

CHILD ACCESS & CUSTODY GUIDELINES

Approved by
Hon'ble Bombay High Court

CHILD ACCESS & CUSTODY GUIDELINES

By

CHILD RIGHTS FOUNDATION

NGO

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Dated : 6th January 2011

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Bombay.

To :

Shri Jatin Katira,
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B-3-13-04, Sector 3,
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Subject : Child Access & Custody

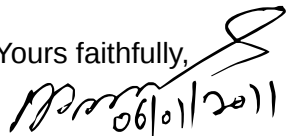
Sir,

With reference to aforementioned subject, I am directed to inform you that the Hon'ble Guardian Judges of the Family Courts in the State of Maharashtra, have been pleased to direct the circulation of the Guidelines amongst the Family Court Judges and the Marriage Counsellors in the Family Courts across the State of Maharashtra.

I convey my gratitude for your kind gesture in preparing a detail guidelines which may prove beneficial to the Judges of the Family Courts as well as the Marriage Counsellors in determining Child access and custody matters.

With regards,

Yours faithfully,


06/01/2011
Registrar (Inspection - II)

Registrar
High Court, Appellate Side
Bombay

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Professor S. Parasuraman
DIRECTOR



Foreword

The principle of the best interests of the child has been the subject of extensive consideration in Child Access and Custody Matters, How to apply this principle in practice, however, often remains challenging for Family Court and Lower Courts as Limited guidance is available on how to operationalize the best interests principle.

These Guidelines are intended as one step to help fill this gap. Among others, interests of the child who will be ensured love and affection of both parents.

The true value of the Guidelines will, of course, be tested and established only by the extent to which they are used, and relied upon in actual practice.

I urge all those into whose hands they will be placed to make the greatest use of the Guidelines. Your experience in using these guidelines will make it even better and more effective tool to enable that the children have a sense of belonging to both the parents and grandparents.

S. Parasuraman
Mumbai
March 16, 2011

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FOREWORD

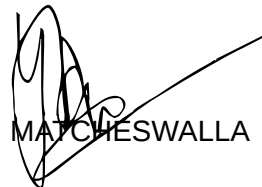
We are faced with the sad reality of increasing divorce rates in the society.

With the many other implications that a divorce has on the individual, family and society at large, children of divorced couples are the ones who bear the brunt of the entire happening. It is a common practice among couples to use kids as pawns in the game of emotional chess. It amounts to absolutely irresponsible parenting to scar children emotionally post separation. In due course, the parents move on in their lives and onto another partners but children carry the trauma of being manipulated and torn apart emotionally, all their lives. In my clinical experience, I have seen a large number of these kids suffer from personality problems, conduct disorder, substance abuse, criminal and antisocial traits, major depressive disorder, etc etc.

Thus the child's lifelong emotional health and stability is paramount and for that they must grow up with feelings of love and respect towards both parents.

The guideline hereby formulated is definitely a huge step forward in respecting and considering the child's best interest. It is easiest to negative and shortsighted but it takes a lot of effort and strength to effect positive change. We are definitely moving ahead.. Positively !

DR. Y. A. MATCHESWALLA



Ms. Swati Popat Vats
PRESIDENT



To,
Child Rights Foundation
Mumbai. India

Re-Congratulations on the work on "Child Access And Custody Guidelines"

Dear Sirs,

The birth of a child is one of the biggest miracles of god and then comes a separation called 'divorce' and the custody of the child becomes the biggest problem. How this is handled keeping in mind the needs of the three stakeholders, namely father, mother and child, is crucial for the emotional development of the child.

I am extremely happy to go through the "Child Access and custody Guidelines" by the Child Rights Foundation. They have taken pains and ensured that every element of custody and visitation rights of both partners is given due importance. I can understand the amount of hard work, perseverance and research that must have gone into the creation of this detailed document.

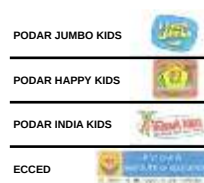
I congratulate Child Rights Foundation for this wonderful work and I am sure that many children's lives will be touched by this good work as it will ensure that the importance of both parents remains in the life of a child even after a painful separation called 'divorce'.

My best wishes to them for all the good work that they are doing.

Warm Regards,

Swati Popat Vats
President

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CHILD ACCESS & VISITATION GUIDELINES
BY
CHILD RIGHTS FOUNDATION

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CHILD ACCESS & VISITATION GUIDELINES

BY

CHILD RIGHTS FOUNDATION

A serious need is felt for approaching the Hon'ble Principal Judge Family court to set proper guidelines for the Family Courts regarding access, visitation and custody, as this will help in disposing off the cases quickly in a scientific manner ensuring that the right of the child to be showered with the love and affection of both the parents is not lost or delayed.

I. Under Section 10(3) of the Family Courts Act the Principal Judge has the powers to frame rules.

II. When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child While determining the best interests of the child:

III. The primary considerations are:

a. Ensuring benefit to the child of having spend equal or substantial or significant time to develop a meaningful relationship with both the child's parents and to ensure an implement of overnight access so that the child gets love and affection of not only both the parents but also of grandparents, uncles , aunties, cousins etc thereby ensuring that the family heritage is maintained; and

b. Ensuring the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

INTRODUCTION :

The recent trend in the society is seeing a paradigm change in the matrimonial relationship. The numbers of divorce cases are rising, particularly in the last decade, more and more middle and lower-middle class couples have been approaching family court for divorce, resulting in rise of bitter child custody battles. Often, the innocent children are used as tools of vengeance by vindictive litigants who inflict severe emotional and psychological abuse on the child thereby seriously affecting the child in his/her later part of life . Failure in marriages is sometimes due to lack of awareness or realization among the litigants where often one of the partner suffers from a personality disorder and/or adjustment disorder which can be easily diagnosed through psychological evaluation.

A serious need is felt for approaching the Hon'ble court as well as HC to set proper guidelines for the Family Courts, as this will help in disposing off the cases quickly in a scientific manner rather than on speculation.

In family disputes, litigants often make false and vindictive allegations against each other, wasting & consuming enormous court's time which can be reduced considerably.

Further it would also help to some extent in reconciliation of marital disputes.

Presently, even the Legal system, bureaucrats, politicians, statutory agencies for child welfare, NGO's etc., have forgotten or missed to appreciate or understand child rights as well as the immense emotional trauma that innocent children undergo in the process of custody litigation and parent separation due to lack of love and affection from both the parents.

Depriving love & affection of both parents, more particularly due to alienation of the child by the custodial parent and or denial of proper access to the non-custodial parent by the courts without realizing the serious consequences caused in the later part of the child's life such as drug abuse, deteriorating educational achievement, premature sexuality, mental/personality disorder, chronic depression, suicidal tendency, out of wed-lock birth, and often a major force behind serious crimes.

There is an urgent need to establish well defined framework and guidelines for family courts and the counselors to implement while deciding the custody of the children.

Delay in action or callous approach, what kind of future society/generation are we going to create.

Needless, to say today's youth are going to be leaders & thinkers of tomorrow. The Nation's future depends upon today's children. Hence, immediate intervention of higher courts must.

Presently these issues are being decided in an absolutely subjective fashion by the family court seriously affecting the mental health of the tender children as well as specific violations of UN Convention on rights of the Child.

One of the fundamental rights of the children is to get love and affection from both the parents (irrespective of parent's conflict), right to quality of life and survival, and right to be cared, right to develop a sense of belonging, right to participate fully in family, cultural and social life.

We would like to bring specific focus to Article 39(e) & (f), the state shall direct its Policy in such a manner that the tender age of children is not abused and children are given opportunities and facilities to develop in a healthy manner and childhood is protected against exploitation and against moral and material abandonment.

