

ARMY INSTITUTE OF LAW AND MALHOTRA & MALHOTRA ASSOCIATES
CHILD LAW NATIONAL ONLINE MOOT COURT COMPETITION
June 17th- 18th, 2021

MOOT PROPOSITION

1. X, an Indian national by birth permanently migrated with his family to USA after schooling in India and acquired US nationality. Z of Indian origin, also proceeded to US for higher studies after schooling. Both of them met each other in University in USA in 2000 and became friends.
2. Both X and Z pursued studies for medical degrees in USA and became qualified doctors. On January 26 2006, X and Z solemnised a civil marriage in USA according to American laws, which was also beneficial to Z for acquiring American nationality by marriage to X. They did not start cohabiting as husband and wife in USA due to family reasons.
3. Due to reasons of family sentiments, X and Z again got married in India according to Sikh rites and ceremonies on December 26, 2007 at Jalandhar and soon thereafter returned to USA.
4. A daughter D was born to the parties in USA on April 13 2012 who became an American national by birth. X and Z set up a joint medical practice and soon acquired assets in USA. Both of them had professional practice licenses, bank accounts, funds, deposits, assets in USA. They filed joint income tax returns in USA, had US driving licenses, insurance policies and availed of other facilities or benefits available to all US nationals.
5. Due to matrimonial differences, X and Z took professional counseling as Z often accused X of being a wayward spouse who neglected family responsibilities and household affairs. X in turn was of the view that Z was overtly suspicious and suffered from a personality disorder because of which she exhibited abnormal behaviour with a violent temperament. Z was also accused of siphoning funds from the joint bank accounts of the parties and transmitting the same to private bank accounts in India for being used by the family members of Z for business purposes.
6. Z came to India with her daughter D on January 5 2016, to attend the wedding of her sister with a return ticket for March 5 2016. X also attended the wedding in India along with his parents from USA. However, Z refused to go back to USA complaining of domestic violence and despite best efforts of X, Z did not relent and X went back to USA alone. X was distraught to learn that Z was pregnant as she had conceived in USA but had not disclosed this fact to X. Z however claimed that she came to know of the pregnancy only upon coming to India.

7. X returned to USA and after failing in all family efforts to persuade Z to return to USA, X filed an emergency custody petition in USA, where he sought the return of his daughter with Z to USA. X served Z with the notice in India but Z did not appear and ex-parte interim orders were granted to X requiring Z to return to USA with D.
8. Meanwhile, on August 12, 2016 Z gave birth to a baby boy B in Jalandhar. Upon X rushing to India to meet his wife and son, the family of Z refused permission to meet and X had to return disappointed to USA. Meanwhile, Z invoked the jurisdiction of the Family Court, Jalandhar under the Guardians and Wards Act, 1890 (GWA) seeking guardianship and exclusive custody of both the children D and B on the basis of the Hindu Minority and Guardianship Act, 1956 read with the provisions of the Guardians and Wards Act, 1890. Upon notice being served to X in USA, he moved an application under Section 9 GWA read with Order 7 Rule 11 CPC seeking dismissal of the guardianship petition on the ground that the children did not ordinarily reside in Jalandhar and hence, the Family Court exercising powers under the GWA has no jurisdiction.
9. The Guardian Judge upon a preliminary hearing dismissed the guardianship petition on the issue of maintainability of the petition, as the children were not ordinarily resident in Jalandhar. Z filed an appeal in the High Court of Punjab and Haryana and obtained interim custody of D and B. Meanwhile, the US Court also proceeded with the matter and after offering opportunity to appear and Z defaulting in appearance, US Court granted interim custody to X with directions to return to USA for a final hearing. Armed with this US Orders, X moved the High Court of Punjab and Haryana in a habeas corpus writ petition for seeking directions of the return of Z with both the children to USA. The appeal of Z against the order of Guardian Judge dismissing the Guardianship petition on grounds of jurisdiction and the habeas corpus petition of X were clubbed to be heard together.
10. The High Court dismissed the appeal of Z and upon the matters being heard by different Benches of the High Court due to changes in hearing as per change of roster, the habeas corpus petition was heard by a different Bench and judgment was reserved after detailed hearing.
11. Z appealed against the Orders of the High Court in the Supreme Court which held that the Guardianship petition could not have been dismissed summarily in an application assailing jurisdiction and directed that the Guardianship petition be heard and decided within six months. However, the Supreme Court directed that the Guardian Judge would await the decision of the High Court in the habeas corpus petition before finally proceeding in the matter.
12. Z placed on record of the High Court proceedings of the US Court which she has obtained through US attorneys instructed only to observe the US Court proceedings but

