2026 INSC 1248

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(@SPECIAL LEAVE PETITION (CRL.) NO. 11625 OF 2026)

HELENA ANNA MARIA LERSCH ...APPELLANT(S)

VERSUS

STATE OF GOA & ANR. ...RESPONDENT(S)

J U D G E M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

"On the seashore of endless worlds children meet.

The infinite sky is motionless overhead and the restless water is boisterous. On the seashore of endless worlds the children meet with shouts and dances.

They build their houses with sand, and they play with empty shells. With withered leaves they weave their boats and smilingly float them on the vast deep. Children have their play on the seashore of worlds.

They know not how to swim, they know not how to cast nets. Pearl-fishers dive for pearls, merchants sail in their ships, while children gather pebbles and scatter them again. They seek not for hidden treasures, they know not how to cast nets."

- Rabindranath Tagore, "On the Seashore".

Leave granted.

2. In this proceeding, we are seeking to protect the autonomy of a child and help preserve the child's magical world,

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Date: 2026.01.19 15:57:40 IST
Reason:

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which unfortunately appears to be seriously jeopardised by the bitter bickering between the parents.

3. This Court is confronted with an unusually piquant situation wherein an unmarried German mother is seeking access to her minor son of four years, who she claims has German citizenship and has been issued a German passport, but is being denied access and custody by the father. She is also fervently urging this Court to allow her to take the child to Singapore, where she is presently employed, for his school education. These pleas obviously have been stoutly resisted by the father of the child, an Indian citizen, not only on merits, but also by doubting the jurisdictional competency of this Court under Article 136 of the Constitution in passing any further orders other than to grant access to the mother of the child, as the present proceeding arises out of a habeas corpus petition pending before a High Court, and more particularly, when a guardianship proceeding has been already initiated by the father in the meantime in India.

4. While the unwed status of the parents, both of whom have different nationalities and citizenships, and their complete lack of convergence on the core issue of the custody of the child

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are facts that may pose challenges to any court in determining an equitable solution, the problem has been compounded in the present case by the multiple related proceedings arising out of the same facts.

5. In view of the pendency of multiple proceedings, this Court has to address the foundational jurisdiction question raised by the father. However, in our opinion, it need not be considered as a preliminary issue and can be addressed in due course as we consider other issues by delving into the peculiar facts and circumstances arising in this proceeding, which will also provide the backdrop in deciding this fundamental question.

CERTAIN RELEVANT FACTS

6. The Petitioner herein is the mother of the minor boy, while Respondent No. 2 is the father. Their minor son in question is Master Marcus Johannes Mukerji, born on 15.07.2022, who is four years of age at the time of passing this order.

7. The mother is a German citizen who ordinarily lives and works in Singapore as TikTok's Vice President of Public Policy, while the father is a lawyer who runs his own law firm, PLR Chambers, in New Delhi, India. The parents are not married. The

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parties began a relationship in 2019, and in October 2021, the mother became pregnant with the child. Two months before the child's birth, the mother moved to New Delhi to facilitate the father's involvement in the child's birth and life, as he was primarily based in India pursuing his legal profession.

8. The child was born on 15.07.2022 in New Delhi. In October 2022, both parents, the child, and a full-time nanny shifted to Goa due to Delhi's worsening winter air pollution. From the child's birth until February 2026, per the mother and father's own admissions, the child and the parents primarily lived in New Delhi and Goa, with intermittent time spent in Germany with the mother and her family. During this time, the mother also frequently travelled between India and Singapore for work, as TikTok, the company where she is employed, was banned in India in 2020, restricting her ability to stay in India for extended periods. For the purpose of formal schooling, the child was enrolled in the German Embassy School in New Delhi and the Yellow House in Goa.

9. During this period, the relationship of the parents came under considerable strain and underwent rough patches, and at present, their relationship has ruptured to the extent that they

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have mostly remained separated. However, they continued to attempt to maintain cordial relations only for the child's sake, with limited success.

10. In October 2025, the mother obtained a negative declaration from the German Embassy stating that she is the child's sole legal guardian under German Civil Law, supported by the German passport issued to the child within a month of his birth in India. Thereafter, she travelled with the child from New Delhi to Germany. Within days, the father joined them, and in November 2025, the father brought the child back from Germany to Goa, India, with the mother's consent. During the period the child was in Germany, he was allegedly enrolled in a school in Germany but was later withdrawn when it was felt that raising the child in Germany may not be suitable.

11. In December 2025, the parents apparently decided to consider moving the child to Singapore and explored admission to United World College South East Asia (hereafter "UWCSEA"), one of the finest schools in Singapore. According to the mother, the father assisted in preparing the admissions application over email throughout December 2025 and January 2026. However, in a later email dated 04.02.2026, he backtracked, stating that

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he did not consent to the child being enrolled in a school in Singapore.

12. During that phase in December 2025, both parents took the child to Germany for Christmas and then went to Singapore. After a dispute between the parties, which ended with the mother lodging a complaint against the father with the Singapore Police on 3rd January 2026, the father brought back the child to Goa from Singapore, allegedly with the consent of the mother.

13. At the beginning of February 2026, the mother travelled from Singapore to Goa specifically to spend time with the child, but the father took the child to Kolkata to allegedly attend a friend's wedding, which was a trip the mother had specifically objected to as soon as she was informed of it.

14. Being prevented from meeting the child despite communicating her plans and wishes for the same to the father, the mother filed a habeas corpus writ petition before the Goa Bench of the High Court of Bombay (hereafter "the Bombay High Court") on 17.02.2026. The Bombay High Court granted the mother interim custody of the child for ten days (from 27.02.2026 to 08.03.2026) in Kolkata. On 04.03.2026, the mother's compliance with the conditions imposed was recorded.

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On 08.03.2026, the mother duly returned the child to the father's custody.

15. During the pendency of the habeas corpus petition before the Bombay High Court, the father instituted guardianship proceedings in the Court of the District Judge at South-24, Parganas at Alipore, West Bengal and obtained an ex-parte order on 02.04.2026 restraining the mother from taking custody of the child, wherein the Family Court noted Kolkata as the ordinary place of residence of the child.

16. The mother challenged the Family Court's ex-parte order before the Calcutta High Court, and on 23.04.2026, the Calcutta High Court directed the Family Court to decide the jurisdictional issue before passing any substantive orders in the guardianship proceedings. Thereafter, the mother filed an application for rejection of the guardianship petition under Order VII Rule 11 of the Code of Civil Procedure, 1908, which came to be rejected on 05.05.2025, holding that the question of jurisdiction required a factual analysis on merits and could not be decided in an Order VII Rule 11 application.

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17. The mother alleges that during the pendency of proceedings before the Bombay High Court and in Kolkata, the father prevented the mother from meeting the child and from communicating properly with the child.

18. In that background, the Bombay High Court, on 08.04.2026, directed that video interactions between the mother and child be facilitated and supervised by a state-appointed counsellor. The Bombay High Court thereafter noted on 15.04.2026 that the counsellor found the interaction between the mother and the child to be healthy and directed a schedule for supervised video interactions.

19. The mother, however, alleged that the father obstructed her interactions. The father allegedly used the court-appointed counsellor's non-availability to prevent any communication between the child and mother. The mother claims that the father cut off all communication with the child for more than six weeks, from 16.04.2026 to 25.05.2026, when all calls the mother made to the father went unanswered.

20. According to the mother, having no other alternative, she filed an application on 25.05.2026 seeking custody and urgent directions from the Bombay High Court, stating that

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communication between her and the child had completely broken down and was being obstructed. On 26.05.2026, the Bombay High Court granted video interaction with the mother, but the father retained custody of the child.

21. On 02.06.2026, the mother informed the father by email that she would be travelling to Kolkata from 05.06.2026 to 08.06.2026 to spend time with the child but received no response. On 05.06.2026, when the mother arrived in Kolkata and informed the father, the father replied that he was with the child in Bangalore. The mother immediately flew to Bangalore and sought the child's exact location and address. However, on 07.06.2026, the father informed the mother that they were in Mysore.

22. On 11.06.2026, the mother filed an additional affidavit before the Bombay High Court regarding the father's obstruction across Kolkata, Bangalore, and Mysore in a hide-and-seek manner. The matter, however, was adjourned on 15.06.2026 until 26.06.2026.

23. Against this adjournment, the mother filed the present Special Leave Petition before this Court on 19.06.2026, and the

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matter has come up before us and is being considered in this background.

24. On the first date of hearing, this Court directed both parties to be present in Court, and the father was directed to produce the child before this Court. Over the next several hearings, we encouraged the parties to attempt mediation, considering the child's best interests and the parents' custody rights. However, the parents could not reach a consensus on the child's custody.

25. The parties' pleadings and submissions before this Court reveal a deep divide between the parents. Their relationship appears acrimonious and severely strained, with tension easing only in the child's presence. They have been unable to agree on a mutually acceptable custody arrangement. We note that their entrenched differences have left the child's welfare caught in the vortex of their discord.

26. With the guardianship proceedings pending and in the absence of any agreement between the parents or court-directed interim custody granted to either parent, in the backdrop of the case as discussed above, this Court felt that it would best serve the welfare of the child if temporary custody is given to one of

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the parents. This would require determining whether the temporary custody of the child be given to the father, in which event the child would remain in India; or be given to the mother, in which case the mother has to be allowed to take the child to Singapore, where the mother is presently based. There is some indication that both parents had considered the latter option of admitting the child in a Singaporean school, before their relationship irreversibly deteriorated.

27. As the child's best interests remain paramount and take precedence over the parents' interests and other considerations, and in light of the peculiar background of the case, this Court considered it appropriate to have the parents and the child examined by NIMHANS, the country's premier mental health institution, to understand their psychological and mental conditions.

28. Accordingly, this Court, by order dated 11.08.2026, directed the parents and the child to undergo individual and family assessments at NIMHANS, Bengaluru.

29. We have thus felt it apposite to reproduce the order of this Court passed on 11.08.2026, which reads as follows:

> *"1. This Court is presently seized of the matter pertaining to the rival claims of the parents in seeking custody of*

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their child, who is about four years and one month old (born on 15.07.2022).

2. Admittedly, the mother and father are not married to each other. The relationship between the parties commenced sometime in January 2019 in the course of their professional interactions. Subsequently, a child was born on 15.07.2022 at La Femme, Hospital, New Delhi, India. The mother is a German citizen employed as a Vice President of Public Policy at TikTok, based in Singapore. The father is admittedly a practicing lawyer, and partner of a law firm, PLR Chambers, based in Delhi.

