SUPREME COURT'S STANDPOINT IN EFFECTUATING GENDER NEUTRALITY VIS-À-VIS GUARDIANSHIP IN INDIA: CHANGING STATUS OF WOMEN IN 21ST CENTURY

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Abstract

This paper focuses on how the Hon'ble Supreme Court has pioneered a significant change in the status of Women in the facet of Guardianship in the 21st century in India. Since age-old times, women have always been entrusted with the responsibility of upholding the custody of their children, but the natural guardianship has been presumed to be of the father. Scrutinising the leading judgments of the Supreme Court, a progressive change has been brought about in recognising women as not only having custody rights but also being the natural guardians of the children before the law. These judgements have set forth a precedential value and have been an inspiration to the high courts of India in delivering their judgments. The authors have analysed that all the personal laws presiding in India have always favoured the 'father' of the child to be their natural guardian, but with the advent of the 21st century, the focus is shifting towards women in the role of guardianship to be bestowed with the same privilege. In our developing nation, a surge in the population of women becoming more financially independent has resonated with the Supreme Court, which observed that women are capable of assuming the responsibility of sole guardianship by supporting their children both emotionally and financially. Guardianship has a prominent role in the lives of both the father and mother of the child, and repudiating the rights of women in the matter of guardianship shall not meet the ends of justice. It is still a vigorous battle to achieve the feat of women empowering them in the role of guardianship beyond the horizon.

Keywords: *Guardianship, Natural Guardian, Hizanat, Minority, Custody.*

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INTRODUCTION

The Hindu Minority and Guardianship Act of 1956 defines a guardian as someone who takes care of a minor's welfare, property, or both. In common parlance, the "guardian" is the "protector" of the minor child. The following types of guardians are among those recognised by the progressive Indian Society:

- Natural Guardians,
- The guardian chosen in accordance with the minor's will, known as the lawful guardian
- A guardian appointed or declared by the court is known as the legal guardian.

According to Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardians of a Hindu minor who are responsible for both the person of the minor and the minor's property (apart from his or her undivided interest in the joint family property), are:-

- if there is a male child or an unmarried girl child, it is the father, and after him, the mother; however, the custody of a child under the age of five is typically with the mother,
- if it is the case of an illegitimate male child or illegitimate unmarried girl- then it is the mother, and after her, it is the father,
- If a girl is married, then the natural guardian is her husband.

Section 6 of the Hindu Minority and Guardianship Act 1956 grants to the father the right to act as the natural guardian of a legally born child. A mother can only be a child's natural guardian after the father, which means she can only take on that role if the father has died or is otherwise unable to do so. The stepfather and stepmother are not included in the category of the father and mother, according to the interpretation of Section 6 of the Hindu Minority and Guardianship Act, 1956. The adoptive mother gets the guardianship of her adoptive son only after the death of the adoptive father, as explicitly stated in Section 7 of the Hindu Minority and Guardianship Act, 1956. The mother can be the natural guardian of a minor only when the child is illegitimate, as it could be comprehended from Section 6 of the Hindu Minority and Guardianship Act, 1956. Only a parent or parent figure may be appointed as a minor's guardian because the guardianship of a minor is concerned more with the child's welfare than with the minor's legal rights. As a result, Section 6 of the Hindu Minority and Guardianship Act, 1956, should always be read in accordance with Section 13. If a girl marries, her husband automatically

becomes her guardian, according to Section 6 Clause (c) of the Hindu Minority and Guardianship Act, 1956. Even if a minor girl is married, her husband serves as her legal guardian.

Guardianship is listed in Section 2 of the Muslim Personal Law (Shariat) Application Act 1937 as one of the matters to which the Muslim personal law (Shariat) shall apply, despite the fact that the Dissolution of Muslim Marriages Act, 1939 is quite on the subject. In all schools of Muslim law, the father's right to guardianship is recognised. Even if the mother or any female with custody rights has custody, the father still has the right to general control and supervision. The fundamental tenet of hizanat in Islamic law is the wellbeing of the child. Every other factor must take the well-being of the kid into account, according to the Muslim law of hizanat. Because of this, in terms of custody of young children, Muslim law provides the mother the advantage over the father. In cases where it is necessary for the child's well-being, even a woman with poor credit can keep custody of her minor child.