While framing guidelines a clear distinction needs to be made between the Rights of the Child versus the Rights of a Parent (which invariably ends up being interpreted as Rights of only the mother).

India and the *UNCRC

The UNCRC – United Nations Convention on the Rights of the Child (UNCRC) a clarion of worldwide movement and the pinnacle of international effort to promote the basic needs of children as fundamental human rights is a remarkable and wonderful gift to the children which is given a 'go by' by our current legal system. (India along with 193 countries has also agreed to undertake the obligations of the Convention by ratifying to it as on December 2008).

INTERIM CHILD VISITATION GUIDELINES

Immediately within one week from the date of service of summons or the first meeting with the counselor for mediation and conciliation parties shall draw up an interim visitation plan.

The basic principles of the courts are to ensure that the child/children get(s) to spend equal or substantial and significant time to be showered with love and affection from both the parents irrespective of parent's conflict.

Efforts should be made by parties and if necessary court should direct parties to mutually agree upon a visitation schedule to be drawn up along with the Marriage Counselor within a maximum period of 60 days. Pending, finalization of mutual final overnight visitation agreement, an interim access has to be worked out immediately.

If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Visitation is for the primary benefit of the child. Visitation should not be viewed as a privilege to be exercised at the whim of either parent, but as a responsibility that should be fulfilled as a necessary cause. The custodial parent is expected to provide access of each child at unscheduled times if requested and if to do so would not unreasonably disrupt prior planned activities of the child or the custodial parent.

REINTRODUCTION OF ABSENT PARENT: The Guidelines assume that each parent has been a continuous presence in the children's lives. In the event that a parent has had limited or no contact with his or her children and wishes to be reintroduced into the children's lives, it is up to the parents to agree on the means by which this is to be accomplished. If the parents are unable to agree, the first alternative shall be to mediate the conflict. If mediation is unsuccessful, it shall be the responsibility of the Court to adopt a schedule to ease the reintroduction.

CHAPTER 1

INTERIM VISITATION

The following visitation guidelines should balance the needs of both parent and child, regardless of whether that child has older siblings that enjoy extended visitation with the Non-custodial parent.

A. VISITATION (CHILDREN AGED BETWEEN 0 TO 36 MONTHS)

The following visitation guidelines should balance the needs of both parent and child, regardless of whether that child has older siblings that enjoy extended visitation with the Non-custodial parent.

1. **WEEKENDS:** The Non-custodial parent shall be entitled to weekend visitation every weekend. For children between 0 to 36 months visitation shall be between 11.00 A.M. to 2.00 P.M. or 4.30 P.M. to 7.30 P.M. on Saturday and Sunday during the weekend and Twice (two times) during Weekday between Monday to Friday for 1½ hours (90 Minutes).
2. **WEEKDAY VISITATION:** The Non-custodial parent shall be entitled to visitation two (2) evenings per week during weekday between Monday to Friday for 1½ hours (90 Minutes). These shall be the same two evenings every week and varied only if the weekday visitation schedule conflicts with the holiday or vacation schedule. If the parties cannot agree, weekday visitation shall be on Monday and Wednesday.
3. **HOLIDAYS:** The non-custodial parent shall be entitled to spend at least 3 Three hours on the holiday or festival day including 15th August, 26th January, 1st May (Maharashtra day;) , 2nd October (Gandhi Jayanti), 14th November (Children's day) excluding the time of travel. Only where it is not possible to share during the festival day due to reasons of distance or otherwise. In odd-numbered years, the Non-custodial parent shall be entitled to spend with the minor child; in even numbered years, the schedule shall be reversed. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated each year

Note : For children aged between 0 to 36 months it shall be open for the custodial parent to remain present during visitation.

- i. Visitation shall be from 11:00 a.m. until 2:00 p.m. or 4.00 p.m. to 7.00 p.m. on the official holiday.

B. VISITATION (CHILDREN 36 MONTHS AND OLDER)

4. WEEKENDS: The Non-custodial parent shall be entitled to weekend visitation every other weekend or every weekend one night every week. Every other weekend Visitation shall begin Friday at 6:00 p.m. and end at 6:00 p.m. on Sunday. If every weekend visitation is opted then every week overnight visitation shall begin either from every Friday at 6.00 p.m. and end on Saturday 6.00 pm. or from every Saturday 6.00 p.m. and end on 6.00 p.m on Sunday. It is not the responsibility of the custodial parent to provide food or shelter for the child during the Non-custodial parent parent's visitation.
5. WEEKDAY VISITATION: If the parties reside within thirty (30) Kilometers driving distance of each other, the Non-custodial parent shall have visitation two (2) evening per week for 2 two hours between 6.00 p.m. to 8.00 p.m., but shall exercise the weekday visitation in the locale of the child's primary residence or within the radius of 10 ten kilometers. The preceding sentence shall not preclude occasional travel beyond the thirty (30) Kilometers for special weekday events. The weekday visitation shall be on the same evening each week and varied only if it conflicts with the holiday or vacation schedule. If the parties cannot agree on the weeknight and if there are no scheduled activities for Wednesday, it shall be Wednesday evening for 2 hours. If there are activities scheduled for Wednesday, the Non-custodial parent shall have first choice of an alternate weekday for weekday visitation
6. HOLIDAYS: The non-custodial parent shall be entitled to spend at least Three (3) hours on holidays and festival day excluding the time of travel. Only where it is not possible to share during the holidays and festival day due to reasons of distance or otherwise. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated. In the absence of an agreement, the court shall allocate religious holidays between the parties.
 - i. Visitation shall be from 11:00 a.m. until 2:00 p.m. Or from 4.00pm to 7.00pm on the official holiday.
7. CHILDREN COMPLEX ROOM: Where access even though either agreed by mutual consent or ordered by the court is not being granted to the noncustodial parent, Children's complex room situated in the premises of the Family Courts or such other place as either mutually agreed or directed by the court such as premises made available and approved by the Hon'ble Family court shall be used for purposes of counseling the child or the parent for a specific period and thereafter access can continue as per schedule set forth.

CHAPTER – 2

FINAL CHILD VISITATION GUIDELINES PENDING CUSTODY ORDER OF THE HON'BLE COURT.

8. GENERAL PROVISIONS

The parent with primary custody (parent who is having custody of child since birth and is taking care of the day to day and hour to hour need of the child) shall be referred to herein as the custodial parent, and the other parent shall be referred to as the Non-custodial parent.

9. ACCESS VISITATION SCHEDULE:

This visitation schedule has been approved by the Hon'ble Bombay High Court as a model visitation schedule. Parties to any order entered before the effective date of these guidelines may agree in writing to the provisions herein; otherwise, such parties shall continue to comply with the old order unless a modification of the order is entered by the court.

i. If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Even if mediation does not work then the court can pass an appropriate order in terms of the visitation schedule for parties to comply. Special reasons may exist to alter this visitation schedule such as: age of the child, health, special care needs, etc.

ii. Within a period of not more than 60 days parties shall draw up and finalize a final schedule of visitation as per chapter 3 below.

iii. On the visitation schedule being drawn and agreed upon between the custodial and the non-custodial parent the counselor shall have the same duly executed by the parties and the same shall be placed on record for the approval of the Hon'ble court. Parties shall comply with the agreement in full and any violation shall give rise to cause of action to the aggrieved party to seek appropriate directions from the court.

A. The no-contact or limitation-of-contact provisions of any domestic violence case, injunction case, juvenile case, or criminal case supersede any contact provisions set forth in these guidelines. That is, the no-contact or limitation-of-contact provisions of any domestic violence case, injunction case, juvenile case, or criminal case should be followed as set forth by the

judge in that case. It may be necessary to seek a modification of the nocontact or limitation-of-contact provisions in order to facilitate visitation.