3. This Court is considering the rival claims of the parties for custody of their child. We have interacted with the mother and father in person on several occasions and have also observed the behavior of the child. Though certain allegations and counterallegations have been made by the parties against each other, the child does not appear to have any aversion towards either of the parents. Both parents also appear to be doting parents. The child is presently in India. For varying periods of time, the child has stayed with the parents in India, including in Delhi and Goa, and has recently stayed with the father in Kolkata, which according to the mother was without her consent. The child has also travelled to and stayed in Singapore on a couple of occasions, along with his parents, and has travelled to and stayed in Germany with the family of the mother.

4. The mother initiated writ proceedings before the High Court of Bombay at Goa Bench, in February 2026, seeking access to the child, as she claims to have been denied access to the child by the father without any reason. The matter is pending before the High Court of Bombay at Goa Bench out of which the present proceeding has arisen before this Court. The High Court initially granted the mother access to the child for 10 days, and thereafter passed certain orders for continued access to the child, the details of which may not be necessary to be referred to herein. After the filing of the writ proceedings before the High Court of Bombay at Goa, the father filed a petition under the Guardians and Wards Act, 1890 in the Court of the District Judge, South 24-Parganas at Alipore in April 2026, seeking protection and custody of the child. In the writ petition filed by the mother, she also sought custody of the child and permission to take the child to Singapore. The mother is keen to provide education to the child in Singapore, where

she lived for the last several years. The child's admission to one of the best schools in Singapore is stated to be under process, where the mother would also be able to provide quality time to the child in Singapore. The father, on the other hand, seeks to retain custody of the child in India, which he claims to be the child's habitual residence and will be in the child's welfare where quality education can be provided.

5. In considering such rival claims and counter-claims, this Court has to keep the best interests of the child as the foremost consideration, apart from the claim of the biological mother based on maternal love, affection and maternal instincts, as well as that of the father. In our view, this would obviously necessitate an evaluation of the various physical and mental conditions of all concerned, including the child, as neither have agreed to joint custody so far.

6. The father is primarily based in India because of his legal profession, while the mother is primarily based in Singapore because of her professional commitments. Therefore, if the child is to remain in India with the father, the mother will not have access to the child for a substantial period of time, except during occasional visits to India. Similarly, if the child is placed in Singapore as desired by the mother, the father will not be in a position to spend substantial time with the child, except during occasional visits. Under such circumstances, accepting the request of either parent would necessarily entail dislocation of the other parent for a substantial period of time. In absence of any agreement between the parties, the child has to remain either in India or in Singapore.

7. Under the circumstances, this Court has felt the necessity to seek the views of experts, particularly child psychologists/behavioural specialists, who may interact with the child as well as with the parents, either separately or together, as the psychologists/experts may deem fit and appropriate, and apprise this Court of their views. Thereafter, this Court will be in a better position to understand the psychological impact on the child if either parent is unable to remain with the child for a prolonged period of time, and thereafter to determine the issue of custody of the child. Therefore, this Court would like to ascertain the comparative psychological impact on the child of the two possible arrangements, namely, the child continuing to reside in India with the father in the absence of the mother for substantial period, or the child

residing in Singapore with the mother in the absence of the father for substantial period, and which of these two arrangements would better serve the welfare and best interests of the child. The experts may accordingly examine the comparative merits, demerits and implications of both alternatives and place their considered opinion before this Court, keeping in mind that the child is only about 4 years old, the psychological harm it may cause if the child is deprived of the maternal love and affection for a prolonged period, as compared to deprivation of the love and affection of his father. In either eventuality, the parent with whom the child does not ordinarily reside shall have reasonable and meaningful access to the child, including regular interaction through video conferencing and appropriate weekly/monthly visitation rights, as may be feasible and conducive to the best interests of the child.

8. From the records, we have also seen that the child has been looked after by nannies named, Kusum and Anu, for a substantial period of time. If the experts so desire, they may examine them also, as they may provide valuable insights into the behaviour predisposition of the child and the role of the parents.

9. The experts may also give their views as to whether they need to visit any particular place, either in India or in Singapore, as the case may be, to ascertain the proposed physical environment of the child where the child may be placed for the time being, for which the parties shall make the necessary arrangements for travel and stay and both the parties will share the expenses.

10. For the aforesaid purpose, we request the National institute of mental health and Neuro Sciences (hereinafter 'NIMHANS') at Bengaluru to immediately constitute a panel of experts consisting of such members as they may deem fit and appropriate who shall examine the child and parents, considering the aforementioned background and desire of the parents, keeping in mind the best interests of the child.

11. Considering the nature of the case and also the limitations on the mother to physically remain in India beyond a limited period, which have been appreciated by all, including the father, we would request the NIMHANS authorities to initiate the process of interaction without any further delay.

12. The parties have agreed to visit NIMHANS, Bengaluru, with the child immediately and shall report to NIMHANS at such time and place as may be required. If the NIMHANS authorities feel that it would be better for the parties to stay in their complex for some time, the parties shall cooperate and stay in the complex. Otherwise, they may stay at a hotel near NIMHANS, as per their convenience.

13. The mother has expressed that her child is very proficient in German language and that she would like to interact with the child in German during the interaction, and the experts may also interact with the child in German with the help of an expert/ interpreter.

14. Considering the nature of the case, we have requested Ms. Aishwarya Bhati, learned ASG, to assist the Court for expediting the constitution of the Board of experts by NIMHANS and also to render necessary assistance in requesting the services of a Germanspeaking person fluent in English, preferably a German national based in Bengaluru to assist the Board of Experts and also the mother and child.

15. NIMHANS is requested to submit a report before this Court in a sealed cover, preferably within a period of 2–3 weeks, from today. However, if the NIMHANS authorities feel the need for extension of time for this exercise, they may do so, which may be communicated to the learned ASG, Ms. Aishwarya Bhati, who will apprise this Court of such requirement. NIMHANS shall accordingly inform both parties through email as well as text messages on their mobile phones and shall also inform their respective lawyers/counsels regarding the date and time of their presence required at NIMHANS, Bengaluru.

16. This Court, for obvious reasons, is not going to make any observation at this stage regarding the claims and counter-claims or allegations/counter-allegations of the parties. However, to apprise the Board of Experts, of the background of the case, the parties are at liberty to submit, in writing, their respective cases, with a short synopsis/list of dates, before the Medical Board of NIMHANS within two days from today. The same shall not exceed three pages/2000 words. Further, the parties shall also submit their updated concrete plan/ proposals regarding the custody and care of the child to the Board of Experts also, which was earlier directed to be submitted before this Court.

17. During this period, the interim custody of the child shall remain with the mother during her stay in India. Obviously, the father will also have access to the child at such convenient time and place, as may be agreed between the parents. The respective counsel of the parties may help in this regard to the parties. It goes without saying that, in the absence of the mother in India, the interim custody of the child will revert back to the father, till the mother returns to India who shall then take custody of the child again from the father until such order of the Court.

18. Regarding the pending guardianship petition bearing 'Act VIII Case No. 69 of 2026 (R-69)', before the Court of the District Judge, South 24-Parganas at Alipore, it has been agreed by the both parties that the same can conveniently be transferred to an appropriate Court in Delhi. The Chief Justice of the High Court of Delhi is requested to assign the matter to a specific Court in Delhi at the earliest. The concerned Court at Alipore is directed to send the records immediately to the High Court of Delhi, which is to be sent to the appropriate Court in Delhi as per the directions of the Chief Justice of the High Court of Delhi.

19. The costs of the entire exercise involved in the assessment to be conducted by NIMHANS shall be borne by both parents equally, for which each parent shall deposit a sum of Rs.2 lakhs with the Registry of this Court within a period of 2 days. The expenses incurred by NIMHANS towards payment of fees to counsellors, experts and other ancillary expenditures shall be reimbursed from the amounts so deposited by the parties in this regard. Any additional amount, so required, shall be borne by the parties by depositing the same with the Registry of this Court, as may be intimated to the Registry by the NIMHANS.

20. The passport of the petitioner, Helena Anna Maria Lersch, may be returned to her so as to enable her to make the necessary arrangements for her travel in India and abroad, without any restrictions. However, the passport of the child shall remain with the Registry of this Court. The interim direction issued by this Court restraining the removal of the child from the country without the leave of the Court and other incidental directions issued earlier shall also remain in force, subject to what has been ordered today.

21. A copy of this order be furnished to Ms. Aishwarya Bhati, learned ASG, with a request that the authorities at NIMHANS be duly intimated and also for engagement of an interpreter.

22. We place on record our appreciation for the assistance rendered by Ms. Aishwarya Bhati, assisted by Mr. Sachin Sharma and Ms. Madhulika Upadhyay, learned counsels, on behalf of the Ministry of Health and Family Welfare, who have appeared at the request of this Court since the matter involves the participation of NIMHANS.

23. Counsels may apprise this Court on 14.08.2026 of the steps taken and developments in this regard in terms of the directions issued today. The parties may not be required to be present on 14.08.2026 in person unless they so desire.

24. The guardianship proceedings shall commence immediately without any loss of time by the concerned Court in Delhi on receipt of the records at the Court, and the Court is requested to proceed with the matter on a day-to-day basis, subject to other judicial commitments, and dispose of the same as expeditiously as possible. It is also made clear that the concerned Court shall proceed with the matter without being influenced by the proceedings and orders that have been passed by this Court in the present proceedings.

25. List the matter on 14.08.2026 at 2:00 p.m."

30. The NIMHANS report was received on 21.09.2026 and copies were furnished to the parties.

31. The pending Guardianship Petition bearing 'Act VIII Case No. 69 of 2026 (R-69)' before the Court of the District Judge, South 24-Parganas, at Alipore, has now been transferred to the Family Court, Patiala House Courts, New Delhi, upon the

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mother and father agreeing to the same. The case is now at the initial stage, and the parents are participating in the same.