DIFFERENCE BETWEEN GUARDIANSHIP AND CUSTODY

Custody is a more specific concept connected to the raising, daily care, protection, and control of the kid, whereas guardianship refers to a collection of rights and powers that an adult has regarding the person and property of a minor. The term "custody" is not defined in Indian family law, either secular or religious. In other words, having custody of a child entails having that child under one's care and protection, ensuring his or her physical presence. It requires the capacity to make consistent, ongoing decisions about the child's education, medical treatment, and general movement. The custody exists over the person of the minor and not over his or her property. While the idea of guardianship, especially in Hindu law, seems to have its origins in the Vedic Era, when the Hindu family was essentially a patriarchal structure with significant power lying with the head of the household. A guardian's responsibilities are more demanding than those of a simple custodian. The custody may be brief or temporary and for a specific reason, as was held in the case of *Ramesh Tukaram* Gadhwe v. *Sumanbai Wamanrao Gondkar*.[1] In each case's specific facts and circumstances, the issue of guardianship may stand alone and be distinct from the issue of custody. In the case of *Athar Hussain* v. *Syed Siraj Ahmed*[2], the court held that it was not constrained by the bar envisioned in Section 19 of the Guardians and Wards Act, 1890.

A few Ahadis and certain verses in the Quran serve as the foundation for Muslim guardianship and custody laws. The guardianship of a minor's person is barely touched upon in these verses,

[1] AIR 2007 SCC OnLine Bom 975.
[2] AIR 2010 2 SCC 654.

but guardianship of their property is extensively discussed. Muslim law makes a distinction between actual physical custody, or hizanat, the responsibility for the day-to-day care of a child and the authority to make crucial choices affecting the minor's upbringing. The idea of hizanat is comparable to the concept of custody under Hindu law.

Personal laws in India distinctly determine who the minor's natural guardian will be. All personal laws automatically make the father the guardian as long as he is sound and alive. The mother is also the chosen custodian of very young minors in both Hindu and Muslim law, despite the fact that the father is the child's natural guardian. The welfare and best interests of the minor children may, however, be prioritised by the courts over personal laws. The court's rulings must override the existing rigid Personal Law legislations accustomed to the changing needs of modern times.

The Guardians and Wards Act (GWA) of 1890 and the parties' current personal laws, which are partly based on custom and partly codified laws, for instance, the Hindu Minority and Guardianship Act (HMGA) of 1956, which establishes the guardianship laws for Hindus governing the guiding principles of adoption, guardianship and custody of minors in India. In addition, it also establishes the guidelines for child custody and guardianship during divorce procedures between the child's parents who were married and are now seeking divorce.

The marriage and divorce laws of Hindus, Muslims, Parsis, and Christians are well governed and substantiated by the Hindu Marriage Act of 1955. When deciding custody disputes, a court is not constrained by precedents, rigid rules of evidence or procedure, or by statutes. The court must consider the child's happiness, satisfaction, health, education, intellectual growth, and favourable circumstances in addition to their bodily and mental comfort.

In *Nil Ratan Kundu* v. *Abhijit Kundu*[3], the court held that if the youngster is old enough to develop an intelligent choice or judgement, the court must also take that preference into consideration. However, the court should ultimately decide the best possible solution for the minor's welfare with its discretion. In *Lahari Sakhamuri* v. *Sobhan Kodali*[4], it was concluded that, among other things, the following are some of the crucial factors that courts must take into account while evaluating the welfare of the kids and equitably for the parents: maturity and judgement, mental stability, the ability to provide access to education, moral integrity, the ability to provide ongoing

[3] AIR 2008 (9) SCC 413.
[4] AIR 2019 SC 2881.

community involvement, financial sufficiency, and the relationship between the parent and the child.

