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THE LEGAL RECOGNITION OF SINGLE MOTHERHOOD IN INDIA

- Muskan Bansal¹

ABSTRACT

In past years, a multi-faceted question has been asked before the courts about the conception of parenting by the state that prioritizes the father in the public recognition of a child. The cases are socially and contextually significant because beyond the patriarchal family paradigm they portray new ways of parenthood. A lot wider range of single motherhood is included in India's social and cultural phenomena as compared with the statute code that is provided by the legislature. There were unequal outcomes in the world on the elimination of illegal rights as a legal group. The results are mixed for female equality as mothers. The reform of the law in this region was largely carried out for the sake of the rights of children, but equity was also considered. Even so, simultaneously, it arose that the interests of birth fathers should also be granted, and that the statute really should equalize the rights of birth father and mothers. The paper studies the famous ABC case in details, discussing the changes the judgement brought and some of the flaws in the judgement. The paper also discusses various cases that took ABC as a stand and also about the sentimental claims where judges answered practically and simultaneously provided relief to the single mothers, thus making this project significant.

INTRODUCTION

“Around the world, we are witnessing concerted efforts to deny women’s agency and their right to make their own decisions in the name of protecting ‘family values’. Yet, we know through research and evidence that there is no ‘standard’ form of family, nor has there ever been.” –

Phumzile Mlambo-Ngcuka (UN Women Executive Director)

To begin with, a woman carries her male partner's child. If she is engaged to him, the child inherits its identity, land, community membership and so forth. But the child is still his

¹3rd Year, B.B.A. LL.B. (Hons.), KIRIT P. MEHTA SCHOOL OF LAW, NMIMS (Deemed to be) UNIVERSITY, MUMBAI.

illegitimate offspring, even if the concerned woman is not engaged to him. The advent of seeds and earth's symbols has been noted by anthropologists in the reproductive philosophies' dominant in the nation, in which women are supposed to act like an earth.² Whereas the body contributions of the mother - blood and milk - are considered important to the infant, they are not considered to transmit identities to the child, like those of the father.

Because of a variety of diplomatic reasons, the Indian government also demanded for the name of the father, until recently. These activities, which connected the father with the civil society and the mother only with private domain, were underpinned by the differentiation of parental positions in the patriarchal family. Since all mothers were reduced to subordinate position, standardization of the public patriarchal family paradigm has had adverse effects, especially for single mothers – 'women raising their offspring up beyond the conjugal frameworks.'³

For instance, because hospitals fail to register unnamed births, sex workers are required to take outsiders out from the street and make them appear well before hospital officials as fathers of their infants. While it helps them to get their children's identity documents, if the 'parent' indicated on the birth certificate does have an upper caste suffix, it poses a challenge for those of the lower castes to request for their kids' caste identity documents. Poverty stricken single mothers, divorced/separated or abandoned by their spouses, find it really challenging to reap the benefits, as schools do not recognize mother's identities and income records to establish that their children have the right to receive these seats,⁴ of the seats allocated under the Right to Education Act.⁵ Rape victims and their children born as a consequence of rape often face common problems, which have led the administration of Madhya Pradesh to order schools in these kinds of cases that they do not force on getting fathers' information. Passport authorities allegedly declined to approve single mothers' requests for their children from divorced/separated/deserted mothers without evidence of approval from their former/absent spouse.⁶

Some of the women were in confused or briefly heterosexual marriages, during their pregnancy, in earlier decades. In a couple of occasions, women did not reveal a complex legal situation to

² Pushpesh Kumar, *Gender and Procreative Ideologies among the Kolams of Maharashtra*, 40 (3) CONTRIBUTIONS OF INDIAN SOCIOLOGY 281, (2006).

³ Deepa Priya Mehrotra, *Home Truths: Stories of Single Mothers* 6 (Penguin Books 2003).

⁴ Kendriya Vidyalaya Sangathan v. Shanti Acharya Sisingi, (2011) 176 DLT 341.

⁵ In accordance with Section 12(1)(c) of the Right to Free and Compulsory Education Act 2009, private unassisted schools have to designate for the members of "economically vulnerable" and "disadvantaged classes" in the communities, a minimum of 25 percent of the available number of seats in education. The Act and the Rules set out these classes and their requirements for qualifying.

