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CASE COMMENT ON GITAHARIHARAN & ANR. v. RESERVE BANK OF INDIA & ANR.

- M. K. Guru Prasath & B. Harini[1]

Case Title	**Gita Hariharan & Anr v. Reserve Bank of India & Anr**
Citation	AIR 1999 SCC 228
Court	The Supreme Court of India
Date of Judgement	17. 02. 1999
Petitioner	Mrs. Gita Hariharan & Anr
Respondent	Reserve Bank of India & Anr
Bench	Justice Umesh C. Banerjee
Relevant Provisions	Section 6(a) of Hindu Minority and Guardianship Act, 1956

INTRODUCTION

Women have been considered as secondary to men in all matters, since the British era. Society would never consider the opinion of women. It has always been said that a woman takes care of the family and the house, but Hindu law certainly does not follow that. In Hindu law, There are cetain provisions and practices that are considered to be biased against women which includes the Hindu Minority and Guardianship Act, 1956 and the Hindu Succession Act,1956.

[1] Student at The Tamilnadu Dr. Ambedkar Law University, School of Excellence in Law, Chennai

In particular, Section 6 of Hindu Minority and Guardianship Act deals with who is the natural guardian of minor. The foresaid provision provides the father as a natural guardian of the minor and only after him, mother is a natural guardian, which means mother can act a natural guardian only in the absence of her husband.Section 6 (a) of the said act reflects deep gender inequality by assuming the primacy of fathers as natural guardians. Women are denied equal rights and responsibilities in shaping the lives of their children, perpetuating the notion that women are inherently less capable or less important in decision-making processes. It also ignore the primary consideration of best interest of the child while appointing a natural guardian as it prioritize father's claim to guardianship over mother without even taking into the consideration about her competence, nurturing abilities and emotional connection with child. The Constitutional validity of this section was challenged before the Supreme court for the first time in the landmark case of Gita Hariharan & Anr. v. Reserve Bank of India & Anr. [2]

FACTS OF THE CASE

The petitioner married Mr. Mohan Ram in the year of 1982 and out of wedlock, a son named Riahab Bailey was born in 1984. The petitioner applied for a 9% relief bond in favor of her son from the Reserve Bank of India by stating that as she would act as a natural guardian and control all the investments.

The application was returned, and the court directed her to present an application signed by the father of the minor son and, in addition, to present a guardianship certificate from a competent authority in her favor.

However, the divorce proceedings of the petitioner and her husband were pending before the court, where the husband prayed for custody of the child.In this regard, he wrote several letters to the petitioner stating that he is the natural guardian of the minor child and that they could not take the decision without his approval.

[2]AIR 1999 SC 226.

The petitioner alleged that the communication from RBI authorities was arbitrary. she challenged the constitutional validity of section 6 of Hindu Minority and Guardianship Act, 1956 before the Supreme Court of India.

ISSUES RAISED:

1. Whether Section 6(a) of the Hindu Minority and Guardianship Act 1956 violate Article 14 and Article 15 of the Indian Constitution?

2. Whether the term 'after' in Section 6(a) of the HMA Act, 1956 should be interpreted literally or be considered with the intent of the legislature?

PROVISIONS:

Section 6 of the Hindu Minority and Guardianship Act provides that , *"The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—*

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). Explanation.—In this section, the expression "father" and "mother" do not include a step-father and a step-mother".[3]

Section 19 of Hindu Minority and Guardianship Act provides that, "*Guardian not to be appointed by the Court in certain cases.—Nothing in this Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person—*

(a) of a minor who is married female and whose husband is not, in the opinion of Court, unfit to be guardian of her person; or

(b) of a minor whose father is living and is not in the opinion of the Court, unfit to be guardian of the person of the minor; or

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor."[4]

CONTENTIONS:

A). Arguments by Petitioners:

The petitioner contended that the recommendation of the respondent was arbitrary as it was discriminatory against women and violated her fundamental rights guaranteed under Article 14 and Article 15 of the Constitution of India. She also contended that it was also against the fundamental concept of right enshrined in Article 32 of the Indian Constitution.

She argued that the section 6 (a) of the Hindu Minority and Guardianship Act, 1956 discriminates against women and puts them at a disadvantage in terms of custody of their own children. She alleged that the word 'after him' in the said section discriminate women to be a natural guardian of a minor during the presence of her husband.

