INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

 ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

RIGHTS OF MOTHERS AS NATURAL GUARDIANS - CASE ANALYSIS OF GITHA HARIHARAN V. RESERVE BANK OF INDIA

AUTHORED BY - AFTAB SINGH

Brief Facts

Githa Hariharan, the Petitioner in this case, tied the knot with Dr. Mohan Ram in 1982. Their son, Rishab Bailey, was born in 1984. The husband and wife jointly applied for 9% Relief bonds for Rs. 20,000 in their son's name before the respondent, the Reserve Bank of India (RBI). They expressly agreed that the child's mother would represent as the guardian for investments in the name of their son. Accordingly, the mother signed the application form as the minor's guardian. The Reserve Bank of India rejected her application and asked the couple to either submit the application form with the child's father listed as the domestic guardian or furnish a certificate issued by a competent authority affirming the standing of the mother as the "natural guardian".

It argued that, as per Section 6(a) of the Hindu Minority and Guardianship (HMG) Act, 1956[1], the mother cannot be considered the "natural guardian" of a minor. An application for child's custody arising from a divorce case had been pending in a District Court in Delhi. The father sought custody of the child during the proceedings. In response, the petitioner submitted an application seeking maintenance support for both herself and her minor son, claiming that the father displayed complete indifference regarding the child and was unconcerned about the child's well-being, and that he was demanding to be the "natural guardian" without fulfilling any duties towards the child.

Consequently, a petition was filed was before the court with the plea for repealing Section 6(a) of the 1956 Act and Section 19(b) of the Guardian and Wards (GW) Act, 1890[2], as they identify the father as the only "natural guardian" and hence infringe the constitutional right to equality of women guaranteed under Articles 14 and 15[3] and to nullify and overturn the decision of the RBI to reject the petitioner's deposit and to issue a mandamus instructing the RBI to accept the deposit with the petitioner recognised as the "natural guardian" of the minor.

[1] Hindu Minority and Guardianship Act., 1956, § 6(a), No. 32, Acts of Parliament, 1956 (India).
[2] Guardians and Wards Act., 1890, § 19, No. 80, Acts of Parliament, 1890 (India).
[3] INDIA CONST. art. 14 & art. 15

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Legal Issues

- Whether, according to Section 6(a) of the HMG Act, 'after' implies the mother becoming "natural guardian" only after the father's death, if she can be the "natural guardian" of a minor son's property, and if she can obtain custody and guardianship while the father is alive and fit.
- Whether Section 6(a) of the HMG Act and Section 19(b) of the GW Act violate the right to equality guaranteed to women under Articles 14 and 15 of the Constitution.
- Whether for the welfare of the minor can Section 6(a) of the HMG Act and Section 19(b) of the GW Act be interpreted narrowly or widely depending upon the circumstances of the case.

Rules

- INDIA CONST. art. 14 & art. 15
- Hindu Minority and Guardianship Act., 1956, § 6, No. 32, Acts of Parliament, 1956 (India).
- Guardians and Wards Act., 1890, § 19, No. 80, Acts of Parliament, 1890 (India).

Judgement

In this case, the court ruled that the term "natural guardian" includes both the father and the mother of the minor and that the definition of "guardian" and "natural guardian" under the Hindu Minority and Guardianship (HMG) Act., 1956 did not make any discrimination between fathers and mothers. The common understanding of the phrase "the father, and after him, the mother" suggests that the father is seen as the primary "natural guardian" of the child, and only if he's not available or alive, then the mother assumes the role of "natural guardian". However, according to the definition provided in Section 4(c)[4], the term "natural guardian" includes the guardians listed in Section 6 of the 1956 Act. Both the child's father and mother are among the three classes of guardians specified in Section 6 of the Act. Since the mother is mentioned as a guardian in the Act, it cannot be argued that she is not a "natural guardian". As a result, the right of the mother to be "natural guardian" is not eliminated while the father is living, and the court can replace him

[4] Hindu Minority and Guardianship Act., 1956, § 4(c), No. 32, Acts of Parliament, 1956 (India).