32. We will now consider the arguments put forth on behalf of the parents seeking interim custody of the child.

33. Learned Senior Advocate for the mother, Ms. Geetha Luthra, submits that per the Tender Years Doctrine as enunciated in ***Queen v. Maria Clarke***,[1] Section 1626(b) of the German Civil Code, and per Section 6 of the Hindu Minority and Guardianship Act, 1956, the mother is the natural guardian of a very young child. Additionally, where the child is born out of wedlock, the mother is the child's natural guardian. Further, it is submitted that, under the doctrine of nurture, a child so young is best cared for by the mother. The learned Senior Counsel also relied on paragraph 18 of ***ABC v. State (NCT of Delhi),***[2] which held that where the parents are not married, the mother should have custody of the child. Similarly, per ***Gohar Begum v. Suggi alias Nazma Begam and Ors***.,[3] an unwed mother has the best claim over the minor child.

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[1] 1857 SCC OnLine EWHC 1: 119 ER 1217.
[2] (2015) 10 SCC 1.
[3] 1959 SCC OnLine SC 8: (1960) 1 SCR 597.

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34. It is thus submitted that it is in the best interest of the child to allow the mother to have custody of the child in Singapore, as this will not amount to dislocating the child if the parent is compelled to move the child because of their profession or employment. The mother also avers that, to ensure the father's access to the child in Singapore is not disrupted, access will be maintained through telephone/video calling or physical access, as may be agreed.

35. Ms. Luthra also submits that the child is very attached to the mother and becomes very distressed upon separation from the mother during many custody exchanges between the father and mother. It is also submitted that the father's proposal involves moving the child to Kolkata, a city the child has never spent any significant time, where the child has no familiar environment and where the father has no work-related reason to be present.

36. On the other hand, learned Senior Advocate for the father, Mr. Gopal Sankaranarayanan, submits that this Court's jurisdiction was invoked fraudulently, that the habeas corpus writ petition has become infructuous now that the mother's continuous contact with the child has been restored, and that

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the matter is being heard and argued in a custody petition before a jurisdictional court.

37. It is also submitted that since the child's birth, the mother has been 'absent' for nearly half the time, and the father has been the child's primary caregiver. It is further submitted that the father has built a 'well-drawn' cocoon for the child, and that introducing the child to the 'alien' city of Singapore during the pendency of the Family Court proceedings would be against the child's interests.

38. Mr Sankaranarayanan also submits that the Hindu Minority and Guardianship Act, 1956 will not apply, as the father claims to be a Christian and the mother is also not a Hindu. Therefore, the Guardians and Wards Act, 1890 will apply, and Section 17 of that Act provides only that the guardianship of a minor child is to be determined according to what appears to be in the welfare of the minor. It is vehemently submitted that allowing the mother to take the child to Singapore would dislocate the child and would not be in his best interests.

39. We have heard the arguments of the parties and perused all the materials placed before us.

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HABEAS CORPUS JURISDICTION OF THIS COURT:

40. The father and the mother seek conflicting custody arrangements that are incompatible with each other. The mother wishes to have the child educated in Singapore, where she works and resides, while the father wishes to raise the child in Kolkata. In either case, one parent will have less contact with the child than the other, as the parents' occupations necessitate their long-term presence in different locations/countries. This issue will also need to be addressed by the jurisdictional court when determining the child's final guardianship/custody arrangement, because of the complete lack of overlap between the interim custody and final custody arrangements sought by each party.

41. Mr. Sankaranarayanan argued vehemently that the matter should be remitted to the jurisdictional court handling the guardianship proceedings, in which the mother is already participating. He contended that her participation renders the reliefs she seeks from this Court infructuous, and that the present Special Leave Petition should therefore be disposed of as infructuous in light of Guardianship Petition No. 37 of 2026,

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pending before the Family Court at the Patiala House Courts, New Delhi.

42. It may be noted that while the habeas corpus petition was filed in February 2026, the father instituted the guardianship proceedings in Alipore, West Bengal, only in April 2026, after participating in the Bombay High Court proceedings. The Family Court, now seized of the guardianship petition, will continue to have jurisdiction despite the habeas corpus proceedings, as it will deal with the final determination of the child's guardianship. Similarly, the subsequent filing of the guardianship petition cannot render the habeas corpus petition infructuous.

43. A relief sought becomes infructuous when it either becomes not necessary or impossible for such relief to be granted. This Court in ***M. Sudakar v. V. Manoharan***[4] held that:

> *"15. .....In our opinion a writ petition broadly speaking is held infructuous when the relief sought for by the petitioner is already granted or because of certain events, there may not be necessity to decide the issue involved in the writ petition...."*

44. Further, in ***Nirmala v. Kulwant Singh & Ors,***[5] it was held as follows:

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[4] (2011) 1 SCC 484.
[5] 2024 INSC 370.

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> *"16. 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 depend on the facts and circumstances of each case."*

45. Based on a conjoint reading of ***M. Sudakar*** *(supra) and* ***Nirmala*** *(supra),* the pertinent question is whether, in light of the specific facts and circumstances, it is no longer necessary for this Court to decide the question of interim custody now that a petition for guardianship has been instituted by the father.

46. In this regard, we may recall the observations In ***Rajeswari Chandrasekar Ganesh v. State of T.N.***,[6] wherein this Court held that the *parens patriae* jurisdiction being exercised by this Court is foremost for the protection of the minor and is independent of the statutory framework. The relevant paragraphs are reproduced below:

> ***"99.*** *Thus, it is well established that in issuing the writ of habeas corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of habeas corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a*

[6] (2023) 12 SCC 472.

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> *court of equity. The primary object of a habeas corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a habeas corpus proceeding brought by one parent against the other for the custody of their child, the Court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child."*
>
> (emphasis added)

47. There is a distinction between a guardianship petition and a habeas corpus petition for custody. From a perusal of the record and pleadings, it is clear that what is now being sought from this Court is not final adjudication of the guardianship of the child, but, in the peculiar facts of the case, consideration of the plea for interim custody of the child.

48. It is also apposite to reproduce the reliefs sought by the father in the petition now pending before the Principal Judge of the Family Court, Patiala House Courts, being Guardianship Petition No. 37 of 2026, as follows:

> "It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:
>
> a) Appoint the Petitioner as the permanent guardian of the minor son Marcus Johannes Mukerji,
>
> b) Grant permanent custody of the minor son Marcus Johannes Mukerji to the Petitioner father,
>
> c) Pass an order of permanent injunction restraining the Respondent from disturbing the

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peaceful enjoyment of the minor at his ordinary place of residence while staying with the Petitioner.

Pass any other orders that this Court may deem fit in the interest of justice."

49. These prayers clearly distinguish the guardianship petition from the habeas corpus proceedings. In the former, the father seeks a final adjudication on the permanent guardianship of the child, whereas in the latter, the remaining relief sought by the mother is purely interim, namely, to take the child to Singapore for the child's education.

50. It could also be argued that under Section 12 of the Guardians and Wards Act, 1890, the Family Court is also equipped to decide interim custody of the child. However, we are of the opinion that for a court of equity to subject a minor child of the tender age of four years to multiple proceedings and to delay a decision on interim custody, while being fully aware of the absolute lack of cooperation between the parents, would be to neglect the duty of this Court towards the child under the *parens patriae* jurisdiction.

51. We are also of the opinion that, irrespective of the nature of the proceeding before a court, when the custody right over a child is involved, the child's best interests must be the

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preeminent consideration; it must prevail over all other considerations. Hence, once the child's best interests become the core issue, all other interests and considerations must be subservient to it, and such collateral interests, however important they may appear to the contesting parents, must be moulded accordingly. Their interests must not be allowed to override the best interests of the child. *A fortiori*, procedural law, including jurisdictional issues, must yield if it stands in the way of the child's best interests. Even international jurisdictional issues cannot come in the way of the best interests of the child.

52. In that regard, we may refer to the observations in ***Sheetal Vasant Thakur v. Chirag Arora***,[7]

> ***"51.*** *Through a series of judgments, this Court has laid down firmly that welfare of the child is the overarching and the determining factor even in matters relating to custodial and visitation rights of the parents. All other factors are subservient to the welfare of the child.*
>
> *This Court in* Gaurav Nagpal v. Sumedha Nagpal,[8] *after a survey of law in this country as well as in foreign jurisdictions, affirmed that child welfare is the paramount consideration and also highlighted the legal proposition of parens patriae jurisdiction of the court for the welfare of the child. This Court even went to the extent of ignoring orders of foreign courts by keeping the welfare of the child as the paramount consideration.*

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[7] 2026 SCC OnLine SC 1110.
[8] (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1.

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In Yashita Sahu v. State of Rajasthan,[9] *and* Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu[10] *this Court held that though this Court will accord substantial weight to foreign custody orders, it will be like other factors which will be subordinate to the prime consideration of the welfare of the child. Comity or first strike consideration will be subordinate to the welfare of child, affirming the supremacy of the child welfare principle. We may not burden ourselves any further with the numerous decisions in this regard in reiterating the dominant principle of the welfare of the child.*

52. *In* Gaurav Nagpal *(supra) this Court emphasised that welfare must be understood in the widest sense, from moral and ethical perspectives keeping in mind physical, emotional and educational needs of the child. In other words, all those factors which are conducive to the physical, moral and intellectual development of the child, and not merely confined to material aspects, must be taken into consideration by the court. In the aforesaid case, this Court also considered the conduct of the parents, psychological impact on the child which may result because of tutoring by either of the parents etc. in seeking to ascertain what would be in the best interest of the child.*

This Court observed in Gaurav Nagpal *(supra) as follows:—*

> "**50.** When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in

[9] (2020) 3 SCC 67 : (2020) 2 SCC (Civ) 39.
[10] (2023) 12 SCC 472.

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Mausami Moitra Ganguli case,[11] the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.

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

53. *In the light of the above position we can say that emotional stability, psychological security, dignity and mental health constitute vital components of the concept of the welfare of the child. Consequently, any such factors which may impede and seen to be disruptive to the welfare of the child must be abjured while considering the welfare of the child. Any process which leads to the detriment of the welfare of the child must be avoided by the court while passing orders relating to the custody/visitation rights claimed by any of the parents. The court is required to remain responsive not merely to the legal consequences but also the impact which the judicially ordained process may have upon the welfare of the child."*

[11] (2008) 7 SCC 673.