[3]Section 6 of the Hindu Minority and Guardianship Act, 1956.
[4]Section 19 of the Hindu Minority and Guardianship Act, 1956.

The counsel for petitioners relied on the case of Jijabai Vithalrao Gajre v. Pathankhan, [5]where the mother and father were living separately. Minor daughter was living with her mother and father didn't show any interest in the family affairs. Therefore, The court appointed the mother as a natural guardian even when the father is alive. In Mohini v.Virendra [6], the court held that though the natural guardians are enumerated in section 6 of the Hindu Minority and Guardianship Act was not an absolute right and the court has to give paramount consideration to the welfare of the child.

B). Arguments by respondents:

The Reserve Bank of India argued that section 6(a) of the Hindu Minority and Guardianship Act, 1956 provided that the natural guardian of the Hindu minor, in respect of that child and as well as his/her property will be the father in case of the male child and unmarried girl and after him only the mother will have the guardianship over them. So, in this case the petitioner being a mother of a male child could not act as a natural guardian of the relief bond on behalf of her son. Therefore the Respondent's act of sent back the application and relied on the provisions be held valid. The disclosure made by the RBI was not arbitrary and opposed to the basic concept of justice rendered under the law of the land.

They have also contended that the word 'after' in the provision (sec 6(a)) means after the death of the father, and she cannot be a natural guardian when the father was alive and fit to be a guardian. Therefore the court should interpret the word in a literal manner and not to the wider.

JUDGEMENT

Justice Banerjee., made the decision. He made a view by considering Article 2 of the Universal Declaration of Human Rights which conferred equal rights and freedom without any discrimination.

[5](1970) 2 SCC 717
[6]AIR1977 SC 1359

As regards to the concept of Guardianship in Hindu law, both the father and mother were treated as the natural guardian for the minor child and their property, except in a case where the husband will be the guardian for his wife. Under the definition clause (sec 4) of the HMG Act, the word 'minor' and 'Guardian' has been defined. The word 'Guardian' include a person who will take care of the minor child or his/her property. It also include the word 'Natural Guardian' which means guardian under section 6.

By analyzed the provision of section 6, it states that upon the death of the father, the mother will act as a Guardian for her minor child in the absence of any testamentary guardian appointed by the father or any other person appointed by the court. There are cases were the law accept both the de facto and de jure guardian of a minor.

The court also considered the aspect of England which is consistent with the welfare of the children. In equity, the rights of guardian has been under the control of the discretionary power and the legal rights of these guardian should be exercised by considering the welfare of the child and should not be in an erratic way. In **re Mc Grath,** (1893, 1 Ch.143) Lindley,L.J., Observed: " The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word `welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical wellbeing. Nor can the ties of affection be disregarded"[7]. **Lord Esher, M.R. in the Gyngall** (1893) 2 Q.B.232 stated: "The Court has to consider therefore, the whole of the circumstances of the case, the position of the parent, the position of the child, the age of the child, the religion of the child so far as it can be said to have any religion, and the happiness of the child. Prima facie it would not be for the welfare of the child." [8]

The court also considered the Indian law, made reference to the case of J.V. Gajre vs Astrakhan and ors. 1970 (2) SCC 717 in which this Court in paragraph 11 of the report observed:

[7] https://indiankanoon.org/doc/1241462
[8] https://thelawmatics.in/gita-hariharan-v-reserve-bank-of-india-1999-complete-analysis/

"We have already referred to the fact that the father and mother of the appellant had fallen out and that the mother was living separately for over 20 years. It was the mother who was actually managing the affairs of her minor daughter, who was under her care and protection. From 1951 onwards the mother in the usual course of management had been leasing out the properties of the appellant to the tenant. Though from 1951 to 1956 the leases were oral, for the year 1956-57 a written lease was executed by the tenant in favour of the appellant represented by her mother. It is no doubt true that the father was alive but he was not taking any interest in the affairs of the minor and it was as good as if he was non-existent so far as the minor appellant was concerned. We are inclined to agree with the view of the High Court that in the particular circumstances of this case, the mother can be considered to be the natural guardian of her minor daughter. It is needless to state that even before the passing of the Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956), the mother is the natural guardian after the father. The above Act came into force on August 25, 1956 and under section 6 the natural guardians of a Hindu minor in respect of the minor's person as well as the minor's property are the father and after him the mother. The position in the Hindu Law before this enactment was also the same. That is why we have stated that normally when the father is alive, he is the natural guardian and it is only after him that the mother becomes the natural guardian. But on the facts found above the mother was rightly treated by the High Court as the natural guardian." [9]

