisdiction to return the child to the United States of America on the ground that its removal from USA in 1984 was contrary to the orders of US courts. It was also held that whenever a question arises before a court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest of the minor." (emphasis supplied)*

Again in paragraphs 29 and 30, the three-judge bench observed thus:-

> *"29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the court where the parties had set up their matrimonial home, the court in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of the child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case.*
>
> *30. However, in a case where the court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the court may leave the aspects relating to the welfare of the child to be investigated by the court in his own native country as that could be in the best interests of the child. The indication given in Mckee v. McKee that there may be cases in which it is proper for a court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in L (Minors), In re and the said view has been approved by this Court in Dhanwanti Joshi. Similar view taken by the Court of Appeal in H. (Infants), in re has been approved by this Court in Elizabeth Dinshaw." (emphasis supplied)"*

39. In regard to the propelled question as to whether the order passed by the Foreign Court, directing the mother to produce the child before it would render the custody of the minor unlawful and indubitably, merely because such an order is passed by the Foregin Court, the custody of the minor would not become unlawful *per se*. There cannot be a pedantic approach contrary.

40. The learned Senior Counsels orchestered arguments that, while dealing with the issue of custody of a child, the Court should impede from venturing into other branches of law, where it will be always open for the parties to seek relief since the present Writ Petition is filed for the custody of child under Article 226 of Constitution of India for a Writ of Habeas Corpus.

41. Again, at paragraph 46 of ***Nithya Anand Raghavan***'s case, where it is emphatically observed that *"Once again, we may hasten to add that the decision of the Court, in each case, must depend on the totality of the*

facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign Court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign Court or to 16 113 (2004) Delhi Law Time 823 resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised."

42. The Hon'ble Supreme Court legalistically laid down the principle that even in case where Habeas Corpus petition is filed for the enforcement of an order passed by the Foreign Court cannot be blindly accepted or implemented without considering the paramount consideration and welfare of the child. Particularly, this point in the present case is forcibly argued, concomitantly by both the sides. It was also observed in ***Nithya Anand Raghavan***'s case that "India is not yet a signatory to the Hague Convention and also has no Comity of Court." A *fortiori*, as observed by the Hon'ble Supreme Court regarding the true test to be applied in a case of Habeas Corpus dealing with the welfare of the child, the law is well settled. In a recent judgment of the Hon'ble Supreme Court in ***Rohan Rajesh Kothari vs State of Gujarat and Others***[13], decided on 05.08.2024, while answering as to whether the order of the Foregin Court needs to be implemented or is decisive in nature. At paragraph 3, the Hon'ble Supreme Court has answered as follows:

> *"**3.** It is further clarified that no attempt shall be made or allowed by the Indian authorities or the Indian Courts (except this Court) to affect the status of the children or their mother, who are staying in India, in purported compliance to an order the petitioner is claimed to have obtained from the District Court, Fourth Judicial*

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District, Family Court Division, State of Minnesota, U.S.A. in July, 2023. A foreign judgment violative of Indian law is not conclusive between the parties and thus, Indian Courts are not bound to follow it. This principle is also statutorily recognized by Section 13(f) of the Civil Procedure Code, 1908. Hence, the aforesaid order is not binding on the respondents or the children."

43. The alacrity of the desirous father for the custody of the child by filing the petitions before the Family Court of England, sitting at Kingston-upon-Hull, and High Court of England would certainly illuminate love and affection. But, the letter and spirit of law is that the Court should be *ad litem* (guardian) to the child and its welfare, but it gets obliterated for the time being.

44. As seen from the pleadings narrated in the Writ Petition as well as in the counter-affidavits, the child, Sitara, was moved from the UK in the year 2019 and since then living with the parents of respondent No.8. In this connection, it is necessary to refer to the Hague Convention of 1980 on the Civil Aspects of International Child Abduction.