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53. In the aforesaid case of ***Gaurav Nagpal*** (*supra*), it was also observed as follows:

> ***" 43.*** *The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the "welfare of the child" and not rights of the parents under a statute for the time being in force.*
> *xxx*
> ***45.*** *In Saraswatibai Shripad Ved v. Shripad Vasanji Ved [AIR 1941 Bom 103 : ILR 1941 Bom 455] , the High Court of Bombay stated : (AIR p. 105)*
> *"... It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which is the paramount consideration...." (emphasis supplied)*
> *xxx*
> ***47.*** *Again, in Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka [(1982) 2 SCC 544 : 1982 SCC (Cri) 505] , this Court reiterated that the only consideration of the court in deciding the question of custody of minor should be the welfare and interest of the minor. And it is the special duty and responsibility of the court. Mature thinking is indeed necessary in such a situation to decide what will ensure to the benefit and welfare of the child."*

54. Thus, the primacy of consideration of the best interests of the child by the court has been the consistent judicial norm adopted in this country. Reference to a few more decisions in that regard would suffice.

(i) ***Nil Ratan Kundu v. Abhijit Kundu,***[12]

> ***" Principles governing custody of minor children***
> ***52.*** *In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be*

[12] (2008) 9 SCC 413.

decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

(ii) ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari,***[13]

" Welfare of the minor child is the paramount consideration

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

(iii) ***Rajeswari Chandrasekar Ganesh v. State of T.N. (****supra****)***

" 127. *We would therefore hold that in the case at Bar, the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined*

[13] (2019) 7 SCC 42.

solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult.

(iv) Vasudha Sethi v. Kiran V. Bhaskar,[14]

"32. *The decision of this Court in Kanika [Kanika Goel v. State (NCT of Delhi), (2018) 9 SCC 578 : (2018) 4 SCC (Civ) 411] reiterates the well-settled law that the issue regarding custody of a minor child and the issue of the repatriation of the child to the native country has to be addressed on the sole criteria of the welfare of the minor and not on consideration of the legal rights of the parents. The principle that the welfare of the minor shall be the predominant consideration and that the rights of the parties to a custody dispute are irrelevant has been consistently followed by this Court."*

55. At the same time, this Court also observed in the aforesaid case of ***Vasudha Sethi*** *(supra)* that each case has to be decided on its own facts and circumstances and no hard and fast rule can be laid down, and the factual aspects are required to be tested on the touchstone of the principle of the welfare of the minor child.

56. In light of the above well-settled principles, this Court must approach the dispute only from the lens of the best

[14] (2023) 17 SCC 478.

interests of the child. Given the lack of cooperation of the parents with each other as to an interim arrangement during the pendency of the guardianship petition, this Court proposes to exercise its *parens patriea* jurisdiction to decide an interim arrangement to ensure the child is not exposed to multiple proceedings and the harms that thus follow.

57. We are conscious that this Court has to address the fundamental question posed by Mr. Sankaranarayanan and Ms. Malavika Rajkotia, that if any order is passed at this stage allowing the mother to take the child to Singapore, it would amount to passing a final order and practically render the pending guardianship proceeding in Family Court, Patiala House Courts infructuous.

58. This is an aspect which, in our opinion, can be answered in due course when we consider the core issue of the best interests of the child in the light of the expert opinion before us. In our view, the expert opinion which has given by NIMHANS after a comprehensive clinical examination of the parents and child for a fairly well-extended period of time, provides a reliable, relevant and material basis for evaluating the contesting claims of the parents, even in a parallel proceeding arising out of the

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habeas corpus petition. It highlights to us that there is sufficient reason for this Court to intervene at this stage.

59. Further, we are mindful of the fact that when considering the best interests of a child in any proceeding, any determination made by a court is essentially temporary in nature, in as much we are dealing with an ever-growing child whose needs and aspirations also keep on evolving and changing. What is in the best interests of a child who is four years old will not be the same once the child is ten or fifteen years old. Similarly, the parents' circumstances, be it psychological, financial, or social, may also fluctuate, necessitating a revision of the custody arrangements. Further, as warring parents move on from the heat of a dispute, it may even be possible for them to become more agreeable to changing the custody arrangement based on what may be required or needed, based on the evolving needs of the child.

60. In this regard, we may refer to the observations of this Court in ***Neethu v. Rajesh Kumar,***[15] which are pertinent in understanding/guiding the nature of relief that grants custody to a parent/guardian:

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[15] (2025) 10 SCC 436.

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> ***"15.*** *Further, since the case at hand is a custody matter, it becomes imperative for us to lay down the universally accepted tenets that such matters are to be dealt sensitively with due consideration to the emotional, intellectual, physical, financial, social and cultural needs of a growing child. Therefore, custody orders are always considered interlocutory orders and by the nature of such proceedings, custody orders cannot be made rigid and final. Rather, the courts are entitled to alter and mould the custody orders in view of the best interest of the minor.*
>
> ***16.*** *The core and inalienable standard is the paramount consideration of the child's welfare, which is affected by an array of factors, is ever evolving and cannot be confined in a straitjacket. Therefore, each case has to be dealt with on the basis of its unique facts and take into account any change in circumstances which have an impact on the quality of a child's upbringing.*
>
> ***17****. In light of the aforesaid legal principles surrounding review jurisdiction of this Court and the role of courts in custody matters, it is a natural corollary that judicial discretion has to be properly balanced between the statutory provisions that advocate for limited exercise of review powers and the peculiar care that needs to be extended by the courts in matters of child custody. We sincerely believe that undertaking a far too hyper technical approach in such cases shall indeed amount to abandoning the doctrine of parens patriae and will cause travesty of justice."*

61. We are conscious of the fact that the jurisdictional Family Court, Patiala House Courts will finally decide the issue of permanent guardianship of the child. Accordingly, what we propose to do in the present proceeding is to examine the advisability of passing certain interim arrangements, which will not come in the way of the jurisdictional court in deciding the final custody arrangement of the child.

62. With this caveat in mind, we proceed to examine the competing reliefs sought from us as to which interim relief can be granted to either parent.

TRIPLE TEST:

63. It is well settled that interim relief is evaluated through the triple test, viz.,

(a) prima facie case; and

(b) balance of convenience; and

(c) irreparable harm.

64. The test must be applied in this proceeding in view of the interim nature of the child's custody being sought from this Court. We must make it clear that this Court would not have had to engage in this analysis at all had the child been old enough to express his own desires and wishes as to which parent he would like to stay with, or which country he would want to stay in. However, this child has only just turned four years old on 15.07.2022 and in our interactions with him in chambers, it has become clear to us he is too young to be able to express an opinion or wish or desire one way or another and is oblivious of his surroundings so long as he is with his parents. In light of

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this, we must then engage in balancing the claims of the parents against each other and consider the best interests of the child.

PRIMA FACIE CASE

65. The first prong of which party has a prima facie case may be evaluated as which parent may have a better legal claim over the child on the face of it. Ms. Luthra contends that under Section 6 of the Hindu Minority and Guardianship Act, 1956, the custody of a child under the age of five years vests with the mother. Further, where the parents are unwed, the mother is the natural guardian of the child. She relied upon ***ABC v. State (NCT of Delhi)*** *(supra)* and ***Queen v. Clarke*** *(supra)* to establish the right of an unwed mother to the custody of a young child. On the other hand, Mr. Sankaranarayanan contends that the Hindu Minority and Guardianship Act, 1956 does not apply as neither the mother nor the father are Hindus and the applicable law is the Guardians and Wards Act, 1890, wherein Section 17 provides that the custody of a child shall only be determined based on the best interests of the child.

66. ***X1 v. State (NCT of Delhi)***[16] provides a broad survey of the various laws across many jurisdictions as to an unwed

[16] (2015) 10 SCC 1.

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mother's claim of guardianship as opposed to the unwed father's claim.

> ***"10.*** *Section 6(b) of the Hindu Minority and Guardianship Act, 1956 makes specific provisions with respect to natural guardians of illegitimate children, and in this regard gives primacy to the mother over the father. Mohammedan Law accords the custody of illegitimate children to the mother and her relatives. The law follows the principle that the maternity of a child is established in the woman who gives birth to it, irrespective of the lawfulness of her connection with the begetter. However, paternity is inherently nebulous especially where the child is not an offspring of marriage. Furthermore, as per Section 8 of the Succession Act, 1925, which applies to the Christians in India, the domicile of origin of an illegitimate child is in the country in which at the time of his birth his mother is domiciled. This indicates that priority, preference and pre-eminence is given to the mother over the father of the child concerned.*
>
> ***11.*** *In the United Kingdom, the Children Act, 1989 allocates parental responsibility, which includes all rights, duties, powers, responsibilities and authority of a parent over the child and his/her property. According to Section 2(2) of that Act, parental custody of a child born of unwed parents is with the mother in all cases, and additionally with the father provided he has acquired responsibility in accordance with the provisions of the Act. To acquire responsibility, he would have to register as the child's father, execute a parental responsibility agreement with the mother or obtain a court order giving him parental responsibility over the child.*
>
> ***12.*** *In USA, each State has different child custody laws but predominantly the mother has full legal and physical custody from the time the child is born. Unless an unmarried father establishes his paternity over the child it is generally difficult for him to defeat or overwhelm the preferential claims of the mother to the custody. However, some States assume that both the parents who sign the child's birth certificate have joint custody, regardless of whether they are married.*
>
> ***13.*** *In Ireland, Section 6(4) of the Guardianship of Infants Act, 1964 ordains — "The mother of an illegitimate infant shall be guardian of the infant". Unless the mother agrees to sign a statutory declaration, an unmarried father must apply to the court in order to become a legal guardian of his child.*

14. *Article 176 of the Family Code of the Philippines explicitly provides that "illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code". This position obtains regardless of whether the father admits paternity. In 2004, the Supreme Court of the Philippines in Joey D. Briones v. Maricel P. Miguel[2] held that an illegitimate child is under the sole parental authority of the mother.*

15. *The law in New Zealand, as laid out in Section 17 of the Care of Children Act, 2004, is that the mother of a child is the sole guardian if she is not married to, or in civil union with, or living as a de facto partner with the father of the child at any time during the period beginning with the conception of the child and ending with the birth of the child.*

16. *In South Africa, according to the Children's Act 38 of 2005, parental responsibility includes the responsibility and the right : (a) to care for the child; (b) to maintain contact with the child; (c) to act as guardian of the child; and (d) to contribute to the maintenance of the child. The biological mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child. The father has full parental responsibility if he is married to the mother, or if he was married to her at the time of the child's conception, or at the time of the child's birth or any time in between, or if at the time of the child's birth he was living with the mother in a permanent life partnership, or if he (i) consents to be identified or successfully applies in terms of Section 26 to be identified as the child's father or pays damages in terms of customary law; (ii) contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and (iii) contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.*

17. *This conspectus indicates the preponderant position that it is the unwed mother who possesses primary custodial and guardianship rights with regard to her children and that the father is not conferred with an equal position merely by virtue of his having fathered the child. This analysis should assist us in a meaningful, dynamic and enduring interpretation of the law as it exists in India.*

(Emphasis added)

67. Thus, it becomes clear that across several jurisdictions, the mother has primary custody of a child born outside of wedlock. This right of the mother does not come at the exclusion of the father's claim of custody. In many jurisdictions, the father acquires custody upon proper application to the proper forum. Paragraph 17 of ***X1 v. State (NCT of Delhi)*** *(supra)* also notes that the custodial and guardianship rights are not merely conferred upon a person because he has fathered the child, but when he meets some greater threshold than mere biological connection. In the instant facts, we are not seeking to determine if the father has met a greater threshold than that identified in ***X1 v. State (NCT of Delhi)*** *(supra) but* only seeking to evaluate which of the unwed parents has a better prima facie claim of custody over a very young child.

