

IN THE COURT OF LD. PRINCIPAL JUDGE; FAMILY COURT

KARKARDOOMA COURT; DELHI

INTERIM APPLICATION NO. _____

IN

ORIGINAL PETITION CASE NO. GP 1095/18

(GUARDIANS AND WARDS ACT)

IN THE MATTER OF

HUSBAND

....Petitioner

Versus

WIFE

....Respondent

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DELHI
DATED:

PETITIONER THROUGH

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DURING THE PENDENCY OF THE ORIGINAL PETITION CASE NO. GP 1095/18 AT KARKARDOOMA FAMILY COURT THE PETITIONER-FATHER PRAYS BEFORE THE HON'BLE COURT FOR INTERIM CUSTODY OF HIS MINOR CHILD MADHAV TRIVEDI AGED 11 YEARS U/S 12 OF THE GUARDIANS AND WARDS ACT, 1890 AND FOR ACCOMPLISHING THIS INTERIM CUSTODY IMPLEMENTATION OF THE PARENTING PLAN PREPARED FOLLOWING THE SUGGESTIONS OF THE LAW COMMISSION REPORT NO. 257 PUBLISHED ON 25.05.2015 AND PRESENTED IN THIS PETITION UNDER THE HEADING 'PROPOSED INTERIM PARENTING PLAN' FOR KIND CONSIDERATION OF THE HON'BLE COURT.

MOST RESPECTFULLY SHOWETH:-

1. That the petitioner-father has filed the original petition u/s 25 of the Guardians and Wards Act, 1890 and the facts leading to filing of the said petition have been mentioned in detail in the same. The petitioner-father prays leave of this Hon'ble Court to refer to and rely upon the same as it forms part and parcel of this petition being filed for interim custody of the child Madhav Tivedi.
2. That the petitioner-father and the respondent-mother are Hindus by faith and their marriage was solemnized as per Hindu rites and rituals on 25.05.2001 in the presence of friends and relatives at the Harirama Asharm, Nasatra, Sarthebari, Assam. On 26.03.2003, the marriage between petitioner-father and the respondent-mother was solemnized

as per Special Marriage Act, 1954 at Guwahati, in the district of Kamrup (Metro), Assam.

3. That on 11.05.2007 a male child, whom the petitioner-father and the respondent-mother named as 'Madhav Trivedi', was born of their wedlock in Chicago, IL, USA.
4. That the son, Madhav Trivedi, of the petitioner-father and the respondent-mother is currently studying in class VI at Diamond International School, Sector 35, Noida, U.P. He has been studying in the same school for the last 6 years. As such he is very comfortable with the school environment and he feels happy and secure in that school.
5. That the petitioner-father begs to state that, on 8.11.2017 he brought his 76-year old mother from Guwahati to Delhi for knee replacement surgery. After the surgery had been over he took back his mother to Guwahati on 10.12.2017. When the petitioner-father was busy in Guwahati attending to his mother for post-surgery problems the respondent-mother left the matrimonial house at Indirapuram, Ghaziabad on 01.01.2018 and also wrongfully took away the minor son 'Madhav Trivedi' with her without the consent and presence of the petitioner-father. The respondent-mother left the key of the house with a neighbour saying that they were deserting the petitioner-father and the house for ever.
6. That the child is being deprived of petitioner-father's love, care, guidance, presence and company due to respondent-mother living separately and having taken the child with her.
7. That since the petitioner-father is very thoughtful about the educational growth of his minor son he decided to send his son to the Diamond International School, Sector 35, Noida, considered one of the best schools in Noida. The school was chosen by the petitioner-father as it has good reputation, offers air-conditioned transportation for its students, has a very safe environment, has air-conditioned class-

rooms and offers wholesome breakfast and lunch. **All the costs related to the minor son's educational fees, transportation and food at school are paid by the petitioner-father.** As proof of the petitioner-father's love and concern for the minor son photocopies of the petitioner-father's bank checks used to pay for the son's school fees and corresponding bank passbook statements, receipts of domestic and foreign travels taken by the son and the respondent-mother and paid by the petitioner-father, invoice of laptop purchased by the petitioner-father etc. for his son are annexed as **Annexure-1**.

8. **Fact why the wife is not fit to take care of the child.** That the petitioner-father begs to state that the respondent-mother is working in Dept. of Commerce, New Delhi and as she stays 10-11 hours outside home every day from Monday to Friday she has no time to properly look after the child as she remains busy mostly in her own world leaving aside her care, love, responsibilities towards the family and therefore, so there is every possibility of the child being deprived of proper care. A very recent incident of the respondent-mother's utter carelessness in regards to the safety and wellbeing of the child is detailed in the next para. On the other hand, the petitioner-father begs to state that he is able enough and has ample time to take care of his only son with great care and love considering the utmost interest of the child at his formative and adolescent years.