The Supreme Court has consistently held that if the child has been brought into Indian territories, the Indian courts may either undertake a short inquiry or a comprehensive probe into the custody issue. In the event of a summary inquiry, the court may determine that it is appropriate to order the child's return to the nation from which they were removed unless it can be demonstrated that doing so would be injurious to the child. In other words, regardless of a previous order of return of the kid by a foreign court, the court is free to refuse the remedy of returning the child to the country from which he or she was removed, even in the case of a cursory inquiry, as it was held in *Nithya Anand Raghavan* v. *State (NCT of Delhi)*[5].

PRECEDENTS OF THE SUPREME COURT BEFORE THE 21ST CENTURY

The Supreme Court has set a number of precedents before the 21st century also in favour of women regarding the matter of custody and guardianship that are still commended in modern society. However, the precedents that have been delivered and favoured to the women are mostly related to the matter of custodial rights of the mother and not of guardianship. The pattern in the judgements that have been seen was that the custody used to be mostly awarded to the mother rather than the father in a normal circumstance where the mother is fit to take care of the child.

An eleven-year-old girl who resided with her father was the subject of *Thrity Hoshie Dolikuka* v. *H.S. Dolikuka*[6]. The girl allegedly suffered from psychological stress and a nervous breakdown because the father, according to the mother, poisoned the child's mind to turn it against her. In contrast to the mother, who wanted to take the child away from the father's home and keep sending her to boarding school, the father was fixated on the concept of having sole custody and possession of the child. The mother had a job and could afford to pay for the boarding school. The High Court had first denied the mother custody of the daughter, mostly on the grounds that she was a working mother. The father was deemed unfit by the Supreme Court to be the child's legal guardian. The daughter could continue her education in a boarding school after turning sixteen, according to the court's ruling, which stipulated that the mother should have custody of the child during that time. In accordance with the laws and regulations of the school, the parents were each granted the freedom to see their daughter on an as-needed basis. This situation serves

[5] AIR 2017 SC 3137.
[6] AIR 1982 SC 1276.

as an example of the idea that a woman's employment status has no bearing on whether she can care for her child. Whether the mother worked outside the home or was a stay-at-home mom had no bearing on her suitability to serve as a custodian of her child.

According to Section 6 of the Hindu Minority and Guardianship Act, 1956, the father is the child's natural guardian. However, this provision will not supersede the essential consideration of what is in the best interest of the child, held in *Smt. Surindar Kaur Sandhu* v. *Harbax Singh Sandhu & Anr*[7].

In the case of *Suresh Babu* v. *Madhu*[8], the father kept the female child, who was eighteen months old, and the mother was expelled from the marital home. The mother requested custody in accordance with Section 25 of the Guardians and Wards Act, 1890 while residing with her grandparents. The mother received custody from the court. The child's welfare, according to the court, should be understood broadly and not just in terms of the child's financial and physical well-being. The court recognised that the mother would provide the child with better affection and attention than the father, despite the father's claims to be wealthier than the mother since he was too busy with his business.

The Supreme Court noted in *Jijabai Vithalrao Gajre* v. *Pathankhan & Ors.*[9] that the father is the child's natural guardian while he is still living and that the mother only takes over when he passes away. The father is unquestionably the minor's natural guardian of both the person and his or her property, as shown by the case. A "fit" father who is the natural guardian is also the custodian of the person or minor and their property in accordance with section 19 clause (b) of the Guardians and Wards Act and section 4 sub-section (2) of the Guardians and Wards Act. A "guardian" is defined as the person who has custody of the person or property of the minor or both. Therefore, it is to be assumed that the existence of a "fit" father will prevent the court from designating any other individual as the minor's guardian, even if it is the mother of the minor child.

