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KUTUMB
February 2026 Edition

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KUTUMB



CENTRE FOR COMPARATIVE
STUDIES IN PERSONAL LAWS

February 2026

Divorce



Divorce

1. Supriya Gaurav Devare v. Gaurav Jitendra Patil 2026 SCC OnLine Bom 1757

Court: High Court of Bombay (Division Bench)

Coram: Bharati Dangre and Manjusha Deshpande JJ.

Date: 27 February 2026

 **Relevance:** An important evidentiary ruling for the digital age: WhatsApp chats and SMS messages, however compelling, cannot sustain a divorce decree on grounds of cruelty if the opposing party has had no opportunity to rebut them. Electronic evidence must be formally proved, and natural justice demands a fair hearing before any finding of matrimonial fault.

Facts:

The appellant-wife challenged a decree of divorce granted ex parte against her by the Family Court at Nashik under Section 13(1)(ia) of the Hindu Marriage Act, 1955, on the ground of cruelty. The respondent-husband had filed a divorce petition alleging that his wife had subjected him to mental cruelty through a series of WhatsApp messages and SMS exchanges. The Family Court proceeded ex parte when the wife did not appear and, on the basis of the husband's uncontested testimony, allowed the divorce petition.

The primary evidentiary foundation of the Family Court's decree rested on WhatsApp messages. The court recorded that these chats showed the wife persistently demanding that the husband relocate the matrimonial home from Nashik

to Pune where she preferred to live by using derogatory and intemperate language against the husband's mother, sister, and other family members. The Family Court held that a wife who uses emotional pressure tactics, derogatory language against in-laws, and who attempts to compel the husband to abandon his parents and shift residence, commits mental cruelty upon the husband. On this basis, it granted the divorce decree. The wife appealed the decree on the ground that she had been denied any opportunity to participate in the trial.

Issues:

The Court framed the following key issues:

1. Whether an ex parte decree of divorce on the ground of cruelty can be sustained solely on the basis of WhatsApp messages and SMS exchanges, where the wife has been afforded no opportunity to appear, contest, or rebut the evidence?
2. What standard of proof and what procedural safeguards must be observed before electronic communications such as WhatsApp chats are accepted as evidence of matrimonial cruelty?
3. Whether the principles of natural justice specifically the right to be heard and the right to rebut adverse evidence are applicable in matrimonial proceedings under the Hindu Marriage Act?

Ratio Decidendi:

1. **WhatsApp Messages Are Not Self-Proving Evidence of Cruelty:** The Court held that WhatsApp chats and SMS messages are not a category of evidence that proves itself. Like any other piece of documentary or electronic evidence, they must be formally proved through the production of evidence in

accordance with law before they can be relied upon by a court. In the present case, the husband had stated in his testimony that his version was 'supported by' the chats but supporting evidence is not the same as proved evidence. The Family Court had accepted the chats as proof of cruelty without subjecting them to any formal evidentiary scrutiny. The Division Bench held that this was insufficient to sustain a decree of divorce.

2. **An Opponent Must Have the Opportunity to Rebut:** The Court emphasised that the right to rebut adverse evidence is a foundational requirement of procedural justice. A court cannot record a finding of fact especially a finding as grave as matrimonial cruelty, which has the consequence of dissolving a marriage on the basis of evidence that has been tendered in proceedings from which one party has been entirely excluded. The wife had no opportunity to challenge the authenticity of the messages, to provide context for them, or to lead counter-evidence. The ex parte nature of the decree meant that the cruelty finding was based exclusively on the husband's self-serving account, accepted without any scrutiny.
3. **Natural Justice Applies in Matrimonial Proceedings:** The Court reaffirmed that the principles of natural justice audi alteram partem (hear the other side) apply fully in matrimonial proceedings before the Family Court. The fact that a party has not appeared does not relieve the court of its obligation to satisfy itself that adequate notice was given and to consider whether the party ought to be given an opportunity to participate before a final decree is passed. Granting a divorce decree on ex parte evidence, without affording the other spouse the opportunity to be heard, was procedurally unfair and inadequate.

Conclusion:

The Division Bench set aside the ex parte divorce decree of the Family Court. The matter was remanded back to the Family Court with directions to determine all the issues raised in the divorce petition afresh by leading evidence, with a full opportunity afforded to the appellant-wife to appear, be heard, and lead evidence in rebuttal. The Court gave the parties liberty to explore mediation as an alternative path to resolution. The judgment is a timely reminder that in the age of digital communication, the ease with which screenshots and chat logs can be produced in court must be matched by a corresponding rigour in the process by which they are admitted and acted upon. A marriage cannot be dissolved on the basis of unproved, unrebutted electronic messages, however damning they may appear on their face.

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CENTRE FOR COMPARATIVE
STUDIES IN PERSONAL LAWS

February 2026

MAINTENANCE



Maintenance

2. Satyendra Nath Murmu v. State of West Bengal & Anr CRR 3513 of 2019

Court: High Court of Calcutta

Coram: Uday Kumar, J.

Date: 13 February 2026

 **Relevance:** Clarifies the limits of the Badshah exception: the protective estoppel against a husband who conceals a prior marriage does not extend to a woman who enters the second marriage with full knowledge of the subsisting first marriage. Confirms that no document, not even a registered marriage certificate can validate a union that is void ab initio under the Hindu monogamy rule.

Facts:

The petitioner, Satyendra Nath Murmu, a primary school teacher, challenged the judgment dated 31.08.2019 of a Sessions Court. The Revisional Court had set aside an order of dismissal dated 05.12.2016 and granted maintenance to Smt. Anandi Murmu.

Anandi Murmu had filed a maintenance claim in 2010 under Section 125 Cr.P.C., asserting marriage registration under the Special Marriage Act and a social ceremony, and alleging physical and mental torture and desertion. The petitioner contended that Anandi was not his legally wedded wife because his first marriage to Jyotsna Rani Murmu (in 1990) subsisted and had been judicially recognized in earlier proceedings. The Trial Magistrate dismissed the maintenance claim applying

Section 5(i) of the Hindu Marriage Act (monogamy rule). The Revisional Court reversed that dismissal; the present High Court proceedings examined the correctness of that reversal.