B. The term "local" shall apply to parties residing within 200 driving Kilometers of each other.

C. The term "nonlocal" shall apply to parties not residing within 200 driving Kilometers of each other.

10. ENFORCEMENT OF VISITATION SCHEDULE: If the parties cannot agree on visitation, their first alternative is to mediate the conflict. Even if mediation does not work then the court can pass an appropriate order in terms of the visitation schedule for parties to comply.

11. MEDICATION, ILLNESS OR ACCIDENT: If medication or therapy has been prescribed for the child, then both parents shall without fail provide the child all medical prescription dosages, treatment and/or therapy as may be prescribed for the child. The parents shall share the health care professional's name and phone number as well as instructions for treatment. 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. NON CUSTODIAL PARENT CAN VISIT THE CHILD IN HOSPITAL.

12. COMMUNICATIONS. Provided that both parents have telephones in their homes, the child shall be entitled telephone communication at least once every day with both parents. Each parent shall immediately deliver to the child all letters, cards, e-mails, correspondence, telephone messages, gifts, toys, clothes and other items sent to that child by the other parent. Neither parent shall withhold, return, destroy, give away, sell or otherwise dispose of any such items. If either parent plans a vacation or trip out of town with the child for three (3) days or more, that parent must provide the other parent with a general itinerary, a phone number where the child can be reached, and the dates of departure and return. Each Parent shall provide the other Parent promptly upon being requested to do so, with information concerning the well-being of said children including, but not limited to; monthly school attendance reports, reports concerning completion of homework, copies of report cards, school meeting

notices, vacation schedules, class programs, requests for conferences, results of diagnostic tests, notices of activities involving said children, samples of school work, order forms for school pictures, communications from health care providers; the names, addresses and telephone numbers of all schools, preschools, regular day care providers, all health care providers, counselors, or other activity supervisor, and friends, schoolmates and relatives.

13. SCHEDULED EVENTS: Both parents shall be entitled and are encouraged to attend and participate in the child's special events, such as school programs, graduation, sports, recitals, and other extracurricular activities. When the child has extracurricular activities, the parent caring for the child when the activity is scheduled should assure the child's attendance. Each parent shall advise the other parent of extracurricular activities in which the child participates within twenty-four (24) hours of notification of an event or activity. Each parent shall make an effort not to schedule activities for the child that interferes with the other parent's visitation time with the child.

14. ADDITIONAL VISITATION:

a. 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 hours 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 untimely 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.

15. ADEQUATE AND CLEAN CLOTHING FOR VISITATION: Adequate and clean clothing shall be supplied by the custodial parent and all these clothes shall be returned in the same clean condition by the Non-custodial parent to the custodial parent after each visitation period.

16. INTENT TO RELOCATE: Neither party to the suit can relocate unless final visitation rights agreement as set out is signed and finalized.

17. NOTICE OF INTENT TO RELOCATE: In the event that either parent intends to relocate outside of local area of residence of the non-custodial parent, he/she

shall provide the other parent with ninety (90) days written notice prior to any relocation. This is a notice provision only and does not eliminate the need for court approval of such relocation if legally necessary. In the event such relocation does take place and the custodial parent is permitted to relocate and further if the non-custodial parent in order to be able to be near the child and for the sake of the child also chooses to relocate then under such circumstances the non-custodial parent on relocation shall enjoy the same access schedules as already decided and agreed without any alterations. In the event the non-custodial parent's status changes from 'Non-local' to 'Local' the access schedule shall also likewise change and the non-custodial parent shall be entitled to all provisions of local access.

18. **CHANGES IN ADDRESS AND PHONE NUMBERS:** Neither parent shall conceal the whereabouts of the child from the other parent. Each parent shall advise the other parent at all times of the residence address and telephone number where the child will be as well as the parent's work telephone number. If a residence or telephone number changes, the parent making the change shall notify the other parent personally or by telephone within twenty-four (24) hours and in writing within seventy-two (72) hours of the change.
19. **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 nonpayment or late payment of child support. 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.
20. **FLEXIBILITY AND THE BEST INTERESTS OF THE CHILD:** The parents may agree to change this schedule to meet the needs of their child. The parents are encouraged to put such changes in writing. If the parents do not agree to visitation schedule changes, they must adhere to these guidelines, or a parent in violation may be held in contempt of court.
21. **SHIFT OF CUSTODY: FOR REASONS OF CHILD ALIENATION / TUTORING / MIND POISONING / BRAINWASHING / PARENTAL ALIENATION SYNDROME :** In the event it is observed or alleged by concrete substantive evidence or material placed on record enumerating instances as listed below the court shall proceed to seriously entertain and decide that the custody of the child

be shifted from the custodial parent to the non-custodial parents on their being conclusive evidence to substantiate either any one or more of the following :

A custodial parent who unjustifiably punishes her divorcing or divorced Non-Custodial parent by:

- I. Attempting to alienate their mutual child(ren) from the Non-Custodial parent.
 - ii. Any act, deed done or caused to be done by the custodial parent which may lead to the infringement of the right of the non-custodial parent's visitation.
 - iii. Involving others in malicious actions against the Non-Custodial parent.
 - iv. Engaging in excessive litigation.
 - v. The custodial parent specifically attempts to deny her child(ren) regular uninterrupted visitation with the Non-Custodial parent.
 - vi. Uninhibited telephone access to the Non-Custodial parent.
 - vii. Obstructs or causes any obstruction in the Non Custodial parents participation in the child(ren)'s school life and extracurricular activities.
 - viii. The pattern is pervasive and includes malicious acts towards the Non-Custodial parent including:
 - ix. Lying to the children
 - x. Lying to others
 - xi. Violations of law Or Making False Complaints
 - xii. The disorder is not specifically due to another mental disorder although a separate mental disorder may coexist.
22. NEW SPOUSE OR COMPANION: The parents shall not encourage the child to call a new spouse or companion "Papa" "Mummy" "Father", "Dad", "Mother", "Mom", or similar names, as such is detrimental to the child's relationship with his/her natural parents and may confuse and adversely affect the child. A substitute name may be suggested or encouraged. Each parent shall encourage a new spouse or companion not to confront or to interfere with the other parent's contacts or visitation with the child and each parent is expected to prevent any such confrontation or interference. The other parent shall not be adversarial or hostile to a new spouse or companion but shall be courteous, polite, respectful,

and non-threatening. Unless otherwise ordered or agreed by the parties, the parents are expected to speak directly with each other concerning all matters related to a divorce or separation judgment or order.

23. 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.

24. CHANGE OF SCHOOL OR DAYCARE CENTRE: The custodial parent shall not be entitled to admit, change the school or the daycare centre 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 centre of the child shall be as per the order of the court.

25. REMOVAL OF CHILD FROM DAYCARE OR 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 Noncustodial 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.

26. 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.

27. NOTICE - NONLOCAL (PARTIES NOT RESIDING WITHIN 200 DRIVING KILOMETERS OF EACH OTHER):

- i. A minimum of three days (3 days) notice shall be given by the parent entitled to visitation for a holiday or special occasion if visitation will not be exercised. A minimum of Fifteen (15) days' notice shall be given in writing by the parent entitled to visitation for Diwali, Christmas, Summer vacations or an annual visitation period of one (1) week or greater if visitation will not be exercised. If the cancellation is NOT agreed to by both parents, the parent seeking cancellation must arrange and pay for child care or other appropriate supervision of the child for the visitation period, to the extent such expense is due to the cancellation. ANY VISITATION CANCELLED BY THE NONCUSTODIAL PARENT SHALL BE FORFEITED, UNLESS THE PARTIES AGREE TO SUBSTITUTE VISITATION. IF THE REQUIRED CANCELLATION NOTICE IS GIVEN, THE CUSTODIAL PARENT SHALL NOT UNREASONABLY WITHHOLD SUBSTITUTE VISITATION.
- ii. ADDITIONAL VISITATION: The Non-custodial parent shall be entitled to exercise other reasonable visitation in the local of the child's primary residence upon reasonable notice to the custodial parent.

