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CUSTODY AND GUARDIANSHIP THROUGH GENDER LENS

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INTRODUCTION

Guardianship and custody are twin concepts, generally used interchangeably and presumed to be so in popular sense. But legally speaking both are different concepts but interrelated in the sphere of parental care and control over children. Guardianship refers to a bundle of rights and powers that an adult has in relation to the person and property of a minor, while custody is a narrower concept relating to the upbringing and day-to-day care and control of the minor. In other words, guardianship is the legal right over the person and property of the minor during his/her minority whereas custody refers to physical possession of the child and taking care of the child's interests by way of serving the needs of the child for proper growth. Guardianship generally refers to a permanent or a long run right and custodianship refers to relatively a short term personal care. A guardian is legally competent to deal with the property of the minor whereas the custodian does not enjoy that right. This right has always a corresponding legal accountability also. In spite of these differences, guardianship and custodianship are in the nature of a sacred trust. As long as parents are living together, the issues of guardianship and custodianship do not conflict with each other. But in case of separation of parents, the issues surface warranting legal and judicial interventions. In such cases guardianship may vest with one person and custody with another.

Legislations Governing Custody and Guardianship in India

In India, there are various laws that govern the domain of the Child Custody and Guardianship. The reason being, diverse religious and secular laws are in operation. Following are the legislations relating to the custody and Guardianship in India.

Guardians and Wards Act, 1890

The Guardians and Wards Act (hereinafter referred to as the GWA) is a secular law regulating questions of guardianship and custody for all children within the territory of India, irrespective of their religion.[1] It authorizes the District Courts to appoint guardians of the person or property of a minor, when the natural guardian as per the minor's personal law or the

testamentary guardian appointed under a Will fails to discharge his/her duties towards the minor. The Act is a complete code laying down the rights and obligations of the guardians, procedure for their removal and replacement, and remedies for misconduct by them. It is an umbrella legislation that supplements the personal laws governing guardianship issues under every religion.[2] Even if the substantive law applied to a certain case is the personal law of the parties, the procedural law applicable is what is laid down in the GWA.[3]

Section 7 of the GWA authorizes the court to appoint a guardian for the person or property or both of a minor, if it is satisfied that it is necessary for the 'welfare of the minor.' Section 17 lays down factors to be considered by the court when appointing guardians.[4] Section 17(1)states that courts shall be guided by what the personal law of the minor provides and what, in the circumstances of the case, appears to be for the 'welfare of the minor'.[5] Section 17(2) clarifies that in determining what is for the welfare of the minor, courts shall consider the age, sex and religion of the minor; the character and capacity of the proposed guardian and how closely related the proposed guardian is to the minor; the wishes, if any, of the deceased parents; and any existing or previous relation of the proposed guardian with the person or property of the minor.[6] Section 17(3) states that if the minor is old enough to form an intelligent opinion, the court 'may' consider his/her preference.[7]

Section 19 of the GWA deals with cases where the court may not appoint a guardian.[8] Section 19(b) states that a court is not authorized to appoint a guardian to the person of a minor, whose father or mother is alive, and who, in the opinion of the court, is not unfit to be a guardian.[9] The earlier Section 19(b) prevented the court from appointing a guardian in case the father of the minor was alive. This clause was amended by the Personal Laws (Amendment) Act, 2010 and was made applicable to cases where even the mother was alive, thus removing the preferential position of the father.[10]

Guardianship and Custody under Hindu law

Classical Hindu law did not contain principles dealing with guardianship and custody of children. In the Joint Hindu Family, the Karta was responsible for the overall control of all dependents and management of their property, and therefore specific legal rules dealing with guardianship and custody were not thought to be necessary.[11] However, in modern statutory Hindu law, the Hindu Minority and Guardianship Act, 1956 (hereinafter, HMGA) provides that the father

is the natural guardian of a minor, and after him, it is the mother.[12] Section 6(a) of the HMGA provides that:

1. In case of a minor boy or unmarried minor girl, the natural guardian is the father, and 'after' him, the mother; and
2. The custody of a minor who has not completed the age of five years shall 'ordinarily' be with the mother

According to HMGA, 1956, a guardian can be of three categories, namely natural guardian, testamentary guardian and court appointed guardian. In case of a boy or an unmarried girl, father is the first natural guardian and after him, the mother.[13] In all cases the custody is generally with the mother, till the child attains five years of age.[14] The expressions 'Father' and 'Mother' do not include step father and step mother[15] but include adoptive father and adoptive mother.[16] For an illegitimate boy or illegitimate unmarried girl, mother is the first natural guardian and after her, the putative father.[17] In case of a married minor girl, parents lose their guardianship and her husband becomes the natural guardian.[18] It is quite explicit that in case of legitimate children, law accords primary position to father and secondary position to mother to act as natural guardian. However the custodianship is acknowledged to be the prerogative of mother generally due to the emotional bondage of motherhood with her child.

The issue of legality of guardianship of mother to her daughter during the life time of father came before the Supreme court in ***Jijabai Vithalarao Gajre v. Pathankhan***[19] in which the court observed that "It is no doubt true that the father was alive but had fallen out with the mother and he was not taking any interest in the affairs of the minor for 20 long years and it was as good as if he was non-existent so far as the minor was concerned. In the peculiar circumstances, the mother could be considered as the natural guardian."

A Shift from patriarchy to Gender Equality; Role of Gita Hariharan's Case;

The issue of constitutional validity of provision of law (Section 6 (a) of HMGA, 1956 and a parallel provision Section 19(b) in GWA, 1986) relegating a secondary position to mother came before the Supreme court as violation of Articles 14 and 15 of the Constitution[20] in ***Githa Hariharan v. Reserve Bank of India.***[21]

In ***Gita Hariharan v. Reserve Bank of India***,[22] The petitioner Mrs.Gita Hariharan married Dr.Mohan Ram and they had a son named Rishy born in July 1984. The petitioner applied for RBI Relief Bonds in the name of her son Rishab, a minor at the time of application and she signed off as his guardian. A few days later, RBI rejected the application and asked the petitioner to produce an application signed off by the natural guardian i.e., Rishab's Father or in an alternative , RBI asked the petitioner to produce a certificate of guardianship declaring her s natural guardian by the prescribed authority in relevant procedure. RBI also gave the reasoning behind this rejection that Section 6(a) of the Hindu Minority and Guardianship Act, 1956 does not allow the mother to be a natural guardian if the father is alive and as Rishab's father is alive he can only apply for the bonds. Hence aggreived by this decision of RBI, Gita Hariharan brought the issue before the Hon'ble SC.

The petitioner challenged the constitutional validity of S.6(a) of HMGA, 1956 which says father is the natural guardian of a boy or an unmarried girl and after him the mother will hold guardianship. The petitioner argued that the RBI's recommendation is arbitrary as it is discriminating against women and put women at a disadvantage concerning guardianship rights related to their own children and there by violating Art. 14 & Art. 15 of the Indian Constitution.

The Supreme Court took a close look over the issue raised and considered the import of the word ‘after’ and examined whether, as per the scheme of the statute, the mother was disentitled from being a natural guardian during the lifetime of the father. The court observed that “ the word ‘after’ father, on a cursory reading does give an impression that the mother can be considered as a natural guardian only after the life time of the father. When we look through the rules of interpretation, It is a well settled principle that if on one construction a given statute will become unconstitutional and on another construction, it is constitutional, the court will prefer the latter on the ground that the parliament would not have intended to ignore the fundamental right which prohibits gender discrimination. Hence the Court observed that the term ‘after’ must be interpreted in light of the principle that the welfare of the minor is the paramount consideration and the constitutional mandate of equality between men and women.