Issues:

The Court framed the following key issues:

1. Whether a woman who enters into a marriage with the knowledge of her husband's prior valid marriage is entitled to claim maintenance as a 'wife' under Section 125 Cr.P.C.?
2. Whether the estoppel/'innocent victim' exception (as applied in *Badshah v. Urmilla Badshah Godse*) applies where there is no deception by the husband, and whether prior admissions or marriage certificates can validate a union void ab initio under Section 5(i) of the Hindu Marriage Act?

Ratio Decidendi:

The Court examined the interplay between Section 125 Cr.P.C. as social welfare legislation and substantive personal law under Section 5(i) of the Hindu Marriage Act. It reiterated that the term 'wife' in Section 125 ordinarily denotes a person in a legally valid marriage.

1. **Strict Rule- Void Marriage Bars Maintenance:** The Court affirmed that a marriage entered into during the subsistence of a prior valid marriage is void ab initio under Section 5(i) of the Hindu Marriage Act and generally cannot ground a maintenance claim under Section 125 Cr.P.C.
2. **Badshah Exception Requires Deception:** The Court analysed the *Badshah v. Urmilla Badshah Godse* exception, which applies where the husband has duped the woman by fraudulently concealing a prior marriage. The exception

requires the essential element of deception. In the present case, the Court found that Anandi Murmu had knowledge of the petitioner's prior marriage and had even been a witness in earlier related litigation. The element of deception being absent, the Badshah ratio did not apply.

Conclusion:

The High Court set aside and quashed the judgment dated 31.08.2019 and restored the original order of dismissal dated 05.12.2016 of the Judicial Magistrate. The maintenance claim of Respondent under Section 125 Cr.P.C. consequently failed. Any interim maintenance granted was vacated. The Court noted that the opposite party remains free to seek relief under the Protection of Women from Domestic Violence Act, 2005, whose definition of 'domestic relationship' is wider than that under Section 125 Cr.P.C.

3. Ravinder Singh Bisht v. State of U.P. 2026 SCC OnLine All 363

Court: High Court of Allahabad

Coram: Madan Pal Singh J.

Date: 5 February 2026

 **Relevance:** Reinforces that a wife's employment or independent income does not automatically bar her maintenance claim. The decisive test remains whether her income is sufficient to sustain the standard of living enjoyed during the marriage, not merely whether she earns anything at all.

Facts:

The wife filed an application under Section 125 of the Criminal Procedure Code, 1973 (CrPC) seeking maintenance from her husband. The Trial Court directed the husband to pay Rs. 15,000 per month to the wife from the date of the application. Aggrieved, the husband filed the present criminal revision.

The husband contended that the wife was an educated working woman and financially independent, with an annual salary of Rs. 11.28 Lakhs. He further stated that she had voluntarily left the matrimonial home, was unwilling to discharge her matrimonial obligations, and refused to reside with his aged parents. He also claimed he had left his employment to care for his ailing parents and was burdened with financial liabilities. The wife countered that the husband had admitted before the Trial Court to employment with J.P. Morgan from April 2018 to 2020, drawing an annual package of Rs. 40 Lakhs.

Issues:

1. Whether mere employment or earning of the wife is, by itself, a ground to deny maintenance under Section 125 CrPC?
2. Whether the maintenance awarded by the Trial Court was just, reasonable, and commensurate with the husband's earning capacity?

Ratio Decidendi:

1. **Earning of the Wife Does Not Bar Maintenance:** The Court reaffirmed the settled legal position that mere employment or earning of the wife is not, by itself, a ground to deny maintenance. The object of Section 125 CrPC is not merely to prevent destitution but to ensure that the wife is able to live with dignity, consistent with the status of the husband. The Court relied on *Shailja v. Khobbanna*, (2018) 12 SCC 199, and *Rajnish v. Neha*, (2021) 2 SCC 324.
2. **Disparity of Income is the Decisive Test:** The Court noted that even if the wife had some source of income, the material on record reflected a substantial disparity in the earning capacity and financial status of the parties. The income attributed to the wife was insufficient to enable her to maintain the same standard of living to which she was accustomed during her matrimonial life.
3. **Husband's Alleged Financial Constraints Were Unsubstantiated:** The Court held that the husband's assertions regarding financial constraints were bald assertions, as no convincing or reliable material was placed on record to establish that he lacked sufficient means to discharge his statutory obligation of maintenance.

Conclusion:

The High Court dismissed the criminal revision. The Court held that the maintenance of Rs. 15,000 per month awarded by the Trial Court was just, reasonable, and

commensurate with the husband's status and earning capacity. The impugned order did not suffer from any perversity, illegality, or material irregularity warranting interference in the exercise of revisional jurisdiction.

4. Rakesh Ray v. Priti Ray 2026 SCC OnLine Del 757

Court: High Court of Delhi

Coram: Swarana Kanta Sharma J.

Date: 16 February 2026

 **Relevance:** A landmark ruling on the economic value of homemaking. The Court holds that a wife who sacrificed her career due to marriage cannot be penalised for that sacrifice upon separation, squarely rejecting the 'idle wife' narrative. It also harmonises maintenance awards under the DV Act and Section 125 CrPC to prevent duplication while ensuring full relief.

Facts:

The parties were married in June 2012 and solemnised their marriage again according to Hindu rites in February 2013. They initially lived together at Durgapur and later relocated to Kuwait when the husband secured employment with Kuwait Oil Company. The parties adopted a male child in 2015. They returned to India in February 2020, but the husband left for Kuwait in August 2020, allegedly deserting the wife and the child.

The wife initiated proceedings under Section 125 CrPC claiming Rs. 2.5 Lakhs per month and also under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act), seeking various reliefs including maintenance. The Metropolitan Magistrate awarded Rs. 10,000 per month for the child but declined maintenance to the wife. The Appellate Court enhanced the child's maintenance but again denied maintenance to the wife. The Family Court, however, granted Rs. 50,000 per month to the wife and Rs. 40,000 per month to the child under Section

125 CrPC. Revision petitions were filed by both sides challenging the respective orders.

Issues:

1. Whether the wife had any independent source of income and, if so, whether she was entitled to the grant of maintenance?
2. Whether the income of the husband had been correctly assessed and appropriately apportioned between the wife and the minor child for the purpose of maintenance?