28. TRANSPORTATION

A. Local (parties residing within 200 driving Kilometers of each other): The Non-custodial parent shall pick up the child for visitation and the custodial parent shall pick up the child after visitation. A third party, agreed to by both parents, may substitute for one of the parents in transporting the child to and from visitation. The parties should reasonably consider a parent's current spouse or a family member of the child as a substitute. A party who moves and thereby causes an increase of more than thirty (30) Kilometers in driving distance between the two parents, shall bear responsibility for transportation in

absence of Court intervention. The place of pick up and drop of the child shall be agreed to in writing by both the parents. However the place of pick up and drop shall either be the residence of the custodial parent or the family court children's complex or as ordered by the Hon'ble court.

B. Nonlocal (parties not residing within 200 driving Kilometers of each other):
The court shall decide the issue of transportation on a case by case basis absent an agreement by the parties.

29. WAITING: A child shall be picked up or delivered within thirty (30) minutes of the scheduled time of exchange. If the Non-custodial parent is more than thirty (30) minutes late to pick up the child for visitation and creates a hardship as a result, visitation shall be forfeited for that visitation period. If legitimate reasons exist for delay in picking up the child for any weekend or longer visitation, and beginning the visitation the next day does not create a hardship on the custodial parent, the Non-custodial parent may pick up the child at a mutually agreed upon time later in the visitation period. The Non-custodial parent shall give the custodial parent as much notice as reasonably possible of any delay in picking up the child.

30. AMENDMENTS: Parties can vary; alter the interim access schedule as per convenience within a period of one week from the date of presentation of the petition before the Hon'ble court or within one week from the date of their meeting with the counselor for mediation whichever is earlier. In the event parties fail to arrive at a decision and conclude on the interim visitation schedule then the counselor shall draw up an interim visitation schedule and place the same before the Hon'ble court to be made final by an order of the court.

31. OVER NIGHT ACCESS: Court's are under obligations to consider the child spending equal time, or substantial and significant time, with each parent. In making a parenting order the court 'must consider' making orders that the child spend equal time, or if not equal then substantial and significant time, with each parent. 'Substantial and significant time' is defined to mean, essentially, weekdays and overnight weekends and holidays, times that allow the parent to be involved in the child's daily routine as well as occasions and events that are of particular significance to the child or the parent child to maintain or consolidate a secure attachment with a parent whose behavior is oriented only to 'visiting' rather than 'care-giving'.

- Children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, divorced, have never married or have never lived together; and
- Children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other immediate family members & relatives); and
- Children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

Over Night Access at home of the non-custodial parent should be encouraged at an early stage so that the children have a close and continuing relationship and get the love, affection of not only parents but also of grandparents and other immediate family members like uncle, aunts, cousins etc. The healthy emotional development of children depends upon their early experience of a continuous, emotionally available care-giving relationship, through which they are able to form an organized attachment, and to develop their human capacities for thought and relationships essentially,

Children have their right to childhood of hopeful existence free of exploitations, neglect. Children need consistent support system as well as love, hope and encouragement, all these things and more are required in order to experience childhood to the fullest and to eventually develop into a healthy, capable adult for the full and hormonal development of his or her personality children should grow up in a family environment in an atmosphere of happiness, love and understanding which is very important for their overall growth and well being. The children should be fully prepared to live life in society, in the spirit, dignity tolerance, freedom, equality and solidarity. However young children are subjected to exploitation especially in a broken marriage where the court has to intervene to protect the rights of the child. Children have to be ensured that their right to parental access, right to quality of life, right to be cared for, and right to freedom of expression is not compromised and children get love and affection from both parents and grandparents and immediate family members. They should have a sense of belonging to a healthy family environment maintaining their heritage so that the genealogy of the child is not lost after attaining adulthood and they are able to be linked with their ancestors. Overnight access should therefore be encouraged at an early stage.

CHAPTER – 3

LOCAL GUIDELINES

(PARTIES RESIDING WITHIN 200 DRIVING KILOMETERS OF EACH OTHER)

C. FINAL VISITATION (CHILDREN BETWEEN AGE 0–TO-36 MONTHS)

The following visitation guidelines should balance the needs of both parent and child, regardless of whether that child has older siblings that enjoy extended visitation with the Non-custodial parent.

32. **WEEKENDS:** The Non-custodial parent shall be entitled to overnight weekend visitation every weekend. For children between 0 to 36 months visitation shall be between 11.00 A.M. to 2.00 P.M. or 4.30 P.M. to 7.30 P.M. on Saturday and Sunday and Twice (two times) during weekday between Monday to Friday for 1½ hours (90 Minutes). One of the most important considerations is for attachment with both parents. It is important for visitation to provide opportunities to establish a bond between the child and the parent. Generally, frequency of visitation is given more consideration than duration of visitation. Making up for less frequent visits by increasing the length of time of visits is not recommended for infants recommended daily visits, but if this is impractical, then visits should be spaced no more than two days apart. There is research, however, to show that overnight visits with the parent can occur, provided that the parent has been a significant caretaker and a primary attachment figure.
33. **WEEKDAY VISITATION:** The Non-custodial parent shall be entitled to visitation two (2) evenings per week during weekday between Monday to Friday for 1½ hours (90 Minutes). These shall be the same two evenings every week and varied only if the weekday visitation schedule conflicts with the holiday or vacation schedule. If the parties cannot agree, weekday visitation shall be on Monday and Wednesday.
34. **HOLIDAYS:** The non-custodial parent shall be entitled to spend at least 3 Three hours on the holiday or festival day including 15th August, 26th January, 1st May (Maharashtra day;) , 2nd October (Gandhi Jayanti), 14th November (Children's day) excluding the time of travel. Only where it is not possible to share during the festival day due to reasons of distance or otherwise. In odd-numbered years, the Non-custodial parent shall be entitled to spend with the minor child; in even numbered years, the schedule shall be reversed. A party's

entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated each year.

Note : For children aged between 0 to 36 months it shall be open for the custodial parent to remain present during visitation.

- i. Visitation shall be from 11:00 a.m. until 2:00 p.m. or from 4:00pm to 7:00pm on the official holiday.
 - ii. Mother's day Shall be spent with the mother every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 2:00 pm or 4:00 pm to 7:00 pm.
 - iii. Father's day shall be spent with the father every year with priority over any other visitation schedule; visitation hours shall be from 11:00 am. until 2:00 p.m. or 4:00 pm to 7:00 pm
 - iv. Diwali / Eid / Moharram / Makarsakaranti / Janmashtmi/Mahavir Jayanti / Mahashivratri / Ramnavi / Parsi New Year / Dussera / Laxmipoojan / Bhau Bheej / Gurunanak Jayanti / Raksha Bandhan / Navratri / Ganesh Chaturthi / Anant Chaturthi / Holi visitation to the non-custodial parent shall be for a period of 3 three hours excluding travelling time and timings shall be decided between the parties mutually.
35. FESTIVALS WEEKEND OVERNIGHT ACCESS : Festivals which last for more than seven days especially Navratri, Ganpati and Ramzan and for which long holidays are not available to the child the non-custodial parent shall be entitled to one weekend overnight stay during this stretch of festival. A party's entitlement to this festival weekend overnight stay overrides the other party's right to regularly scheduled weeknight or weekend visitation .
36. MOTHER'S BIRTHDAY: shall be spent with the mother every year. If the mother is the Non-custodial parent and the mother's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the mother's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.
37. FATHER'S BIRTHDAY: shall be spent with the father every year. If the father is the Non-custodial parent and the father's birthday is on Sunday, Monday,

Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the father's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.

