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## CHILD CUSTODY BATTLES: BEST INTERESTS OF THE CHILD STANDARD”

### INTRODUCTION:-

Marriage has three distinct definitions, according to Merriam-Webster. The first are: a) the legal recognition of a state of becoming spouses in a mutually beneficial and consensual relationship; b) the relationship between married individuals; and c) the institution of marriage. The act of marrying or the ritual, like the wedding ceremony or other festivities, that symbolises a marriage is referred to in the second definition. An intimate or close union is the third and final meaning.<sup>1</sup>

Numerous elements, such as verbal or physical abuse, individual traits, and behavioural patterns, can be connected to the husband and wife’s conflicts. Extramarital affairs, habitual drinking, marital dissatisfaction, and other factors can also be addressed as potential causes of these conflicts. One of the main points of contention between the disputing couple is frequently child custody. Following a divorce, each parent retains equal custody of their minor child. In the absence of mutual agreement, the child’s custody and major life decisions are decided by the family courts. Despite being closely related to guardianship, the term “custody” has no definition in any of the Indian personal legal systems, religious or secular.<sup>2</sup> The provisions made under The Hindu Marriage Act, 1955; The Special Marriage Act; and The Guardianship and Wards Act, 1890 are cited by the court when making an order in any case involving the issues of custody, access, education, and maintenance of children. The Supreme Court has made it clear in a

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<sup>1</sup> Stritof, S., & Blomquist, L. (2006, January 10). What Is the Definition of Marriage? Brides. <https://www.brides.com/definition-of-marriage-2303011>

<sup>2</sup> *Family Law – Jurist & Jurist International*. Jurist & Jurist International. <https://www.juristandjurist.com/family-law/>

number of rulings that the welfare of the child, not the rights of the parents, should come first when deciding custody disputes.<sup>3</sup>

## **LEGAL FOUNDATIONS OF THE “BEST INTERESTS” STANDARD:-**

The laws pertaining to guardianship and child custody are closely related. While custody refers more specifically to the minor’s daily care and supervision, guardianship refers to a broader range of rights and powers that an adult has over the person and property of a minor. The "welfare of the child" is the most important factor to take into account when making decisions about custody or other matters involving a child. This was held in the case of *Somnath Das v. Sheoli Hati*, 2019<sup>4</sup>. In the case of *Saraswatibai Shripad Vad v. Shripad VasANJI Vad*,<sup>5</sup> the court held that, the mother's and father's welfare are not the most important factors. The child's welfare is the most important factor, and the child's welfare alone.

The court must make a custody order for minor children under the guidelines of the Hindu Minority and Guardianship Act, 1956, or the Guardians and Wards Act, 1890, with the minor's best interests and welfare given top priority. When determining a parent's entitlement to custody, adjudication is not necessary to determine which parent has the better right.<sup>6</sup> In the case of *Gayatri Bajaj v Jiten Bhalla*,<sup>7</sup> the court must consider various relevant factors when determining custody of a minor, including the child's desire, the availability of a suitable and conducive environment for proper upbringing, and the ability and means of the concerned parent to care for the child.

A child's regular comfort, contentment, health, education, intellectual development, and favourable environment must all be taken into consideration by the court. But moral and ethical principles must take precedence over material comforts. Child custody has changed along with

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<sup>3</sup> Child custody with respect to Indian laws – iPleaders. <https://blog.iplayers.in/child-custody-respect-indian-laws/>

<sup>4</sup> *Somnath Das v. Sheoli Hati*, Jharkhand High Court, July 11, 2019, 204, AIR 2019 SUPREME COURT 3245, 2019 (7) SCC (India). <https://www.google.com/amp/s/www.casemine.com/judgement/in/5d9199b6714d587fe94e8a8b/amp>

<sup>5</sup> *Saraswatibai Shripad Ved vs Shripad VasANJI Ved* on 11 October, 1940 (1941)43BOMLR79, AIR 1941 BOMBAY 103

<sup>6</sup> BATRA, H., & ARORA, T. (2022, May 23). *Articles* â□□ *Manupatra*. *Articles* â□□ *Manupatra*. <https://articles.manupatra.com/article-details/WELFARE-OF-THE-CHILD-AFTER-PARENTS-DIVORCE-OR-SEPARATION-KEY-ANALYSIS>