9. **Here add some facts with proofs about how the wife neglected the child.** That on 12.06.2018 minor child Madhav told the petitioner-father on phone that on 13.06.2018 he would go to Jodhpur from Delhi with his maternal grand-mother but for this trip permission of the petitioner-father was never requested to take him out of Delhi. The petitioner-father refuses to give permission to anyone to take the minor child out of Delhi if at least one of his parents is not accompanying him. Then on 13.06.2018 the petitioner-father tried calling the minor son several times but his phone was switched off. As the petitioner-father was very worried for his minor son's well-being he sent email and SMS messages to the respondent-mother asking her to inform him about the son's well-being and his whereabouts. The petitioner-

father mentioned in his email to the respondent-mother that the minor son must not be taken out of Delhi without the consent of the petitioner-father and without the company of at least one of the parents. The petitioner-father tried calling his minor son again on 14.06.2018 but the phone was still switched off and the respondent-mother never replied to the petitioner-father's emails and SMS messages. So it looks like the minor son was sent out of Delhi without the consent of the petitioner-father and that too without any of his parents accompanying him on this trip.

In complete disregard not only of the safety of the minor child but also of the wishes and concern that the petitioner-father has for his minor child the respondent-mother sent the child on a journey out of Delhi without any direct parental supervision. Though the petitioner-father repeatedly instructed the respondent-mother not to send the child out of Delhi if at least one of his parents is not accompanying him the respondent-mother never heeded to this advice and jeopardized the well-being and safety the child by sending the child whimsically out of Delhi without any direct parental supervision. In this case the child was sent to Jodhpur from Delhi on 13.06.2018 with the respondent-mother's mother who is old, physically weak and not at the best of her health as she is on heavy medication due to various health issues related to old age. Though the respondent-mother may claim that her mother was providing the required supervision to the child in this journey, in reality it was the minor child who would have to provide supervision and help to his grandmother as due to her frail health she was in no way fit to provide effective supervision and required physical help to the minor child in case of any emergency or untoward incident. It is to be noted that the minor child is not accustomed to the extreme heat and dust-storm condition of Rajasthan. At the time of the minor child's departure to Jodhpur the air quality in Delhi remained beyond the "severe" level for the third day on 14.06.2018 due to dust storms in western India, particularly Rajasthan and the weather report regarding this dust storm was detailed in all the media. One such report can be found in the following URL: <https://timesofindia.indiatimes.com/city/delhi/air-quality-in-delhi->

remains-beyond-severe-for-third-day/articleshow/64582636.cms. By sending the minor child to Rajasthan without direct parental supervision at such extreme heat and dust-storm condition the respondent-mother jeopardized not only the safety of the minor child but also his health. Email correspondence between the petitioner-father and the respondent-mother regarding this incident and the weather report related to this incident are annexed herewith as **Annexure – 2.**

10. **In this para it is described why father is important for a child.**

That for meaningful, significant, constructive development of the child at his formative years the physical custody of the child by the father for extended period of time is necessary and important. Visitation right for a mere couple of hours in a week or month does not serve meaningful purpose for significant and constructive development of the child at his formative years.

In the case of 'Ruchi Majoo vs Sanjeev Majoo' on 13 May, 2011, Supreme Court, it was observed that role of father at formative and impressionable stage of the child's life in the child's upbringing and grooming to face the hard realities of life cannot be undermined and that role of a father is very important for the upbringing of a minor child.

In the case of 'Rosy Jacob vs Jacob A' Chakramakkal MANU/SC/0260/1973:(1973) 1SCC 840', it was observed:

"The family is normally the heart of our society and for a balanced and healthy growth of children it is highly desirable that they get their due share of affection and care from both the parents in their normal parental home."

In the case of K.M.VINAYA vs. B.R.SRINIVAS on 13 September 2013 in the High Court of Karnataka, Bangalore, MFA. No. 1729/2011 (G&W) it was observed in the judgement for the custody battle of the 12-year old son:

"At this stage, the guidance and friendliness of the father is also required. The minor child is living with the appellant from the day of his birth and she has taken care of the well-being of the child with love and affection that by itself would not entitle her the custody of child.

Father's care and love has a powerful and positive impact upon the development and health of a child.

In addition, numerous studies have found that children who live with their father are more likely to have good physical and emotional health to achieve academically and more likely to exhibit self-control and pro-social behaviour. It is important that the minor have his father's care and guidance, at this formative and impressionable stage of his life. Nor can the role of the father in his upbringing and grooming to face the realities of life be undermined. It is in that view father's care is important for the child's healthy growth.

Parental touch and influence of other parent will enable the two to stay in touch and share moments of joy, learning and happiness with each other. Hence, we are of the opinion that both the appellant and respondent are entitled for custody of the child for the sustainable growth of the minor child."