38. CHILD'S BIRTHDAY: The child shall celebrate his or her birthday with the Non-custodial parent in odd-numbered years and the custodial parent in even-numbered years. In years that the child spends his or her birthday with the Non-custodial parent, if the child's birthday falls on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation shall be from 5:00 p.m. until 8:00 p.m.; if the child's birthday falls on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m.. The parent holding a birthday party for the child may wish to consider inviting the other parent.

39. ANNUAL VISITATION FOR CHILDREN (UNDER AGED 0-TO-36 MONTHS): Unless otherwise agreed to by the parties, regular weekend and weekday visitation shall be maintained year round in lieu of a designated annual visitation period.

D. FINAL VISITATION (CHILDREN 36 MONTHS AND OLDER)

40. WEEKENDS: The Non-custodial parent shall be entitled to weekend visitation every other weekend. Visitation shall begin Friday at 6:00 p.m. and end at 6:00 p.m. on Sunday. If parties wish to avail continuous every week access then every weekend access shall begin from Friday at 6.00 p.m. and end on Saturday 6.00 p.m. or Saturday 6.00 p.m. to Sunday 6.00 p.m. It is not the responsibility of the custodial parent to provide food or shelter for the child during the Non-custodial parent's visitation.

41. WEEKDAY VISITATION: If the parties reside within thirty (30) Kilometers driving distance of each other, the Non-custodial parent shall have visitation two (2) evening per week for 2 two hours between 6.00 p.m. to 8.00 p.m., but shall exercise the weekday visitation in the locale of the child's primary residence or within the radius of 10 ten kilometers. The preceding sentence shall not preclude occasional travel beyond the thirty (30) Kilometers for special weekday events. The weekday visitation shall be on the same evening each week and varied only if it conflicts with the holiday or vacation schedule. If the parties cannot agree on the weeknight and if there are no scheduled activities for Wednesday, it shall be Wednesday evening. If there are activities scheduled for Wednesday, the Non-custodial parent shall have first choice of an alternate weekday for weekday visitation.

42. HOLIDAYS: The non-custodial parent shall be entitled to spend at least 4 Four hours on the holiday or festival day including 15th August, 26th January, 1st May (Maharashtra day) , 2nd October (Gandhi Jayanti), 14th November (Children's day) excluding the time of travel. Only where it is not possible to share during the festival day due to reasons of distance or otherwise. In odd-numbered years, the Non-custodial parent shall be entitled to spend with the minor child; in even numbered years, the schedule shall be reversed. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If the parties celebrate religious holidays other than those defined in sections A and B below, those religious holidays shall be mutually agreed upon in writing, divided, and alternated each year. In the absence of an agreement, the court shall allocate those religious holidays between the parties..

- i. Visitation shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m. on the official holiday.
- ii. Mother's day Shall be spent with the mother every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m. Father's day shall be spent with the father every year with priority over any other visitation schedule; visitation hours shall be from 11:00 a.m. until 3:00 p.m. or 4.00 p.m. to 8.00 p.m.
- iii. Diwali / Eid / Moharram / Makarsakaranti / Janmashtmi / Mahavir Jayanti / Mahashivratri / Ramnavi / Parsi New Year / Dussera / Laxmi poojan / Bhau Bheej / Gurunanak Jayanti / Raksha Bandhan / Navratri / Ganesh Chaturthi / Anant Chaturthi / Holi visitation to the non-custodial parent shall be for a period of 4 Four hours excluding travelling time and timings shall be decided between the parties mutually.

NOTE : Non-custodial parent shall be entitled to take the child at his residence during this period of access.

43. FESTIVALS WEEKEND OVERNIGHT ACCESS : Festivals which last for more than seven days especially Navratri, Ganpati and Ramzan and for which long holidays are not available to the child the non-custodial parent shall be entitled to one weekend overnight stay during this stretch of festival. A party's entitlement to this festival weekend overnight stay overrides the other party's right to regularly scheduled weeknight or weekend visitation.

44. FIFTY % VACATION: The non custodial parent shall be entitled to 50% of each vacation during the year the child has vacations for Diwali, Christmas and Summer.
45. MOTHER'S BIRTHDAY: shall be spent with the mother every year. If the mother is the Non-custodial parent and the mother's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the mother's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.
46. FATHER'S BIRTHDAY: shall be spent with the father every year. If the father is the Non-custodial parent and the father's birthday is on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation hours shall be from 5:00 p.m. until 8:00 p.m. If the father's birthday is on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m. This visitation will not affect holiday visitation.
47. CHILD'S BIRTHDAY: The child shall celebrate his or her birthday with the Non-custodial parent in odd-numbered years and the custodial parent in even-numbered years. In years that the child spends his or her birthday with the Non-custodial parent, if the child's birthday falls on Sunday, Monday, Tuesday, Wednesday, or Thursday, visitation shall be from 5:00 p.m. until 8:00 p.m.; if the child's birthday falls on Saturday or Sunday, visitation shall be from 11:00 a.m. to 4.00 p.m.. The parent holding a birthday party for the child may wish to consider inviting the other parent.

E. CHILDREN IN DIFFERENT AGE GROUPINGS:

- i. If there are two (2) or more children whose ages span different age groupings entitling the children to different visitation periods with the Non-custodial parent, then the younger children shall get the benefit of the oldest child's visitation schedule.
- ii. THIS PROVISION DOES NOT APPLY TO CHILDREN AGED BETWEEN 0 TO 36 MONTHS. PARENTS OF A CHILD AGED BETWEEN 0 TO 36 MONTHS MUST FOLLOW THE VISITATION SCHEDULE FOR THAT CHILD REGARDLESS OF WHETHER OR NOT THE CHILD HAS OLDER SIBLINGS ON A DIFFERENT SCHEDULE.

48. SCHEDULING ANNUAL VACATION :

- i. The Non-custodial parent shall have first choice of annual vacation visitation and shall designate such choice in writing no later than March 1 of each year. Subject to the Non-custodial parent's designated choice on or before March 1, the custodial parent shall designate in writing his or her choice for annual vacation by March 15th of each year.
- ii. The custodial parent's annual vacation shall be scheduled around the Non-custodial parent's annual vacation and may override no more than one (1) weekend and three (3) weeknight regularly scheduled visitation periods of the Non-custodial parent.
- iii. A parent's first choice of annual vacation shall not interfere with the other parent's entitlement to the child's birthday or the Diwali Holiday.
- iv. Unless specifically prohibited by Court order, either parent may temporarily remove the child from the jurisdiction of the court for purposes of annual visitation only if the parent travelling with the child provides the other parent with a written general itinerary and phone numbers where the child can be contacted during the vacation.
- v. Annual vacation shall not conflict with the school calendar.

CHAPTER - 4

NON-LOCAL GUIDELINES

(PARTIES NOT RESIDING WITHIN 200 DRIVING KILOMETERS OF EACH OTHER)

49. VISITATION (CHILDREN AGED BETWEEN 0 TO 36 MONTHS) Visitation for children under 36 months old shall be established by the court on a case-by-case basis.

50. ADDITIONAL VISITATION: The Non-custodial parent shall be entitled to exercise other reasonable visitation in the local of the child's primary residence upon reasonable notice to the custodial parent.

