

TITLE: 'Child Is Not A Pawn': Kerala High Court Restores Child To Mother, Directs Family Courts To Follow Calcutta High Court's Child Custody Guidelines Till State Rules Are Framed

SUB-TITLE: The Kerala High Court entertained a mother's Habeas Corpus petition, restored custody of the child, and reaffirmed that child custody disputes must be resolved through due process.

Do fathers get the same urgency from courts in custody battles that mothers often receive when a child is taken away?

IMAGE

KERALA: In a judgment dated June 1, 2026, the **Kerala High Court** comprising **Chief Justice Soumen Sen and Justice Syam Kumar V.M.** ordered that a minor child be handed back to the mother after finding that the father had taken custody of the child in violation of a Family Court decree that had **granted permanent custody to the mother.**

The case came before the High Court through a **Habeas Corpus petition filed by the mother.** She informed the Court that despite a decree passed by the Family Court granting her permanent custody of the child, the father had taken the child away from school without informing her and had continued to keep the child with him. She requested the Court to direct that the child be returned to her custody.

The Court noted that although the **mother had the option of seeking execution of the Family Court decree,** she had approached the High Court through a Habeas Corpus petition because the child had been removed from her custody contrary to the court order.

During the hearing, the judges personally interacted with the child, the father and the mother. The Court recorded that the child clearly expressed a desire to stay with the mother. The Court observed that although the **child initially stated that he wished to go with the father,** the judges were of the view that the statement did not appear to have been made out of free will.

The Court further found that there was no dispute that the father had taken custody of the child in **violation of the decree passed by the Family Court.**

The father argued that the **child had made complaints about the mother** while he was interacting with him at school. However, the High Court made it clear that even if such concerns existed, the father could not ignore the existing custody order. The Court observed,

“The father ought to have filed an application for modification of the compromise decree and could not have taken the law into his own hands by removing the child from the custody of the mother, in utter violation of the decree.”

The Court also recognised that circumstances may arise where a custody arrangement requires modification. However, it stressed that legal remedies must be pursued through **proper legal procedures**. The Court stated:

“There may be circumstances warranting modification of a decree or order passed by the Family Court; however, the due legal process must be followed.”

Expressing concern over the conduct of both parents, the Court remarked:

“It is unfortunate that the child is being treated like a pawn in the hands of the parents.”

The Court further observed:

“The parents are not expected to behave irresponsibly.”

Considering the welfare of the child and the existing custody decree, the Court held:

“The child should now be returned to the mother, who shall continue to be the guardian of the child unless and until the order of the Family Court is modified.”

The High Court clarified that its observations **would not affect the pending execution proceedings before the Family Court**. At the same time, it directed that the **welfare of the child should remain the primary consideration** in all future proceedings.

The Court also referred to child access and custody guidelines approved by the **Calcutta High Court** and suggested that Family Courts in Kerala may follow those guidelines until a **final framework** is prepared by the committee examining the issue.

To assist the Family Court in future proceedings, the High Court directed the **Child Welfare Officer** to submit a **social investigation report** regarding the child. The Court also ordered both parents to strictly comply with the terms of the compromise decree.

At the conclusion of the proceedings, the child was present before the Court and **custody of the child was handed over to the mother** in the courtroom itself.

EXPLANATORY TABLE: LAWS AND PROVISIONS INVOLVED

| Law / Provision | Purpose | How It Was Used In This Case |
|-------------------------------|--|--|
| Habeas Corpus Petition | A constitutional remedy seeking production of a person allegedly under unlawful detention. | The mother approached the High Court seeking return of her child after alleging that the father had illegally taken custody despite a Family Court decree. |

| Law / Provision | Purpose | How It Was Used In This Case |
|---|---|--|
| Family Court Custody Decree | Determines custody and guardianship rights between parents. | Permanent custody had been granted to the mother through a compromise decree. |
| Execution Proceedings | Used to enforce a court order when a party does not comply voluntarily. | Proceedings were already pending before the Family Court regarding custody and visitation rights. |
| Modification of Custody Order | Allows a parent to seek changes in custody arrangements due to changed circumstances. | The High Court said the father should have sought modification instead of taking the child away himself. |
| Guardianship Principles | Determine who legally acts as guardian of a child. | The mother continued as legal guardian under the existing decree. |
| Child Welfare Principle | Paramount consideration in custody matters. | The Court repeatedly emphasized that the welfare of the child must come first. |
| Social Investigation Report | Assessment by welfare authorities regarding the child's circumstances. | The Child Welfare Officer was directed to submit a report before the Family Court. |
| Protection of Women from Domestic Violence Act, 2005 | Provides remedies in domestic violence disputes. | Mentioned only while directing circulation of child custody guidelines to courts dealing with family and DV matters. |

CASE DETAILS

Case Title: Hayarunisa Abdul Hakkim v. Director General of Police & Others

Case Number: W.P.(Crl.) No. 820 of 2026

Court: Kerala High Court

Date of Judgment: 1 June 2026

Neutral Citation: 2026:KER:37511

Bench:

Justice Soumen Sen

Justice Syam Kumar V. M.

Counsels:

For Petitioner: Navaneeth N. Nath, Abhirami S., Abdul Latheef P.M., Krupa Saji, and Arun Gopi G.L.

For Respondent No. 3: Reginald Valsalan, and Ann Maria Francis

For State: K.A. Anas, Public Prosecuto

KEY TAKEAWAYS

- When fathers file Habeas Corpus petitions for child custody, courts often direct them to the Family Court. The same standards and legal principles should apply equally to both parents.
- Child custody should never become a gender issue. No parent should be allowed to ignore court orders or take the law into their own hands.
- Children are not weapons in matrimonial disputes. Using them to settle parental conflicts ultimately harms the child the most.
- Concerns about visitation, access, or parental alienation are genuine issues, but they must be addressed through legal remedies and due process.
- Gender equality in family law requires equal accountability. The same legal expectations that apply to fathers must apply to mothers as well, with the child's welfare remaining paramount.