
CASE ANALYSIS ON ABC V. THE STATE (NCT OF DELHI)

Versha Tomer & Aishwarya Bhatia, Mody University of Science & Technology (School of Law), Laxmangarh,
Rajasthan

INTRODUCTION

The primary goal of custodianship legislation is to protect minors from harm. These laws, on the other hand, do not provide parents with an equal playing field. Previously, it was assumed that the father was the natural guardian of a minor, followed by the mother. The Indian Supreme Court must pass legislation ensuring that women receive the same privileges as males.¹ As a result, custody laws have unwittingly reinforced patriarchal cultural institutions. Many restrictions reflect this, such as the requirement for the father's name on forms for many vital documents, which can be challenging for single or unwed mothers. As a result, there have been a number of lengthy legal battles for women's equal custodial rights.

ABC v. The State (NCT of Delhi)², in which the Supreme Court supported an unwed mother's ability to become the sole legal guardian without the approval of the father, has been hailed as a watershed moment for India's single and unwed mothers. However, understanding the decision to infer those unmarried mothers were given sole custody of their children is almost certainly incorrect. Despite the judiciary's efforts since the Githa Hariharan case, unmarried, unwed, or divorced mothers continue to be victimised by constraints that make obtaining custody and guardianship of their children a difficult legal battle.

HISTORICAL BACKGROUND OF THE CASE

The filing of this Special Leave Petition was compelled by the Delhi High Court's decision. The appellant was a well-educated, financially well-off unwed mother who had raised her kid alone since his birth. She petitioned the local government for guardianship so that the boy might be her nominee in all avings.³ She had the option of disclosing the child's father's name or

¹ Githa Hariharan v. Reserve Bank of India, AIR 1149(SC) (India).

² ABC v. The State (NCT of Delhi), Arising out of SLP (Civil) No. 28367 of 2011 (India).

³ Nooreen Haider & Rishima Rawat, *Case Note on ABC v. The State (NCT of Delhi)*, Vol. V, Issue I, NLIU Law Review.

obtaining a guardianship certificate from the court. She asked the Guardianship Court to declare her the only guardian of the kid under section 7 of the Guardianship and Wards Act, 1890 ('the Act'). The Guardianship Court dismissed the appellant's petition in April 2011 because she refused to reveal the father's name. She took her case to the High Court, which dismissed it in August 2011, ruling that the natural father of the child may have a stake in the kid's well-being and thus must be informed. The High Court refused to rule on the matter since the father was not present. The appellant filed this Special Leave Petition with the Supreme Court after being disappointed by the High Court's ruling.⁴

COURT'S INTERPRETATION

The Supreme Court considered a number of statutes and personal laws pertaining to guardianship in reaching its decision. It read Sections 7, 11, and 19 of the Act with care. While section 7 empowers the court to appoint a guardian for the minor's care, section 11 outlines the procedures for filing a guardianship application. The court focused on clause I of Section 11(1)(a), which mandates that a notice be served on the minor's parents in line with the Civil Procedure Code if they live in any state to which the Act applies. Section 19 prevents the court from appointing a guardian if the minor's father is alive and deemed unfit by the court.

According to the State, the foregoing legislation required notification to the minor's "parents," and the court could not appoint a guardian while the minor's father was still alive. According to the State, the High Court's decision was in conformity with the Act. The state's argument was rejected by the court, which stated that such an interpretation of the provisions would be contrary to the purpose of the act, which was to preserve the minor's welfare. Section 11, which is a procedural provision that includes notifying the child's parents, must be carefully evaluated in light of the legislation's aim. The terms 'parents' in section 11 and 'father' in section 19 were discovered to be very different "The minor's well-being is the court's paramount concern, not any procedural misstep, especially one that does not violate the law."⁵

According to the court, Section 11 of the Act is designed to apply when a third party seeks guardianship, which is not the situation here. The Delhi High Court ruled that a literal interpretation of the Article required the father to be notified and heard before the guardianship

⁴ *Supra* note 1.