The Court held the term ‘after’ in Section 6(a) should not be interpreted to mean ‘after the lifetime of the father,’ but rather that it should be taken to mean ‘in the absence of the father.’ The Court further specified that ‘absence’ could be understood as "temporary or otherwise or total apathy of the father towards the child or even inability of the father by reason of ailment or otherwise".[23] Therefore, in the above specific situations, the mother could be the natural guardian even during the lifetime of the father. The court said that the decision is only an expansion of the principle set out by the Bench in ***Jijabai's case***.[24]

Therefore it can be concluded that the father continues to have a preferential position when it comes to natural guardianship and the mother becomes a natural guardian only in exceptional circumstances, as the Supreme Court explained in ***Gita Hariharan.*** Thus, even if a mother has custody of the minor since birth and has been exclusively responsible for the care of the minor, the father can, at any time, claim custody on the basis of his superior guardianship rights. ***Gita Hariharan***, therefore, does not adequately address the original problem in Section 6(a) of the HMGA. Second, all statutory guardianship arrangements are ultimately subject to the principle contained in Section 13, that the welfare of the minor is the ‘paramount consideration.’ In response to the stronger guardianship rights of the father, this is the only provision that a mother may use to argue for custody/guardianship in case of a dispute.[25]

Hence, in spite of the ruling given by the apex court in ***Gita Hariharan's*** case still it is an issue to ponder whether mother can be considered as a natural guardian in the absence of the various situations mentioned by the court in the case. Even though discrimination between the mother and the father in terms of guardianship has been removed by the 2010 amendment to Section 19(b) of GWA, but discrimination between the parents continues under the HMGA as far back as 1989, regarding the preferential position given to the father under Section 6(a) of the HMGA. Thus Section 6(a) of HMGA is to be amended suitably so as to accord equal guardianship to father and mother.

Mother is legally declared as custodian of her child, generally, till the age of five years and it is based on the legal presumption that welfare of a child below five years is most secure and assured in the lap of its mother which has no substitute. This recognition enables her to seek custody of her child if she is deprived of it in case of any matrimonial litigation filed under Hindu Marriage Act, 1955.[26] Only under exceptional situations, the custody of children cannot be given to mother considering the welfare of the children. The father or mother as natural guardian loses

his or her status on conversion to another religion[27] or on renunciation of the world.[28]

Section 13 of the HMGA declares that, in deciding the guardianship of a Hindu minor, the welfare of the minor shall be the 'paramount consideration' and that no person can be appointed as guardian of a Hindu minor if the court is of the opinion that it will not be for the 'welfare' of the minor.

Regarding the ***power of appointing a guardian under will***, under classical Hindu law, only the father by his will could appoint a testamentary guardian. The testamentary guardian appointed by father became the guardian after the death of the father, even in the presence of the mother, and in that way the father was empowered to deprive the mother of her natural guardianship by making his own appointee. These injustices have been cured under HMGA, 1956. Firstly, mother can also appoint a guardian of her own choice under her will.[29] Secondly, as long as she is alive, the testamentary guardian appointed by her husband will not become the guardian.[30] Thus husband cannot rob her of her right through his will. Thirdly, in case of her death leaving a will appointing any person to act as guardian, her appointee will become the guardian and her husband's appointment will become ineffective.[31]

In case of illegitimate child, the mother can appoint a testamentary guardian.[32] But the question 'whether such person can become guardian in the presence of putative father' is not answered by the legislation. This needs legislative clarity because the law declares putative father as the natural guardian of the illegitimate child after mother. In the absence of such amendment, the question 'whether the mother of her illegitimate child can bar the putative father from becoming the natural guardian by her will?' becomes a subject of judicial interpretation. Gender parity requires removal of this lacuna existing against putative father.