⁶ Arpita Raj, *Single women seeking kids' passports run into red tape*, TOI (2016).

the man they expected to raise – is that, whether the father, for example, was obligated to know that he has a biological child and ought to have rights on the grounds of genetic bond? More generally, the legislation presented a variety of women with major obstacles, from the right to educate children alone to the difficulty of registering children, crossing borders and securing passports. Women's rights as mothers, has typically been interpreted in the context of illegitimacy laws. The legal and social structures, of men, as monetary providers and sole earners, particularly in family law, came out of certain immediate concerns of financial obligation.

Coming to the problem, *ABC v. State (NCT of Delhi)*⁷ became the basis of giving legal recognition to single mothers in India. Though the case has been a significant movement towards breaking the patriarchal norms of the standardized set of family and society, the judgment also discusses few important points that have been ignored, time and again, and the flaws in the judgement.

Further, the category comprises mothers whose husbands are dead, unmarried mothers and women, discarded or abandoned mothers, among many others, as single adopted mothers or single mothers, who use artificial reproductive technology. So, another problem that exists is that the phenomenon of single motherhood has not been built in accordance with this wider social class, and only by biological connectivity or purpose and not as a mechanism as to who carried out the parental work. Single motherhood is therefore a multipurpose societal phenomenon with laws and regulations that needs to be identified and regulated properly.

The various research questions that need to be addressed are – Why does a single mother have to struggle for her legal identification, when the role of the child's father was never performed; Why does a mother's name do not bear any priority over the child's certificates; What were the various points that were upheld in *ABC v. State*; and what are the different challenges posed by law against single mothers?

Therefore, the objectives of this paper are –

1. To study *ABC v. State (NCT of Delhi)* and discuss various considerations of a single mother's claim.
2. To study the intention framework and the limitation of the scope with regards to father's name on birth certificates.

⁷ (2015) 10 SCC 1.

3. To study various other important concepts that were highlighted and upheld in the above case.
4. To study other similar cases where the discussion turned to who took efforts to perform the actual duties of parenting far beyond the contextual and social significance.

***ABC v. STATE (NCT of Delhi)*⁸**

The facts of the case are such that, the plaintiff was a fully qualified, successful and economically healthy lady. She was a believer of the Christian religion. Even without the help of her son's father, she had raised her son. To appoint the nominee for her savings i.e., her son, she was ordered to reveal her father's identity or obtain a court certificate of custody/adoption. She was unwilling to make the father's identity public. She then submitted an application for the appointment of sole guardian under section 7 (Power of the Court to make an order as to guardianship) of the Guardians and Wards Act of 1890.⁹ She even submitted an affidavit altering the rights of guardianship, if in the possibility; the child's father raises an objection against it. However, as per Indian case law, parents must be made a party to this proceeding mandatory if they are alive. In the immediate situation, however, the father's identity had to be revealed to him to proceed. Afterwards, the Guardian Court and the Delhi High Court rejected their petition because of her repeated rejection to disclose the identity of her son's father. She lodged an appeal before the Supreme Court, aggravated by her dismissal.

After the following considerations, the appeal was approved. Countries around the world – UK, US, Ireland, Philippines and even India – maintains the rights of parents and custodians to an infant born out of marriage with a mother above a father. In this context, the Hindu Minority and Guardianship Act of 1956 (India) gives mother preference to the rules of the unlawful child's natural guardian, and the 1964 Infant Guardianship Act (Ireland), for instance, states that "the mother of the illegal baby shall guard the child," etc. The hon'ble Supreme Court noted the same thing.

Section 11 of the Guardians and Wards Act, 1890¹⁰ was interpreted as, it is understood the word 'parents' as meaning that the parent alone is primarily for illegitimate children with a sole parent to care for. Therefore, no warning to the uninvolved parent is needed in the event of a request by the specified parent to be nominated as a sole guardian. Although this would not exclude from the unimplicated parent the power to the Guardian Court to later, whether in the

⁸ AIR 2015 SC 2596.