45. According to Article 12 of the Hague Convention, the child to be sent back, but if a period of more than one year has lapsed from the date of removal to the date of commencement of proceedings before the Court, the child would still be returned unless it is demonstrated that the child is now settled in her new environment. Article 12 is subject to Article 13 and a return could be refused if it would expose the child to physical or psychological harm or otherwise place the child in an intolerable position or if the child is quite mature. In England, these aspects are covered by the Child Abduction and Custody Act, 1985. This elucidates and throws light specifically on the present case that the child, who is now in India has gained acquaintance with the family of respondent No.8, in particular, with her grandparents. In view of the duration spent by Sitara with her grandparents, she has encountered close ties with the parents of respondent No.8 and milieu.

46. The petitioner, in his affidavit, has categorically admitted that, in order to provide love and affection of the parents of respondent No.8 to the

child, he moved the Courts in UK for permission to permit the petitioner to travel to India during the vacations, enabling the child, Sitara, to spend time with her grandparents. If that is so, the petitioner's intention is very clear that the child, Sitara, needs love and affection of the grandparents where she is now presently brought up and living since her removal from the United Kingdom. To an incisive query to the petitioner, regarding his stay in UK and the care of the child, during his office hours, to which, his answer was, 'staying alone', and employed a maid servant to look into the needs of the child, Sitara.

47. The aspect as to whether the petitioner intentionally moved the application to travel to India along with the child, Sitara, to spend in India during the vacations and as to whether the respondent No.8 has given her consent and accepted the jurisdiction of the England Courts, will be gone into in the appropriate proceedings initiated before the Courts and it is left open to the parties to raise the said issues. Since the present petition is only to handover the custody of the child to the petitioner by implementing the orders of the Foreign Court i.e., Family Court of England, sitting at Kingston-upon-Hull, and High Court of England, the same was answered supra that the orders of the Foreign courts are not binding, particularly, when deciding with the custody of the child in a Habeas Corpus petition. This aspect is answered by the Hon'ble Supreme Court affirmatively, and hence, the request of the petitioner cannot be considered for the present.

CUSTODY OF CHILD AS PER *PARENS PATRIAE* DOCTRINE:-

48. There is no dispute regarding the marriage, which was accorded on 24.11.2017 including solemnization, customization and child, Sitara, who is now aged about 6 years 4 months that this is also not in dispute. The child is tangled in between the petitioner and respondent No.8, who are the natural guardians and having equal force under law for their custody. This Court sensitizing the *parens patriae* principle, has to consider the welfare of the child as paramount which is also disciplined under Article 12 of Hague Convention and the rulings of the Hon'ble Supreme Court.

49. The argument advanced by the petitioner's counsel Mr.V.V.Lakshmi Narayana, regarding the implementation of the Foreign Court's order under First Strike, intimate contact and closest concern, are also considered and negatived. This Court, while exercising the jurisdiction under Article 226 of the Constitution of India, Writ of Habeas Corpus regarding the custody of child is guided by the afflux and catena of judgments of the Hon'ble Supreme Court in the matter of exercising *parens patriae* and also particularly when adjudicating the welfare of a girl child.

50. The invocation of First Strike principle as a decisive factor, in our opinion, would undermine and whittle down the wholesome principle of the duty of the Court having jurisdiction to consider the best interests and welfare of the child, which is of paramount importance, if the Court is convinced in that regard. While considering that aspect, the Court may reckon the fact that the child was abducted from his or her country of habitual residence but the Court's overriding consideration must be the child's welfare, and having regard to the child's presently residence and the laws prevailing in the positioned place of the child.

51. It is also important to bear in mind a very germane biological aspect of the matter concerning puberty, privacy and care needed to a girl child. At this juncture of life, the girl child needs special care and attention of the mother. There are certain biological changes, which a girl child undergoes, which cannot be taken care of by the father, who acceding to his admission that he stays alone in United Kingdom.

52. Children will be reticent in the tender age and may demonstrate a greater degree of emotional intelligence, awareness, and responsiveness to her surroundings. This developmental characteristic assumes significance while considering issues relating to the welfare, care, and emotional security of a minor girl child.