make no appearance. The High Court in its judgment in the Habeas Corpus petition directed Z to return to USA with the two children upon X obtaining a mirror order from the Court in USA with the following stipulations to be made a part of the modified US order before Z could be directed to return to USA with the two minor children D and B. The conditions were as follows:

- a) The minor children shall remain the interim custody of Z till the final determination of custody and guardianship is made by the competent Court in USA and till then, the minor children would not be separated from Z and would reside with Z in an independent apartment to be provided by X with all amenities, facilities and necessary items of daily use.
- b) X will not pursue any criminal proceedings for child removal nor initiate any other proceedings for any penal action against any of her family members.
- c) X will only have visitation rights and will not reside with Z, till such time a shared/joint parenting plan is prepared by consent of parties or the US Court agrees to joint custody.
- d) X will provide maintenance/support and other facilities till Z returns to work and earns independently and will also provide financial assistance till Z gets legal aid or support.
- e) X will create an escrow account of 25,000 USD in US for ensuring compliance.

X obtains a mirror order from the US Court incorporating all the above conditions and the High Court directs Z to return to USA with B & D. However, Z does not comply with the order.

13. Meanwhile, the Family Court decides the matters in 6 months on merits and holds that the children deserve to be brought up in USA considering the rights of children and issues of Parental Alienation Syndrome. Holding children to be US nationals and considering the best interest and welfare of the children, the Family Court suggests joint parenting in US. On merits, the Family Court decides that singular custody with mother alone is not favorable. This decision is challenged by Z in the High Court and by a detailed decision, the appeal of Z is dismissed and taking note of the decision of the High Court in the Habeas Corpus petition, it is reiterated that the welfare of the children lies in returning to USA to be brought up by both parents. It is held that the children being US nationals, US Courts being the jurisdiction of closest contact, and since Z had been granted protection and facilities in US, she ought to go back with the children.

14. Both the decisions of the High Court in Habeas Corpus and appeal jurisdiction are challenged by Z in Supreme Court of India on issues of merits and maintainability & are to be heard together.

15. The matter stands with the children of US parents being without valid passports. Issues of nationality of the son B are raised as under the Citizenship Act, 1955 he is not entitled to Indian citizenship being born to US parents. The US passport of the daughter D has lapsed, but not renewed. The mother Z is still a US national. The Constitution of India

and Citizenship Act bar dual nationality. The welfare of the children is questioned by X seeking reliance on the provisions of the United Nation Convention on the Rights of the Child, endorsed by India and pursuant to which the provisions of the Juvenile Justice (Protection of Children) Act, 2015 was amended. The mother Z seeks reliance on the maternal preference rule to claim singular custody of minor children and assails the decisions on the grounds of being a victim of domestic violence and persecution in US on account of child removal being a federal offence. It is pleaded that parental custody is not child removal under any law in India.

16. Argue for X or Z and support with case law as India is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, 1980 and Interparental child removal is not an offense under any Indian codified law, as also that children had settled in India. It was urged that relocation in pandemic times is not in the best interest and welfare of minor children, since they were more safe in India than in the US. Safety in US due to corona virus was at high risk and children having taken roots in India, the scenario had changed after the decisions. It was further urged that despite mirror orders, the safety and security of Z could not be guaranteed. Z in turn urged that being Hindu by religion, her matrimonial dispute should be adjudicated by the Courts in Jalandhar. X urged that all issues of matrimonial discord, child custody and division of matrimonial property could be settled in US. However, Z insisted on a division of matrimonial assets and urged that a joint parenting plan be prepared before leaving India. The matter is now to be decided finally by the Supreme Court of India.