Ratio Decidendi:

1. **Transfers by Husband Cannot Be Treated as Wife's Income:** The Court found that the Magistrate had erroneously treated transfers made by the husband for household expenses as the wife's independent income. Financial assistance from parents during distress, extended out of familial responsibility, cannot be construed as evidence of financial independence.
2. **Capacity to Earn vs. Actual Earning:** The Court reiterated the settled distinction between 'capacity to earn' and 'actual earning'. Mere educational qualification or theoretical employability cannot disentitle a wife from maintenance in the absence of proof of actual income sufficient to sustain her standard of living.
3. **Domestic Contribution Must Be Recognised:** The Court observed that women often discontinue employment due to marital expectations, relocation, or childcare responsibilities and that re-entry into the workforce after a long break is not effortless. A husband who expected or permitted his wife to give up employment cannot later shift the burden of sustenance entirely onto her.

The Court described domestic labour as the 'invisible structure on which many families function,' and held that the law must recognise not only financial earnings but also the economic value of a wife's contribution within the home.

4. **Voluntary EMIs Cannot Dilute Maintenance Obligation:** The Court held that voluntary financial commitments, including repayment of housing or personal loans undertaken at the husband's own discretion, cannot be permitted to dilute or defeat the statutory obligation to maintain a dependent spouse and minor child. Only statutory deductions may be excluded while computing the husband's income.
5. **Harmonisation of DV Act and Section 125 CrPC Orders:** To ensure uniformity and avoid overlapping maintenance orders, the Court directed that interim maintenance of Rs. 50,000 per month to the wife and Rs. 40,000 per month to the child shall be payable uniformly under both proceedings. The enhancement of child maintenance to Rs. 60,000 by the Appellate Court was reduced to Rs. 40,000 to maintain consistency.

Conclusion:

The Court set aside the findings of the Magistrate and Appellate Court denying maintenance to the wife and upheld the Family Court's grant of Rs. 50,000 per month to the wife and Rs. 40,000 per month to the child as balanced and reasonable. The Court also emphasised the value of mediation as a more constructive path for resolving matrimonial disputes, particularly where minor children are involved. Arrears were directed to be cleared within six months, with adjustment for amounts already paid in parallel proceedings.

5. Chetna Kumar v. Dr. Prasoon Kumar, 2026 SCC OnLine Jhar 206**Court:** High Court of Jharkhand**Coram:** Sanjay Kumar Dwivedi J.**Date:** 2 February 2026

 **Relevance:** Underscores that a husband's duty to maintain his wife is sacrosanct and cannot be extinguished merely because permanent alimony has been paid under a divorce decree. Maintenance under Section 125 CrPC is an independent, continuing obligation aimed at preserving a wife's dignity not just preventing destitution.

Facts:

The marriage between the parties was solemnized in 1985 according to Hindu rites. The relationship, initially cordial, deteriorated during a period of residence abroad, and the parties separated in 2006. The wife alleged degrading remarks, altercations, and physical assault, after which she left the matrimonial home. She approached the Mahila Aayog in 2014, which advised her to file a petition under Section 125 CrPC. The wife sought Rs. 60,000 per month, citing the husband's substantial income as a renowned neuro physician with a clinic in Patna. The Family Court awarded Rs. 24,000 per month. Both parties filed criminal revision petitions the wife seeking enhancement and the husband seeking to set aside the award on grounds that he had already paid interim maintenance, permanent alimony of Rs. 20 Lakhs pursuant to a divorce decree, and had borne the expenses of their daughters' education and marriage.

Issues:

1. Whether the wife was entitled to enhancement of maintenance beyond Rs. 24,000 per month awarded by the Family Court?
2. Whether payment of permanent alimony under a divorce decree absolves the husband of his continuing duty to maintain his wife under Section 125 CrPC?

Ratio Decidendi:

1. **Section 125 CrPC is a Social Welfare Provision:** The Court emphasised that proceedings under Section 125 CrPC are of a summary nature, intended to prevent vagrancy and destitution. The provision was conceived to ameliorate the financial suffering of a woman who has left her matrimonial home, and 'sustenance' does not mean a bare subsistence-level existence; the wife is entitled to live in a manner consistent with the status and strata of her husband.
2. **Sacrosanct Duty of the Husband:** The Court underscored that it is the sacrosanct duty of the husband to render financial support, even if he is required to earn money through physical labour, as long as he is able-bodied. There is no escape from this obligation unless a court specifically rules that the wife is disentitled to maintenance on legally permissible grounds.
3. **Permanent Alimony Does Not Extinguish Maintenance Liability:** The Court held that permanent alimony paid under a divorce decree does not absolve the husband of his continuing statutory duty of financial support under Section 125 CrPC. The Family Court had rightly considered all the liabilities of both sides, including the husband's responsibility towards his daughters.

Conclusion:

The Court found that the Family Court had correctly awarded Rs. 24,000 per month in favour of the wife. Both the criminal revision filed by the wife seeking

enhancement and the criminal revision filed by the husband seeking to set aside the order were dismissed. All pending petitions were disposed of accordingly.

6. Rakesh Kumar v. State of U.P. 2026:AHC:24683

Court: High Court of Allahabad

Coram: Madan Pal Singh J.

Date: 4 February 2026

 **Relevance:** This case draws a clear boundary between moral and legal obligation, however compelling a daughter-in-law's moral duty to support aged parents-in-law may appear, it cannot be enforced as a legal maintenance obligation without an express statutory basis. The maintenance framework is confined strictly to the categories enumerated by the legislature.

Facts:

The parents-in-law of a deceased son filed an application under the relevant provisions seeking maintenance from their daughter-in-law. They submitted that they were old, illiterate, and indigent, and that their son had since passed away. They argued that their daughter-in-law was employed as a Constable in the Uttar Pradesh Police with sufficient independent income and had also received all service and retiral benefits of their deceased son. They contended that her moral obligation to maintain them should be treated as a legal obligation. The Principal Judge, Family Court, rejected the application. The parents-in-law challenged this order in the present criminal revision.

Issues:

1. Whether a daughter-in-law can be fastened with a legal obligation to maintain her parents-in-law under the provisions of the Nagarik Suraksha Sanhita, 2023?