68. It is recognised across legal jurisdictions that, unless otherwise proved, preference in the law is to give custody of the child to the mother when there is a dispute between the parents. Further, under the Guardians and Wards Act, 1890, there is no legal provision that disables the mother from having a prima facie claim of custody of a child of a tender age of four years. Thus, jurisprudentially, the mother has a preferential custody

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right over the child. There is no reason to depart from this well-settled legal position. The recognized international jurisprudence is an additional reason that establishes the prima facie case in favour of granting custody to the mother. Therefore, in the case of a child born to unwed parents, the mother has a better prima facie claim of custody.

BALANCE OF CONVENIENCE

69. The next prong of the triple test is the balance of convenience. The mother has been relentlessly pursuing litigation in India to continue to maintain her relationship with the child, which was never ruptured at her instance at any stage except for necessary visits to Singapore to pursue her career. Even prior to the litigation, while she was shuttling between Singapore and India, she remained in constant touch with the child. According to the mother, her communication and access to the child was disrupted by the father without any reason sometime in February 2026 when she came to India to meet the child. This led to the filing of the habeas corpus petition before the Bombay High Court. Despite facing serious hardships and difficulties in being involuntarily away from her place of work in Singapore, she has remained in India most of the time and has

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been in consistent contact with the child since the beginning of the litigation.

70. The mother has informed this Court that her continuous presence in India due to the litigation is hampering her ability to work. Further prolonged presence in India may also affect her ability to maintain her employment status. This Court is cognizant of the fact that if the possibility of her having to stay in India for a prolonged period to maintain her parental relationship with the child results in her losing her employment relationship, the resulting harm is that it will prevent her from being able to provide the lush standard of living the child currently enjoys, including access to the world-class education that the mother has shown that she has consistently paid for. The consequential disturbance to both mother and child, if she were to lose her job, is also a factor this Court must consider when evaluating the balance of convenience of the parents and child. The court must be conscious not to allow fortuitous circumstances to improve or diminish any rightful claim.

71. Comparatively, the father lives and works in New Delhi as a founding partner of a successful law firm. Travelling to Singapore to meet the child may be inconvenient. Pursuing any

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necessary litigation in Singapore may be additionally inconvenient, but it cannot be said to be unfamiliar or impossible for him, with access to both the financial and legal resources to handle it, and the legal knowledge to understand the processes, as he himself practices in the Supreme Court of this country. The mother has been greatly inconvenienced in having to approach this Court to even maintain proper telephonic and physical access to her own child, while putting in peril her employment status. The father, running his own law firm, would face comparatively less inconvenience as regards his employment if he were to travel often to Singapore to maintain contact with the child.

72. The continued presence of the mother in India, if temporary custody of the child is given to the father, can happen only if the mother gives up her employment and remains at the tender mercy of the father, which we consider utterly unfair and iniquitous to the mother. The issue is whether it would be fair to compel the mother to give up her job when the parents are not living together and are hardly on speaking terms except because of the child, if a viable alternative is available without her having to give up her job.

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73. Certainly, neither parent has offered to give up their respective careers and move for the sake of the child. Hence, we do not consider an arrangement which would significantly hinder either parent's professional commitments. One of the parents has to forgo a substantial period of companionship with the child, which is the unfortunate fallout of this bitter dispute between the parents. We are not, in any manner, seeking to find the reasons for it or identify who is responsible for this unfortunate situation. We are trying to determine in whose custody the child's best interests will be better served. We conclude by finding that it cannot be said that the father would be more inconvenienced than the mother in having to travel to another country to maintain contact with the child, given that the mother has been diligently doing the same since the birth of the child in this country, though she is neither a citizen nor a resident here, but ordinarily working and based out of Singapore.

IRREPARABLE HARM

74. The most important prong of the triple test for interim relief in the facts and circumstances before us is the issue of irreparable harm. Irreparable harm in the context of habeas

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corpus petitions filed for child custody should be viewed from the lens of the most vulnerable party and the subject of the *parens patriae* jurisdiction, i.e., the child. As discussed above, it is also settled law that courts of equity, in the exercise of their *parens patriae* jurisdiction, always assess custody claims through the lens of the best interests of the child.

75. Irreparable harm should thus be seen not from the perspective of the parents or guardians of the child, but from the view of irreparable harm which may be caused to the child by granting/not granting a particular proposed arrangement by a parent.

76. In evaluating the best interests of a child, there are several factors that tip the scales one way or another. Love, affection and warmth; formal schooling and opportunities for growth; and the child's established roots are some of the major factors.

77. In ***Rajeswari Chandrasekar Ganesh v. State of T.N.*** (*supra*), this Court held that the factors through which the best interests of a child are to be considered have to do with stability, love, care and affection essential for the holistic development of the child:

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> ***"95.*** *The question as to how the court would determine what is best in the interest of the child was considered* McGrath (Infants), In re*, and it was observed by Lindley, L.J., as follows : (Ch p. 148)*
>
> > *"… The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."*
>
> ***xxx***
>
> ***97.*** *The question as to what would be the dominating factors while examining the welfare of a child was considered in* Walker v. Walker & Harrison *[Walker v. Walker & Harrison, 1981 New Ze Recent Law 257] and it was observed that while the material considerations have their place, they are secondary matters. More important are stability and security, loving and understanding care and guidance, and warm and compassionate relationships which are essential for the development of the child's character, personality and talents. It was stated as follows:*
>
> > *"Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents."*

78. The best interest of a child is a highly complex consideration requiring assessment of all the relevant considerations. Only after a comprehensive examination of the relevant factors, the court may arrive at the most practical and

desirable conclusion. It must be remembered that determining a child's best interests will always be a complex exercise as the relevant factors themselves are always in a state of flux.

79. In ***Sharmila Velamur v. V. Sanjay,***[17] this Court observed as follows:

> ***"32.*** *To consider the interests of the child, the Court must take into account all attending circumstances and the totality of the situation. The Court must consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare including stability and security, loving and understanding care and guidance, and full development of the child's character, personality, and talents. The Court has to give due weightage to the child's ordinary contentment, health, education, intellectual development, favourable surroundings, and future prospects. Further, over and above physical comforts, moral and ethical values also have to be taken note of, as they constitute equal if not more important factors than the others."*

80. Keeping the best interests of the child in mind, this Court had been continually nudging the parents to arrive at an amicable solution which would factor in their own constraints. However, over the course of the proceedings before this Court, it has become clear that the parents are unable to agree on any custody arrangement without the Court's intervention, which has only resulted in detriment to the child, who has now been

[17] 2025 SCC OnLine SC 482.

out of formal schooling for several months, depriving him of the structure and benefits of the same.

81. The inevitable consequence of the lack of agreement between the parents is that the child must remain with only one parent for a substantial period while undergoing schooling, while the other parent would be with the child only intermittently, since the parents are staying separately in different countries pursuing their professions. It was in that context that this Court, in exercise of its *parens patriae* jurisdiction, sought the opinion of the National Institute of Mental Health and Neuro Sciences (NIMHANS), a premier national institution of worldwide repute, to give an opinion as to how to promote the best interests of the child, keeping in mind the inability of the parents to come to a mutually agreed arrangement, and the capacity of the parents in all relevant parameters to look after the child.

82. NIMHANS has undertaken a detailed examination of the parents and child and submitted a comprehensive report on 17.09.2026, of which references will be made to the relevant portions.

83. Interestingly, the Report mentions that both parents are capable of looking after the child's welfare, despite the fact that

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there may be incompatibility between the parents *per se,* which the Report also notes.

84. The Assessment Report of the mother by NIMHANS states that,

> *"Ms Helena Anna Maria does not have a diagnosable psychiatric disorder lifetime/currently. She has the capacity to fulfil her parental responsibilities. She has adequate access to financial, family, educational, and healthcare resources."*

85. Interestingly, the Assessment Report of the father is also along the same lines, which says that,

> *"Mr Suhaan Mukerji does not have a diagnosable psychiatric disorder lifetime/currently. He has the capacity to fulfil his parental responsibilities. He has adequate access to financial, find family, educational, and healthcare resources."*

86. At the same time, it is important to note the Family Assessment Report of NIMHANS, with regard to parenting capacity states as follows:

> *"Both parents presented as emotionally invested in Marcus and described themselves as attentive and caring parents despite their strained relationship with each other.*
>
> *The sessions suggest strengths in emotional investment and commitment to Marcus in both parents, alongside areas requiring attention in cooperative parenting, communication, conflict management, and shared decision-making.*
>
> *Each parent appears to attribute the conflict primarily to the other while viewing their own actions as motivated by Marcus's welfare."*

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87. The Family Assessment Report then concludes in the following words:

> **"***Both parents presented as strongly emotionally invested in Marcus, with a strong emotional bond with him, and described themselves as caring and committed parents. The sessions indicate a high-conflict and significantly strained couple relationship, with differing perceptions regarding past events, safety, caregiving, residence, and future parenting arrangements. The primary concern is the ongoing inter-couple conflict and its potential impact on Marcus, rather than a lack of parental attachment. Couples therapy was recommended; however, it could not be initiated as both parents were unable to arrive at a mutually agreed decision regarding reconciliation."*

88. Since the proceedings revolve around the focal point of the welfare of the child, we are of the opinion that the "Child Clinical Psychologist Observation Report" of the child by NIMHANS would be of great importance in deciding the issues before us, including the issue of jurisdiction of this Court, and hence, the same Report in totality is reproduced as below:

> ***"Child Clinical Psychologist Observation Report***
>
> *Marcus was seen across several sessions (about 12 hours) with both parents together and individually. Most sessions were play-based sessions. The child had consistently showed interests towards construction play, especially in the sandpit where he built and then rebuilt a "forest" scene using his construction toys. He also enjoyed playing the keyboard and drums, singing, and drawing.*
>
> *Marcus is a bright, creative and verbally expressive child who could clearly communicate his ideas, preferences and needs. He spoke both fluently in English and German and could understand and to some extent manage to communicate in Hindi as well. He demonstrated a good vocabulary beyond what is expected of his*

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developmental level. His overall communication and development appeared to be age-appropriate. It was noted that he engaged well in imaginative play and he could sustain his attention on activities he was interested in. Additionally, it was seen that he had a strong need to direct how the play went and how others took part in it, and he resisted most attempts to redirect him.