Guardianship and custody under Muslim law

This gender bias is not exclusive to Hindu laws, but pervades all personal laws in India. The Muslim Personal Law (Shariat) Application Act, 1937[33] which provides for the application of Shariat law to matters relating to Guardianship of children[34] illustrates this in the context of Islam. Islamic law is the earliest legal system to provide for a clear distinction between guardianship and custody, and also for explicit recognition of the right of the mother to custody.[35]

Custody Under Muslim law:

Under Muslim law the custody of every child primarily belongs to its mother, while the guardianship of every legitimate child is ordinarily with father. It provides that the foremost right to custody of minor children belongs to the mother and she cannot be deprived of her right so long as she is not found guilty of misconduct, this is recognized as the right of hizanat. The mother as custodian is called Hazina. The concept of Hizanat provides that, of all persons, the mother is the most suited to have the custody of her children up to a certain age, both during the marriage and after its dissolution. A mother cannot be deprived of this right unless she is disqualified because of apostasy or misconduct and her custody is found to be unfavorable to the welfare of the child.[36]

Under Hanafi law, her custody of female child terminates on attaining puberty and of male child on attaining seven years of age. Thereafter it is the right of the father to have custody. Under Shia law, mother continues to be the custodian till seven years for female child and two years for a male child and thereafter father becomes the custodian. In case of death or legal incapacity of mother, under Hanafi law, the maternal grandmother or great grandmother, paternal grandmother or great grandmother, sister or her daughter, maternal aunt and paternal aunt will become the custodian of the child in the above said order. Under Shia law, father and after him paternal grandfather takes custody of the child.

Guardianship Under Muslim Law:

Regarding guardianship, Muslim law speaks of three types of guardians namely guardian of person (Walayat-e-Nafs), guardian of property (Walayat-e-Mal) and guardian of marriage (Walayat-e-Nikah) and mother is not entitled to act as a guardian for any purpose. Father and in his absence, his male relatives will act as guardian. There is a great disparity in the position between father and mother. However, it is open to father as a guardian of property to appoint by his will mother as a testamentary guardian or as an executor of will and in such cases she can become the legal guardian of minor's property. In spite of these rules, court in many cases appointed or declared a mother as a guardian of her children's property under the GWA, 1890, if the welfare of the children warrants so and in such cases the minority is till the child attains the age of 21.

Guardianship and custody under other personal laws

Unlike Hindus and Muslims, Christians and Parsees do not have a separate personal law governing guardianship and minority. During British period, with the exception of Hindus and Muslims, all other British Indian subjects including Christians and Parsees came to be governed by the rule of common law of the land in matters in which they do not have a specific personal law. Apart from codification of law of marriage, matrimonial remedies and succession, codification did not happen in matters of guardianship and custody. Under un-codified law, father is the natural guardian for his legitimate minor children and after father, mother takes the guardianship. For illegitimate children mother is the first natural guardian and in her absence putative father is the next guardian. A minor is considered to be a person who has not completed the age of 18 years as defined under Indian Majority (Amendment) Act, 1999.[37]

The Guardianship and Wards Act, 1890, as general law, continues to govern the situation for the purpose of appointment, removal and declaration of guardians in case of absence of natural guardians. For Christians and for those who marry under Special Marriage Act, 1954,[38] matrimonial remedies are provided under the Indian Divorce Act, 1869,[39] later amended as Divorce Act, 2010 [40] in which Section 41 provides for custody of children in case of battle for custody and the court, while determining the entitlement of the parties, will place main focus on the welfare of the child as the primary consideration. In case of matrimonial disputes, filed under the Parsi Marriage and Divorce Act, 1936,[41] the issue of custody of children becomes an ancillary relief and welfare of the children becomes the only consideration for the court in awarding custody.

Significant Developments Towards Eliminating the Gender Bias

The first significant step for keeping the child's interest at highest pedestrian was taken by the 'Law Commission of India' on May 23, 2015, through its report titled ***"Reforms in Guardianship and Custody Laws in India"***.[42] To summarize our perception about the report, in a nutshell, it provided for weighing all decisions through the scales of child's interests, thereby keeping all other determinants secondary.

The report suggests amendments to the 'Guardianships and Wards Act, 1890'which currently does not provide for Joint custody. I believe that the reason for focusing primarily on this suggestion is owing to the fact that it recognises the unpleasing situations of the dispute between parents over sole custody after the divorce which causes negative effects on the interests of the

child.