Describing here how the father can be helpful to the child. The petitioner-father in this instant case is highly educated having stood in the top 1% in his state in both 10th and 12th standards. He then got his B.E. degree in civil engineering with First Class Honors. Later on he got his master's degree in mechanical engineering from USA and then another master's degree in computer science from USA. All through his educational life he received merit scholarships and in USA also he completed two master degrees with teaching and research assistantship offered by the university. Right from his primary school days to the graduate level the petitioner-father scored consistently well above 90% in mathematics. In fact even in his master's degree program he scored a perfect 100 out of 100 in one mathematics paper. This was possible because of the continuous daily tutoring and guidance that the petitioner-father used to get from his father in his school days up to his 10th standard. This continuous daily tutoring and guidance helped the petitioner-father understand the basics and score better not only in mathematics but also in English, Science, Geography and other subjects. Further this daily tutoring and guidance that the

petitioner-father got from his father helped in his upbringing immensely and grooming to face the hard realities of life. Therefore the petitioner-father needs to spend significant amount of time with his minor child on a daily basis consistently so that he can groom the minor child to face the hard realities of life and teach mathematics, English, science and geography to make him understand better and score better in class examinations as well as competitive examinations which are necessary to lead life as a successful citizen. Wholeheartedly the petitioner-father requests the Hon'ble court not to deprive the minor child from this guidance and learning experience to be offered by a doting father to his only child.

11. **Why does interviewing the child is not a good idea.** That since the child has already been brainwashed and his mind poisoned into creating ill-will against the petitioner-father and his family, interviewing the child will serve no purpose unless his mind is clinically evaluated and cleansed by trained child psychologists. Often family court decides the child's custody based on the wishes of the child during an interview which the court conducts on the child of tender age but the fact is that child of tender age is not his own master, is not matured enough to look into the future and is not capable of forming any intelligent, prudent or well-reasoned preference of a parent (in other words if child expresses he/she is unwilling to go to school, will the family court honour the wishes). So while deciding custody the court is prayed to ensure the welfare and the best interest of the child's upbringing and not to be influenced by the mere wish of the child especially in this case where the child has already been heavily tutored, brainwashed and poisoned against the petitioner-father. In the case of K.M.VINAYA vs. B.R.SRINIVAS on 13 September 2013 in the High Court of Karnataka, Bangalore, MFA. No. 1729/2011 (G&W) though child expressed desire to be with mother, it was not considered too important because he had been primarily in custody of mother all along, and was 12 years old. In the case of Mr. Tushar Vishnu Ubale vs Mrs. Archana Tushar Ubale on 15 January, 2016 in the Bombay High Court, WRIT PETITION NO.5403 OF 2015, it was observed that “Gradually a feeling that I can do without the absent parent develops

and this gradual parental alienation becomes a part of the child's life and which may lead to social alienation which is in fact a deep trauma and not a healthy or happy circumstance. Alienated children often show contempt and withdraw affection whenever they are in contact with the non-custodial parent. Physical estrangement adds to emotional alienation.” In the case of Mohan Kumar Rayana vs. Komal Mohan Rayana in the High Court of Judicature at Bombay Appellate Jurisdiction Family Court Appeal No. 29 of 2007 the court observed in Para No. 48 that “Anisha may not be able to immediately adjust herself at the home of the appellant-father, but it does not mean that mere willingness of Anisha would be decisive factor. Looking at her age and hostile attitude towards the appellant, her wish, insofar as access/visitation right is concerned, need not be given importance or any weightage. The Court is not supposed to act as executor of the wish expressed by the minor.”

12. That the Law Commission of India sent its Report No. 257 on 25th May 2015 and suggested reforms in guardianship and custody laws in India. The Law Commission has proposed amendment in Hindu Minority and Guardianship Act, 1956 and Guardian and Wards Act, 1890 by observing that law must accept the concept of joint custody and shared parenting for the welfare of the child. The Law Commission headed by Hon'ble Justice A. P. Shah and other members of the Law Commission have referred to various judgments of the Hon'ble Supreme Court and various Hon'ble High Courts and literature available on the point and suggestions which were received by the Law Commission from the members of the society and it has prepared a report proposing that joint custody should be the norm and presumption. No doubt, the said proposed amendments are in pipeline. They are just in the form of suggestions and the law is yet to be crystallized by legislative amendment in Parliament, but that should not affect courts to refer to that document which is relevant piece of material while deciding aspect of parenting plan.
13. The Law Commission in its recent report No. 257 referred above in Para 3.3.1 to 3.3.5 gives certain reasons for adopting **Joint Custody**

in India. That reasoning adopted by the Law Commission is reproduced in this petition. Entire report is annexed in **Annexure - 5**.

3.3.1. First, with rapid social and economic change, conjugal and familial relationships are becoming more complex and so are the conditions of their dissolution. As these social changes that affect family life escalate, we need to update the laws governing the family relationships, during and after the marriage. At present, our legal framework for custody is based on the assumption that custody can be vested with either one of the contesting parties and suitability is determined in a comparative manner. But, just as the basis for dissolving marriage has shifted over time, from fault-based divorce to mutual consent divorce, we need to think about custody differently and provide for a boarder framework within which divorcing parents and children can decide what custodial arrangement works best for them.

3.3.2 Second, the judicial attitude towards custody matters has evolved considerably. As legal scholar and activist, Flavia Agnes notes, in modern day custody battles, neither the father, as the traditional natural guardian, nor the mother, as the biologically equipped parent to care for the child of tender age, are routinely awarded custody. The principle, best interest of the child takes into consideration the existing living arrangements and home environment of the child. ... Each case will be decided on its own merit, taking into account the overall social, educational and emotional needs, of the child.