51. VISITATION (CHILDREN AGED 36 MONTHS & OLDER)

52. WEEKENDS: The Non-custodial parent shall be entitled to at least one weekend visitation every week. Visitation shall begin either on Saturday and / or Sunday at 11:00 a.m. and end at 6:00 p.m. It shall be open for the parties to work out more than one visitation per week as per mutual agreement.

53. HOLIDAYS: If the parties celebrate religious holidays other than those defined in sections 41 above, those religious holidays shall be mutually agreed upon in writing, divided, and alternated each year. In the absence of an agreement, the court shall allocate those religious holidays between the parties.

54. FIFTY % VACATION: The non custodial parent shall be entitled to 50% of each vacation during the year the child has such as Diwali, Christmas and Summer vacation.

Note : In case non-custodial parent is unable to avail vacation access during a particular year he/she shall be entitled to be compensated by full vacation sharing during the subsequent year.

55. ANNUAL SUMMER VACATION: Visitation shall be as follows:

A. CHILDREN IN DIFFERENT AGE GROUPINGS: If there are two (2) or more children whose ages span different age groupings entitling the children to different visitation periods with the Non-custodial parent, the younger children get the benefit of the oldest child's visitation schedule. THIS PROVISION DOES NOT APPLY TO CHILDREN UNDER AGED BETWEEN 0 TO 36.

PARENTS OF A CHILD AGED BETWEEN 0 TO 36 MONTHS MUST FOLLOW THE VISITATION SCHEDULE FOR THAT CHILD REGARDLESS OF WHETHER OR NOT THE CHILD HAS OLDER SIBLINGS ON A DIFFERENT SCHEDULE.

56. SCHEDULING ANNUAL VACATION: The Non-custodial parent shall have first choice of annual vacation and shall designate such choice in writing no later than April 1 of each year. Subject to the Non-custodial parent parent's designated choice on or before April 1, the custodial parent may plan an annual vacation and shall notify the Non-custodial parent of those dates by April 15th of each year.

- i. A parent's first choice of annual vacation shall not interfere with the other parent's entitlement to the child's birthday, unless the Noncustodial parent will be denied the full annual visitation period if the custodial parent exercises visitation on the child's birthday. If the child's birthday falls within the anticipated summer school break, and if the parties are unable to reach a specific agreement about an annual vacation schedule, the parties shall mediate the annual vacation scheduling issue before final hearing, unless mediation is excused by court order. If the parties are unable to resolve the annual vacation schedule issue through agreement or mediation, the parties shall present the issue to the court before entry of a final visitation order.
- ii. Unless specifically prohibited by Court order, either parent may temporarily remove the child from the State of Maharashtra for purposes of Annual Visitation only if the parent traveling with the child provides the other parent with a written general itinerary and phone numbers where the child can be contacted during the vacation.
- iii. Annual vacation shall not conflict with the school calendar.

CHAPTER ? 5

JOINT CUSTODY

57 PRINCIPLE :The most fundamental principle underlying child rights is the inherent right of every child to be brought up in the secure comfort of a family environment and to enjoy the love and affection of both its parents .These are rights enshrined in the **U N .Charter for Child Rights ,1989 which has been adopted and ratified by India .**

58 RESIDE ALTERNATELY :That child may reside alternately ,one week with the custodial parent and one week with non custodial parent and that both custodial and non custodial parent share joint responsibility for decisions involving child's long term care ,welfare and development ;

CHAPTER - 6

59. PSYCHIATRIC AND PSYCHOLOGICAL EVALUATION OF PARENTS AND THE CHILD.

- A. Under Section 12 of the Family Courts Act, 1984, the Court is empowered to secure the services of medical experts; the scope of Section 12 envisages: For settling a problem the Judge of the Family Court cannot merely take his own personal decision. Under this section, he has to rely and consult an expert as while deciding the dispute between husband and wife, the fate and future of innocent children, if there are any, has to be kept in mind. The Judge therefore will have to act as all in one. If either or both litigants are quarrelsome, the altercations definitely lead to litigation on various grounds and their children will be the worst sufferers. In such cases the opinion of medical and welfare experts will be of much use.
- B. The family Court either on an application by one of the litigant or the court suo motto while exercising its discretion to conduct a psychiatric / psychological evaluation of both the parents including the child in order to ensure that custody is given to the emotionally and mentally fit parent, thus ensuring welfare of the child. Procedure for such psychological evaluation shall be as per procedure prescribed.
- C. Failure in marriages is sometimes due to lack of awareness or realization among the litigants where often one of the partner suffers from a personality disorder and/or adjustment disorder which can be easily diagnosed through psychological evaluation.
- D. The child/children are psychologically evaluated (by play therapy) to determine stress, depression level & also any bad tutoring or poisoning of mind to alienate the child from other parent. On diagnosis if confirmed the child is assisted through, intervention of psychological counseling.
- E. In fact Supreme Court has come down heavily for not using the services of medical experts by the lower courts as provided under sec 75e of CPC. (Ref: Sharda versus Dharampal (2003) 4 SCC 493))

60. PSYCHOLOGICAL EVALUATION:

This schedule provides for assistance of medical and welfare experts to be sought and taken by either of the parent either suo moto by the Family Court or on an application by either party; to secure the services of the medical expert or

such person including a person professionally engaged in promoting the welfare of the family as the court may think fit for the purposes of assisting the Family court.

I. PSYCHIATRIC AND PSYCHOLOGICAL EVALUATION OF PARENTS AND THE CHILD.

Under Section 12 of the Family Courts Act, 1984, the Court is empowered to secure the services of medical experts; however, the family Court rarely uses the same. The scope of Section 12 envisages: For settling a problem the Judge of the Family Court cannot merely take his own personal decision. Under this section, he has to rely and consult an expert as while deciding the dispute between husband and wife, the fate and future of innocent children, if there are any, has to be kept in mind. The Judge therefore will have to act as all in one. If either or both litigants are quarrelsome, the altercations definitely lead to litigation on various grounds and the children will be the worst sufferers. In such cases the opinion of medical and welfare experts will be of much use.

Should it not be mandatory for the family Court either on an application by one of the litigant or the court suo moto while exercising its discretion to conduct a psychiatric / psychological evaluation of both the parents including the child in order to ensure that custody is given to the emotionally and mentally fit parent, thus ensuring welfare of the child.

In fact Supreme Court has come down heavily for not using the services of medical experts by the lower courts as provided under sec 75e of CPC. (Ref: Sharda versus Dharampal (2003) 4 SCC493)

A common practice followed in US courts while deciding child custody by conducting Psychological evaluation tests such as MMPI, Rorschach ink blot test etc., which reveals any litigant suffering from any mental/personality disorder, drug abuse, alcoholic, manipulative, tendency to speak lies, tendency to abuse/physical attack towards spouse etc.

However, if in the event both the parties/litigants are refusing or do not find necessary to be evaluated, then the court should follow the Primary caretaker principle and if either one of the litigant (child's father or mother) refuses then as per law adverse inference shall be drawn.

The child/children are psychologically evaluated (by play therapy) to determine stress, depression level & also any bad tutoring or poisoning of mind to alienate the child from other parent.

On diagnosis if confirmed the child is assisted through, intervention of psychological counseling.

Often Indian courts fail to differentiate between psychosis & mental disorders. Individuals suffering from mental disorders are often intelligent but with very poor emotional state, (high intelligent quotient but poor emotional quotient), who tend to suffer from uncontrolled rage & temperament, violent, aggressive, manipulative, & often speak lies. This can be diagnosed only through specific psychological tests. Hence, merely interviewing litigants by the court will never give a clue whether the individual is suffering from mental/personality disorder except psychosis.

In fact Family Courts should resort to referring litigants for diagnosis to such reputed and high caliber psychologists/psychiatrists identified/appointed by the Family Courts / High Court.

