



Mother's Right to Decide Surname of Child

For Prelims: Guardianship Laws in India

For Mains: Supreme Court Judgments on guardianship

Why in News?

Recently, the [Supreme Court](#) ruled that the mother, being the only natural guardian of the child after the death of the biological father (husband), has the **right to decide the surname of the child**.

- The court was dealing with a plea challenging a judgement passed by the High Court of Andhra Pradesh in January 2014, which asked to **restore the child's surname to the previous one** and to show **the name of the late husband in records** as his natural father and if that is not possible, **to mention the new husband as his stepfather**.

What did the SC Rule?

- Surname is **not only indicative of lineage and should not be understood just in the context of history, culture and lineage** but more importantly the role it plays with regard to the **social reality along with a sense of being for children** in their particular environment.
- Homogeneity of surname emerges as a **mode to create, sustain and display 'family'**.
- The SC also opined that the mother, being the only natural guardian, also has the **right to give up the child in [adoption](#)**.

What are the Laws Related to Guardianship in India?

- **Hindu Minority and Guardianship Act:**
 - **Indian laws accord superiority to the father** in case of guardianship of a minor (below the age of 18 years).
 - Under the religious law of Hindus, or the **Hindu Minority and Guardianship Act, (HMGA) 1956**, the natural guardian of a Hindu minor in respect of the minor's person or property **"is the father, and after him, the mother**.
 - Provided the custody of a minor who has not completed the age of five years shall ordinarily be with the mother."
- **Guardian and Wards Act of 1890 (GWA):**
 - It deals with the **appointment of a person as a 'guardian' to a child**, both with respect to the child and property.
 - Child custody, guardianship and visitation issues between parents are determined under the GWA, if a natural parent wants to be declared as an exclusive guardian to his/her own child.
 - Upon disputes between parents in a petition under the GWA, read with the HMGA; **guardianship and custody can be vested with one parent with visitation rights to the other parent**.
 - In doing so, the welfare of the minor or **"best interests of the child"** shall be of

paramount consideration.

What is Understood by 'Best Interests of the Child'?

- India is a signatory to the [United Nations Convention on the Rights of the Child \(UNCRC\)](#).
- The definition of “best interests of the child” has been incorporated from the [Juvenile Justice \(Care and Protection of Children\) Act, 2015](#).
- The “best interests of the child” means **“the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development” and is paramount in any custody battle.**

- **Muslim Personal Law (Shariat) Application Act, 1937:**
 - It says that the Shariat or the religious law will apply in case of guardianship according to which the **father is the natural guardian**, but **custody vests with the mother until the son reaches the age of seven** and the **daughter reaches puberty** though the father’s right to general supervision and control exists.
 - The concept of Hizanat in Muslim law states that the welfare of the child is above all else.
 - This is the reason why Muslim law **gives preference to the mother over father in the matter of custody** of children in their tender years.
- **Supreme Court Judgements:**
 - The [Supreme Court’s landmark judgement in Githa Hariharan v. The Reserve Bank of India](#) in 1999 provided partial relief.
 - In this case, the HMGA was challenged for violating the guarantee of equality of sexes under [Article 14](#) of the Constitution of India.
 - Article 14 says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the territory of India.
 - The court held that the term **“after”** should not be taken to mean “after the lifetime of the father “, but rather **“in the absence of the father”**.
 - However, the judgement failed to recognise both parents as equal guardians, subordinating a mother’s role to that of the father.
 - Though the judgement sets a precedent for courts, it has **not led to an amendment to the HMGA.**

Way Forward

- A **child-centric human rights jurisprudence** that has evolved over a period of time is founded on the principle that public good demands proper growth of the child, who is the future of the nation.
 - Therefore, shared or **joint parenting with equal rights can be a viable**, practical, balanced solution for the child’s optimal growth.
- The [Law Commission of India](#) in its 257th report on **“Reforms in Guardianship and Custody Laws in India” in May 2015 recommended** that the **“superiority of one parent over the other should be removed”**.
 - Both the mother and the father should be regarded, simultaneously, as the natural guardians of a minor.
 - The HMGA **should be amended to “constitute both the father and the mother as being natural guardians** ‘jointly and severally,’ having equal rights in respect of a minor and his property.

[Source: IE](#)