2. Whether a moral obligation can be enforced as a legal obligation in the absence of a statutory mandate?

Ratio Decidendi:

1. **Maintenance is a Statutory Right Confined to Enumerated Categories:**

The Court held that the right to claim maintenance under the Nagarik Suraksha Sanhita, 2023 is a statutory right confined only to the categories of persons expressly mentioned therein. The legislature, in its wisdom, has not included parents-in-law within the ambit of this provision.

2. **Moral Obligation Cannot Be Enforced Without Statutory Mandate:**

The Court held that while the concept of a moral obligation appears compelling, it cannot be enforced as a legal obligation in the absence of a statutory mandate. It was not the scheme of the legislature to fasten the liability of maintenance upon a daughter-in-law towards her parents-in-law. Furthermore, there was nothing on record to indicate that the daughter-in-law's employment was secured on compassionate grounds so as to create a distinct liability.

Conclusion:

The High Court dismissed the criminal revision. The Court affirmed that maintenance under the said provision could be claimed only by persons falling within the categories specifically enumerated therein. The parents-in-law's application accordingly failed for want of a statutory basis.

7. Dimpal v. Nishant Pravinbhai Soni, 2026 SCC OnLine SC 337**Court:** Supreme Court of India**Coram:** J.B. Pardiwala and K.V. Viswanathan JJ.**Date:** 27 February 2026

 **Relevance:** This case demonstrates the Supreme Court's willingness to use salary-deduction orders as a direct enforcement mechanism when a husband wilfully defaults on maintenance. A practical reminder that courts will pierce procedural delays to protect financially vulnerable dependents, particularly minor children.

Facts:

The parties had been living separately since 2022. Their minor daughter was approximately four years old. The husband had not paid a single penny towards the maintenance of his wife or child since separation, and had not even met or seen his daughter during this entire period. An order of interim maintenance had been passed by a Magistrate's Court in Nashik in 2024, directing the husband to make monthly payments; however, substantial arrears had accumulated, leaving a total outstanding amount of Rs. 1,38,000 unpaid.

When the matter came before the Supreme Court in December 2025, the Bench noted the complete breakdown of the marriage, the wife's categorical statement that she would not return to the matrimonial home, and the husband's total disregard for his financial obligations. The wife had expressed that she expected a lump-sum settlement of Rs. 40 Lakhs as a full and final resolution of all claims. The Court had previously referred the matter to mediation and directed the husband to deposit Rs.

25,000 with the Registry towards the travelling expenses of the wife and minor daughter, as a minimum show of financial responsibility. The husband not only failed to comply with this direction but, when specifically asked in open court whether he was willing to deposit Rs. 2,50,000 inclusive of maintenance arrears he outright refused to pay anything at all.

The husband was employed with a shipping and clearing agency in Nashik, earning a total salary of Rs. 50,000 per month, amounting to an annual income of Rs. 6 Lakhs. Despite having a regular, documented salary, the husband had persistently evaded every maintenance obligation. The wife was single-handedly caring for the minor daughter with no financial support whatsoever from the child's father.

Issues:

1. Whether the Court, faced with persistent and wilful non-compliance of maintenance orders, can direct an employer to deduct the maintenance amount directly from the defaulting husband's salary and transfer it to the wife?
2. What measures can be taken to protect the interests of a minor child whose father has wilfully refused to contribute to her welfare?

Ratio Decidendi:

1. **Wilful Default Justifies Direct Employer Deduction:** The Court noted that despite being specifically directed by the Supreme Court to deposit a modest sum of Rs. 25,000 for the travelling expenses of his wife and daughter, the husband had chosen not to comply. His outright refusal to pay even minimum maintenance in the face of a Supreme Court direction left the Court with no alternative but to invoke its powers to enforce the obligation directly. The Court held that where a husband wilfully and persistently defaults on his

statutory obligation to maintain his wife and child despite court orders, the Court is entitled indeed obligated to direct his employer to deduct the maintenance amount from his salary at source and remit it to the wife. Such an order operates as an effective and immediate enforcement mechanism that bypasses the need for further litigation.

2. **A Father Cannot Abandon His Child's Welfare:** The Court expressed deep concern over the plight of the minor daughter. The Bench observed that the husband had not paid a single penny for his child's upbringing and had not even seen her in over four years. A father's obligation to contribute to the welfare of his minor child is not contingent upon the state of his marriage or his willingness to engage with the family court process. The Court characterised the husband's conduct as a complete abdication of parental responsibility and held that such behaviour could not be permitted to continue without judicial intervention.
3. **Mediation as a Preferred Path Remains Open:** While directing salary deduction as an enforcement measure, the Court kept the door open for mediation. It had previously referred the parties to mediation with the objective of arriving at a one-time lump-sum settlement for all claims. The salary deduction order was intended to ensure that the wife and daughter were not left without any support during the pendency of those larger settlement discussions.

Conclusion:

The Supreme Court directed the husband's employer to deduct Rs. 25,000 per month from the husband's salary and remit this amount directly to the wife's account via

RTGS. The order was made in the face of the husband's accumulated arrears of Rs. 1,38,000 and his explicit refusal to discharge his maintenance obligations voluntarily. The matter was posted for a compliance report. The case serves as a strong judicial signal that the Supreme Court will not countenance deliberate evasion of maintenance obligations, and that the machinery of salary attachment is available where conventional enforcement has failed.

KUTUMB



February 2026

GUARDIANSHIP



Guardianship

8. K. Balamurugan v. Superintendent of Police, H.C.P.No.242 of 2026

Court: High Court of Madras

Coram: P. Velmurugan J

Date: 9 February 2026

 **Relevance:** This case reaffirms that habeas corpus is not a shortcut in custody disputes: where a child is in the lawful custody of the other natural guardian, the writ does not lie. Parties must pursue the appropriate statutory remedies before a Family Court rather than bypass them through writ jurisdiction.

Facts:

K. Balamurugan married Divya and the couple had a daughter, Shrinika, who was approximately four years old at the time of the proceedings. After the child's birth, the marriage deteriorated rapidly. The petitioner alleged that the wife deserted him, denied him access to both the wife and child, and that her brother physically assaulted him. The petitioner had separately initiated proceedings under the Hindu Marriage Act seeking restitution of conjugal rights and access to the minor child; in those proceedings, the wife had obtained an interim stay order.