It was argued before the court by the petitioner that Section 6(a) itself includes both the parents as the natural guardians, so the word ‘after’ used in the provision has to be interpreted in a manner to not violate the intention of the law makers. And it was also contended that it violated the constitutional rights of equality as its literal meaning led to discrimination against both sexes. So that the court, by considering the constitutional grants and safeguards, interpreted the word as ‘it’s not always mean that upon the death of the father only, the mother becomes a legal guardian. Instead, she can be the guardian of her minor child when the child’s father is not financially stable or unwilling to be the guardian.

[9] https://indiankanoon.org/doc/1241462/

Therefore, the words under the Hindu Minority and Guardianship Act can be interpreted narrowly or widely by the court based on the circumstances of the case and according to the welfare of the child.

The court upheld the constitutional validity of the provision of HMA Act 1956 and then dismissed the writ petition. But the court directed the Reserve Bank of India to accept the application signed by the mother and not to demand any signatures from the father. The court also ordered the Delhi District Court to consider this order while deciding the guardianship and custody of the child.

CRITICAL ANALYSIS

Many people in the country view the Hindu Minority and Guardianship Act, 1956 as having a gender bias. This is due to Section 6 (a) of the Act, which states that the father is the natural guardian, followed by the mother. However, there have been cases, such as the Gita Hariharan and Padmaja Sharma cases, where the court has recognized the mother as the natural guardian even when the father is alive. The phrase "after him" in Section 6 (a) was initially interpreted to mean after the father's death, but the Gita Hariharan case redefined it to mean "in the absence of."

Although judges have sometimes ruled in favor of making the mother the natural guardian even when the father is alive, this change has not been reflected in the Act. The 133rd Law Commission Report recommended rectifying this injustice towards women and focusing on the principle of welfare. It suggested giving both parents legal status in terms of guardianship and custody and proposed amendments to Section 19 of the Guardians and Wards Act, 1890, as well as Sections 6 (a) and 7 of the Hindu Minority and Guardianship Act. The report also recommended changing "adopted son" to "adopted daughter." The Guardians and Wards Act, 1890 was previously considered gender biased until it was amended in 2010 to remove gender discrimination from Section 19 (b).

While gender discrimination has been eliminated from the 1890 Act, it still persists in the Minority and Guardianship Act. The 257th Law Commission Report also made a similar

recommendation, emphasizing the need for equality not just in roles and responsibilities but also in parental rights and legal position. Despite numerous recommendations by the government, no amendments have been made to Section 6 (a) of the Act of 1956.

In 2019, following the 2015 Law Commission Report, the Chairperson of the National Commission for Women (NCW), Rekha, made a set of recommendations to the Ministry of Women and Child Development. These recommendations aimed to eliminate discrimination against women, particularly rape survivors and single mothers. The key changes proposed by the Commission included replacing "father after him the mother" in the Act of 1956 with either the father or the mother, depending on the circumstances. Both parents would be recognized as the natural guardians of the minor child. The Commission argued that the Act of 1956 favors the father over the mother, violating Articles 14 and 15 of the Constitution of India. Additionally, the Commission suggested removing the term "illegitimate" from the Act and amending Section 7 to replace "adopted son" with "adopted child" to eliminate discrimination between sons and daughters. All these recommendations were compiled and submitted to the Ministry of Women and Child Development. However, these recommendations were never implemented in the Hindu Minority and Guardianship Act, 1956.

CONCLUSION:

In this case, it was decided that section 6(a) of the HMA Act does not disqualify the women from being acting as a guardian for her child. Further this decision has been affirmed by the other courts in the case of **Vandana Shiva v. Jayanta Bandhopadhaya [10] and Padmaja Sharama v. Raran Lal Sharma[11],**whereit was held that the mother can be a guardian in certain circumstances, even when her husband alive.

Guardianship is an important area of family law. The welfare of the children should be taken into account by the court while deciding the cases related to it. Though the court granted them equal rights on Guardianship, it’s not been implemented by the legislature by enacting a proper

[10]AIR 1999 SC 1149
[11] AIR 2000 SC 1398

provision or statute. Simply declaring an act void or illegal will no way lead to proper judicial review. So that it would be more effective if there is an amendment according to the new changes and needs of the society.