When it came to awarding the guardianship to the women, the Supreme Court set a condition of 'after' in these cases where the mother could have been awarded the right to have guardianship of her minor child only after the death of the father of the child or if the father is unfit to hold the guardianship rights sincerely in uncertain circumstances.

[7] AIR 1984 SC 1224.
[8] AIR 1984 Mad 186.
[9] AIR 1971 SC 315.

As part of a public interest lawsuit challenging Section 6 of the Hindu Minority and Guardianship Act, the Supreme Court also sent a notice to the Centre requesting a response. As it discriminates against women in concerns of natural guardianship, the law has been contested as a violation of the "Equality" principle entrenched in Article 14 of the Constitution.

In *Geeta Hariharan* v. *Reserve Bank of India*[10], the petitioner Geeta Hariharan asked the Reserve Bank of India in 1984 to hold a bond in her minor son's name, indicating that she would function as a natural guardian for investment purposes. The bank rejected the application and instructed the applicant to provide a copy of it that was signed by the father or, in its place, a certified copy of a court-issued guardianship order. The mother disputed the bank's activities, arguing that the mother and father are the natural guardians while citing section 6 and section 4 clause (c) of the Hindu Minority & Guardianship Act, 1956. The Supreme Court gave a broad interpretation of the word "after" in the provision in the case of *Geeta Hariharan* v. *Reserve Bank of India*[11], noting that "the word did not necessarily mean after the death of the father", on the contrary, it signifies "in the absence of", whether that absence is short or long term, complete apathy of the father towards the child, or even the father's incapacity due to illness or another factor. The Supreme Court ruled that the mother cannot be considered the minor's natural guardian only after the passing away of the father as doing so would violate the Hindu Minority and Guardianship Act of 1956's legislative intent is the welfare of the child, and it will also be discriminatory in nature. Therefore, the natural guardian could be either the mother or the father, depending on who is most qualified, available, and concerned for the welfare of the minor. According to this case, the mother's standing as a natural guardian of her child's property would only be recognised in situations where the father has given up his parental duties or given his approval to raise the mother to that level. It is problematic for the sake of fiercely debated custody disputes that the court refrained from granting the mother of the child equal status as a natural guardian[12].

The Supreme Court noted that the definitions of "guardian" and "natural guardian" under the Hindu Minority and Guardianship Act of 1956 Act did not discriminate in any way between mothers and fathers, and since the mother was mentioned as a guardian under Section 6 of the Act, it could not be said that the mother could not also be a natural guardian. However, Section 6 clause (a) of the 1956 Act unambiguously specifies that the "father, and after him, the mother",

[10] AIR 1999 SC 1149.

[11] *Ibid.*

[12] Tejaswi Pandit & Manovi Mittra, "Custody of Children" *SCC Online Times* Nov. 25, 2019, *available at*: https://www.scconline.com/blog/post/2019/11/25/custody-of-children/ (last visited on: 08.01.2025)

are the minor's natural guardians. A cursory reading of the passage might lead one to believe that mothers only gain the right to natural guardianship after the father, which would indicate that she only receives the right after the father's passing. The welfare of the minor is considered most while making decisions about guardianship and custody. Even when the father was still living, the courts might grant guardianship to the mother or any other qualified person for the child's care. The interests of the minor are of utmost significance; thus, this would be possible. The welfare and interests of the minor would therefore take precedence over the words "after" as they appear in Section 6 clause (a). As a result, the Supreme Court gave the provision at issue a harmonic interpretation that is in keeping with Constitutional requirements to correct the legal anomaly and bring the law into compliance with the rights guaranteed by the Constitution. It was noted that the word "after" need not imply "after the lifetime" of the father; it could equally be interpreted as "in the absence of", where the word absence would reflect the father's absence from providing for the minor's physical or financial needs. Therefore, the mother can act as natural guardian of the minor in situations where the father and mother have agreed that the mother should be the guardian, in situations where the father is completely absent from the life of the minor and shows no interest in their welfare, in situations where the father is physically unable to protect the interests of the minor because he lives in a different location or has some form of mental or physical incapacity, and in other situations that are similar.