The petitioner further alleged that the wife, without his knowledge or consent, took the child out of India. When he approached the police with a complaint, no effective action was taken. Left with no immediate remedy through ordinary legal channels, the petitioner filed a writ petition under Article 226 of the Constitution in the nature

of habeas corpus, seeking a direction to produce the minor child before the Court and hand her over to him as the child's natural guardian under Section 6 of the Hindu Minority and Guardianship Act, 1956. He argued that as a natural guardian, he was entitled to invoke habeas corpus where a minor was retained without his consent, and that the denial of parental access could, in appropriate circumstances, amount to unlawful deprivation of parental rights.

Issues:

1. Whether a natural guardian is entitled to invoke the writ jurisdiction by way of habeas corpus to secure custody of a minor retained without consent?
2. Whether the presence of a minor with her mother who is equally a natural guardian amounts to illegal detention justifying the extraordinary writ of habeas corpus?
3. Whether this Court should exercise extraordinary jurisdiction under Article 226 in a custody dispute involving disputed questions of fact, particularly when statutory civil remedies are available?

Ratio Decidendi:

1. **Habeas Corpus is an Exceptional Remedy in Custody Disputes:** The Court reaffirmed that disputes over the custody of minors are ordinarily adjudicated under the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890. These proceedings contemplate a detailed, evidence-based enquiry by a court equipped to weigh all relevant welfare considerations. The writ of habeas corpus, by contrast, is an urgent remedy designed to address illegal detention; it is summary in nature and not suited for the holistic welfare enquiry that custody disputes require. The writ jurisdiction is therefore

available only where the custody of the child amounts to actual illegal detention, or where some other genuinely exceptional circumstance such as a real threat to the child's safety or an imminent risk of removal from jurisdiction exists.

2. **Custody of One Natural Guardian is Not Illegal Detention:** The Court found as a factual matter that the minor child was in the custody of her mother, who is a natural guardian of equal standing under the law. The custody of a minor by one of the two natural guardians does not, by itself, amount to illegal detention. The petitioner's grievance that he was being denied access was a legitimate concern to be addressed through the appropriate statutory forum, but it did not transform the mother's custody into an act of illegal restraint warranting a writ.
3. **Competing Claims of Natural Guardians Require Evidence-Based Adjudication:** The Court emphasised that the matters raised including allegations of desertion, assault, and removal of the child from India involved seriously disputed questions of fact that required the production and assessment of evidence. These issues were not capable of resolution in summary writ proceedings and were appropriately left to the Family Court or a competent civil court, which are equipped to inquire into the child's welfare comprehensively.

Conclusion:

The Habeas Corpus Petition was dismissed. The Court declined to exercise extraordinary jurisdiction under Article 226 in circumstances where the child was in the custody of her mother a natural guardian and where the underlying dispute raised

contested questions of fact suitable for adjudication in statutory proceedings. The petitioner was held to be at liberty to seek appropriate custody and access remedies before the Family Court or a competent civil court under the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956. The judgment reinforces that the habeas corpus remedy cannot be routinely pressed into service in matrimonial custody disputes as a means of bypassing the prescribed statutory framework.

9. Mohtashem Billah Malik v. Sana Aftab 2026 SCC OnLine SC 146

Court: Supreme Court of India

Coram: Pankaj Mithal And S.V.N. Bhatti, JJ

Date: 4 February 2026

 **Relevance:** The Supreme Court clarified that while the welfare of the child is the paramount consideration in custody disputes, courts must also examine related factors such as the parents' conduct, financial stability, educational continuity, living conditions, and the child's comfort and preferences. The judgment is especially significant in international custody disputes because it recognizes the relevance of foreign court orders and condemns unilateral removal of children from another jurisdiction without consent.

Facts:

Both parties are Indian citizens who were married in Srinagar under Muslim Personal Law and subsequently relocated to Qatar, where the husband was employed and where their two sons were born. The elder son, Malik Karim Billah, was born in October 2017, and the younger, Malik Rahim Billah, in November 2019. The matrimonial relationship deteriorated to the point where both parties separately filed divorce petitions before the Family Court at Qatar. The Qatar court resolved both petitions by a common judgment in March 2022, granting a decree of judicial divorce on the ground of mutual abuse. By the same judgment, custody of the minor boys was awarded to the mother, while guardianship including control over the children's passports and travel documents was vested in the father.

In August 2022, the mother travelled to India with both children and settled in Srinagar. The father alleged that this removal was effected mid-academic session, without his knowledge or consent, and in violation of the Qatar court's order which required the father's permission for international travel. He further alleged that the mother had misused the guardianship structure by procuring duplicate or fresh passports for the children without the father's consent, enabling the travel. When the matter was taken up by the High Court of Jammu & Kashmir and Ladakh, it was disposed of on the basis of an undertaking given by the mother that she would return to Qatar with the elder child before school reopened in January 2023 and take steps for the younger child's residency. The mother visited Qatar in December 2022 but returned to India without the children.

Following this breach, the Qatar court took up the matter and, by order in October 2023, revoked the mother's custody entirely and directed that custody be transferred to the father, on the ground that she had removed the children from its jurisdiction without consent. In parallel, contempt proceedings were initiated before the High Court in Srinagar; the mother was found guilty of contempt for violating her undertaking, though only a token fine was imposed. A fresh application by the father under Section 25 of the Guardians and Wards Act, 1890 was allowed by the Family Court in Srinagar in January 2025, which granted custody to the father. The High Court, in appeal, reversed the Family Court and restored custody to the mother. This Supreme Court appeal challenged the High Court's reversal.

Issues:

1. Whether the High Court erred in setting aside the Family Court's custody order in favour of the father without considering material factors relevant to a welfare-based custody determination?
2. Whether the High Court failed to consider the impact of the mother's removal of the children from Qatar without consent, the Qatar court's subsequent revocation of her custody, and the contempt finding against her?
3. What weight ought to be given to foreign court orders and the expressed wishes of minor children in an Indian custody proceeding?