⁹ The Guardians and Wards Act, 1890, § 7, No. 8, Acts of Parliament, 1890 (India).

¹⁰ The Guardians and Wards Act, 1890, § 11, No. 8, Acts of Parliament, 1890 (India).

best interests of the child, change or cancel his orders. Section 19 of the same,¹¹ was interpreted as, in any circumstance in which a parent is not actually responsible for a minor's affairs on the grounds of his or her ignorance, for the purposes of Paper 19(b) of the Guardian and Wards Act, 1890 he or she is declared to be 'absent' and the mother may serve as the child's guardian. Meaning, if he is not interested in the raising of the kid the hon'ble Apex Court has explicitly declined to prioritize father's interests to those of a mother to the illegitimate child. A single mother can then raise her infant, and it is not necessary to acknowledge an uninvolved father.

India today encounters several mothers who are capable of raising their child by themselves because the father has left both of them. There is now a debate as to if legal recognition is necessary for 'the biological father' who performed no part in a child's life outside of his birth. The hon'ble Supreme Court replied negatively to this question and held that it was not necessary to impose on a deserting father in the best interests of the child.

But along with it, the hon'ble Supreme Court also answered various questions that often go ignored. Along with it, unwed mothers right to privacy was also recognized and that it would be broken if she were requested to share her child's name and information in contravention of her will. Secondly, The Supreme Court duly recognized a child's right to recognize the identities of its parents, in lieu of all of the above factors. In this situation the same thing happened to the mother. She was questioned to tell her father's name and information. However, the information obtained was not released. It is stored in an envelope that is properly sealed and can only be read in the best interests of the child, according to strict orders of the court.

They ruled that perhaps the mother was really the child's rightful guardian, and ordered that the information from the genetic parent they had received in secrecy from the mother, was placed in an enclosed packet, that would be released at the court's request, if the child wanted to know whoever the father was. This solution enabled them to enforce the mother's point, which in this case was reasonably necessary, ensuring the well-being of the child and protecting her right, to know his parental identity.

But the problem is, even in the judgement, in the rationale of the judges, the desire or willingness of the single mother to nurture her child by itself was not significant. It was the lack of role of father's participation in the child's life that prompted the judges to determine if the genetic parent should be informed or not. The uninvolved father was rebuked by the judges on

¹¹ The Guardians and Wards Act, 1890, § 19, No. 8, Acts of Parliament, 1890 (India).

the grounds that he was an irresponsible man/father: "Every man accountable will follow his descendants and care for the child he introduced into the world; this does not seem to be the scenario at hand."¹² They therefore deemed it inappropriate for the child's well-being. What is worth noting is that it was the presumed rejection by a negligent father which enabled the judges to determine parental position, instead of the single mother's stated purpose.

Certainly, judges in the history to consider married mothers as the guardians, under the HMGA, the Supreme Court's 1999 judgement in *Githa Hariharan v. RBI*,¹³ is perhaps the most remarkable example. In her marriage to a legal father, the mother applied to the Bank for those bonds to be bought in the possession of her minor son, with her as the legal guardian for investing. In order for it to either to be approved by the father or to be supported by a court order certifying her to be the guardian, the bank rejected the letter. Guardian for a Hindu minor child was "the father, and after him the mother," according to Section 6(a) of the HMGA¹⁴ which ruled the parties in that case. Githa questioned the division's substantive legitimacy for violation, under the Indian Constitution, of her equal right (Paper 14)¹⁵ and sexual non-discrimination (Paper 15).¹⁶ A three-judge bench in the Supreme Court, not ready to do anything about it, used an alternate reading in paragraph 6(a), according to which the legal purpose of child protection, of constitutional guarantees of non-discrimination and of the dignity of the law is met.

On the basis of *Jijabai Vithalrao Gajre v. Pathankhan*,¹⁷ a former Supreme Court decision, the judges considered that the term "after" should be interpreted as the "in the absence of," and not "after the death of" the father. Therefore, the mother was able to be legal guardian of a minor Hindu person, even during his lifespan, if the father was unavailable in the child's life, whether for negligence or for physically or mentally impairment, or because of a deal between his or her parents.