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as the guardian even when he is alive.

The Court ruled on the constitutionality of the challenged sections, stating that a legislation is presumed to be valid and should be upheld unless it is in gross violation of constitutional principles. It emphasised avoiding narrow interpretations that contradict constitutional principles unless such interpretations drastically deviate from legislative intent. The intention of legislature behind the HMG Act was to recognize the welfare of the minor and thus words under the Act can be interpreted narrowly or widely depending upon the circumstances of the case to ensure the welfare of a minor. Hence, to rectify the inconsistency in the law and align it with constitutional principles, the Apex Court offered a harmonious, ensuring it conforms with constitutional principles. Section 6(a), when interpreted in conjunction with Articles 14 and 15, can be construed in a manner that ensures no discrimination between the rights of fathers and mothers. It was determined that interpreting "after" in Section 6 of HMG to mean post the lifetime of the father would infringe the principle of gender equality enshrined in the Indian Constitution, therefore the word "after" was understood to be referring to the "absence of", where absence implies the father's absence from the property or person of the minor. Regarding parental responsibility[5], the court asserted that both parents should be considered guardians, and any interpretation favouring the father is unconstitutional. However, it was also stated that in exceptional circumstances, the mother could assume guardianship only during the father's lifetime without removing specific language from the statute.

The Court also ruled that both the parents of the minor are equally liable to take care of the minor and in case the father is deceased, uninterested in the child's affairs, or has agreed with the mother to let her handle them, or for any other reason does not attend to the child, the mother becomes the "natural guardian". The Supreme Court instructed the Reserve Bank of India to accept letters signed by the mother alone without requiring the father's signature. This is a prospective judgement which means that the earlier cases cannot be reopened on the grounds of this judgement of the Supreme Court. The Court dismissed the Writ Petition, stating that matter regarding the guardianship and custody of the minor should be decided by the District Court of Delhi.

Critical Analysis

Prior to the ruling in Githa Hariharan v. RBI, the Courts typically viewed the father as the "natural

[5] Shilpa Bhandarkar, "Mums the Word?" - Understanding the Githa Hariharan Judgment, Iss. 1, NLSJ: Vol. 10: Article 11 (1998)

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guardian" of a minor child, meaning he had authority over the child's affairs as long as he was alive. However, there was a significant shift in this perspective due to previous legal cases.

In Re **Mc Grath**[6], the English court emphasized the paramount importance of the child's welfare in determining natural guardianship, defining welfare broadly to include moral, religious, and physical aspects, along with affectionate ties. Similarly, in **Gyngall**[7], the court instructed authorities to assess the circumstances, parental and child positions, age, religion, and happiness of the child, while considering the natural rights and feelings of both parents and child before making guardianship decisions. In the **Jijabai Vithalrao Gajre**[8] case, the Supreme Court ruled in favour of a mother who had leased her minor daughter's property while the father was alive but missing from the child's life. The court established the mother as the "natural guardian" because she was solely responsible for the child's care and well-being.

However, the Githa Hariharan case brought about a broader change in interpretation. While the decision in the Gajre case was specific to its circumstances, the verdict in this case established a general interpretation of certain legal provisions. Specifically, it changed how Section 6(a) of HMG Act and Section 19(b) of GW Act were to be interpreted in similar cases moving forward. In this case, the Supreme Court acknowledged that a mother can indeed serve as the "natural guardian" of a minor child even while her husband is alive. The Court reinterpreted the term "after" to signify "in the absence of", thereby shifting the balance of power towards mothers. This reinterpretation has significant implications, empowering mothers with greater authority in guardianship matters concerning their minor children. It was held that the word "after" if read literally, would be violative of basic principles of gender equality as guaranteed in the articles of the Constitution[9], CEDAW[10], and UDHR[11]. The directive to interpret the impugned sections in consonance with the Constitution highlights the Court's commitment to upholding constitutional principles, including gender equality. By challenging the traditional interpretation that prioritizes the father's role as the "natural guardian", the Court acknowledges the need to rectify discriminatory practices embedded in the law.