53. This Court opines that it is necessary to elucidate and not to hesitate to refer the language used by the High Court of Justice, Family Division sitting at the Royal Courts of Justice, which pricks the mind of the Court. At point No.15 of the order, it is observed that "*the Courts of India do decline to exercise any jurisdiction in relation to matters of parental responsibility in respect of the child*". This order passed by the High Court of Justice, Family Division, Sitting at Royal Courts of Justice, after noticing that Habeas Corpus petition in India in the High Court of Andhra Pradesh (No.22723 of 2025) seeking the return of the child to his custody is filed. At point l, the mother also initiated proceedings in India relating to the child in the Family Court at Guntur (GWOP No.649 of 2025/FCOP No.649 of 2025).

54. This imprints a fostered culture of subordination and embraces speaks of colonial mindset. As *subsidium sine qua non*, this colonial legacy cannot be permitted to be revived or superimposed upon the independence of the Indian Judicial.

55. The another glossy argument advanced by Mr.V.V.Lakshmi Narayana, learned counsel for the petitioner is that the conduct of the respondent No.8 has to be looked into by the Court. He asserts that respondent No.8 has, with all letter and spirit, accepted and admitted before the Family Court of England sitting at Kingston-upon-Hull, that the petitioner consented to travel to India and more particularly that she has voluntarily declared her habitual residence to be England and is within the jurisdiction of England and Wales. Basing on the admission of the respondent No.8, the Family Court of England sitting at Kingston-upon-Hull passed the orders and any inflation or vilification of the orders would amount to wanton disobedience.

56. As evinced, the Hon'ble Supreme Court in ***Nithya Anand Raghavan***'s case (supra 3) enshrined that the orders of the Foreign Court would not be binding when it is a matter pertaining to the custody of the child where paramount consideration is to be taken.

57. In view of the above ratio, which is no more a legal conundrum, the arguments of the petitioner are necessarily to be negatived.

58. When addressing the issue of visitation rights, the Hon'ble Supreme Court, in ***Yashita Sahu***'s case (supra 10) held as follows:

> *"A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.*
>
> *The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.*
>
> *Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks, and holidays. In cases like the present one where the parents are in two different continents effort should be made to give maximum visitation rights to the parent who is denied custody.*
>
> *In addition to 'Visitation Rights', 'Contact rights' are also important for development of the child specially in cases where both parents live in different states or countries. The concept of contact rights in the modern age would be contact by telephone, email or in fact, we feel the best system of contact, if available between the parties should be video calling. With the increasing availability of internet, video calling is now very common and courts dealing with the issue of custody of children must ensure*

> *that the parent who is denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 510 minutes everyday. This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if we cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each.*
>
> *In the present case, it is not necessary to go into various allegations and counter-allegations made by both the spouses. The husband states that he has no intention of divorcing his wife. It is hoped that the couple can either by themselves or through mediation settle their disputes which would not only be in their own custody but also in the interest of the child.*
>
> *Since at this stage , the dispute between the appellant and the V remains unresolved, the factors are required to be weighed in a proper manner to see what is best in the interest of the child. The child is less than three years old. She is a girl and, therefore, she probably requires her mother more than her father. This is a factor in favour of the wife".*

59. In determining the question of welfare of the minor, the Court may take into consideration the nearness of the relationship of the party with his/her child, which is a matter of main concern. The word "welfare" has the widest amplitude and it is to be understood in its wildest sense so as to cover the material and physical well being, education, health, happiness and moral welfare of the child. The welfare of the minor has to be determined by the Court after a full consideration of the facts and circumstances of each and every case. Recently, the Hon'ble Supreme Court in the case of ***Mohtashem Billah Malik vs. Sana Aftab***[14], with a slight deviation, held that the welfare of the child is paramount, but the Courts must also take into consideration the other relevant factors, including the conduct of the parties, their financial capacities, standard of living and comfort and education of the children.

(emphasis supplied)

60. The care and inalienable standard is the paramount consideration of the child's welfare which is affected by an array of factas, is ever evolving

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and cannot be confined to a straitjacket formula. The case need to be dealt within the basis of the facts and circumstances which have an impact on the quality of the child's upbringing.