In that respect, the universal applicability of the notion that an uninvolved and negligent father has no 'natural' right to the guardianship of his child was one of ABC's main outcomes.

Under the decision, an unmarried mother may request sole custody of her child without having to provide the identity of uninvolved father with an obligatory note. In addition, she does not contradict her desire to disclose the father's identity. At the same moment, father identification

¹² *Supra* note 16, ¶ 11.

¹³ AIR 1999 SC 1149.

¹⁴ The Hindu Minority and Guardianship Act, 1956, § 6(a), No. 32, Acts of the Parliament, 1956 (India).

¹⁵ INDIA CONST. art 14.

¹⁶ INDIA CONST. art 15.

¹⁷ AIR 1971 SC 315.

might not be necessary to secure the birth certificate of an infant.

PROVING PARENTHOOD & PRAGMATIC JUDGES

The only basis of parenthood in Indian law is no longer genetic relation. In the case of parenting, intent establishes a moral foundation for parenthood by adoption or ARTs. The purpose argument is the most obvious in substituting where an individual contractor is known as the "meaning parent," to give birth to his child. Intent-based parenthood violated motherhood and fatherhood's conventional legal constructs, so it severed the links between marriage and reproduction. A single woman (or a man) may then be a parent without seeing any notions in this context of legitimacy/illegitimacy. This chapter will deal with how *ABC* as a judgement is being used to extend the scope by various single mothers as well as judges, and to discuss about practical approaches adopted by judges regarding sentimental claims.

In *Mathumitha Ramesh v. Chief Health Officer*,¹⁸ a divorced and single mother moved to the high court of Madras, in order to instruct the local officials to remove the identity of her daughter's father, whom she designed by intrauterine donor sperm insemination. The issue of the mother was that, a man's name had been recorded in the hospital, as the father of her children, which contributed to the wrong identification into the birth certificate, which occurred at the moment of conception. She asked the Municipal Corporation to erase the identity from the birth certificate and claimed that she herself was the only legitimate parent, since she had designed a confidential donor sperm. However, this claim met with bureaucratic sensitivity. The official involved of the municipal company requested that the statute correct the child's father identity, in the certificate of birth, but not that he should be deleted. The mother sent a letter submission to the High Court to ask her of a separate official. The second official also denied her request on the same basis as the first which led her to submit a second written request.

The Court ruled that the registrar is entitled to solve the issue according to Section 15 of the RBDA,¹⁹ and the alleged difference between the correction and omission of a mistake in the name was unwarranted. The judge questioned substantially, if the officials were permitted in all respects to decide on the identity of the father, for the certificate of birth. Indeed, it was not enforced by either the act or the rules, but a section to the name of a parent was included in the birth registration document. The layout of the form carried by the judge was contradictory to the notion that an unknown donor was conceived, whose name was subject to the statute. In reality, in the event of children born by in vitro fertilization, or artificial insemination with

¹⁸ 2018 SCC OnLine Mad 2153.

¹⁹ The Registration of Births and Deaths Act, 1969, § 15, No. 18, Acts of Parliament, 1969 (India).

donor sperm, this mismatch has long been resolved by a guideline informing the registrar to keep a section for the father's name vacant in the birth register. This event then showed that the new laws had not been applied to the institutional machinery, which had led the claimant to round up governmental offices and filing writ petitions twice.

Returning to judging's argument in this instance, the fact that instituting the identity of the parent in the birth certificate was a challenge, not only raises the ethical-legal question particular to this event, as well as the issue of the courts where fathers were "negligent and unwilling husbands," and where the former forced their wives to bring the children up themselves. The judge observed *ABC* assistance, and said that it is entirely wrong to persuade these single or unwed mothers to announce the identity of the child's parent who decided to leave the child.²⁰

Single mother sent requests for a written petition to order the municipal corporation to remove the details of the hereditary fathers in their birth certificates, in both *ABC v. Bombay Municipal Corporation of Greater Mumbai*,²¹ and *Bhavika Jaywant Lohar v. Mumbai Municipal Corporation*,²² upholding the *ABC* judgement. In both these instances, the mothers claimed that they were not engaged to a genetic parent, whose names are listed on their birth records, and that they had been given unmarked signature by hospitals and entered the particulars of the fathers without the consent of the mothers themselves. In both cases, the Judges rightly found out in the context of *ABC*, that birth certificates were issued, and that the identities of fathers were not removed from those already issued. In reality, the above-mentioned Madras High Court decision did not pose a problem since the case concerned a donor of an unidentified sperm. However, there were separate lawsuits before the High Court of Bombay.