PRECEDENTS OF THE SUPREME COURT REVOLUTIONIZING THE STATUS OF WOMEN IN 21ST CENTURY

In the matter of granting custody of the minor in the 21st century, the welfare of the children has been seen as utmost importance by the Supreme Court which has still been seen as relief by many mothers in India.

The High Court is required to (a) consider the wishes of the child in question, and (b) evaluate the psychological impact, if any, on the change in custody after consulting with a child psychiatrist or a child welfare worker before making a decision regarding whether custody should be given to the mother or the father or partially to one and partially to the other. According to the ruling in *Mamta* v. *Ashok Jagannath Bharuka*[13], all of this must be done in addition to determining the relative material welfare that the child or children may experience with either parent.

[13] AIR (2005) 12 SCC 452.

Better financial standing of either parent or their affection for the child may be crucial factors, but they cannot be the sole deciding factor for the child's custody. A high burden is placed on the court in this situation to apply its judicial discretion wisely in light of all the pertinent facts and circumstances, with the child's welfare as the top priority. In Section 13 of the Hindu Minority and Guardianship Act 1956, the term "welfare" must be construed in a literal sense and in the broadest sense possible. This was held in *Moitra Ganguli* v. *Jayant Ganguli*[14].

According to *Nil Ratan Kundu* v. *Abhijit Kundu*[15], the "positive test" that such custody would be in the minor's best interests is what is important, not the "negative test" that the father is not "unfit" or ineligible to have custody of his son or daughter. The court should use this standard when deciding whether to grant or deny custody of a minor to the father, the mother, or any other guardian.

It was held in *Gaurav Nagpal* v. *Sumedha Nagpal*,[16] that in the event of a disagreement between the mother and the father, the court is expected to strike a fair and appropriate balance between the needs of the minor children's welfare and the rights of the parents. To ensure that children can develop in a healthy, balanced way and become contributing members of society, parents' ultimate control over the destinies and lives of their children must give way in today's transformed social context. Along with the child's bodily welfare, the court must consider the child's moral and ethical welfare. There is nothing that can prevent the court from using its parens patriae jurisdiction that arises in such instances, even while the provisions of the particular legislation that control the rights of the parents or guardians may be taken into consideration.

When deciding who should have custody of a minor, the court must consider several pertinent factors, including the child's desires, the presence of a supportive and suitable environment for the child's upbringing, and the ability and resources of the involved parent to care for the child, and it was held in *Gaytri Bajaj* v. *Jiten Bhalla*[17].

According to *Sheoli Hati* v. *Somnath Das*,[18], when deciding on custody or other issues concerning children, the 'welfare of the child' is the most crucial consideration to take into account. According to the Guardians and Wards Act of 1890 or the Hindu Minority and Guardianship

[14] AIR (2005) 12 SCC 452. AIR 2008 SC 2262.
[15] *Supra* note 3
[16] AIR 2008 SC 2262.
[17] AIR 2013 SC 102.
[18] AIR (2019) 7 SCC 490.

Act of 1956, standards must be followed when the court makes a custody decision for young children, with the welfare and best interests of the child being given top priority. When choosing which parent is entitled to custody, it is not the right of either parent that would require judgment.

However, even in the 21st century, there are still not many cases where the Supreme Court has talked specifically about providing rights of natural guardianship to the 'married mother' or where the rights of guardianship are being provided equally to the father and mother in any normal circumstances. The rights of guardianship have been preferred and given to women only when the mother has illegitimate children, if the father denies the responsibilities of guardianship, or if he is unfit to take care of the minor in unfortunate circumstances.