Subsequently, there was a catena of judgments with respect to joint custody. One of the landmark judgments was ***Vishnu Ubale v Mrs. Archana Tushar Ubale,***[43] which gave proper shape to the abstract idea of joint custody by refusing to grant sole custody of an eight-year child. The court here, considering the financial standing of both parents, ordered that not only the upbringing but also the financial burden for such upbringing must be shouldered equally by both parents.

The Dynamic approach of courts concerning child custody issues was again evidenced in a recent petition filed in the Calcutta High Court, where the court, keeping in mind the nationwide lockdown which has kept the non-custodial parents "locked in homes". Echoing the principle of 'best interest of the child', the court suggested that *"If they have visitation rights, we suggest that electronic contact instead of physical visits can be substituted in these times".*[44]

In a very recent case ***Rashneet Kaur v. State of Hariyana and Others***,[45] Hon'ble Punjab and Hariyana High Court held that *"The lap of the mother is the natural cradle where the safety and welfare of the infant can be assured and there is no substitute for the same. Mother's protection for the infant is indispensable and no other protection will be equal in measure and substance to the same. No amount of wealth or mother like love can take place of mother's love and care. Motherly care and affection is indispensable for the healthy growth of the infants".*

Another important step towards eliminating the gender bias in guardianship and Custody matters was through Personal Laws (Amendment) Act, 2010.[46] The Act has amended the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956. The Act is aimed at bringing gender equality in the matter of guardianship under the Guardians and Wards Act, 1890 and in the matter of giving in or taking in adoption a son or a daughter by father or mother under the Hindu Adoptions and Maintenance Act, 1956.[47] Under Clause (b) section 19 of the Guardians and Wards Act, 1890, mother was not included as Guardian along with father. The Law Commission of India in its Eighty-third Report on "the Guardians and Wards Act, 1890 and certain provisions of the Hindu Minority and Guardianship Act, 1956", vide paragraph 6.83, had inter alia recommended amendments in clause (b) of section 19 of the said Act to include mother along with the father for the purpose of removing the gender inequality.[48] The recommendations has been accepted and implemented by the enactment.

In sum, all the recent developments concerning child's welfare as the ultimate determinant

can be traced back to the Law Commission Report which broke through the patriarchal shackles (in form of priority to father in HMGA and Guardians and Wards Act, 1890) and provided a progressive outlook to the issue of custody.

Custody and Guardianship Rights of LGBTQ+ Community;

Despite homosexuality been decriminalized, the laws in India still remain hostile and prejudicial towards the LGBT community in several ways. The reason behind this is that there exists an enormous gap between the legislative and the judicial development of LGBT laws in India. So, though the Supreme Court of India through the landmark judgements of **National Legal Services Authority v. Union of India,**[49] **Navtej Singh Johar v. Union of India,**[50] and **Justice K.S.Puttaswamy v. Union of India**[51] has laid the groundwork to confer upon the queer and non-binary community a bundle of basic human rights, but the legislature has failed to keep up with the recent developments.

Even though the same-sex couples now have the legal right to cohabit and conduct their personal affairs without any fear of persecution but are still denied equality of treatment in various aspects. Thus, it is imperative to take the conversation forward and talk about the various laws that continue to discriminate against the LGBT+ persons. It includes anti-discriminatory laws such as no recognition of same-sex marriages, no rights for adoption, surrogacy , discrimination in the matter of custody and Guardianship etc. So, the fight for equality continues as there is a long battle waiting ahead, swarmed with numerous difficulties given that the LGBTQ+ community remains closed off to civil rights.