⁵ *Society of Sisters of Charity St.Gerosa Convent v. Karnataka State Council for Child Welfare*, (1992) AIR Kant 263 (India).

claim could be pursued. The facts of the case, on the other hand, necessitated a different application of the rule.⁶ The "well-being of the child" is the sole criterion for appointing a guardian under the Act. The Supreme Court took a more liberal approach, in keeping with the legislation's aim, by using section 7 of the Act, which provides that the child's wellbeing should be the principal and deciding criteria in granting guardianship. As a result, the court took a holistic approach to the act, attempting to include the logic of other countries' legislation.⁷

PRECEDENT INTERPRETATION

The Act designates the father as the child's natural guardian. In the landmark case of *Githa Hariharan v. Reserve Bank of India*⁸, the mother's status as a natural guardian was established. In this case, the Supreme Court decided that a mother, rather than the father, should be recognized as the kid's guardian in the best interests of the child. The court referenced section 6 of the Hindu Minority and Guardianship Act, 1956, which specifies the father as the natural guardian of a minor, followed by the mother, while considering the mother's right to privacy and the child's best interests. Both the mother and the father were recognized as natural guardians of a small child in this case. According to the court, the phrase "after" might also refer to the father's brief absence for whatever reason. This case was used to demonstrate that if a woman is the primary caretaker for a kid and the child is in her custody, she has the legal ability to act as the minor's natural guardian for any reason, even if the father is still alive.⁹

Despite the fact that the case involves weighing the rights of the mother, father, and child, the court emphasized that the third is the most significant in this situation while exercising its *parens patriae* authority to safeguard the kid's welfare. The case of *Laxmi Kant Pandey v. Union of India*¹⁰ was used to emphasize that the child's welfare must take precedence above all other considerations, including parental rights. Despite the fact that the Act expressly stipulates that the biological parents should not be notified, the court concluded that doing so would jeopardize the child's future and interests.

⁶ Saurav Datta, *Why The Elation Around The SC Ruling On Unwed Mothers Was Overblown*, CATCH NEWS, <http://www.catchnews.com/pov/false-elation-why-the-sc-ruling-on-custody-and-unwed-mothers-was-overblown-1436356616.html>.

⁷ *Ibid.*

⁸ *Githa Hariharan*, *supra* note 1.

⁹ *In the Name of the Mother*, ECONOMIC AND POLITICAL WEEKLY, <http://www.epw.in/editorials/name-mother.html>.

¹⁰ *Laxmi Kant Pandey v. Union of India*, (1985) SCC 701 (Supp) (India).

The Supreme Court took a progressive approach, declaring that in today's society, where single mothers are increasingly preferring to raise their children alone, an uninvolved father's opinion is not required to defend the interests of a child born out of marriage and raised by the mother. It struck a delicate balance between children's rights and procedural needs. The necessity to name the father was dropped, but the requirement to publish a guardianship notice in a daily newspaper was kept. While doing so, the court protected the child's right to know about his father.

The right of a child to know about his father has already been emphasized by the Supreme Court. Previously, the court clarified that under Article 21 of our Constitution, a child's right to know about his father or origin is part of his (basic) right to life. As a result, the court did not believe that exposing the father's identity was necessary for the child's best interests.¹¹ However, as the child's *parens patriae*, it emphasized the value of the child's right to know his father, which should not be compromised. The right of a child to know his or her parents' identities is recognized in the Universal Declaration of Human Rights, which India is a signatory to as a result, the judges ordered the woman to reveal the name of her child's father and to submit all pertinent information in a sealed envelope, the contents of which would be revealed only if the court gave specific and suitable directions.¹²

The mother claimed that naming her child's father in the guardianship application would violate her privacy and expose her child to paternity allegations. The mother's privacy, as well as the child's and father's rights, were in peril. In *Dipanwita Roy v. Ronobroto Roy*¹³, the court was confronted with similar concerns concerning an unwed mother's privacy, as well as the rights of her child and father. In that case, the court upheld the mother's right to privacy while working in the best interests of the kid. In this case, the court found that forcing the lady to reveal her child's fathers identify and contact information would be a violation of her fundamental right to privacy.

