

Redefining Guardianship: A step towards Gender Equality

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Abstract:

This research paper examines the evolution of guardianship laws in India and how they relate to the constitutional principle of gender equality. Traditionally, under the Hindu Minority and Guardianship Act, 1956, the father was recognized as the natural guardian while the mother occupied a secondary role. Such a framework, rooted in patriarchal assumptions, undermined women's dignity and contradicted Articles 14, 15, and 21 of the Constitution, which guarantee equality, non-discrimination, and dignity. Judicial interventions, however, have progressively redefined guardianship by emphasizing the welfare of the child as paramount and by interpreting laws in light of constitutional mandates. Landmark cases such as *Jijabai v. Pathankhan* (1971), *Githa Hariharan v. RBI* (1999), and *ABC v. State (NCT of Delhi)* (2015) recognized mothers as equal guardians, supported single mothers, and challenged gender bias. The study concludes that although the judiciary has played a vital role in promoting gender justice in guardianship, comprehensive legislative reform is still required. A gender-neutral framework must be established to uphold constitutional values and safeguard every child's best interests, free from discriminatory stereotypes.

Introduction:

The Indian legal system has always recognised the importance of guardianship in protecting the rights and welfare of children. A guardian is entrusted with the duty of taking care of the child's person and property until the child attains majority. Traditionally, Indian personal laws, specially Hindu Minority and guardianship act 1956(HMGA) placed the father as the natural guardian of a minor child, while the mother was considered as secondary guardian who could step in after the father, under old Hindu law, mother could not act as the natural guardian of the child when the father had written a testament depriving her of the natural guardianship of the minor. But under this act she can be a natural guardian after the death of father. This section has given mother right of natural guardian but place her in a secondary role, her position is subordinate caregiver. Under the law father is decision maker of child and mother is merely for day to day care. It implied that women were inherently less capable of acting in the best interest of their children. Such a presumption not only violated the dignity of mothers but also contradicted the constitutional commitment to equality,

Such a framework came under criticism for being discriminatory and inconsistent with the fundamental right to equality guaranteed under art 14 of the constitution of India. When laws or customs give automatic preference to fathers over mothers in matter of guardianship is a clear example of such inequality. They violate this principle of equality. Over the years, the judiciary has stepped in to reinterpret laws in a way that is more just, equal, and centred on the

welfare of the child. The judiciary, therefore, has used Article 14 to remove these inequalities and promote fairness between parents.

Objective

- To analyse the evolving concept of guardianship in India,
- To study the judicial efforts to redefine the role of mothers as natural guardian in the light of Art 14 of the constitution
- To identify gaps and inconsistencies in existing guardianship laws that contribute to gender inequality.

Research Methodology

In this research paper, Author has used doctrinal research method. And analysed various Acts and Judgement.

Guardianship under Hindu Law

Section 6 of the HMGA

Section 6 of the Hindu Minority and Guardianship Act provides that in the case of boy or unmarried girl, the father and after him, the mother shall be natural guardians. Section 6(a) of the act further provides that the custody of a child under the age of five years will be with the mother, although the father may be the natural guardian.

Section 4 of the HMGA

Section 4(a) of this act defines Minor, a person who has not completed the age of eighteen years. A minor is considered to be a person who is physically and intellectually immature and therefore, in need of protection. A guardian is a person who take care of minors and guide them in every step of life, guardianship encompasses not only the physical care of the minor but also the management of their property. Section 4(b) of this Act defines “Guardian” as a person responsible for the care of a minor’s person, property or both.

Guardians may be:

1. Natural guardians (Section 6)
2. Testamentary guardians (appointed by will)
3. Guardians appointed by the court
4. Persons authorized under specific enactments.

Section 13 of the HMGA

This section enshrines the principle that the **welfare of the minor shall be the paramount consideration**, overriding parental preference or legal entitlement.

Guardianship under Muslim and Secular Law

In **Muslim personal law**, the father is traditionally recognized as the natural guardian, with the mother having only custodial rights for limited periods. Male relatives on the paternal side are given preference even after the father's death.

The **Guardians and Wards Act, 1890** serves as a secular framework. It prevents courts from appointing a guardian if either parent is deemed fit, but historically it too privileged fathers. The **2010 amendment** acknowledged mothers as guardians, marking a progressive shift.

Constitutionalization of Guardianship: Articles 14, 15 and 21

Article 14 is the foundation of equality in India. It ensures that no person is denied equality before the law and equal protection of law. The Supreme Court has repeatedly said that any law or practice that is **arbitrary, discriminatory, or based on stereotypes** violates Article 14. Article 15 forbids sex-based discrimination, and Article 21 guarantees dignity, privacy and personal liberty. Together, they offer a robust basis to revisit statutory presumptions that privilege fathers over mothers. In matters of guardianship, giving fathers automatic preference over mothers is a clear example of such inequality. Using this provisions, the court tested whether section 6(a)'s wording violated fundamental rights, judiciary through following cases remove these inequalities and promote fairness between parents.