3.3.3 But despite this development in judicial attitude, we have ignored the idea that under certain favourable circumstances, the best interest of the child could also result from simultaneous association with both the parents. Since there is no inherent contradiction between pursuing the best interest of the child and the concept of shared custody, the law needs to provide for this option, provided certain basic conditions are met.

3.3.4 Third, as already mentioned, a number of institutions, including the judiciary, have already started engaging with the idea of shared custody. We have referred to some of these recent developments above. But currently this idea is being put into practice in a haphazard

manner. There are several components to the idea of shared custody, such as clear determinants of the best interest of the child standard, the role of judges and mediators, parenting plans and so on. These must be laid down in the law, in order for shared custody to be a viable option that facilitates divorcing parents to mutually agree on the preferred custodial arrangement, without compromising on the welfare of the child.

3.3.5 In the legal systems of several Western countries that were reviewed in this chapter, there is a presumption in favor of joint custody, and sole custody is awarded only in exceptional circumstances. We have already referred to the inequalities in parental roles, responsibilities and expectations that exists in our country. Therefore, we are not in favor of the law placing a presumption in favour of joint custody. As opposed to the case of guardianship, where we have recommended shared and equal guardianship for both parents, in this case, we are of the view that joint custody must be provided as an option that a decision-maker can award, if the decision-maker is convinced that it shall further the welfare of the child.

If these reasons are perused, then the Law Commission has assigned the reasons like social economic change in society, judicial attitude towards custody matters as recorded by legal scholar Flavia Agnes in her book, number of institutions including judiciary accepting the idea of share custody and practices followed in western countries.

14. In the Law Commission report No. 257 referred above, the Law Commission has also taken due note of **Parenting Plan** and observed in the following manner:

5.9 A number of jurisdictions require divorcing parents (either jointly or individually) to submit a shared parenting plan to the court. The plan must address major areas of decision making, including: the child's education; the child's health care; religious upbringing; procedures for resolving disputes between the parties with respect to child-raising decisions and duties; and the periods of time during which each party will have the child reside or visit with him, including holidays and

vacations, or the procedure by which such periods of time shall be determined. Some jurisdictions provide additional guidance regarding communication (between parents and between the child and the non-custodial parent); transportation to and from the other parent's residence; what to do if a parent wishes to relocate; how to change scheduled parenting time; and exchanging information about the child. The parenting plan itself is not a legal document; it must be approved by a court to have legal effect.

While proposing amendment in Guardians and Wards Act in the form of Guardians and Wards Act (proposed), following objectives are suggested and they are as under:

- a) ensuring that the child has the benefit of both parents having a meaningful involvement in his life, to the maximum extent consistent with the welfare of the child;
- b) ensuring that the child receives adequate and proper parenting to help achieve his full potential;
- c) ensuring that the parents fulfill their duties, and meet their responsibilities concerning the care, welfare and development of the child;
- d) giving due consideration to the changing emotional, intellectual and physical needs of the child;
- e) encouraging both the parents to maintain a close and continuing relationship with the child, and to cooperate in and resolve disputes regarding matters affecting the child;
- f) recognizing that the child has the right to know and be cared for by both the parents, regardless of whether the parents are married, separated, or unmarried; and
- g) protecting the child from physical or psychological harm or from being subjected to, or exposed to, any abuse, neglect or family violence.

These objectives thus underline the proposition that the child must get best of both worlds and not just the benefit from any one parent. In fact, the Law Commission has proposed one new definition of “Joint

custody” in the Guardians and Wards Act which the Commission has defined as under:

19C. Definitions.

For the purpose of this Chapter:--

(a) "**Joint custody**" is where both the parents:--

(i) **share physical custody of the child, which may be equally shared, or in such proportion as the court may determine for the welfare of the child; and**

(ii) **equally share the joint responsibility for the care and control of the child and joint authority to take decisions concerning the child;**

and

(b) "**Sole custody**" is where one parent retains physical custody and responsibility for the care and control of the child, subject to the power of the court to grant visitation rights to the other parent.

The face of child custody arrangements is changing. A number of countries across the globe have adopted a preference for shared parenting systems over sole custody as a post-divorce arrangement with respect to children. In the West, this trend has arisen largely in response to changing familial roles (male care takers taking on more child rearing responsibilities) as well psychological studies revealing that the involvement of both parents in child rearing is preferable to sole custody arrangements. Studies indicate that children generally fare better when parents share custody, and some jurisdictions in some countries have a legally prescribed presumption of joint custody. However, scholars and courts also caution that a presumption of joint custody can run contrary to the “best interests of the child” standard, especially in cases of domestic violence, where battered women may agree to joint custody out of fear of further violence.