Formal assessment including the Children's Apperception Test (CAT), Children's Sentence Completion Test (C-SCT) and drawing-based activities were attempted during the course of the sessions. However, the child's responses were brief, limited and inconsistent and therefore meaningful interpretation of these assessments could not be made. During the CAT, he primarily named the animals shown in the cards and reported difficulty in creating stories. During the C-SCT, he provided responses not related to the sentence stems despite attempts to explain the task. His participation in drawing activities was also limited to scribbling or colouring. These responses may be understood in the context of his age and developmental abilities, his preoccupation with his preferred play activities, and his difficulty engaging with structured tasks and limits. Therefore, no clinical conclusions are drawn from these formal assessments.

Both parents were involved and interactive with the child, and he was observed to be comfortable with each of them individually. Tantrums and resistance came up with both parents on different occasions, mostly when his play was interrupted, or when he was asked to follow an instruction or when a parent tried to leave. Across sessions, both parents were observed to have a permissive stance in how they handled his behaviour. Limit-setting was inconsistent, especially once he became distressed or showed resistance. His demands were often accommodated just to calm him down or avoid more distress. This pattern showed up with both parents at different points. It has been reported there is an increase in his behavioural difficulties recently, and this was observed during the play sessions too. It was observed that heightened distress was present around situations like separations, transitions, and changes to his expected routine. Given the recent difficulties between the parents and the changes happening in the family, this context is relevant to understanding his current presentation.

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Both parents clearly demonstrate care about his welfare, future, needs and interests, and both stay involved in his activities. There were differences in how each parent interacted with him, which can likely be attributed to their respective and different cultures with its influence on their individual parenting styles, which cannot be considered as inherently good or bad.

It is suggested that the child should not be exposed to any conversations, disagreements or comments about custody, living arrangements, parental disputes, or either parent's relationship with him. These matters should be discussed privately, away from him.

Given the observed difficulties in the child such as tantrums, refusal, rigidity or non-cooperation, when his demands are not met and alleged few reports of him having behavioural issues/complaints from school; which might be the result of a few things, such as parental separation, probable heated discussion/arguments/quarrel in his presence; it is strongly recommended that both parents need to mandatorily attend structured parenting training with a qualified mental health professional over a few sessions, focusing on managing the wellbeing of the child during the current court proceedings, aiding in the adjustment of the child post the decision regarding custody, explaining the decision to the child in a developmentally appropriate and consistent manner, developing an authoritative parenting style (non-permissive parenting), age appropriate limit-setting, handling tantrums and refusal, managing transitions and building consistent responses to difficult behaviour.

It is also strongly advised that the child resume formal schooling at the earliest, in the light that the child has been away from school for about four months, further contributing to the above-mentioned difficulties.

Overall, based on what was observed, the child engaged well with both parents individually and both parents showed genuine concern for his wellbeing. His current difficulties can be better explained by his individual temperament, his developmental stage, the parenting approaches observed, and the recent changes within the family."

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89. For the same reasons, we also reproduced the Child Psychiatric Assessment Report as follows:

> *"**Findings***
>
> *The child presented as a bright, cheerful and well-engaged four-year-old, with age-appropriate interaction, communication and play. Both parents demonstrated an adequate understanding of the child's developmental and emotional needs. Both were sensitive and responsive to the child's cues and described parenting as a positive and enjoyable experience. Neither parent reported significant parenting-related stress on the Parental Stress Scale. Their responses on the PRFQ were broadly indicative of an ability to consider the child's internal experiences and psychological needs.*
>
> *During the parent and child interaction observations, both parents engaged warmly and reciprocally with the child. With each parent, the child approached readily, participated spontaneously in child-appropriate play, demonstrated positive affect and appeared relaxed, comfortable. Both parents responded appropriately to the child's cues and were able to sustain enjoyable, developmentally appropriate interaction. Both have demonstrated an ability to appropriately soothe and support the child during periods of distress.*
>
> *Collateral information from the child's regular caregivers was consistent with the above findings. The child was described as happy and comfortable with both parents and as enjoying interaction with each. It was also reported that the child likes having both parents together.*
>
> ***Opinion***
>
> *Child demonstrates positive and comfortable relationships with both parents. At present, child doesn't have a diagnosable mental health condition. However, given the ongoing circumstances, there remains the possibility of evolving stress-related symptoms, and continued monitoring of the child's wellbeing is recommended.*

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On the basis of the assessment, both parents demonstrate adequate parenting capacities. Both appear emotionally available and responsive to the child and are capable of providing warm, developmentally appropriate interaction.

In view of the child's positive relationship with each parent, the child's psychological and developmental interests would be best served by preserving meaningful involvement of both parents in his caregiving and upbringing."

90. As quoted above, the Child Clinical Psychologist Observation Report clearly holds that:

(i) Both parents clearly demonstrate care about his welfare, future needs and interests, and both stay involved in all these activities;

(ii) There were differences in how each parent interacted with him, which can likely be attributed to their respective and different cultural influences on their individual parenting styles, which cannot be considered as "*inherently good or bad";*

(iii) It then suggested that the child should not be exposed to any conversations, disagreements or comments about custody, leaving arrangements, parental disputes, or either parent's relationship with him and that these matters should be discussed privately away from him;

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(iv) It was also strongly advised that the child resume formal schooling at the earliest, as the child has been away from school for about 4 (four) months, further contributing to the above-mentioned difficulties.

91. As regards the Child Psychiatric Assessment Report, it says that:

(i) The child demonstrates a positive and comfortable relationship with both parents;

(ii) The child does not have a diagnosable mental health condition;

(iii) In light of the ongoing circumstances, there remains the possibility of evolving stress-related symptoms, and continued monitoring of the child's well-being is recommended;

(iv) Based on the assessment, both the parents demonstrate adequate parenting capacities;

(v) Both appear emotionally available and responsive to the child and are capable of providing warm and developmentally appropriate interaction;

(vi) In view of the child's positive relationship with each parent, the child's psychological and

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developmental interests would be best served by preserving meaningful involvement of both parents in his caregiving and upbringing.

92. The Report has revealed equal psychological capacity of both parents in looking after the child's welfare, ruling out any disability of either parent in doing so. The Report has only strongly urged that the child resume formal schooling at the earliest to prevent any deterioration of the child's well-being due to the separation of the parents.

93. From our observations during interactions with the parents and child, as well as from the NIMHANS Report, both parents are equally invested in the child's well-being. There is nothing to show that either parent cannot provide the warmth, compassion, care and guidance such a tender-aged child requires.

94. However, the Report also mentions that the child is fluent in English and German, which indicates a close bond with the mother in *her* mother tongue/native language. In that circumstance, if interim custody is granted to the father, it is not only that the mother will be deprived of the company of the child,

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but that the child will be deprived of her love and company during a critical developmental period of his life.

95. Child psychology acknowledges that the company of the mother, and maternal care and attention, is most desirable for a very young child if the bonding between mother and child has remained intact. We find reliance on research on child psychology that demonstrates that separation of a young child from a loving and close maternal bond has been linked to increased behavioural difficulties, emotional distress and adverse developmental outcomes. Though there is much diversity in the context in which the psychological effects of maternal separation have been studied, the common theme that has come to the fore is that where the mother is the primary caregiver of the child, prolonged separation from her risks the child's psychological well-being and development in the long run.[18]

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[18] T.N. Srinivasan and K.J. Raman, 'Early Child Parent Separation and Risk for Childhood Psychopathology' (1988) 30(3) Indian Journal of Psychiatry 283–289; Kimberly Howard, Anne Martin, Lisa J. Berlin and Jeanne Brooks-Gunn, 'Early Mother–Child Separation, Parenting, and Child Well-Being in Early Head Start Families' (2011) 13(1) Attachment & Human Development 5–26. DOI: 10.1080/14616734.2010.488119), Danielle Horvath Dallaire & Marsha Weinraub (2005) Predicting children's separation anxiety at age 6: The contributions of infant–mother attachment security, maternal sensitivity, and maternal separation

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96. The NIMHANS Report clearly shows that the mother and child have a very good and strong bond, that the child is very comfortable with the mother, and that the mother does not have diagnosable issues that would prevent her from being less caring towards the child than the father. Though there is nothing adverse against the father, in such a situation we are of the opinion that it would not be beneficial for the child to be kept away from the mother for a prolonged period.

97. The NIMHANS Report has placed the parents on equal footing regarding their psychological and financial capacities, and their commitment to the child. This Court had directed both parents to provide parenting proposals, to see if there may be any other factor that may tilt the balance in favour of either parent.

98. The parenting proposals can broadly be summarised as follows.

99. The mother wishes to take the child to Singapore, and has identified the following possible schools wherein the child can be admitted:

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anxiety, Attachment & Human Development, 7:4, 393-408, DOI: 10.1080/14616730500365894.

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a. UWCSEA Dover Campus, Singapore (Admission process pending either a No Objection Certificate from the father, or an order of this Court, based on communication from the school to the mother); or

b. Superland Pre-School, River Valley Campus (Admission process is pending, but positive communication from the school has been received as to availability of a seat for the child).

100. She has specifically proposed visitation schedules to India around the school academic calendar in Singapore, so that the child may continue to visit India and keep in touch with the father, as well as his roots, friends, and family. This would be in addition to any visits the father may desire to make to Singapore in exercise of his right of access to the child.