More and more transgender parents are fighting to protect their relationships with their children in the face of custody challenges. Yet they face significant obstacles. Parents who have come out or transitioned after having a child with a spouse or partner have seen their gender transition raised as a basis to deny or restrict child custody or visitation. Transgender people who formed families after coming out or transitioning have faced challenges to their legal status as parents, often based on attacks on the validity of their marriages.[52]

Over the last several decades, guardianship laws have also undergone a remarkable period of reform and commentary. Reform efforts have sought to enhance respect for the core concepts of dignity and self-determination by revising the capacity standards, rejecting plenary guardianships, increasing procedural safeguards, and imposing certification and monitoring

requirements on guardians. These reforms all share a common silence on issues related to sexual orientation and gender identity. Although this silence could be interpreted as simply adopting a "neutral" stance, the result is a false neutrality that disadvantages LGBT individuals and LGBT families. The failure to expressly mandate that respect for a ward's sexual orientation and gender identity is integral to the concepts of dignity and self-determination leaves guardianship law open to the influences of anti-LGBT bias that can range from cultural insensitivity to outright hostility. When this occurs, facially neutral guardianship provisions can operate to erase LGBT identity, deny autonomy, and ignore partners and chosen family.

The silence of guardianship law with respect to sexual orientation and gender identity disadvantages LGBT individuals and LGBT families. Also the existence of LGBTQIA+ parents or transgender parents where the gender is not clear, the application of these laws will pose some problems. Because all the legislations that deals with the custody and guardianship in India is founded on binary gender concepts. If there are LGBTQIA+ parents or transgender parents whose gender is unknown, the application of these guidelines will be complex, hence it is important to define such terms.

As we all know that the principle of "best interest of the child" is the main consideration behind granting anyone custody or guardianship. The court takes cognisance of the fact that custody of the child is given to the person who displays care, concern and can provide a familiar environment to the child. This principle is extremely flexible and can be incorporated into a variety of fact situations.

So, in order to bring a custody and guardianship law inclusive of the LGBT+ community ie. in compliance with the ***NALSA***[53] and ***Navtej Singh Johar***[54] judgment, the language of the law should go beyond the binary so that such individuals regardless of gender, the structure of relationship or sexual orientation can become guardians. But essentially speaking, this will significantly depend upon how the term " best interest of the child" shall be interpreted by the court of law in the context of LGBTQIA+ community. Choice of guardianship and custody provisions should include partners regardless of gender and provide a mechanism for the recognition of chosen family.

CONCLUSION

From the foregoing discussion, it is to be noted that the status of women in the sphere of guardianship is generally relegated to a secondary position and in matters of custody, she is acknowledged as a primary custodian. As infants are in need of strong emotional bondage, love and care for all round development during nascent years, all personal laws, whether codified or un-codified, place mother in a high pedestal. On the other hand, as the matters related to property of the minor need a higher degree of skill and prudence, it is placed in the exclusive domain of the guardian declaring the father as the first natural guardian. This hierarchy within the family is, no doubt, to some extent tried to be balanced by the judiciary, through interpretation, with the scale of gender equality, leaving the burden of making it a law to the legislature. It is time to recognize both father and mother as equal guardians as done in the case of adoption through Personal Laws (Amendment) Act, 2010. Moreover all the existing laws are silent when it's comes to LGBTQ+ Community thus put those persons in trouble. Hence the law should address the problems of LGBTQ Community also and make sure that both the parents in equal pedestal irrespective of their sex or gender. Thus equality between parents is a goal that needs to be pursued and, indeed, the law should not make preferences between parents based on gender stereotypes. However, such equality cannot be only in terms of roles and responsibilities, but must also be in terms of the rights and legal position of the parents. Thus, the first step towards reform in this area is to dismantle the preferential position of the father in all personal laws, and make both the parents natural guardians without gender differences.