15. The time has come to give up the archaic mind set which India adopted since British era to think that only one parent is better than other parent to take care of the child. The Guardians and Wards Act was passed in 1890, almost 125 years back. The Hindu Minority and

Guardianship Act was passed by our Parliament almost 60-70 years back. The society is evolving at the fast space. The new India is adopting new ethos and new concepts. In 1890 when the Guardians and Wards Act was passed, may be Indian woman was not a working woman but now the woman like respondent-mother who is working as a class I gazetted officer and earning her own livelihood and protecting her self-respect even when there are alleged incompatibility between the petitioner-father and the respondent-mother. The standard set in 1890 by the British era cannot be made applicable directly to the litigants of this 21st century, who lives in metro city like New Delhi or Mumbai. Therefore, a time has come to change our mindset of finding out who is better parent than to adopt a new thinking as to find out how these two parents can behave in a better way; so that the child can have best from both of them and with that view in mind, the petitioner-father presents this parenting plan for consideration.

16. In the case of Anjali Kapoor vs Rajiv Bajjal on 17 April, 2009, Supreme Court of India, Civil Appeal No. 2628 of 2009 the Apex Court observed that whenever a question arises before Court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child.

If the sole and paramount principle for deciding custody is "welfare of child", then unless there is substantial research/studies which show that single parenthood/single motherhood is better for children, then awarding sole custody by default to mother is against the principle of welfare of child.

Awarding sole custody by default to mother does not ensure that the child has the benefit of both parents having a significant, meaningful and constructive involvement in his life, to the maximum extent consistent with the welfare of the child.

Awarding sole custody by default to mother does not recognize the fact that the child has the right to know and be cared for by both the parents, regardless of whether the parents are married, separated, or unmarried.

Awarding sole custody by default to mother does not ensure that the child receives adequate and proper parenting to help achieve his full potential.

No studies have been done in India on the effect of divorce/separation of parents on child(ren). The default mindset and mode of deciding about custody so far in India is to grant it to the existing custodial parent with whom child is already settled, and so mostly custody gets awarded to the mother since in most cases, a wife who starts living separately takes child with her.

Western research points to worse outcomes for children raised in single parent/mother families. There is ample amount of research and studies done in Western countries about effects on children on being raised in single parent families (especially single mother families since 83% of single parent households in US are single mother households) (source:<https://singlemotherguide.com/single-mother-statistics/>).

There is no study which suggests that a child does better when raised by a single mother/parent as compared to a two biological parents' intact family. However almost all studies indicate worse outcomes for child (whether boy or girl) raised in a single mother/parent household. References and conclusions of many such studies are given in the attachment titled **'Studies and Researches done on Outcomes for Child Raised in Single-Parent or Single-Mother Household'** which is annexed as **Annexure - 4**.

Further the Indian Constitution Directive Principle 39(f) says - "That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

So for a child having a caring and compassionate father and still not allowed to grow with father's care and upbringing is akin to forced moral and material abandonment of the child from one parent's care. Awarding sole custody to mother by default is against the Indian Constitution Directive Principle 39(f) as child is not allowed to grow with father's care and upbringing.

17. That for consideration of the Hon'ble Court in regards to interim custody of the child the petitioner-father presents the following interim parenting plan prepared following the suggestions of the Law Commission Report No. 257 published on 25.05.2015 which proposed amendment in Hindu Minority and Guardianship Act, 1956 and Guardian and Wards Act, 1890 by observing that law must accept the concept of joint custody and shared parenting for the welfare of the child:

Proposed Interim Parenting Plan for Joint Custody of the Child

The mother and father will behave with each other and each child so as to provide a loving, stable, consistent and nurturing relationship with the child even though they are separated / divorced. They will not speak badly of each other or the members of the family of the other parent. They will encourage each child to continue to love the other parent and be comfortable in both families.

This Proposed Interim Parenting Plan details practical decisions about children's care in areas as given below with implementation details of each area following the list:

- I. RESIDENTIAL PARENTING SCHEDULE
- II. DECISION-MAKING
- III. FINANCIAL SUPPORT / MAINTENANCE
- IV. PRIMARY RESIDENTIAL PARENT (CUSTODIAN) FOR OTHER LEGAL PURPOSES

V. DISAGREEMENTS OR MODIFICATION OF PLAN OR
NONCOMPLIANCE

VI. RIGHTS (OF CHILD AND PARENTS)

VII. NOTICE REGARDING PARENTAL RELOCATION

I. RESIDENTIAL PARENTING SCHEDULE

A. RESIDENTIAL TIME WITH EACH PARENT

The Primary Residential Parent (Custodial parent) is mother and father

Under the above schedule each parent will spend the following number of days with the child:

With Mother: 6 months With Father: 6 months

Child Madhav shall stay (physical custody) with the mother from 1st April to 30th September and thereafter the child Madhav shall stay with the father from 1st October to 31st March and so on in the above manner till disposal of the main petition.

This 6-month residential time with each parent is feasible because both the parents live close to the school of the child and school bus goes to both the locations. Addresses of school and residences are given below:

Address of Mother	Address of Father	Name and Address of Child's School
Flat No. F-613 5th Floor Pahar Apartments 45, I.P. Extension, Patparganj, New Delhi – 110092 Distance from child's school: 18 km	435 GKG Apartments Vaibhav Khand Indirapuram, Ghaziabad U.P. 201010 Distance from child's school: 8 km	Diamond International School Sector 35, Noida, U.P. 201301

B. DAY-TO-DAY SCHEDULE

The non-custodial parent shall have access to the child on every Sunday between 9.00 a. m. to 6.00 p. m. The non-custodial parent shall pick up the child at the gate of the custodial parent at 9.00 a. m. on every Sunday and shall drop back the child at 6.00 p. m. on the same day. The non-custodial parent during relevant period shall have telephonic or webcam access every day, if necessary at any time between 5.00 p.m. and 8:00 p.m.