Judicial role in redefining Guardianship

1. Jijabai Vithalrao Gajre v. Pathankhan (1971)

In this case, the Court recognized a mother as the natural guardian when the father had abandoned the family. This was one of the first steps toward recognizing mothers' independent role as guardians.

2. Githa Hariharan v. Reserve Bank of India (1999)

The Supreme Court gave a progressive interpretation of Section 6(a). It held that the word "after" does not mean "after the lifetime of the father." Instead, it should be understood as "in the absence of" or when the father is unable/unfit to act as guardian. Such an interpretation will keep the statute within the constitutional limits otherwise the word after if read to mean a disqualification of a mother to act as guardian during lifetime of father the same would violate one of basic principles of our constitution i.e. gender equality, It ruled that a mother can also be a natural guardian during the father's lifetime if the father is not taking care of the child. Thus, both mother and father are natural guardians, and the welfare of the child is paramount. The Court declared that a mother cannot be considered

secondary or inferior in guardianship matters. The judgment redefined the meaning of guardianship under Hindu law, ensuring gender equality.

3. Ramesh v. Anjanabai(2003)

Ramesh, a minor, received property from his uncle. His mother, acting as natural guardian, signed papers and later gifted part of the property to the uncle's wife in compromise of disputes. Later, Ramesh (through his father) challenged the gift, arguing that under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the mother cannot be a natural guardian while the father is alive, and that the alienation of property without court's permission was invalid. The Bombay High Court rejected the father's claim. It held that since the father had been absent and had not cared for the minor, the mother was the natural guardian. Relying on *Githa Hariharan v. RBI* (1999), the Court said that the mother can act as a guardian during the father's neglect/absence. Hence, the gift executed by the mother was valid, and no court's permission was needed.

4. Anju Mehra v. UOI (2013)

The HC stated that it cannot be said that the mother is not the natural guardian during the lifetime of the father or until he is disqualified from being the natural guardian. "When mother and father are natural guardians, adding the income of the minor child to the income of the parent whose income is greater can't be said to be arbitrary, artificial or evasive of the object sought to be achieved," in this case The court upheld gender equality and ensured that mothers are recognized equally as natural guardians in line with article 14 and the children's welfare principal,

5. ABC v. State (NCT of Delhi) (2015)

The Court held that an unmarried mother could be the sole guardian of her child without having to reveal the father's identity. This decision promoted the dignity and privacy of women and recognized the reality of single-parent families.

6. Nigam v. Regional Passport Officer (2016)

The Delhi high Court held that a single mother can apply for her child's passport without mentioning the father's name. If the mother applies as a single parent. The insistence on father's name was arbitrary, violative of Art 14 (right to equality) and Art 21 (Right to life with dignity) of the Constitution. The Court directed the Passport Authority to process applications without mandating the father's details if the applicant (single mother) chooses not to disclose them. The judgement recognized the right of single mothers and upheld that a mother is an equally natural guardian, removing patriarchal barriers in administrative process.

7. **A. Aniswar, Minor v. Union of India (2016)**

The Court ruled that a divorced mother holding actual custody of her minor child is the child's natural guardian and need not furnish a formal custody order when applying for an OCI Card, deeming such a requirement arbitrary and directing OCI registration proceed without it.

8. **Binita Devi v. Union of India & Ors. (2022)**

The Supreme Court held that a mother is the natural guardian of the child after the death of the father, the mother has the absolute right to decide the surname of the child. "The surname is an important facet of identity. To deny the mother the right to decide the surname of her child is to deny her dignity." The Court emphasized that a child cannot be forced to retain only the father's surname, especially when the mother is the surviving guardian. Guardianship laws must be interpreted in line with Articles 14 and 15 of the Constitution (equality and non-discrimination).

Conclusion

The transformation of guardianship law in India reflects the judiciary's active role in dismantling patriarchal biases. From Jijabai to Githa Hariharan to Binita Devi, courts have reaffirmed that **both parents are equal guardians** and that the **child's welfare** must always prevail over gender-based preferences.

However, to fully realize gender equality, legislative reform is necessary. Outdated statutory provisions must be replaced with a **modern, gender-neutral guardianship framework** that reflects constitutional values. Equality is not just about giving rights to parents; it is about ensuring that every child grows up in an environment where decisions about their future are made in their best interests, free from stereotypes and discrimination.

References

1. Hindu Minority and Guardianship Act sec-6
2. Hindu Minority and Guardianship Act sec-4 (a), 4(b)
3. Hindu Minority and Guardianship Act sec-13
4. Constitution of India Art- 14,15,21
5. Jijabai Vithalrao Gajre v. Pathankhan, (1971) 2 SCC 609.
6. Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.
7. Ramesh v. Anjanabai, 2003 SCC OnLine Bom 32.
8. Anju Mehra v. Union of India, 2013 SCC OnLine Del 1942.
9. ABC v. State (NCT of Delhi), (2015) 10 SCC 1.
10. Nigam v. Regional Passport Officer, 2016 SCC OnLine Del 3144.

11. A. Aniswar (Minor) v. Union of India, 2016 SCC OnLine Ker 26338.
12. *Binita Devi v. Union of India & Ors.* (2022) 10 SCC 1