101. In terms of childcare, the mother plans to employ an Indian, Hindi-speaking nanny such that the child continues to learn Hindi. Additionally, the mother undertakes to keep the child connected to his Indian roots through food, language and social company.

102. The mother, having lived and worked out of Singapore for the last several years, also has a comfortable and close social

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circle there to ensure the child has a loving and close community of people to spend time with.

103. Per the father's proposed parenting plan, the father wishes to take the child to Kolkata, and proposes a Montessori school, alongside certain co-curricular and extra-curricular activities that the child shall have access to, including horse-riding, swimming and music classes.

104. He has also proposed that the mother may visit whenever convenient for her. His proposal stipulates that the mother may either stay over in the ordinary household of the child or that she may reside in a suitable residence nearby, but the child shall continue to live in the house of the father when the mother visits.

105. He has also mentioned several relatives and some friends of the child with whom the child is familiar who will be available to create a friendly and homely environment in Kolkata.

106. The father has also repeatedly stated throughout his pleadings and even in his parenting proposals that the mother has significant mental health issues that put the child's well-being in jeopardy and that this makes her unsuitable to be the primary caregiver of the child.

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107. We now delve into comparing both parents' proposals on three fundamental points – location, the mother's mental health, and education.

LOCATION

108. Mr. Sankaranaryanan has argued that uprooting the child from his familiar environment in Kolkata will be greatly distressing and may cause irreparable harm to the mental state of the child. It has been argued that the established roots of the child are in India and allowing the mother to take the child to Singapore would amount to dislocation of the child.

109. Whether the child has already been rooted in the Indian environment is a matter of fact to be established. We have noted that the child is four years old now and during babyhood, the child shuttled from place to place along with the parents. The parents seemed conscious of the child's educational needs and made arrangements for the child's schooling in more than one location in Delhi and Goa, and even Germany, as revealed in the pleadings. In such a short span of time, it would be reading too much into any one fact to state that the child has developed a particular attachment or roots in any place.

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110. The child, being all of four years now, is in a very malleable stage. Children this young often have the capability to adapt to any environment to which the parents may introduce the child, so long as the child is in the comfortable company of the parent(s). Therefore, the supposed cultural rooting of the child at a very tender age should not be amplified. As long as the child is with the parents, or either parent with whom the child is comfortable, the child would adjust.

111. The NIMHANS Report clearly indicates that the child is comfortable with both/either of the parents. Accordingly, the father's concern that the child would be uprooted from familiar surroundings in India if the child is relocated to Singapore appears to be an overstatement.

112. The father has also submitted, both before this Court and before the Family Court when the guardianship petition was pending in Alipore, West Bengal, that the child's ordinary residence is Kolkata and the child is rooted there. We find that merely because the child has stayed with the father in Kolkata for a few months, it cannot be said with certainty or definitiveness that the child has established roots there, and that relocating from Kolkata to Singapore would amount to

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uprooting the child. The materials show that the child is not totally a stranger to Singapore or foreign soil. No one can say that merely because the child is four years of age and has lived largely in India, the child is rooted here. In fact, even within India, the child had been living with the parents in different cities across the country, each with a different cultural milieu and environment. Delhi is culturally and socially very distinct from Goa, and the same is true of Kolkata vis-a-vis the other cities. In such circumstances, can the father claim a better right than the mother on the factor of rootedness in Kolkata or even India? We doubt.

113. The observational description of the child in the Child Clinical Psychologist Observation Report of NIMHANS noted that the child spoke fluently in both English and German and could understand and, to some extent, communicate in Hindi as well. This clearly indicates the child is linguistically quite close to the mother, which is natural and demonstrates the child's strong bond with the mother, alongside the strong multicultural comfort of the child. How can the father thus claim that the child has established roots in India, which would be disrupted if he is relocated to Singapore? The child's familiarity with his

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surroundings can always be developed as the child grows more mature, and it will always be available to the child to choose to reconnect with India. Thus, the apparent loss of the child's roots if relocated from India cannot be said to be irreparable or detrimental.

114. We are also of the opinion that familiar environment cannot be decided merely on geographical location. The child is four years old, has regularly shuttled between Delhi and Goa, two very different socio-cultural environments and is still well-adjusted. The child has also stayed in Kolkata, albeit for only some months, which is again different from Delhi and Goa in almost all respects. During the proceedings before this Court, the child has practically remained in Delhi. He is at a very malleable, tender age and will adjust anywhere he has the attention, love, and care of his parents. Therefore, the geographical or physical location will not make much difference. Stability comes from the persons around the child - the parents, siblings, friend circles, and the routines they provide. At all of four years, a child develops fondness for anybody who is constantly with them and is affectionate towards them. Under the circumstances as revealed in the pleadings, we are of the

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view that this issue of stability or cultural rootedness does not prevent the relocation of the child to Singapore.

MENTAL HEALTH CONCERNS:

115. We must also deal with another concern repeatedly expressed by the father in his pleadings, that the mother has mental health concerns which are detrimental to the well-being of the child, and thus disqualifies her from being granted interim custody of the child. We are mindful of the observation of this Court in ***Rohith Thammana Gowda v. State of Karnataka,***[19],

> **"*12.*** *When couples are at loggerheads and wanted to part their ways, as Parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, "what would be the best interest."*

116. We have noted that the pleadings of the father are replete with allegations and insinuations against the mother that she is not in the best mental disposition to look after the well-being of the child, which appears to be totally negated by the NIMHANS Report. As seen therein, the mother has been found to not have a diagnosable mental health condition currently or

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[19] (2022) 20 SCC 550.

in her lifetime, and neither displays any behaviour that might otherwise be detrimental to the child. Therefore, we cannot give any weight to the father's contentions that the mother has mental health issues that will impact the child negatively.

EDUCATION:

117. Based on the above discussion, we conclude that the irreparable harm to the child that must be duly addressed is the current lack of formal schooling, which the NIMHANS Report indicates is detrimental to the child. The uncertainty of the child's schedule, coupled with a lack of a structured environment, seems to be presenting as certain symptomatic behaviours in the child.

118. There are two proposed options, one where the child is allowed to remain in Kolkata where the father desires to educate him, and the other is to allow the child to go with the mother to Singapore, where she proposes an international school for his education.

119. Both in the records and during the proceedings, the father has said he does not consent to the child going to school in Singapore. Realistically, we do not expect the mother to give consent to schooling in Kolkata either. This Court, in the

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circumstances, cannot be expected to evaluate the aspect of schooling from the perspective of either parent's consent to the school. Additionally, no meaningful purpose will be served by deciding on the suitability of schools either in Kolkata or in Singapore for the child's admission, as schools in both locations may be of comparable standards. We also do not wish to engage in any analysis as to whether one city is more suitable than the other. Thus, the focus will be on who will be the better person to ensure a better education for the child and provide better intimate personal attention and a comfortable environment to the child.

120. The mother has initiated the process for the child's admission to UWCSEA in Singapore and has identified backup schools as well. She has also demonstrated her very proactive commitment to the child's education and, from the record, appears to be the primary parent financing the child's education.

121. On the other hand, there is nothing too concrete to show what the father did for the child's schooling in Kolkata after he took the child there in February. The father has only averred to a Montessori school in Kolkata but has shown no documents of admission/enrolment, etc. His pleadings are unspecific and not

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backed by any admission documents, conversations with the schools, or any admission fees paid/payable by him. No concrete plan for the child's education is discernible on the part of the father. In direct contrast, the mother has provided her communications with the schools as well as the fees payable/paid by her. The mother has shown two different schools which are willing to admit the child in Singapore upon either an NOC from the father or an order of this Court. We therefore draw positive inferences from the mother's pleadings. We find that the mother has provided more compelling material showing that she has been proactive and will immediately enrol the child in formal schooling to provide a stable environment as soon as she receives a green signal from this Court, in the absence of any consent from the father.

122. The father has argued that the mother's professional commitments have limited her parenting time in the past and will continue to leave her with insufficient time for the child. We find that although she is working in a senior role at a large company, we cannot hold her professional commitments against her, as she has provided us with her employer's Work-from-Home policy and their endorsement of the same, which clearly

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supports her ability to adjust her working hours to be present for the child when he is not in school.

123. Let us now consider the situation where custody is given to the father for the child's education in Kolkata. We believe that the father is also capable of providing a high quality of life and education for the child. Yet, we are concerned with certain other aspects which appear to be against the father. The father is admittedly a successful lawyer running a busy law firm in Delhi, employing about 53 associates. The father has a wide professional network, practising law not only in Delhi but also in other places such as Goa, Mumbai, and Bengaluru. We are well aware of the limited time a busy lawyer can spare for family members. In the present case, the family member is not an adult, but a small child of four years who is very energetic, as the NIMHANS Report also shows, who will require much more personal attention. The demands of a small child of this age can be very unpredictable, and we are not very confident that the father would be in a position to spare sufficient and adequate time for the child during the most crucial period for his development, which will include preparing the child for school, helping with homework, as well as keeping up with the demands

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of various hobbies and extracurricular activities. Even after ascribing only the best intentions to the father and although he has averred to having a flexible schedule, we are sceptical that he would be able to provide the child with quality time comparable to what the mother has arranged for, because of his professional commitments. In most likelihood, he will have to rely on the assistance, help and cooperation of his relatives and nannies. Because of the demands of work, he would be delegating a significant portion of parental responsibilities to others. We are concerned about this prospect, which, in our opinion, is not in the best interests of the child, who is already struggling due to the current lack of stability.

124. On the other hand, the mother's proposal appears realistic and more beneficial to the child, with a significant focus on direct parenting time by the mother. Thus, the proposal of the mother inspires more confidence in us.

CONCLUSION

125. Accordingly, we conclude as follows:

Firstly, as regards the competency of this Court and jurisdictional issue raised by Mr. Sankaranarayanan, we hold that this Court has the jurisdiction to decide interim custody in

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exercise of the *parens patriae* jurisdiction in this habeas corpus proceeding;

Secondly, the mother has a better prima facie claim of custody over the child;

Thirdly, the balance of convenience lies in favour of the mother;

Fourthly, it is most likely that the child may suffer irreparable injury in the event the interim custody is not given to the mother, as the mother has a better/more concrete plan for his education and well-being in the interim, which is in the child's best interests.