This parenting schedule shall begin on 1st October and end on 31st March when the child will be in the custody of the father and begin on 1st April and end on 30th September when the child will be in the custody of the mother.

The petitioner or the respondent shall take care of extra-curricular activities of the child whenever the child is in their custody for six months as per above referred order.

C. HOLIDAY SCHEDULE AND OTHER SCHOOL FREE DAYS

Indicate with which parent the child will be during FESTVALS every year:

FESTIVAL	MOTHER	TIMING	FATHER
26 Jan Republic Day	√	4:00p.m. – 7:00p.m.	–
Holi	√	4:00p.m. – 7:00p.m.	
Mahashivratri		4:00p.m. – 7:00p.m.	√
Janmasthami		4:00p.m. – 7:00p.m.	√
Rakshabandhan Day	√	4:00p.m. – 7:00p.m.	
15 Aug Independence Day		4:00p.m. – 7:00p.m.	√
Mother's Birthday	√	4:00p.m. – 7:00p.m.	
Father's Birthday		4:00p.m. – 7:00p.m.	√
Child's Birthday	On odd years	4:00p.m. – 7:00p.m.	On even years

D. VACATIONS AND LONG FESTIVAL WEEKEND HOLIDAYS

The petitioner-father requests that the child be with him for 50% of long vacations like summer, winter, school-year end, Diwali, Dushera and Christmas vacations whereas for the other half of these long vacations the child be with the respondent-mother. On long vacations when the petitioner-father has the custody of the child the petitioner-father will be able to take the child on a visit to the child's paternal grand-parents who live in Guwahati or to other suitable locations of the child's choice. Likewise when the respondent-mother has the custody of the child the respondent-mother will

be able to take the child on a visit to the child's maternal grand-parents who live in Jodhpur or to other suitable locations of the child's choice. Since welfare of the child is of paramount importance the petitioner-father insists that until the child becomes major at least one of the parents must accompany him if he is going or taken out of Delhi.

VACATION	MOTHER	FATHER
Summer Vacation	1 st 50%	2 nd 50%
Winter Vacation	1 st 50%	2 nd 50%
School-year end Vacation in March	1 st 50%	2 nd 50%
Diwali Vacation	1 st 50%	2 nd 50%
Dushera Vacation	1 st 50%	2 nd 50%
Christmas Vacation	1 st 50%	2 nd 50%

This period of sharing may be altered by the petitioner-father and the respondent-mother in consultation with and the convenience of each other and shall be decided at least two weeks before the vacation commences.

E. TRANSPORTATION ARRANGEMENTS

The place of meeting for the exchange of the child shall be: at the gate of the house of respective parent.

The parent who has the physical custody of the child must make reasonable transportation arrangements to protect the child while in the care of that parent.

II. DECISION-MAKING

A. DAY-TO-DAY DECISIONS

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

B. MAJOR DECISIONS

Major decisions regarding each child shall be made as follows:

Educational decisions: mother father joint

Non-emergency health care: mother father joint

Religious upbringing: mother father joint

Extracurricular activities: mother father joint

Obtaining passport: mother father joint

C. NAME OF THE CHILD & SURNAME

The custodial parent shall not be entitled to change the name or the surname of the child which has been given to the child as per either a ceremony performed for the same or the name along with the father's surname as it appears in the birth certificate without the court order or written consent of the noncustodial parent.

D. CHANGE OF SCHOOL OR DAYCARE CENTRE

The custodial parent shall not be entitled to admit, change the school or the daycare center of the child without written consent and/or agreement between the parties. If the issues is not being resolved then such admission, change of school/daycare center of the child shall be as per the order of the court.

E. REMOVAL OF CHILD FROM SCHOOL

In the absence of prior agreement between the parties and proper notification of the daycare or school - except in the event of an emergency - the Non-custodial parent shall not remove the child from daycare or school for visitation or otherwise. This paragraph shall not be applied to preclude the Non-custodial parent's participation as a parent in school activities and access to the child at school, to the same extent as afforded the custodial parent, nor to prevent the Non-custodial parent from picking the child up after school or daycare if such pickup is pursuant to the parties' visitation arrangement.

F. MEDICATION, ILLNESS OR ACCIDENT

If the child becomes ill or is involved in an accident, and treatment by a medical professional is obtained, the parent who has the child at the time of

the illness or accident shall notify the other parent as soon as practicable but no later than three (3) hours after the incident or diagnosis. ILLNESS OF THE CHILD SHALL NOT PREVENT VISITATION WITH THE CHILD, UNLESS THE CHILD IS HOSPITALIZED. NONCUSTODIAL PARENT CAN VISIT THE CHILD IN HOSPITAL/Residence of custodial parent or and place where child is stays during illness.