61. This Court also emphasizes and expects both the parents to build "child-parent" bond gradually through the patience and empathy. Court advises both the parents to ensure effective communication and avoid letting the past disputes affect the child. Maintaining the relationship with both parents is crucial even when they live apart. That apart, the child's emotional, mental and physical well being should always be a predence and when such issues arise, the central question is not who is right or wrong between the parents, but what arrangements will best serve the child.

62. The Interim Order of this Court dated 08.01.2026 shall continue. The father as a natural guardian has every right to interact with the child, Sitara, and this Court permits the father to interact on video calls everyday and the mother shall ensure the same by allowing to talk with the child, Sitara, for 30 minutes as per the child's adaptability. The order now passed, giving custody to the mother, does not eclipse or impeach the right of the father to agitate his claims in the United Kingdom against respondent No.8. The petitioner shall also ensure the travel tickets and stay of respondent No.8 as well as the child, Sitara, in the event the Courts of United Kingdom need their presence.

63. This order cannot be construed by respondent No.8 that the custody of child is permanently given to her. This order is passed under the principle of p*arens patriae,* exercising jurisdiction under Article 226 of the Constitution in the case of custody of a child under a Writ of Habeas Corpus.

64. The law will take its own course in respect of the rights of the parties in case they want to proceed individually according to the laws prevailing in India, since the legalistic view is already settled that the laws in India should be reckoned as long as the child stays in India.

65. This order of custody to respondent No.8 remains, till the child, Sitara, attains majority or subject to option exercised by the child, Sitara, as per her wish according to her age and capability of thinking.

66. Adverting to the niceties of justice, this Court is of the opinion, to meet the ends of justice, allow the petitioner to travel to England (place of residence) along with the child, Sitara, yearly once till she attains majority.

67. *Consequenter*, with the above directions, the Writ Petition is disposed of. There shall be no order as to costs.

68. As a sequel, Interlocutory Applications pending, if any, shall stand closed, except the interim order dated 08.01.2026.

_____

CHEEKATI MANAVENDRANATH ROY, J

_____

TUHIN KUMAR GEDELA, J

Date : 01-04-2026
BMS/*Tsy*

Note : L.R. Copy be marked

IN THE COURT OF ANDHRA PRADESH: AT AMARAVATI

***

+WRIT PETITION No.22723 of 2025

Between:

Gadde Bala Yeswanth **...PETITIONER**

AND

$ The State of Andhra Pradesh, Represented by its Principal Secretary, Department of Home, Secretariat Building, Velagapudi, Guntur District, Andhra Pradesh and 7 others **..RESPONDENTS**

ORDER PRONOUNCED ON **01.04.2026**

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

&

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

_____

JUSTICE CHEEKATI MANAVENDRANATH ROY

_____

JUSTICE TUHIN KUMAR GEDELA

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

&

***THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA**

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AND

$ The State of Andhra Pradesh, Represented by its Principal Secretary, Department of Home, Secretariat Building, Velagapudi, Guntur District, Andhra Pradesh and 7 others **..RESPONDENTS**

! Counsel for the Petitioner : Mr.V.V.Lakshmi Narayana

! Counsel for the Respondents 1 to 5 : Learned Assistant Government Pleader attached to office of learned Advocate General

! Counsel for the Respondents 6 and 7 : Mr.K.S.Murthy, learned Senior Counsel

! Counsel for the 8th Respondent : Mr.Posani Venkateswarlu, learned Senior Counsel appearing on behalf of Mr.P.Vivek

<Gist :

>Head Note:

? Cases referred: 1. (2010) 1 SCC 174

2. AIR 1962 SC 1778

3. (2017) 8 SCC 454

4. (2019) 7 SCC 42

5. (2018) 9 SCC 578

6. (2019) 7 SCC 311

7. 2025 (1) ALT 426 (DB) (TS)

8. (2021) 12 SCC 376

9. (2011) 6 SCC 479

10. (2024) 10 SCC 595

11. (2020) 3 SCC 67

12. 2017 INSC 1195

13. SLP(Crl).No.1722 of 2024

14. 2026 LiveLaw (SC) 115