Endnotes

1. The Guardian and Wards Act, 1890, No. 8, Act of Parliament 1890 (India)
2. For instance, Section 2 of the HMGA states that its provisions are 'supplemental' to and 'not in derogation of the GWA.
3. The Guardian and Wards Act,1890 , Section 6
4. The Guardian and Wards Act,1890 , Section 17
5. The Guardian and Wards Act,1890 , Section 17(1)
6. The Guardian and Wards Act,1890 , Section 17(2)
7. The Guardian and Wards Act,1890 , Section 17(3)
8. The Guardian and Wards Act,1890 , Section 19
9. The Guardian and Wards Act,1890 , Section 19(b)

10. The Personal Law Amendment Act,2010, No. 30 Act of Parliament 2010(India)
11. Paras Diwan, LAW OF ADOPTION, MINORITY, GUARDIANSHIP & CUSTODY (2012), Universal Law Publishing Co: New Delhi , P.xv
12. The Hindu Minority and Guardianship Act, 1956, No.32, Act of Parliament 1956 (India) Section 6(a)
13. Ibid
14. Ibid
15. The Hindu Minority and Guardianship Act, 1956, Explanation to Section 6
16. The Hindu Minority and Guardianship Act,1956, Section 7 provides that the natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.
17. The Hindu Minority and Guardianship Act, 1956 Section 6 (b)
18. The Hindu Minority and Guardianship Act, 1956 Section 6 (c)
19. (1970) 2 SCC 717
20. Constitution of India, 1950 Art. 14 & Art.15
21. (1992)2 SCC 228
22. Ibid
23. Gita Hariharan v. Reserve Bank of India, (1999) 2 SCC 228, ¶ 25.
24. Jijabai Vithalarao Gajre v. Pathankhan, (1970) 2 SCC 717
25. Law Commission of India, "Reforms in Guardianship and Custody Laws in India", Report No. 257, Government of India, 2015 ¶ 2.2.10
26. The Hindu Marriage Act,1955, No. 25 Act of Parliament 1955 (India)
27. The Hindu Minority and Guardianship Act, 1956, Section 6(c)(a)
28. The Hindu Minority and Guardianship Act, 1956, Section 6(c)(b)
29. The Hindu Minority and Guardianship Act, 1956, Section 9(4)
30. The Hindu Minority and Guardianship Act, 1956, Section 9(2)
31. Ibid
32. The Hindu Minority and Guardianship Act, 1956, Section 9(4)
33. The Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Act of Parliament 1937(India)
34. The Muslim Personal Law (Shariat) Application Act, 1937, Section 2
35. Paras Diwan, Supra note 11 at P. xvi
36. Id at P.xvii
37. Indian Majority (Amendment) Act, 1999, No. 33, Act of Parliament, 1999 (India) (amended Indian Majority Act,1875)
38. Special Marriage Act, 1954, No.43 , Act of Parliament, 1954 (India)
39. The Divorce Act,1869, No. 4, Act of Parliament, 1869 (India)
40. The Indian Divorce (Amendment) Act,2010, No.30, Act of Parliament 2010(India)
41. Parsi Marriage and Divorce Act,1936, No. 3 , Act of Parliament 1936 (India)

42. Law Commission of India, “Reforms in Guardianship and Custody Laws in India”, Report No. 257, Government of India, 2015
43. AIR 2016 Bom Hc 88
44. Hriday Nest Of Family Harmony vs The State Of West Bengal & OrsCAN 3092 of 2020 in WP 5399 (W)
45. CRWP-3251-2022 of Punjab & Hariyana High Court at Chandigarh
46. The Personal Law Amendment Act,2010, No. 30 Act of Parliament 2010(India)
47. The Hindu Adoptions and Maintenance Act, 1956, No. 78, Act of Parliament (India)
48. Law Commission of India, Report No. 83 on "The Gaurdians and Wards Act,1890 and certain provisions of the Hindu Minority and Guardianship Act,1956", Government of India (1980)
49. (2014) 5 SCC 438
50. AIR 2018 SC 4321
51. (2017) 10 SCC 1
52. Leslie Cooper, Protecting the Rights of Transgender Parents and their Children (2013)
53. NALSA v. Union of India (2014) 5 SCC 438
54. Navtej Singh Johar v. Union of India AIR 2018 SC 4321