Ratio Decidendi:

1. **Welfare is Paramount but Not Exclusive:** The Supreme Court reaffirmed that the welfare of the children is the paramount consideration in custody matters. However, it explicitly held that custody adjudication involves a 'host of other factors' that bear upon welfare, including the conduct of the parties, financial capacity, standard of living, continuity of education, and the comfort of the children. The High Court erred in treating the mother's conduct, the foreign court's orders, and the children's own expressed inclinations as irrelevant, and in proceeding as if the welfare principle operated in isolation from these circumstances.
2. **Unilateral Removal Cannot Be Condoned by Passage of Time:** The Court found that the mother had removed the children from Qatar mid-academic session, without the guardian-father's consent and without the original passports, allegedly by obtaining fresh or duplicate travel documents. This conduct was characterised as a serious breach of the custody and guardianship framework established by the Qatar court. The High Court noted this conduct

but failed to draw any consequences from it in the custody determination, an omission the Supreme Court found to be a material error of approach.

3. **Foreign Revocation Order Was Crucial and Could Not Be Ignored:** The Court held that the Qatar court's subsequent order revoking the mother's custody passed specifically because of her misconduct in removing the children from its jurisdiction was crucial material that the High Court completely failed to consider. At the time the High Court delivered its judgment, there was no subsisting custody order in the mother's favour. By contrast, the father had a guardian order in his favour and, thereafter, an order from the Family Court at Srinagar as well. The Supreme Court held that this legal landscape could not simply be overlooked.
4. **Contempt Order Was Conclusive as to Guilty Conduct:** The contempt order against the mother finding her guilty of violating her solemn undertaking to return the children to Qatar had attained finality and was conclusive as to her conduct. The Court held that the High Court's failure to consider the significance of this order in assessing the mother's conduct and credibility was an error that vitiated its custody determination.
5. **Children's Expressed Wishes Were Material and Ignored:** A mediation report placed before the Supreme Court recorded that both children had expressed a preference to accompany their father to Qatar. The elder child indicated that the father's presence would be sufficient for his comfort, and both boys appeared comfortable with the prospect of being without their mother. The younger child repeatedly expressed a wish to go with the father and appeared distressed during interaction. The children also faced difficulty

conversing with local peers, speaking primarily in English. The Supreme Court held that the High Court had completely ignored this material, which bore directly on the children's welfare and wishes.

Conclusion:

The Supreme Court allowed the appeal and set aside the High Court's judgment. The matter was remanded to the High Court for reconsideration on its merits, taking into account all the material factors identified by the Supreme Court the mother's conduct in removing the children, the Qatar court's revocation order, the contempt finding, the father's clean chit in a criminal case regarding abuse allegations, and the mediation report reflecting the children's inclinations. The High Court was directed to complete the reconsideration most expeditiously, preferably within four months from the date of receipt of the certified copy of the Supreme Court's order.

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DOMESTIC VIOLENCE



Domestic Violence:

10. Ateet Jain v. Chhavi Jain 2026 SCC OnLine Del 404

Court: High Court of Delhi

Coram: Dr Swarana Kanta Sharma, J.

Date: 4 February 2026

 **Relevance:** This case settles an important distinction between the DV Act and Section 125 CrPC: unlike the CrPC, the PWDV Act contains no express bar against maintenance for a wife alleged to be living in adultery. Such allegations require a full trial and cannot be used to shut out interim relief at the threshold stage.

Facts:

The petitioner-husband and respondent-wife were married in September 2014. The marriage was short-lived; the respondent left the matrimonial home and approached the courts under the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) alleging a catalogue of abuses sexual, verbal, emotional, and economic harassment as well as dowry-related cruelty. The Protection Officer's domestic incident report and WhatsApp communications between the parties were placed on record in support of the respondent's allegations.

The Magistrate, upon a prima facie examination of the material, directed the petitioner to pay interim maintenance of Rs. 26,000 per month to the respondent with effect from the date of filing of the application. The petitioner's primary line of attack before the appellate court and subsequently before the High Court in revision was

twofold: first, that photographs placed on record prima facie showed the respondent in compromising positions with another man during the subsistence of the marriage, amounting to adultery; and second, that his income had been grossly overestimated, since he was only a 10th-pass commission agent earning approximately Rs. 25,000 per month, and that large credits appearing in his bank statements were actually deposits of PPF, recurring deposits, and fixed deposits belonging to his parents.

The respondent denied the allegations of adultery and pointed out that the photographs were disputed and could have been morphed. She maintained that she had been compelled to leave employment at the petitioner's insistence, had suffered severe domestic violence, and was financially dependent on him. A dissolution petition on the ground of cruelty had also been filed by the petitioner, and the petitioner argued that given the pending cruelty allegations and the alleged adultery, maintaining an interim maintenance order was wholly unwarranted.

Issues:

1. Whether, at the stage of deciding interim maintenance, the Court can accept the petitioner's plea that the respondent is 'living in adultery' and on that basis alone hold that she is not an 'aggrieved person' under Section 2(a) of the PWDV Act, so as to deny her interim relief?
2. Whether the assessment of the petitioner's income based on ITRs and bank credit entries resulting in an award of Rs. 26,000 per month was perverse or legally erroneous?
3. What is the difference, if any, between the statutory treatment of adultery as a bar to maintenance under Section 125 Cr.P.C. and under the PWDV Act?

Ratio Decidendi:

1. **The PWDV Act Contains No Express Bar for Adultery:** The Court undertook a careful comparative reading of Section 125(4) Cr.P.C. and the PWDV Act. Section 125(4) Cr.P.C. expressly disentitles a wife living in adultery from receiving maintenance. The PWDV Act, by contrast, contains no such explicit bar. Explanation II to Section 3 of the Act requires the court to consider the overall facts and circumstances when assessing whether domestic violence has occurred, which means that a wife's conduct including alleged adultery is relevant context but is not a standalone, threshold bar to being an 'aggrieved person.' The legislature's deliberate omission of an adultery bar from the PWDV Act cannot be supplied by judicial interpretation.
2. **Unproved Photographs Cannot Be Acted Upon at the Interim Stage:** The Court held that the photographic material relied upon by the petitioner was unproved, disputed, and alleged to have been morphed. The Sessions Court had correctly concluded that the genuineness and veracity of such evidence was a matter for adjudication after evidence was led at trial. At the interim stage, where only a prima facie view is required, disputed and unverified photographs cannot be the basis for denying maintenance to an otherwise eligible claimant who has made out a prima facie case of domestic violence.
3. **Concurrent Findings on Income Not Perverse:** The Court found no perversity in the concurrent findings of the Magistrate and the Sessions Court regarding the petitioner's income. His own Income Tax Returns showed substantial incomes for earlier assessment years, and large bank credits of over Rs. 28 Lakhs over three years could not be satisfactorily explained merely by asserting that they represented deposits by his parents. The revisional court

declined to re-appreciate evidence or interfere with factual findings that did not suffer from any legal error.