The petitioner in *ABC* v. *State (NCT of Delhi)*[19] was a Christian woman who was an unmarried mother with a good education, a job, and a strong religious conviction. Without the father's involvement in the child's upbringing, she had, since the child's birth, looked after all of his interests and met all of his requirements. She had approached the appropriate authorities with the intention of designating her son as her nominee in all of her bank accounts and insurance policies. The authorities informed her that she would need to either disclose the father's name as the child's natural guardian or obtain a court certificate confirming her guardianship of the child. She made a court application pursuant to Section 729 of the 1890 Act to be recognised as the guardian and issued a notice of the same in the local newspaper, but she refused to give the father's name or address. She even signed an affidavit saying that if the father ever filed a claim for guardianship of the child in the future, the guardianship might be changed in accordance with the court's ruling. The Guardian Court and the High Court declined to comply with her request, stating that under Section 1130 of the 1890 Act, a guardianship application could not be entertained without notifying the child's parents. They reasoned that even though the couple was not married, it could not be assumed that the father had no interest in the welfare of the minor. She filed an appeal to the Supreme Court. According to the Supreme Court, the mother had custody of the illegitimate child under Hindu and Muslim law, as well as the Succession Act of 1925-1931. No matter whether the father was raising the child or not, mothers often enjoyed the right to priority guardianship over their illegitimate children in other countries. The judge commented that it was common knowledge that mothers love and care for their children deeply.

[19] AIR 2015 SCC OnLine SC 609.

Therefore, it would not be a problem if unwed mothers were given preference over paternity. It would not be feasible to impose a father on the established and loving relationship between the petitioner and her kid in modern times when women want to raise their children alone and provide them with all the care necessary. There was no dispute that the father was responsible for the minor's welfare because he had no interest in seeing that the child was taken care of.

The minor's welfare would not be served by giving the father notice because doing so would just lead to needless conflict. In Section 11 of the 1890 Act, the term "parents" was to be understood to refer to the parent who was solely responsible for the minor's welfare and care. The unmarried mother was designated as the child's natural guardian since she was the most qualified person to ensure the welfare of the child. The Supreme Court also issued guidelines stating that when single women register the birth of a child, only an affidavit should be asked, and the mother cannot be forced to divulge the identity of the father. In *ABC* v. State (NCT of Delhi)[20], the Supreme Court acknowledged single women as parents and natural guardians. Therefore, the passport office could not insist that the father's name be included in the document. Instead, the mother should be able to submit an affidavit under oath attesting to the fact that her parents were divorced or that she was a single mother in order for the passport to be issued without the father's name being required.

As a result of the husband's absence in *Aniswar* v. *Union of India*[21], the mother's ex parte divorce became legally binding. The minor child of the couple received a "person of Indian origin" card; however, when the mother later applied for the minor's registration as an overseas citizen of India card holder, his application was denied on the grounds that the mother must produce documents proving that she was granted custody of the minor following the divorce. In an effort to overturn the denial, she petitioned the court. In both of the cases, *Geeta Hariharan* v. *Reserve Bank of India*[22] and *ABC* v. *State (NCT of Delhi)*[23], the Madras High Court noted that the mother had been recognised as the child's natural guardian. Since the divorce had been granted and the child had always resided with the mother since returning to India, it was established that the mother held both legal custody and the child's natural guardianship. Therefore, the petitioner, who is the minor's natural guardian, was qualified to deliver the minor's application to the relevant authorities, and those authorities are required to act quickly to evaluate that application. As a result, it can be said that despite the support of the legal system and the judiciary, the

[20] *Ibid.*
[21] 2016 SCC OnLine Mad 12549.
[22] *Supra* note 10.
[23] *Supra* note 19.

difficulties faced by single moms, divorced mothers, and unmarried mothers have not improved over time.

CHALLENGES NEEDED TO BE OVERCOME IN THE CONTEXT OF CONTEMPORARY INDIAN SOCIETY

The role of women in the family was historically viewed as secondary, and they were rarely given a voice in key family discussions or issues. Due to their status as equal partners in raising a kid, both parents must have an equal voice in decisions affecting the welfare of their child. In Indian culture, men hold a dominant role inside the family, giving them access to and control over all the resources. Even though women are legally entitled to custody, men always have the upper hand when it comes to positions of authority like guardianship. Hindu Minority and Guardianship Act, Section 6, which grants the child's father natural guardianship over the mother, breaches Article 14 of the Indian Constitution, which guarantees the right to equality based on gender and creates complications in achieving the objective of gender neutrality. The law no doubt recognises the mother as a caregiver but not a decision-maker by giving her a preference in custody.