G. ADDITIONAL VISITATION

The Non-custodial parent shall be entitled to exercise other reasonable visitation in the locale of the child's primary residence or at other places like club, place of worship, shop, ground, mall, upon reasonable notice subject to a minimum of 12-hour notice to the custodial parent whenever. There may be need where the non-custodial parent may wish and desire that the child should be present on certain occasions such as poojas, religious functions, birthdays, anniversary celebration, inaugurations, marriage, or emergencies such as death or hospitalization of a close relative such as grandparent/relations etc. In such circumstances the custodial parent shall allow access of the child immediately.

H. CANCELLATION BY NON-CUSTODIAL PARENT

- A. Local (parties residing within 200 driving Kilometers of each other)
 - i. Twelve (12) hours' notice shall be given by the parent entitled to visitation with the child if visitation will not be exercised for the weekday or weekend.
 - ii. A minimum of Three (3) days' notice shall be given by the parent entitled to visitation for a holiday if visitation will not be exercised.
 - iii. A minimum of Fifteen (15) days' notice shall be given in writing by the parent entitled to visitation for a period of one week or greater if visitation will not be exercised.
 - iv. The parent seeking cancellation shall arrange and pay for babysitting, child care or other appropriate visitation of the child for the visitation period; to the extent such expense is due to the cancellation. ANY VISITATION CANCELLED BY THE NON-CUSTODIAL PARENT SHALL BE FORFEITED, UNLESS THE PARTIES AGREE TO SUBSTITUTE VISITATION. THE REQUIRED CANCELLATION NOTICE IS GIVEN; THE

CUSTODIAL PARENT SHALL NOT UNREASONABLY WITHHOLD SUBSTITUTE VISITATION.

III. FINANCIAL SUPPORT / MAINTENANCE

A. CHILD SUPPORT:

Petitioner/Father's gross monthly income is Rs. 75,000/-

Respondent/Mother's gross monthly income is Rs. 1,20,000/-

Current yearly expenses on the child are about Rs. 2,61,000/- which includes school fees and food, clothing, stationery, pocket money, sports, entertainment etc. As of now the petitioner-father pays for the child's school fees and this expense comes to about Rs. 2,10,000/- per year. The school fees include fees for tuition, transportation and breakfast and lunch at school. The rest Rs. 51,000/- per year are paid by the respondent-mother.

Based on the financial information provided in the para above the Hon'ble court is prayed to pass the interim child support order.

CHILD SUPPORT / MAINTENANCE: Non-payment or late payment of child support is NOT an acceptable reason to deny or interfere with visitation. Conversely, denial of visitation is NOT justification for non-payment or late payment of child support. Both parents agree that the Child support and child visitation are separate and independent issues and are not to be manipulated by either parent to gain leverage over the other parent with regard to visitation or child support. Child support shall NOT stop during visitation periods, unless provided by court order.

B. HEALTH AND INSURANCE (Optional)

Reasonable health insurance on the child or children will be (Tick mark below as appropriate):

- maintained by the mother
- maintained by the father
- maintained by both

C. (i) It is directed that they will not pamper the child by expensive gifts.

IV. PRIMARY RESIDENTIAL PARENT (CUSTODIAN) FOR OTHER LEGAL PURPOSES

The child or children are scheduled to reside the majority of the time with the mother father. This parent is designated as the primary residential parent also known as the custodian, SOLELY for purposes of any other applicable state laws. If the parents are listed in Section II as joint decision-makers, then, for purposes of obtaining health or other insurance, they shall be considered to be joint custodians.

THIS DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS OR RESPONSIBILITIES UNDER THIS PARENTING PLAN.

V. DISAGREEMENTS OR MODIFICATION OF PLAN OR NONCOMPLIANCE

Should the parents disagree about this Parenting Plan or wish to modify it, or in case of the non-compliance they must make a good faith effort to resolve the issue by the process selected below before returning to Court.

Mediation by a neutral party chosen by the parents or the Court

The court is requested to appoint a Mediation party.

The dispute resolution process must be commenced by notifying the other parent and the Court by (Tick mark as appropriate)

Written request. Registered mail. Other: _____.

In the dispute resolution process:

A. Preference shall be given to carrying out this Parenting Plan.

B. The parents shall use the process to resolve disputes relating to implementation of the Plan.

C. A written record shall be prepared of any agreement reached, and it shall be provided to each parent.

D. If the Court finds that a parent willfully failed to appear without good reason, the Court, upon motion, may pass appropriate order.

Non-Compliance of the parenting plan may amount to breach of trust and parents are required to approach court for appropriate action.

Parties agree for following consequence for breach of access arrangement.
(Tick mark as appropriate)

- (a) Compensatory access immediately in next week.
- (b) Cost of Rs.1000/- for each day of loss of access.
- (c) Social service of defaulting parent at remand home, orphanage,
- (d) A forfeiture of access, if access not taken for 3 consecutive days without reasonable cause.
- (e) Dismissal of petition or striking of defence, if Court orders / parenting plan / Consent Terms not obeyed.
- (f) Non-custodian parent will be eligible to apply to court for shifting of custody, in case intentional repeated defaults in giving access and visitation right to non-custodial parents.