4. **Conditional Safeguard to Prevent Unjust Enrichment:** Recognising that the respondent's entitlement remained subject to the outcome of the trial, the Court attached a conditional safeguard to its order: if on evidence the respondent is ultimately found to be living in adultery and therefore not entitled to maintenance, she shall be required to refund all amounts of interim maintenance received, with interest at 6% per annum. The respondent was directed to file an affidavit of undertaking to this effect before receiving any further maintenance payments.

Conclusion:

The revision petition was dismissed and the interim maintenance order of Rs. 26,000 per month was upheld. The Magistrate was directed to endeavour to decide the Section 12 application expeditiously, preferably within one year of receipt of the judgment, so that the contested questions of adultery and income could be finally adjudicated on evidence. The decision is significant in establishing that the PWDV Act's maintenance framework operates independently of the Cr.P.C. adultery bar, and that disputed moral conduct cannot be used to shut the door on interim relief without a full trial.

11. Rani Bibi v. Sk. Nurullah & Ors., CRR 3472 of 2022

Court: High Court of Calcutta

Coram: Dr. Ajoy Kumar Mukherjee, J.

Date: 18 February 2026

 **Relevance:** This case comprehensively settles the law on: (1) the maintainability of a Section 482 Cr.P.C. application against orders passed in DV Act proceedings; (2) the meaning of 'temporary residence' under Section 27 of the DV Act; and (3) the jurisdiction of the court where a victim of domestic violence takes shelter. It holds that a victim's temporary residence after being driven from her matrimonial home can confer jurisdiction, and that continuing economic abuse creates a continuing cause of action at the place where the victim resides.

Facts:

The petitioner-wife was married to opposite party No. 1 on 7 February 2013 according to Islamic rituals. Despite receipt of sufficient dowry, the opposite parties maltreated the petitioner and demanded more dowry. Unable to bear the situation further, the petitioner left the matrimonial home (located in Medinipur District) and took shelter in a rented accommodation within the jurisdiction of Taltala Police Station, Kolkata. They were blessed with a son.

In March 2020, the petitioner lodged a criminal complaint at Taltala Women PS under Sections 498A/406/506/34 IPC (FIR No. 6 dated 17.3.2020). She also filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (MISCN Case No. 23 of 2020) before the 11th Metropolitan Magistrate, Calcutta, seeking reliefs under Sections 17, 18, 20, 21, and 22 of the DV Act,

claiming that she ordinarily resided within the Taltala PS jurisdiction. In support, she filed her Aadhaar Card (issued 17 March 2020), a residential certificate from the local councillor (dated 30 October 2019), and a leave and license agreement for the Kolkata address (dated 2 February 2021).

The husband challenged the territorial jurisdiction of the Calcutta court. The 11th MM Court upheld its jurisdiction on 14 July 2022, finding that the petitioner rightly filed within local limits where she resided. On appeal, the Chief Judge, City Sessions Court, Calcutta reversed this order on 22 August 2022, directing the petitioner to present her application before the appropriate court having territorial jurisdiction, and holding that the Kolkata court had no jurisdiction. The petitioner challenged this Sessions Court order before the High Court under Section 482 Cr.P.C.

Issues:

1. Whether an application under Section 482 Cr.P.C. is maintainable against the Sessions Court's order directing return of the DV Act application?
2. Whether the Magistrate's Court at Calcutta had territorial jurisdiction under Section 27 of the DV Act to entertain the petitioner's application?

Ratio Decidendi:

1. **Maintainability of Section 482 Cr.P.C. - Settled by Supreme Court:** The Court engaged in a detailed analysis of the long-standing controversy among various High Courts on whether Section 482 Cr.P.C. is available to challenge orders in DV Act proceedings, given the predominantly civil nature of such proceedings. Relying on the landmark Supreme Court decision in *Sourabh Kumar Tripathi v. Vidhi Rawal* (2025 SCC OnLine SC 1158), the Court held that while the first part of Section 482 (to give effect to orders under the CrPC) does not apply to DV

Act proceedings, the second part which saves the inherent power of the High Court 'to prevent the abuse of the process of any Court or otherwise to secure the ends of justice does apply. The order directing return of the application was not an interlocutory order but a final order substantially affecting the petitioner's rights (akin to return of plaint under Order VII Rule 10 CPC, against which an appeal lies in civil proceedings). Accordingly, the application under Section 482 was held maintainable.

2. Scope of 'Temporary Residence' under Section 27 DV Act: Section 27 of the DV Act confers jurisdiction on the Magistrate in whose local limits the aggrieved person permanently or temporarily resides, carries on business, is employed, or where the cause of action has arisen, or where the respondent resides or is employed. The Court carefully examined what constitutes 'temporary residence' within the meaning of Section 27. Drawing from *Sarod Kumar Pandey v. Mamta Pandey* (2010 DMC 600 Delhi), the Court held that a 'temporary residence' is a temporary dwelling place where a person has, for the time being, decided to make her home, it is not a casual or fleeing visit for filing a case. For jurisdiction to be attracted, the temporary residence must be a continuing residence from the date of acquiring it till the DV application is disposed of.

3. Petitioner's Kolkata Address was Genuine Temporary Residence: The Court found that the material on record particularly, the Domestic Incident Report by the Protection Officer referring to the Taltala address; the charge-sheet in the 498A case identifying the petitioner's residence within Taltala PS; legal notices in separate litigations served upon and received by the petitioner at the Taltala address; and the residence certificate from the local councillor taken together, did

not indicate that the petitioner's stay at the Taltala address was merely a fleeing residence for the purpose of filing the DV case. There was nothing to suggest that she did not ordinarily reside there. The Sessions Court's substitution of its own view for that of the Trial Magistrate, without identifying cogent and overwhelming circumstances warranting interference, was held to be an impermissible re-appreciation of evidence in revision.