In both cases, the judges refused to litigate the questions as matter of the written petitions notwithstanding the factual arguments and rebuttals concerned. However, the mothers were given their desirable remedies. The judges did not want to order the elimination of fathers' identities from birth records, because the *ABC* has stressed a child's freedom to recognize their genetic parents. Therefore, in the *ABC* case, they extended to birth certification as balancing act carried out by the hon'ble Supreme Court.

It is to emphasize (a) the contexts in which the centrality and even importance of the father's

²⁰ *Supra* note 26, ¶ 13.

²¹ 2018 SCC OnLine Bom 868.

²² 2018 SCC OnLine Bom 1019.

identity is challenged for the public identity of the infant and (b) the various interests and problems involved in resolving these issues and explain these situations in depth. All three examples illustrate the constructive involvement of judges in the context of bridging the disharmony between governance processes including birth registration and new models of parenthood. In the previous exclusive sphere of the state, ABC allowed more room for individual freewill.

Further, moving to pragmatic judges, it is most clearly demonstrated in a number of passport situations, the affective component of identity papers. The children or parents requested judicial review in these cases despite the assertion of the passport officials, that the children's passports should be obligatory and that all parents' names should be used. Most of these plaintiffs challenged the state principle of lineage and stressed the improvement in the relationship status of the parents after divorce, and/or remarriage. They used other times to contend with the removal or replacement of the name of a legitimate parent to convey feelings of pain, discomfort and emotional separation. In the case of *Kavneet Kaur v. Regional Passport Office*,²³ the daughter requested that she be permitted to bring the passport with her stepfather's name, or only that of his mothers', but not that of her genetic father, of whom she had no recollection, who had divorced her mother in her childhood only.

Also, in *Vibhu Kalra v. Regional Passport Office*,²⁴ a son wanted the appearance on his passport of his step-mother, rather than the mother's because it was the former who cared for his desires and had "the requisite attention and love for a father" which the latter willingly failed to provide him.

In all these situations, the denial by the passport officers of applicant requests was focused on a collected edition of administrative directives governing a regularly amended passport found in the Manual of Passports. After the refusal of its demands, petitioners reached the High Courts, where it is seen that their appeals for legal action dominated by accounts that the legal parent, whose name they wished to delete / replace, had failed to fulfil its parental position.

These arguments are open to judges. In all this, they choose either in the best of their ability or to recognize the person who had in fact performed the parental task, in support of the plaintiffs. This allowed judges to look at social behaviour as a parent, rather than structured break-up procedures and establishing relationships between parents and children, as directed by the

²³ 2014 SCC OnLine Del 3884.

²⁴ 2015 SCC OnLine Del 8868.

Passport Manual. In the case of *Mohit v. Union of India*,²⁵ judges ruled that the stepfather, having behaved as a dad to his wife's son as early as he was young, was considered as "for all purposes" the legal guardian of the son, even without being appointed by a court to him.

Also, in *Mohd Armaan v. Union of India*,²⁶ in which the step father who didn't adopt the son of his wife from her previous marriage, nor was his guardian nominated by any tribunal, the judges rationalized the importance of the relationship, by an agreement of the following marriage, between an individual as a father, or as a guardian, and an unwanted child recognized and legally acknowledged by the law.

Integration of all these considerations enables the recognition of a single motherhood when it comes to passports. In the case of *Shalu Nigam v. Regional Passport Officer*,²⁷ appropriation of the passport authority failure to grant her daughter's passport, without the name of her parent, single mother appealed to the High Court of Delhi. The situation of the mother was that, the authorities had given a passport to her on multiple counts, but this time they declined to, without deciding on the father's identity. Shortly following their daughter's birth, she and her husband had separated and raised the child on her own. She claimed not only would it change the identity of the father, which she had from the time of birth, but it would also injure her because she would have to have the name of a man who rejected her, because she was a child.