<sup>7</sup> *Gayatri Bajaj vs Jiten Bhalla* on 5 October, 2012 AIR 2013 SUPREME COURT 102, 2012 AIR SCW 6102

society and traditional gender roles. Nowadays, most states prioritise equal parenting. It is more typical to have joint custody. Fathers now enjoy greater rights and a higher chance of obtaining at least partial custody of their children because the law recognises that a child is best served by a healthy relationship with both parents.<sup>8</sup>

The evolution of child custody now acknowledges that providing both parents with attention and care is best for children. When deciding which parent gets custody, courts do so on the basis of equality between the parents.

### **PARENTAL FITNESS ASSESSMENT:-**

The public good depends upon a child's proper growth because they are the nation's future, as the Supreme Court emphasised in the *Vivek Singh v. Romani Singh*<sup>9</sup> case. Consequently, the court considers the following two factors when deciding on a child's custody case:

- giving the child the greatest environment possible.
- ensuring appropriate growth for the benefit of the public.<sup>10</sup>

The Supreme Court established a positive test in the *Nil Ratan Kundu v. Abhijit Kundu*<sup>11</sup> case, which the court uses to determine which of the two parents is more qualified to receive custody of the child. It is not necessary for one parent to be unfit or ineligible to be or denied custody; therefore, the other parent will be awarded custody. Which parent or guardian can best provide for the child is the question. It isn't that the courts entirely ignore the drawbacks, though. Nevertheless, they are regarded as refusing custody to an unfit parent in this situation.

In the historic ruling of *Smriti Madan Kansagra v. Perry Kansagra*<sup>12</sup>, the Supreme Court reaffirmed a number of child welfare principles. As per the court, all considerations must yield to

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<sup>8</sup> Katie L. Lewis, P.C. Family Law. (2021, November 18). How has child custody changed over the years? | Katie L. Lewis, P.C. Family Law. Katie L. Lewis, P.C. Family Law | Katie L. Lewis, P.C. Family Law.

<https://www.katielewisfamilylaw.com/blog/2021/11/how-has-child-custody-changed-over-the-years/>

<sup>9</sup> *Vivek Singh v Romani Singh*, CA No. 3962 of 2016, SC. 13 February, 2017

<sup>10</sup> *Custody of Children | SCC Blog.* SCC Blog. <https://www.google.com/amp/s/www.sconline.com/blog/post/2019/11/25/custody-of-children/amp/>

<sup>11</sup> *Nil Ratan Kundu v. Abhijit Kundu*, Supreme Court, August 8, 2024, 3185 of 2006 (India).

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.casemine.com/judgement/in/56ea8648607dba36fd0b82dd/amp&ved=2ahUKEwjlgbX8kY2EAxU1RWwGHbQpCIAQFnoECA4QBQ&usg=AOvVaw37obuZztDRhZmpGmwawUHR>

<sup>12</sup> *Perry Kansagra v. Smriti Madan Kansagra*, 2019 SCC Online SC 211, decided on 15.02.2019

the welfare of the child. The Supreme Court also laid emphasis on the fact that whenever a question with regards to custody comes to the court, it must not be determined upon the legal rights of the parties but the “sole and predominant criterion of what would serve the best interest of the minor. “The recent ruling by the Supreme Court in the case of *Lahari Sakhamuri v. Sobhan Kodali*<sup>13</sup> enumerates all the requirements and enumerates the elements that the courts must take into account when addressing custody disputes. These include:

- (1) Maturity and discernment;
- (2) Stability of mind;
- (3) The capacity to give schools access,
- (4) Moral fibre;
- (5) The capacity to offer ongoing community involvement;
- (6) Affordability and, last but not least, the aspects of the parent’s relationship with the child, rather than the parent’s personal traits.”

## **CONCLUSION:-**

In conclusion, this particular standard serves as the compass guiding custody decisions, prioritizing the well-being and flourishing of the child. By meticulously weighing factors, considering parental fitness, and adapting to evolving legal landscapes, courts aim to create stable and nurturing environments, ensuring a child-centric approach prevails in custody battles.

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<sup>13</sup> Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311