- 4. Continuing Economic Abuse as Cause of Action:** The Court additionally held that even if the petitioner's documents of temporary residence were obtained after filing the DV application, jurisdiction could still be independently grounded in Section 27(g), 'where the cause of action has arisen.' The petitioner's allegation that the husband had failed to provide maintenance to her and the child, and had remarried without providing anything, disclosed a case of 'economic abuse' under Section 3 of the DV Act. Such economic abuse is a continuing wrong, it arises from day to day and does not require joint residence in the shared household. The cause of action for economic abuse thus continued to arise within the jurisdiction of the Calcutta Magistrate's court from wherever the petitioner resided.

Conclusion:

The High Court allowed the criminal revision. It set aside the Sessions Court's impugned order dated 22 August 2022 and restored the Trial Court's order dated 14 July 2022, affirming the 11th MM Court's (now JM Court, Calcutta) jurisdiction to entertain the petitioner's application under Section 12 of the DV Act. The judgment reinforces protective interpretation of the DV Act in favour of victims and settles the law on territorial jurisdiction, the scope of 'temporary residence,' and the availability

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of Section 482 Cr.P.C. as a remedy against non-interlocutory orders in DV proceedings.

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ADOPTION



Adoption

12. Sri Naveen M Torgal & Smt. Indumati v. Child Welfare Committee, WP

No. 18481 of 2021

Court: High Court of Karnataka at Bengaluru

Coram: D.K. Singh, J.

Date: 5 February 2026

 **Relevance:** This case powerfully affirms the doctrine of the best interest of the child in the context of de facto care over nearly a decade. The Court holds that a child who has been in the loving custody of a couple for almost ten years abandoned at birth and raised by them as their own should not be uprooted, and directs the CWC to conduct its statutory inquiry in a manner that facilitates rather than obstructs the formal adoption process.

Facts:

The petitioners are a married couple Sri Naveen M. Torgal and Smt. Indumati residing at Shivamogga, Karnataka. They are devotees of Sri Gavisiddheshwara Swami Mutt. On 10 June 2016, while visiting the Mutt, they found a newborn child (then only three days old) abandoned by his mother at the Mutt premises. On the advice of the Swamiji of the Mutt, the child was taken into the care and custody of the petitioners. They took the child to Shivamogga, named him Vismay N. Torgal, admitted him to a pre-school, and raised him with complete parental love, affection, and care as though he were their own biological child.

The petitioners' own children had died one physically disabled child at the age of 12 years, and a girl child within four months of birth leaving them with no surviving biological child. The petitioners wish to formally adopt Vismay.

The Child Welfare Committee (CWC), Shivamogga issued a notice on 20 July 2017, summoning the first petitioner to appear before the committee regarding the legality of custody. Though the petitioners appeared before the committee, no proceedings were initiated thereafter. On 6 February 2020, the CWC issued a newspaper publication stating that a complaint had been received that Vismay (then aged about three years) was in the 'illegal custody' of the petitioners, and inviting anyone claiming to be the child's parents or heirs to contact the CWC Chairman with necessary documents. No one came forward.

When the petitioners moved an application on 6 August 2021 seeking Foster Care under the Model Guidelines for Foster Care 2016, the child was transferred to CWC custody. When they requested the child's return, the CWC did not respond favourably. The petitioners then approached the High Court in 2021. This Court vide order dated 8 October 2021 directed the CWC to hand over custody of the child to the petitioners with visitation rights for the CWC for supervision. In compliance, custody was returned. At the time of judgment, the child Vismay was approximately 9.5 years old and studying in 4th Standard in a good school in Shivamogga. His biological parents or any relatives had never come forward since the newspaper publication.

Issues:

1. Whether the paramount interest and welfare of the child Vismay is secured in the custody of the petitioners, given that he has lived with them for almost ten years?

2. What directions, if any, should be given to the CWC and the Central Adoption Resource Authority (CARA) to facilitate the formal adoption process?

Ratio Decidendi:

1. Paramount Interest of Child's Welfare Must Override Procedural Rigidity:

The Court recognized that the CWC has been vested with statutory responsibility under Rules 18 and 19 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 to conduct an inquiry in relation to children in need of care and protection, and to issue directions for securing the welfare, interest, care, and protection of the child. The petitioners had, through what the Court charitably characterized as a 'procedural and legal oversight,' failed to present the child before the CWC as mandated by these Rules in 2016. However, this procedural lapse could not and should not operate to the detriment of the child's settled and deeply rooted life with the petitioners.

2. **Ten Years of De Facto Parenthood Cannot Be Ignored:** The Court placed considerable emphasis on the fact that the child Vismay had been in the continuous custody, care, and protection of the petitioners for almost ten years from the date of abandonment. During this period, the petitioners had provided him every material and emotional resource as if he were their own biological child. The Court held that plucking the child from them at this stage would not only be against his paramount interest and welfare, but would also be 'inhuman.' The child's settled emotional and social environment, his enrollment in a good school, and the complete absence of any claim by biological parents were all factors pointing overwhelmingly in favour of continuation of custody with the petitioners and expeditious formalization of the adoption.

- 3. CWC Inquiry Must be Welfare-Focused and Expeditious:** Rather than quashing the CWC proceedings (as sought by the petitioners), the Court struck a balance by directing the CWC to proceed with the statutory inquiry under Rule 19, but with the express understanding that the inquiry should be welfare-focused and should consider the child's best interest, including the decade of de facto parental relationship with the petitioners. The Court directed that the petitioners produce the child before the CWC in Bengaluru on 10 March 2026, and the CWC was directed to conduct the inquiry promptly and, if the petitioners are found eligible to adopt the child, to facilitate that process.
- 4. CARA Directed to Process Adoption Application Expeditiously:** The Court directed CARA, Bengaluru to process the petitioners' adoption application expeditiously once the CWC completes its inquiry, without further unnecessary delay.

Conclusion:

The writ petition was disposed of with directions: (1) the petitioners were directed to produce the child before the CWC in Bengaluru on 10 March 2026; (2) the CWC was directed to conduct the Rule 19 inquiry to determine whether the interest and welfare of the child is secured in the custody of the petitioners, and if they are found eligible, to facilitate their adoption of the child; (3) CARA was directed to process the adoption application expeditiously once the CWC completes its inquiry; and (4) the child was to remain in the custody of the petitioners during the inquiry. All pending applications stood disposed of. The judgment stands as a powerful affirmation that law must serve the child's best interest, and that a decade of de facto

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parenthood undertaken in good faith cannot be undone on account of procedural formalities alone.