As part of a public interest lawsuit challenging Section 6 of the Hindu Minority and Guardianship Act, the Supreme Court also sent a notice to the Centre requesting a response. As it discriminates against women in concerns of natural guardianship, the law has been contested as a violation of the "Equality" principle entrenched in Article 14 of the Constitution.

The husband is declared to be the natural guardian of a minor married girl, which is where Section 6 of the aforementioned Act is in contravention. This was so when persons lured young girls away from their legal guardians and then married them to avoid being charged with the offence of kidnapping them from their legal guardianship as per section 137 clause (b) of the Bharatiya Nyaya Sanhita. Minors cannot marry under the Prohibition of Child Marriage Act of 2006, and the marriage of a minor girl, which has been done by kidnapping, is null and void according to Section 12 of this legislation. Thus, when marriage with the minor itself is prohibited under law, then it should also be illegal to confer guardianship upon a person who has been party to such an illegal act. The possibility also arises that the husband of the minor girl in such child marriage is a minor, too.

The rights of the mother over her children are unquestionable and undeniable. The law does not allow her to be removed from her proper position. Both parents should be equally entitled to

guardianship of their children as well as equal rights to make decisions affecting the child's welfare. To comply with the equality ideals entrenched in Article 14 of the Constitution, the Law Commission of India proposed changes to Section 6 in its 257th report titled "Reforms in Guardianship and Custody Laws in India." While reiterating the recommendations of its 133rd report, they had argued for the removal of the superiority of one parent over the other and suggested that since the welfare of the child should always come first in all situations, both the mother and the father should be taken into consideration at the same time as the minor's natural guardians. Unquestionably, mothers play a significant and important role in a child's upbringing. Nobody, not even the father of the child, may treat her like a lesser being when it comes to holding the guardianship rights of her children.

The comments and digests, which are regarded as the most important sources of Hindu law, included descriptions of both the new traditions that were asserting their legitimacy and the traditional practises that were documented in the smritis. Despite claiming to be based on smritis, the comments expanded, amended, and explained the traditions that were recorded there in order to make them consistent with the accepted customs of the period and to meet the perceived needs of the time. Many aspects of Hindu and Islamic law have historically remained unaltered by centuries of political instability and social and economic change. In the past, practises covered by Hindu and Muslim personal laws had total protection from the law. In India, the laws governing the issue of natural guardianship are incredibly unfair and discriminatory. All personal laws, whether they be those of Hindus, Muslims, or other communities, give the father a preference over the mother in cases of natural guardianship, placing mothers in the background. Divorced, separated, deserted, or single mothers often suffer because of this since they give up many of their rights and bear the weight of the unfair rules. The balance should tilt in favour of mothers who are both breadwinners for their households and capable carers of their minor children, putting them on a par with their male counterparts. This is because the patriarchal outlook of Indian society is slowly disintegrating, and women are increasingly viewed as independent, capable beings. It should be highlighted strongly that rules governing guardianship for married couples should be equal and joint and that single mothers, as well as married mothers, should be given preference for natural guardianship.

The landmark judgments of the Supreme Court on the matter of natural guardianship given to mothers are unsatisfactory and missed the opportunity to elevate the status of mothers as true natural guardians in modern society, where both men and women are considered to be equal in the eyes of the law. The precedents by the Supreme Court are undoubtedly of great importance

in availing natural guardianship rights to mothers to a certain extent. However, giving constitutional validity to Section 6 clause (a) of the Hindu Minority and Guardianship Act, 1956, till the current times has brought a lot of questions in achieving gender neutrality and not discriminating on the basis of gender under Article 14 of the Indian Constitution. The laws for guardianship once again restrict the rights of women while granting full control to fathers by constructing "after" as "in the absence of". The unconditional recognition of the mothers as natural guardians can only come if the mothers are given equal status alongside the fathers as natural guardians.