While referring litigants for the conduct of psychiatric and psychological evaluation, Courts need not be concerned as regards the expenses involved as Rule 21 of The Family Courts (Maharashtra) Rules, 1987 provides for the same, wherein expenses (including travelling expenses) are to be paid out of the revenues of the State Government. However, if the litigants are willing the same may be born by the respective litigants.

61. GENERAL

- a. The parent with primary custody (parent who is having custody of child since birth and is taking care of the day to day and hour to hour need of the child) shall be referred to herein as the custodial parent, and the other parent shall be referred to as the Noncustodial parent.

62. CHILD'S WISHES :

Often the 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 who is not his own master 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,).*

The court has 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 some cases where the child is heavily tutored or brainwashed or poisoned against the non-custodial parent while deciding custody.

THE GENESIS OF FALSE ACCUSATION

An award-winning book published by the American Psychological Association shows just how easily children can be manipulated to give false accounts that bad things have happened to them.

In one study children were simply asked to repeatedly think about whether different events had ever happened to them, such as getting their finger caught in a mousetrap and going to the hospital to get the trap off. After ten sessions, more than half the children told false stories about the fictitious events in their lives. In fact, their stories were so elaborately embellished with details that experts could not detect which events were real and which were not. Even more remarkable, after the researchers told the children that the events never really happened, many of the children continued to insist that they remembered the fictitious events occurring

One four-year-old-boy had already been told by his parents that the whole mousetrap story was just in his imagination and that nothing like this ever happened. Yet when Stossel asked the boy if he ever got his finger caught in a mousetrap, with his parents beside him, this child said he remembered the event and then gave a detailed account. Stossel reminded him that his parents already said that it never happened, but the boy protested, "It really did happen, I remember it."

In another study, a stranger named "Sam Stone" visited a preschool classroom. He said hello, walked around the room for two minutes, then said good-bye and left. That was it. He touched nothing. During the next ten weeks, the children were interviewed four times and asked to describe Sam Stone's visit. One month following the fourth interview, another adult interviewed the children, this time asking about two events which did not occur, "Did Sam Stone do anything to a book or a teddy bear?"

The investigators learned that they could produce false reports of Sam Stone's behaviour both by bad-mouthing Sam Stone and by asking the children leading, suggestive questions. The bad-mouthing took the form of telling stories to the children, prior to Sam Stone's visit, about Sam Stone's clumsiness. For example:

"You'll never guess who visited me last night [pause] that's right. Sam Stone! And guess what he did this time? He asked to borrow my Barbie and when he was

carrying her down the stairs, he tripped and fell and broke her arm. That Sam Stone is always getting in to accidents and breaking things.

The day after Same Stone's visit, the children were shown a soiled teddy bear that had not even been in the room during Sam's visit. They were asked if they knew how the teddy bear had been soiled. An example of a suggestive question was following: "Remember that time Sam Stone visited your classroom and spilled chocolate on that white teddy bear? Did he do it on purpose or was it an accident?"

By the time of the final interview, an astounding 72 percent of the youngest preschoolers falsely incriminated Sam Stone. Like the children in the mousetrap study, they embellished their stories with fabricated details, such as reporting that they saw Same Stone on his way to the store to buy chocolate ice-cream. And, once again the children fooled the experts.

The investigators showed videotaped interviews of the children to specialists who interview children for purposes of criminal investigations and who treat children suspected of having abused. These experts were confident in their judgements about which events really occurred and which were made up. But the experts were wrong. In fact the very children they rated as most accurate were the children who were least accurate. Substitute Mommy or Daddy for Sam Stone and you begin to see how children can be manipulated to give convincing, yet false, negative reports about a parent.

False beliefs about abuse hurt children beyond the damage done by the alienation. A child who believes that she has been sexually abused by a relative can develop problems similar to those of a child who has actually suffered abuse. The child comes to distrust her caretakers in the same way she would if actually abused. Her view of sexuality is corrupted at an early age and this may lead to problems in sexual adjustment as an adult. Her ability to trust in close relationships is impaired. This may interfere with her relationships throughout her life.

Thus a child can be manipulated to create alienation.

Interviewing Children with Parental Alienation Syndrome : Children suffering with a parental alienation syndrome may present the judge with a convincing picture. By the time the child reaches the judge, he or she has developed a well-rehearsed litany of complaints against the presumably hated parent. This can be quite convincing, especially because the script has probably

been rehearsed many times over with the allegedly preferred parent. Also, by the time the child reaches the judge, he or she has probably presented the scenario to a variety of attorneys and mental health professionals. This has given them the opportunity to practice and sharpen their speeches. There have been a number of occasions when judges have been completely taken in and have not appreciated that they were being handed a "bill of goods." These children have a way of "snow balling" even experienced psychologists and psychiatrists, so one cannot be too critical of judges here. Present below are series of questions that judges should find useful when interviewing these children. It is important to appreciate that the questions provided here relate to the more common situation, the one in which the father is the hated parent and the mother the loved one. However when the situation is reversed (the mother the hated one and the father the loved one) One should obviously reverse the questions.

Describe your custodial parent (mother / father) to me. Children with parental alienation syndrome typically provide only positive responses. If any negatives are provided, they will usually be minimal. If asked to elaborate upon the negatives, only inconsequential criticisms will be provided. Children who are "normal" or suffer with other kinds of psychiatric disturbances will generally be able to list both positives and negatives about each parent. The complete idealization of a parent is a clue to the presence of this disorder.

Describe your Non-custodial parent (mother / father) to me. The child with parental alienation syndrome will enumerate various criticisms at great length. These will be both present and past. Often the past indignities will be about experiences that other children would consider normal or would have forgotten long ago. Sometimes a complaint will be about an event which the child has not actually observed but which the mother has described. The child will accept as valid the mother's rendition and not give any credibility to the father's refutation. When it is pointed out to the child that few if any positives have been described, the child will claim flatly that there are none. Inquiries into past good times between the child and the father will be denied as nonexistent or the child will claim that these events were painful and the child's professed enjoyment of them stemmed from the fear of punishment for not doing so. It is this complete one-sidedness of the response, the total absence of normal ambivalence, that should alert the interviewer to the fact that one is probably dealing with a child suffering with parental alienation syndrome.

How do you feel about your Non-custodial parent's (father / mother) family ?

The child with a parental alienation syndrome will generally respond that all members of the father's / mother's extended family, even the child's own grandparents and previously loved aunts, uncles and cousins, are somehow obnoxious and vile. When asked for specific reasons why there is absolutely no contact at all with any of these individuals, no compelling reasons are provided. Often inconsequential reasons are given. Attempts to impress upon the child how important it is to have relationships with these loving relatives is futile. The child extends the noxious view of the father to the father's extended family. The child will describe no sense of loss or loneliness over this selfimposed removal from the father's extended family. If a potential or actual stepmother is involved with the father, this hatred will extend to her and her extended family as well.

Does your custodial parent (mother / father) interfere with your visiting with your Non-custodial parent (mother / father) ?

Generally the child will describe absolutely no interference on the custodial parent's part. Often the child will proudly describe the neutrality and state that the decision is completely his or her own.

Why then don't you want to visit with your father / mother?

The child may give very vague reasons. When asked to give specific reasons these children may describe horrible abuses in a very convincing way. In addition, they often provide gross exaggerations of inconsequential complaints. They make "mountains out of mole hills" and will dwell on frivolous reasons for not visiting. Often they will claim that they want absolutely no contact at all with the father for the rest of their lives, or at least not before they are adults. When it is pointed out to these children that the vast majority of other children would not cut their fathers off entirely, forever, for such "indignities:" they insist that their total rejection is justified.