ANALYSIS

The media has lauded this decision as groundbreaking and progressive. However, following

¹¹ ABC v. The State, *supra* note 2.

¹² Sidharth Luthra & Viraj Gandhi, Single Mothers, Absent Fathers and the Best Interests of the Child: Drawing a Fine Balance in the ABC Case, OXFORD HUMAN RIGHTS HUB, <http://ohrh.law.ox.ac.uk/single-mothers-absent-fathers-and-the-best-interests-of-thechild-drawing-a-fine-balance-in-the-abc-case/>.

¹³ Dipanwita Roy v. Ronobroto Roy, (2015) AIR 418 (SC) (India).

deeper examination, it becomes clear that the Supreme Court overlooked important issues.

NOT ON ANY SUBSTANTIVE ISSUES

Because there was not a custody dispute, the court decided that the appellant's capacity as the child's guardian was irrelevant. As a result, the court's ruling was not based on whether or not an unwed mother could be named as the guardian of a minor kid. It was simply a matter of alerting the minor's presumed father about the unwed mothers' guardianship application. The court notes in the second sentence of the judgement, "The issue is whether it is essential for an unwed mother to immediately tell the putative father of the child to whom she has given birth of her petition for appointment as the guardian of her kid.¹⁴ The appellant had signed an affidavit pledging to amend or revoke the status of guardianship if the child's father challenged it in the future. The court orders the Guardian Court to revisit its dismissing judgement and evaluate the appellant's case without informing the putative father of the minor in the penultimate paragraph. This supports the claim that the decision did not address any significant rights. Instead, it removed a procedural need that the putative father's name be divulged to ensure the minor's safety.

The court merely upheld an unmarried mother's right to have the father's name removed off crucial documents such as passports and school applications, and ordered officials to issue a birth certificate that only displays the mother's name if she submits an affidavit to that effect. As a result, single mothers would have an easier time obtaining official documents for their children. Although the law's procedural elements were struck down, the court did not rule on the unwed mother's substantive rights to custody of her kid. The right of a woman to custody and guardianship of her kid is still the subject of far too much litigation.

CONCLUSION

The court merely upheld an unmarried mother's right to have the father's name removed off crucial documents such as passports and school applications, and ordered officials to issue a birth certificate that only displays the mother's name if she submits an affidavit to that effect. As a result, single mothers would have an easier time obtaining official documents for their children. Although the law's procedural elements were struck down, the court did not rule on

¹⁴ ABC v. The State, *supra* note 2 at 1.

the unwed mother's substantive rights to custody of her kid. The right of a woman to custody and guardianship of her kid is still the subject of far too much litigation.¹⁵

The current situation highlighted a common problem that single mothers have while naming the father of their child in a variety of ways. A mother may not want to reveal the father's identity for a variety of reasons, but procedural constraints make this nearly impossible. As a result, both the mother and the child have difficulty obtaining even the simplest documentation. The court recognized the difficulty many of these moms had in coming to this choice and found that, under section 11, "parents" might refer to the parent who is raising the kid alone and is the primary caregiver, rather than both parents. It was conceivable to achieve the dual goals of not imposing an absent or indifferent parent on the child while also protecting the mother's privacy by doing so. While the court sided with the mother, it did not consider the substantive rights of women seeking custody of their children. It was just a means for the statute to reflect society's rising trend of child rearing without the participation of both parents.

While the Act governs guardianship and custody procedures, substantive rights are still controlled by personal laws. Despite the recent judgement, unwed mothers may continue to be punished unfairly by comparable legislation enacted by the same court. In reality, the legislature may be more equipped to deal with this issue. A private member's bill that will be submitted in Parliament during the Monsoon session to modify the constitution to grant women exclusive guardianship of their children is a step in the right direction. This will finally recognize the realities of unwed motherhood while also assisting in the resolution of the issues that unwed moms experience when raising their children alone.

¹⁵ Report No 257: Reforms in Guardianship and Custody Laws in India, LAW COMMISSION OF INDIA (2015), <http://lawcommissionofindia.nic.in/reports/Report%20No.257%20Custody%20Laws.pdf>.