There are various manifestations of the similar situations: the approach of judges to the above-mentioned father's identity and the theory previously established in the case of guardianship – that a father without including himself should not have a legitimate part to play in the life of an infant. As noted in the discussion above, judges favour parental issues over biological linkages, even though they choose them by laws or regulatory regulations. The results of this work are not limited to biological connectivity. The judges may, with their permission, with their child rejection or by giving up custody after divorce, employ the alienation stereotype as the primary classification for all forms of parental inaccessibility to validate sidestepping of such laws. In such instances, sentiment-based claims put forward by plaintiffs, whether they expressly address or formed independently of these judicial views, then provide only stronger moral strengthening of what judges currently regard as the honorable thing to do.

SUGGESTIONS

It is found out that in *ABC v. State*, the universal applicability of the notion that an uninvolved

²⁵ 2016 SCC OnLine P&H 10157.

²⁶ LPA No. 249 of 2016, 2017 (P&H).

²⁷ (2016) 230 DLT 473.

and negligent father has no 'natural' right to the guardianship of his child. Further, unwed mothers right to privacy was also recognized and that it would be broken if she were requested to share her child's name and information in contravention of her will, and significance was also given to a child's right to recognize the identities of its parents, in lieu of all of the above factors. Though it was the lack of role of father's participation in the child's life that prompted the judges to determine if the genetic parent should be informed or not, and not the willingness and desire of the single mother to raise her child alone, which failed to play a significant role. Further, in various other cases *ABC* judgement acted as a basis on giving recognition to various single mothers.

In *Shalu Nigam*, there was a greater sentimental approach related to not providing the father's identity, because providing identity will not only injure the sentiments of both the women and the child, but will also gives child the feeling of being abandoned by her own father, and this claim was practically accepted by the judges.

As a suggestion, it is important to establish that if a mother who has single-handedly raised her child alone without any financial or emotional help from the genetic father, she is supposed to have the legal recognition of the single parent and not be demanded to provide father's identity on various different platforms. Further, the way an inbuilt legal recognition is granted to father's identity, the same should be granted to the mother, and she should not fight for it to gain that recognition, because it should be her inbuilt right as well, and changes should be made accordingly.

CONCLUSION

To sum up everything that has been stated above, since the society continues to educate their children against the patriarchal paradigm of the family; single mothers remain a heterogeneous category. These single mothers often comprise women who give birth without marrying the genetic fathers of their child, female individuals who accept or conceive by ART, as well as widows, unmarried and abandoned women who raise children individually. The researcher has analyzed the recent case law in this project, illustrating how the arguments of mothers, as their children's single parents have been upheld. Single motherhood was also argued to be a social phenomenon with various legal forms and regulatory foundations, wherein alternate hypothesis was found to be proved, which is, that exists a significant relationship between single motherhood as social phenomenon and multiple legal forms.

The State modified the PAN card and passport laws, reinforced by the court decisions. moving

away from the original version that mandated applicants to state the father's name, the current form enables you to include both the mother's and father's names, as well as only the name of your mother, in case she is single parent. The Ministry of Foreign Affairs modified the passport rules by authorizing parents of their children to request their passports individually, including their own independent, unmarried, abandoned parents, and children born by surrogacy.

These specific modifications supported by legal judgments such as *ABC* and *Shalu Nigam* have provided a voice domain in which single mothers retain their child's independent legal status. However, the legal base of the patriarchal family existed untouched as such changes meant the recognition of family structures outside of the patriarchal family paradigm. Take the situation of custody, while the Supreme Court quoted in *ABC*, the theory that married Hindu women were originally involved in holding individual mothers to be their own children's independent guardian, under the GWA, married Hindu women themselves, are not recognized or given the status of default "natural guardians" of their children. Though legal recognition has been provided to single mothers in various cases, but the bigger question is why should they fight for their rights, and why an already established recognition is not provided to mothers just like fathers, which acts as future scope of the study.