Does your mother harass or bother you?

Healthy children generally will give some examples of "harassment" such as being made to turn off the television, do homework, or go to bed earlier than they want. Children with parental alienation syndrome describe no such harassments. They often will describe their mother as being perfect and as never asking them to do things they don't want. This is obviously a fabrication and is a manifestation of the whitewash of the mother. You use the word harassment with these children because it is a common expression utilized by mothers of parental alienation syndrome children. The father's overtures for involvement with the child are generally referred to as harassment by the mother. If the child is unfamiliar with the word harassment, It can be substitute by "bother you a lot."

Does your father harass or bother you? These children are likely to describe in great detail the father's "harassments." Generally, they involve attempts on his part to gain contact with the children. Letters, telephone calls, and legal attempts to gain visitation are all clumped under the term "harassments." Although the father's initial overtures may have been spaced reasonably, with mounting frustration over rejection and alienation, the father's overtures increase in frequency and intensity. The love and affection that is at the foundation of these overtures is denied completely by both the mother and the parental alienation syndrome child. Rather, they are viewed simply as onerous harassments. The above questions are general ones. The judge does well to ask more specific questions pertinent to the particular case. These might include questions regarding why the child wants to change his or her name back to the mother's maiden name, why the father's Presents were thrown in the garbage (usually in the mother's presence), why the child wants to have the father still contribute to his or her education even though he or she never wants to see the father again, what the brother's and sister's reasons are for not wanting to see the father (these too often prove inconsequential), and so forth.

Judges who interview children in chambers must be made aware of the fact that these children may be very convincing. They may be taken in by the litany of complaints and give such weight to the child's statements that they may go along with the child's stated preference. Judges must be alerted to the primary manifestations of this disorder, especially the complete lack of ambivalence, the dwelling on frivolous and inconsequential "indignities," the total removal from the extended family of the hated parent, the absolute denial of any positive input on the hated parent's part at any time in the child's life, and the definite statement that the child wishes never to see the hated parent again throughout the remainder of his or her life. It is hoped that judges will increasingly appreciate what is occurring when they see such children and rectify the situation in accordance with the guidelines to be presented. Under the circumstances of brainwashing, tutoring, poisoning, to alienate the child from the non-custodial parent, the Custody should be shifted from the custodial parent to the non-custodial parent who will ensure the child with love and affection of both the parents.

CHAPTER – 7

63. ROLE OF COUNSELORS

Court counselor is duty bound to counsel child to ensure access especially in case of bad tutoring against the non custodial parent rather than being indifferent or a mute spectator. Role of the counselor in family courts has to be proactive to succeed in effecting healthy access to the non-custodial parent

- a. Regular quarterly workshops has to be conducted to the counselors as well as to the Judges of the family court by the reputed psychiatrists and psychologists for continuous updation and orientation to handle the sensitive issues.
- b. Under Rule 27 of the Family Courts Rules 'counselor report' may be allowed to be supplied to the litigant.
- c. Under Rule 28 of the Family Courts (Maharashtra) Rules 1987 Parties have a right to make submission and shall be entitled to make their submissions on the report. However under rule 29 the counselor shall not be called upon to give evidence and shall not be cross examined.
- d. Counselor should be stopped from recommending their opinion to court in regard to whom the custody, court has to grant. (amounting to exercise of judicial powers by non judicial officer).
- e. Cost of the psychological evaluation shall be borne by the litigant urging the court seeking the evaluation of his or her spouse. Rules however provide that the expenses in this regard shall be borne by the state.
- f. It shall be the endeavor of the Counselor to ensure that a healthy bonding is developed between the child and the non-custodial parent and for this the counselor shall make every attempt to counsel and prevail upon the custodial parent to provide healthy, substantial and significant access of the child to the non-custodial parent.

CHART DETAILING MINIMUM VISITATION SCHEDULE

Sr. No.	Visitation Schedule	Age	Occasion	Day	Time	SECTION / CHAPTER
1.	INTERIM VISITATION					
	BETWEEN	0 TO 36 Months				A
			WEEK ENDS	SATURDAY And SUNDAY	3 (three) hours each in the presence of the Custodial Parent.	1
			WEEK DAY	MONDAY TO FRIDAY	1 ½ (90 Minutes) in the presence of the Custodial Parent. TWO TIMES A WEEK	2
	BETWEEN	36 MONTHS AND ABOVE	WEEK ENDS	OVERNIGHT ACCESS EVERY ALTERNATE WEEKENDS	FRIDAY 6.00 P.M. TO SUNDAY 6.00 P.M	B – 4
			OR			
			WEEK ENDS	OVERNIGHT ACCESS EVERY WEEK	FRIDAY 6.00 P.M TO SATURDAY 6.00 P.M. OR SATURDAY 6.00 P.M TO SUNDAY 6.00 P.M.	4
			WEEKDAY	TWO EVENINGS	TWO HOURS	5
			HOLIDAYS		4 FOUR HOURS CHILD WILL BE ALLOWED TO BE TAKEN AT THE RESIDENCE OF THE	6

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							NON CUSTODIAL PARENT THREE HOURS	CHAPTER 2
2.	FINAL VISITATION							CHAPTER 3
	LOCAL GUIDELINES PARTIES RESIDING WITHIN 200 K.M.	BELOW 36 MONTHS						
			WEEK ENDS	SATURDAY AND SUNDAY	3 THREE HOURS IN THE PRESENCE OF THE CUSTODIAL PARENT	32		
			WEEK DAY	MONDAY TO FRIDAY	1½ HOUR (NINETY MINUTES) TWO TIMES A WEEK IN THE PRESENCE OF THE CUSTODIAL PARENT	33		
			HOLIDAYS		THREE HOURS	34		
		ABOVE 36 MONTHS	WEEKENDS	OVERNIGHT ACCESS ALTERNATE WEEKEND OR EVERY WEEKEND	FRIDAY 6.00 P.M TO SUNDAY 6.00 P.M. OR EVERY WEEKEND FRIDAY 6.00 P.M TO SATURDAY 6.00 P.M. OR SATURDAY 6.00 P.M. TO SUNDAY 6.00 P.M.	40		
			WEEKDAYS	TWO EVENINGS PER WEEK	TWO HOURS	41		
			HOLIDAYS		4 FOUR HOURS CHILD WILL BE ALLOWED TO BE TAKEN AT THE RESIDENCE OF THE NON CUSTODIAL PARENT.	42		

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Sr. No.	Visitation Schedule	Age	Occasion	Day	Time	SECTION / CHAPTER
		ABOVE 36 MONTHS	FESTIVAL WEEKEND OVERNIGHT ACCESS	WEEKEND	OVERNIGHT SATURDAY 11 A.M. TO SUNDAY 7. 00 P.M. For FESTIVALS WHICH LAST FOR MORE THAN SEVEN DAYS WITHOUT LONG HOLIDAYS LIKE NAVRATRI, GANPATI, RAMZAAN,	43
			VACATION	SUMMER DIWALI, CHRISTMAS VACATIONS	50% OF EACH VACATION	44
	NON - LOCAL GUIDELINES PARTIES RESIDING BEYOND 200 K.M.	ABOVE 36 MONTHS	ADDITIONAL HOLIDAYS		The Non-Local, Non-custodial parent shall be entitled to exercise other reasonable visitation in the local of the child's primary residence upon reasonable notice to the custodial parent	CHAPTER – 4 50
			WEEKEND	EVERY WEEKEND	11.00 A.M. TO 06.00 P.M. SATURDAY AND / OR SUNDAY	52
			WEEKDAYS	NIL		
			VACATION	SUMMER,DIWALI CHRISTMAS	50% VACATION	54

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