CONCLUSION & SUGGESTIONS

The idea of patriarchy has influenced the traditional laws of the diverse ethnicities that make up India. In addition to relegating women to a subordinate status in society, this normalised the idea of patriarchal families. This generated numerous difficulties for separated mothers, divorced mothers, and single mothers and was especially detrimental to women who were outside the accepted parameters of the "complete happy family of four"- the father, mother, and their two children. The experiences of single mothers are a testament to how they have faced discrimination over the years because fathers were viewed as the primary caretakers of children in India. The vivid idea of the "complete happy family of four" has become so deeply ingrained in people's minds that when a single mother enters the picture, society looks down on them because of the conventional notions of a complete happy family that are deeply ingrained in people's minds. In many cases, single mothers are even despised for deviating from the ideals of the ideal Indian family. The traditional idea of a four-person happy family is no longer an untouchable benchmark for the Indian family. The rise of single mothers is partly a result of the spread of live-in partnerships. This position has changed as a result of the rising number of single parents, particularly single mothers, as more women are opting to raise their children alone. With the advancement of technology and the accessibility of new conception techniques like artificial insemination and in vitro fertilisation, single mothers today include those who have adopted a child, married women who are solely responsible for the child, divorced women, separated women, abandoned women, unwed mothers, and rape victims. With the number of single mothers increasing, it makes sense that the law should change to give mothers equal and joint rights to natural guardianship. The right to equality before the law is provided by Article 14 of the Indian Constitution. The law must be applied equally among equals, and like and unlike must not be treated equally.

In many cases, the women face difficulties in getting out of their toxic marriages because of the fear that they may get separated from their children or they may have to go through many difficult court procedures to get the right over their minor children. The real problem is that even if they get custody of their children, they will not have the rights of guardianship over their minor children, and the presumption of guardianship will always be with the father of their children unless any unfortunate circumstance arises.

The primacy of the father over the mother as the natural guardian cannot have a rational relation with the object of "welfare of the child" sought to be achieved in every single case, which is why the Hindu and Muslim laws that give fathers preference over mothers in matters of natural guardianship cannot pass the test of intelligible differentia as theorised under Article 14. Similar to Article 14, Article 15 makes it clear that sex-based discrimination is prohibited. Therefore, no law passed by the legislature shall discriminate against individuals solely based on their gender.

It is the need of the hour that women should receive the same respect and recognition as men in society. In a nation where women fight the patriarchal model of society and struggle for their rights, the situation of women has significantly advanced. Nonetheless, certain provisions of family laws continue to prevent women from progressing forward. One such facet is the right to have natural guardianship of her children. The commendable amendment to Section 19 clause (b) of The Guardians & Wards Act, 1890 by the government recognised mothers' equality in guardianship. It is now hoped that the legislature would take up the challenge of modifying Sections 6 and 7 of the Hindu Minority and Guardianship Act of 1956, as well as all other customary personal laws on the subject, to grant mothers and fathers joint and natural guardianship rights. As natural guardians, both parents must continue to execute their guardianship responsibilities concurrently and for the benefit of their children while they are still married. The legislature is now in charge of bringing about changes in the contemporaneous circumstances. It has the ability to alter the current situation's discrimination and provide equity, fairness and justice to the laws governing natural guardianship. It is high time for mothers to be fairly acknowledged as the children's primary natural guardians.

When the mothers are given a chance to fight for the custody of their children equally as the father, then the law should also not show biases in letting women fight equally as men for the natural guardianship of their minor children if any special circumstance arises and the law itself must presume that both the father and mother have equal rights over their minor children including the right of having the natural guardianship in all situations alike.