126. Therefore, we will issue appropriate directions below.

127. However, before we issue directions, we want to address the very genuine apprehensions of the father that once the mother is allowed to take the child to Singapore, there is a distinct possibility that once she is out of Indian territory, she may not co-operate with the jurisdiction of the Family Court in Patiala House Courts, New Delhi, or for that matter, even this Court.

128. In this regard, it may be noted that as international custody disputes become more prevalent, the issue of protecting

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the minor and the parent who is losing significant access to the child has become necessary to address. This Court, in ***Smriti Madan Kansagra v. Perry Kansagra***,[20] held that:

> *"24.2. Given the large number of cases arising from transnational parental abduction in inter-country marriages, the English courts have issued protective measures which take the form of undertakings, mirror orders, and safe harbour orders, since there is no accepted international mechanism to achieve protective measures. Such orders are passed to safeguard the interest of the child who is in transit from one jurisdiction to another. The courts have found mirror orders to be the most effective way of achieving protective measures.*
>
> *24.3. The primary jurisdiction is exercised by the court where the child has been ordinarily residing for a substantial period of time, and has conducted an elaborate enquiry on the issue of custody. The court may direct the parties to obtain a "mirror order" from the court where the custody of the child is being shifted. Such an order is ancillary or auxiliary in character, and supportive of the order passed by the court which has exercised primary jurisdiction over the custody of the child. In international family law, it is necessary that jurisdiction is exercised by only one court at a time. It would avoid a situation where conflicting orders may be passed by courts in two different jurisdictions on the same issue of custody of the minor child. These orders are passed keeping in mind the principle of comity of courts and public policy. The object of a mirror order is to safeguard the interest of the minor child in transit from one jurisdiction to another, and to ensure that both parents are equally bound in each State. The mirror order is passed to ensure that the courts of the country where the child is being shifted are aware of the arrangements which were made in the country where he had ordinarily been residing. Such an order would also safeguard the interest of the parent who is losing custody, so that the rights of visitation and temporary custody are not impaired. The judgment of the court which had exercised primary jurisdiction of the custody of the minor child is however not a matter of binding obligation to be followed by the court where the child is being transferred, which*

[20] (2021) 12 SCC 289.

has passed the mirror order. The judgment of the court exercising primary jurisdiction would however have great persuasive value."

129. In the specific circumstances of this case, we are thus of the view that the mother can only be allowed to remove the child from India during the pendency of the Guardianship Petition No. 37 of 2026, pending before the Patiala House Courts, after there are protections put in place for the father's right of smooth visitation, and to prevent the possibility, however extreme or unlikely, that the mother may stop cooperating with the proceedings before the courts in India.

130. In this regard, we have also noted that the mother has voluntarily undertaken to submit herself to the jurisdiction of the Singaporean Courts and avail a mirror order of this interim order, so that the Singaporean Courts may also be aware of the dispute regarding the child's custody between the parents and ensure full compliance with the interim orders of this Court in Singapore.

131. We are conscious of the fact that by allowing the mother and the child to leave India and in granting them permission to go to Singapore, they would ordinarily remain out of the reach of Indian courts. However, we have given due consideration to the

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fact that Singapore has a very robust and efficacious judicial system with international recognition for the same. Even in the field of arbitration, many parties prefer to specifically choose Singapore as the seat, thus exhibiting the confidence that litigants often repose in the robustness and reliability of the Singaporean judicial system. Based on the principles of comity of courts and the reputation of the Singaporean legal system, we are confident in allowing the mother and child to stay in Singapore as an interim custody arrangement for the welfare of the child. The father himself is a well-established lawyer in India, and we are sure he will not be in the woods if he has to seek redressal for any grievance that may arise while his child is in Singapore with the mother in terms of the orders of this Court, for the Singaporean legal system, like India, is also based on common law. The apprehension of the father, in our view, will be secured by a mirror order to be obtained by the mother.

132. In light of the undertaking given by the mother, we therefore direct the mother to obtain a mirror order within a period of 3 weeks from the date of this order from an appropriate court in Singapore to reflect the directions in this order, such that it may be appropriately enforced in Singapore.

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133. Further, after the mirror order from a Singapore court is filed before this Court, the mother shall deposit a sum of Rupees One Crore (Rs. 1,00,00,000/-) in the Registry of this Court, which shall be kept in an interest-bearing fixed deposit account (on auto-renewal basis), for a period of two years or until Guardianship Petition No. 37 of 2026, Patiala House Courts, New Delhi is finally disposed of (any appeals, reviews, revisions etc. included), to ensure compliance with the directions contained in this order until final disposal of the aforesaid Guardianship Petition. Once this Court is satisfied that the mother has discharged all her obligations in accordance with the aforesaid directions, the mother shall be entitled to withdraw the aforesaid amount, together with accrued interest.

DIRECTIONS OF THIS COURT:

A. The mother is granted three weeks to file for, and obtain, a mirror order from the court of appropriate jurisdiction in Singapore reflecting the directions of this Court and the parenting plan approved herein.

B. In the meantime, the child shall remain in Delhi and the schedule for interim custody between the parents till

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the production of said mirror order before this Court shall be as per the following pattern every week:

Monday	Father hands over the child to Mother at 12.00pm.
Tuesday	Mother
Wednesday	Mother
Thursday	Mother
Friday	Mother to hand over the child to Father at 12.00pm.
Saturday	Father
Sunday	Father

C. Further, so long as the mother is not in Delhi during this period, the child shall remain with the father.

D. After the mother has filed the mirror order, the Registry shall return the passport and the OCI card of the minor child to the mother and allow the mother to take the child to Singapore. Further, the mother is directed to be present with the child before this Court and the Family Court at Patiala House as and when directed to do so.

PARENTING PLAN:

E. The mother shall enrol the child in UWCSEA, Singapore. If that is not possible, then the child may be enrolled in one of the other schools mentioned in her

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parenting plan as a back-up or any such appropriate school in Singapore.

F. The father shall provide full cooperation and provide the necessary documents of the child to enable the mother to secure admission for the child in any of the schools in Singapore within the specified time frame, failing which it shall be deemed that he has consented to the admission in terms of this order.

G. When the child is in Singapore, the mother shall have primary responsibility for the health and physical well-being of the child. If the child falls ill, the mother shall be the primary decision-maker regarding the child's healthcare, for which the father shall provide full cooperation.

H. While the child is in Singapore, the mother shall ensure the father has access to the child via video-conferencing every day for a minimum of 20 minutes or any such longer period as agreed between the parties, between 2.00 pm and 10.00 pm Singaporean time, as is convenient to the child and his school schedule, and any

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other convenient times as may be agreed between the parents, or as the child may desire.

I. The father shall also be permitted to have access and visitation rights with the child in Singapore as and when he visits, after due intimation to the mother. He shall have custody of the child for at least a day, as long as it does not disrupt the child's school schedule.

J. Further, if the father stays in Singapore for a period longer than two days, he may have custody of the child from Friday afternoon, when school/extra-curricular activities end, until Sunday evening, 6.00 PM Singaporean time. The father shall return custody of the child in a timely manner so as not to disrupt the child's participation in school, based on the academic calendar. However, the mother shall be constantly apprised of the location of the child when the child is in the custody of the father in Singapore.

K. The father will not be entitled to take the child out of Singapore during the applicability of this interim arrangement during the pendency of the Guardianship

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Petition No. 37 of 2026 in Family Court, Patiala House Courts.

L. The child shall be brought to India by the mother during school vacations of more than 7 days, so that the child may spend time in India with the father, paternal family, and friends, amongst others. This shall be in addition to any other mutually agreed periods as decided by the parents or as decided by the Family Court in Patiala House Courts for the purpose of deciding the guardianship petition pending before it.

M. During the period that the child is brought to India, the father shall have custody in India in the manner laid out below:

Monday	Mother
Tuesday	Mother
Wednesday	Mother to hand over the child to Father at 10.00 AM.
Thursday	Father
Friday	Father
Saturday	Father
Sunday	Father hands over the child to Mother at 6.00 PM.

During these visits, the father cannot remove the child from India, and the father shall keep the mother apprised

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of the child's location at all times. The mother shall have access to the child over the phone and/or on video call from 10.00 AM to 8.00 PM, and also as the child otherwise desires.

N. When the child is in India, the father shall have primary responsibility for the child's health and physical well-being. If the child falls ill, the father shall be the primary decision-maker regarding the child's healthcare, for which the mother shall provide full cooperation.

O. The mother shall not be entitled to remove the child from Singapore to any other country, except to India as mentioned above. However, if she desires to take the child to any other country other than India, she has to take specific permission of the concerned Family Court dealing with Guardianship Petition No. 37 of 2026 in New Delhi.

P. The child will be entrusted to the safe custody of the mother, but the child must not be exposed to any influence that may foster the development of parental alienation syndrome against the father. Per paragraph 97 of ***Sheetal Vasant Thakur*** *(supra),* we find that the complex nature of facts and circumstances and the

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international nature of the dispute necessitate that the child be evaluated for the same. Thus, the mother is directed to obtain a report from an appropriate child psychologist/psychological institution in either Singapore or from NIMHANS in India every six months to ensure the child does not develop parental alienation syndrome. A copy of this report shall be submitted both to this Court as well as the concerned jurisdictional Family Court in Patiala House.

Q. We direct both parents to file undertakings before this Court, stating that they will abide by and comply with the directions passed by this Court within one week from the date of this judgment.

134. Considering the peculiar facts and circumstances of this case, we invoke the powers under Article 142 of the Constitution to transfer the habeas corpus petition titled "Helena Anna Maria Lersch vs. State of Goa and Anr." in Writ Petition No.478 of 2026 (F) from the High Court of Bombay at Goa, to this Court to avoid any duplication of proceedings.

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135. In order to ensure that our orders are duly complied with by the parties, list the matter on 7th December, 2026 at 2.00 pm.

136. We also make it clear that though we have passed this order for interim custody of the child in favour of the mother in light of the materials brought before this Court, this order will not come in the way of the jurisdictional court dealing with Guardianship Petition No. 37 of 2026, Patiala House Courts, New Delhi to decide the said petition finally in accordance with the law, uninfluenced by the observations and directions made by this Court in this order.

137. All pending applications, if any, stand disposed of in terms of the above order.

.....J.
[NONGMEIPAKAM KOTISWAR SINGH]

.....J.
[N.V. ANJARIA]

NEW DELHI;
NOVEMBER 19, 2026

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