However, the Court's decision to keep the phrase 'after him' in the law while allowing for exceptions poses issues of consistency and coherence. On the one hand, the Court highlighted

[6] In Re Mc Grath, (1893) 1 Ch 143 17
[7] Regina v Gyngall, (1893) 2 Q B 232
[8] JV Gajre v Pathankhan and Ors, (1970) 2 SCC 717 (India).
[9] INDIA CONST. art. 14 & art. 15
[10] UNGA, Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Treaty Series, vol. 1249, p. 13, 18 December 1979,
[11] UNGA, Universal Declaration of Human Rights, 217 A (III), 10 December 1948,

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gender equality and children's wellbeing. Although, it did not entirely address the underlying prejudice in the law's phrasing, by interpreting 'after' as 'in absence of' the Court effectively maintains the primacy of fathers in guardianship matters, thereby perpetuating the unequal treatment of mothers.[12] This approach, while ostensibly offering some relief to mothers in certain circumstances, ultimately falls short of recognizing their equal status as "natural guardians" alongside fathers. Indeed, if the Court had unconditionally recognised mothers as "natural guardians", it would have been a more significant step towards achieving gender equality and acknowledging the invaluable role that mothers play in the upbringing and care of their children. By confining mothers' rights to guardianship only in cases where fathers are absent, the Court continues to limit their autonomy and perpetuate gender-based stereotypes that undermine their parental authority.

The limited relief granted to women in the ruling represents a lost chance to challenge set patriarchal notions and achieve true equality. Instead of establishing equal rights for both parents from the start, the Court's ruling perpetuates the idea that fathers are primary caretakers and mothers are secondary figures whose authority is based on the father's absence. Furthermore, the Court's reluctance to strike down the discriminatory language outright, citing the presumption of validity of legislation, may be viewed as a missed opportunity to assert judicial activism in promoting gender equality. While judicial deference to legislative intent is important, it should not come at the expense of fundamental rights and principles enshrined in the Constitution.

In conclusion, while the Court's decision to reinterpret guardianship laws in light of constitutional principles is a step in the right direction, the judgment falls short in fully addressing the underlying gender biases and inconsistencies in the law. A more coherent approach that prioritises equality, clarity, and consistency in guardianship matters is essential to ensure the effective safety of children's rights and the promotion of gender equality in society.

Conclusion

In this landmark case, the Apex Court recognised the mother's capacity to be appointed the "natural guardian" of a minor child even when her husband is living, a decision made for the well-being of the child. It has reinterpreted the word "after" to mean "in the absence of", which has led to a change in the balance of power in favour of mothers and construed that "after" can also mean temporary absence of the father because of any reason. The court, while considering

[12] Harpreet Singh Gupta, Githa Hariharan v. Reserve Bank of India: Impact on Hindu Guardianship Law, Iss. 7, CNLU LJ 249 (2017-18)

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the right to privacy of the mother and the well-being of the child, referred to Section 6 of the HMG Act of 1956, which defines the father as the "natural guardian" of a minor, and after him, the mother. The significance of the judgment lies in ensuring equality between the father and mother in decision-making regarding the minor child. It suggests that neither parent's decisions regarding the child are to be considered absolute.

Instead, both the father and mother should be treated equally when making decisions on behalf of the minor. This interpretation implies that mothers should have the authority to make investments, their signatures should be recognised on application and passport forms, or at the very least, they should be actively involved in decision-making processes. It acknowledges the natural guardianship of mothers and recognizes their significant role in making decisions regarding their child's welfare and property. The Githa Hariharan case was indeed a breakthrough in granting natural guardianship rights to mothers. However, the Supreme Court could have gone a step further struck down Section 6(a) of the 1956 Act. Despite the court's understanding of Sections 6(a) and 19(b), and the interpretation that "after" means "in absence of", there's still a sense that the rights of mothers are somewhat limited.