VI. RIGHTS

RIGHTS OF CHILD

Both Parents recognize child's / children's right to:

- emotional and physical safety, stability and security
- feel loved by both of the parents and significant family members
- know and be cared for by both parents and significant family members
- develop independent and meaningful relationships with each parent.

RIGHTS OF PARENTS:

Both parents are entitled to the following rights:

- (1) The right to unimpeded telephone and web cam conversations with the child at least twice a week at reasonable times and for reasonable durations;
- (2) The right to send mail / gifts to the child which the other parent shall not open or censor;
- (3) The right to receive notice and relevant information as soon as practicable but within three (3) hours of any event of hospitalization, major illness or death of the child;

(4) The right to receive directly from the child's school any school records customarily made available to parents. (The school may require a written request which includes a current mailing address and upon payment of reasonable costs of duplicating.) These include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;

(5) The right to receive copies of the child's medical health or other treatment records directly from the physician or health care provider who provided treatment or health care. (The keeper of the records may require a written request which contains a current mailing address and the payment of reasonable costs of duplication.) No person who receives the mailing address of a parent as a result of this requirement shall provide such address to the other parent or a third person;

(6) The right to be free of unwarranted derogatory remarks made about the parent or his or her family by the other parent to the child or in the presence of the child;

(7) The right to be given at least forty-eight (48) hours' notice, whenever possible, of all extra-curricular activities, and the opportunity to participate or observe them. These include the following: school activities, athletic activities, and other activities where parental participation or observation would be appropriate;

(8) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than two (2) days, an itinerary including telephone numbers for use in the event of an emergency;

(9) The right to access and participation in education on the same basis that is provided to all parents. This includes the right of access to the child for lunch and other activities. However participation or access must be reasonable and not interfere with day-to-day operations or with the child's educational performance.

(10) Right to share the names and contact details of the friends of the child.

VII. NOTICE REGARDING PARENTAL RELOCATION

If a parent who is spending intervals of time with a child desires to relocate outside the state or local jurisdiction from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. The notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

- (1) Statement of intent to move;
- (2) Location of proposed new residence;
- (3) Reasons for proposed relocation; and
- (4) Statement that the other parent may file a petition in opposition to the move within sixty (60) days on receipt of the notice.

18. That the petitioner-father has not filed any other application/petition seeking similar relief under the present act before any court of law.

PRAYER:

It is, therefore, most respectfully prayed that in view of the facts and circumstances of the case the Hon'ble Court may kindly be pleased to:

a) pass an order in favour of the petitioner-father for interim custody of his minor son Madhav Trivedi u/s 12 and / or under relevant sections of the Guardians and Wards Act, 1890 as per the 'Proposed Interim Parenting Plan' presented above.

b) pass any other or further order in favour of the petitioner-father and against the respondent-mother under the facts and circumstances mentioned above in the interest of justice.

New Delhi

Petitioner through Counsel

Dated:

Verification

Verified at New Delhi on this ____ day of ____ 2018 that the contents and the statements made in this petition, filed for interim custody of petitioner's minor child Madhav Trivedi aged 11 years U/S 12 of the Guardians and Wards Act, 1890, from paragraphs 1 to 18 are true and correct to the best of my knowledge, information and belief.

Petitioner

IN THE COURT OF LD. PRINCIPAL JUDGE; FAMILY COURT

KARKARDOOMA COURT; DELHI

INTERIM APPLICATION NO. _____

IN

ORIGINAL PETITION CASE NO. GP 1095/18

(GUARDIANS AND WARDS ACT)

IN THE MATTER OF

HUSBAND

....Petitioner

Versus

WIFE

....Respondent

**AFFIDAVIT IN SUPPORT OF PETITION FOR INTERIM CUSTODY
OF HIS MINOR CHILD MADHAV TRIVEDI AGED 11 YEARS U/S 12
OF THE GUARDIANS AND WARDS ACT, 1890 OF MR. HUSBAND,
AGED ABOUT 51 YEARS, S/O MR. FATHER, R/O 234 GMCK
APARTMENTS, VAIBHAV KHAND, INDIRAPURAM,
GHAZIABAD 201010.**

I, THE ABOVE MENTIONED DEPONENT DO HEREBY SOLEMNLY
AFFIRM AND DECLARE AS UNDER:-

1. That the deponent is the petitioner in the above mentioned case and is well conversant with the facts and circumstances of the case and is competent to swear affidavit in support of the petition filed before this Hon'ble Court.
2. There is no unnecessary or improper delay in the filing of the present petition.
3. The contents of the accompanying petition have been drafted by my counsel under my instruction and the same have been read over by me, understood by me and are true and correct to the best of my knowledge and belief.

4. That the contents of reply and annexures may kindly be read as part and parcel of this affidavit as the same are not being repeated herein for the sake of brevity.

DEPONENT

VERIFICATION

Verified at New Delhi on this ____ day of _____ 2018 that contents of my above affidavit are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed from them.

DEPONENT