



Guardianship of Minors

For Prelims: Guardianship of Minors, Public interest Litigation, Permanent Account Number, Central Board of Direct Taxes, Supreme Court, Article 14, Hindu Minority and Guardianship Act, Muslim Personal Law Application Act, Law Commission of India,

For Mains: Government Policies and Interventions, Issues Related to Children, Guardianship of Minors and Related Laws.

Why in News?

Recently, a [Public interest Litigation \(PIL\)](#) in Madras High Court sought that all documents must also require the mother's name to be mentioned along with the father's.

- In the recent past, there have been changes to the rules **for Passport and Permanent Account Number (PAN)** cards that allow an applicant to furnish their mother's name if she is a single parent.
- But this continues to be an annoying issue when it comes to school certificates and a lot of other documents that insist on the **father's name as the guardian.**
- **PAN** is a means of identifying various taxpayers in the country.

What are the Rules for Issuing Passports and PAN cards to those with Single Parents?

- **Passports:** In **December, 2016**, the Ministry of External Affairs **liberalised its rules for the issuance of passports and took a number of steps.**
 - Certain changes were made following the **recommendations of a three-member committee comprising the Ministry of External Affairs and the Ministry of Women and Child Development** that examined various concerns pertaining to passports for children after a divorce or in case of adoptions.
 - Following the changes, **applicants could provide the name of either parent instead of providing details of both the father and mother.**
 - The **new passport application form also does not require the applicant to provide the name of her or his spouse** when they are divorced and neither are they required to provide the divorce decree.
- **PAN :** In **November 2018**, the [Central Board of Direct Taxes](#) amended **Income Tax Rules, 1962**, so that the **father's name was not mandatory** when a mother was a single parent.
 - The new PAN application form also seeks the mother's name alongside the father's.
 - **Applicants can also choose** whether they want their father's name on the PAN card or their mother's name.

What do the guardianship laws in the country say?

- **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."
- **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 Judgement:**
 - 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"**.
 - But 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.
- **Law Commission of India:**
 - 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."

What is the Major Concern?

- Though courts may tend to grant custody of a child following marital dispute to the mother, **guardianship rests primarily with the father** in the law and this contradiction highlights that **mothers are perceived as caregivers**, but not as decision makers for children.

Way Forward

- Various Government departments **must proactively amend their rules** to ensure that they are in sync with the Githa Hariharan judgement as amending laws can be a challenging exercise.
- **Until that happens individuals will have to continue to flock courts to seek relief.**

PYQ

A legislation that confers on the executive or administrative authority an unguided and uncontrolled discretionary power in the matter of the application of law violates which one of the following Articles of the Constitution of India?

- (a) Article 14
- (b) Article 28
- (c) Article 32

(d) Article 44

Ans: (a)

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