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# DECONSTRUCTING PATERNAL AUTHORITY IN INDIAN GUARDIANSHIP LAW

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Jheel Nagori, Institute of Law, Nirma University

## ABSTRACT

The legal presumption that the father is the natural guardian of a child, with the mother assuming this role only upon his death, reflects a deeply embedded patriarchal construct that continues to shape guardianship laws in many jurisdictions. Rooted in historical notions of male authority, lineage, and property control, this hierarchy treats fathers as the primary legal decision-makers while relegating mothers to a secondary, conditional status within the family. Such a framework fails to acknowledge the evolving realities of caregiving and perpetuates a formal inequality that is increasingly incompatible with contemporary constitutional values. By privileging paternal authority irrespective of actual caregiving roles, guardianship laws reinforce discriminatory power structures within the family and marginalize the mother's agency in matters concerning education, healthcare, residence, and overall child welfare. The presumption not only diminishes maternal autonomy but also constructs motherhood as auxiliary rather than central to a child's upbringing. This research examines the foundations of this hierarchy, demonstrating how such gendered norms undermine constitutional guarantees of equality, reinforce discriminatory power structures within families, and marginalize the mother's agency in child-rearing and decision-making. It further analyzes the ways in which guardianship provisions perpetuate outdated assumptions about gender roles, caregiving, and paternal authority, and evaluates the real-world consequences for mothers and children. Such legal norms produce tangible and far-reaching consequences. Mothers frequently encounter procedural barriers when exercising parental authority, particularly during marital discord, separation, or custody disputes. Children, in turn, may suffer when rigid legal presumptions override an individualized assessment of their best interests and welfare. The analysis argues for a gender-neutral understanding of guardianship that prioritizes the best interests of the child over patriarchal tradition and calls for statutory reform, judicial reinterpretation, and societal attitudinal change to uphold substantive equality within the family structure. Such reform is essential to recognise caregiving as the true foundation of parental authority.

**Keywords:** Guardianship Laws, Natural Guardian, Child Welfare, Gender Bias, Patriarchy

## I. INTRODUCTION

Guardianship laws are a key part of family law. They set the limits of parental authority, outline decision-making roles, and define the legal status of both parents in relation to the child. In India, this system is mainly represented by the Hindu Minority and Guardianship Act, 1956<sup>1</sup> and the Guardian and Wards Act, 1890.<sup>2</sup> These laws reflect social and religious beliefs that have traditionally placed fathers as the main authority in the home. Despite major changes in society, such as women taking on equal roles as earners and primary caregivers, guardianship laws still lean heavily on patriarchal norms that assume fathers are the default legal guardians.

This bias in the law conflicts with the constitutional guarantees of equality found in articles 14<sup>3</sup> and 21<sup>4</sup> of the Constitution of India. It also clashes with growing international standards that demand gender-neutral rights for parents and considerations for child welfare. The preference for paternal authority is not just a legal tradition; it is a structural issue embedded in the language of the laws and how they are enforced. Section 6 of the Hindu Minority and Guardianship Act<sup>5</sup> specifically names the father as the natural guardian, stating, “and after him, the mother.” This creates a presumption of male authority unless the father is dead, unable to act, or missing. While court cases, such as *Githa Hariharan v. Reserve Bank of India*,<sup>6</sup> have softened this hierarchy, the legal framework still places mothers as secondary decision-makers. As a result, mothers often face administrative hurdles when handling issues like school admissions, obtaining passports, managing finances, and making medical decisions for their children. This is especially true in cases of marital breakdown, abandonment, or lack of cooperation from the father. This paper investigates the patriarchal roots of guardianship law in India. It examines court responses, considers the impact on mothers and children, and reviews how well existing laws align with constitutional equality and international standards. The aim is to suggest a guardianship framework that focuses on welfare and is gender-neutral, matching today's social realities.

## II. LITERATURE REVIEW

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<sup>1</sup> Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

<sup>2</sup> Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

<sup>3</sup> INDIA CONST. art. 14.

<sup>4</sup> INDIA CONST. art. 21.

<sup>5</sup> Hindu Minority and Guardianship Act, 1956, § 6, No. 32, Acts of Parliament, 1956 (India).

<sup>6</sup> *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 (SC).

## 1. Guardianship Under Hindu Law – Singh & Singh

This article<sup>7</sup> provides a doctrinal critique of the Hindu Minority and Guardianship Act, 1956 (HMGA), arguing that its structure continues to reflect deep-rooted patriarchal values embedded in classical Hindu laws. Singh & Singh emphasize that Section 6 of the HMGA unjustly prioritizes the father as the natural guardian over the mother, a legal hierarchy that contradicts contemporary constitutional commitments to gender equality. The authors analyse how statutory provisions fail to acknowledge the evolving social reality in which mothers frequently serve as primary caregivers and decision-makers. Their review of jurisprudence including *Gita Hariharan v. RBI* illustrates how courts have attempted to reinterpret the statute to permit maternal guardianship during the father's absence or indifference, but they maintain that judicial corrections cannot adequately compensate for statutory discrimination. The article concludes by calling for legislative reform to establish gender-neutral guardianship, arguing that the current framework undermines both the mother's autonomy and the child's welfare.

## 2. Minority and Guardianship under Hindu Law in India – Rajat Pal

Pal's article<sup>8</sup> focuses on defining and analysing the categories of guardianship under Hindu law, contextualizing them within both ancient *Dharmashastra* traditions and the post-independence codification efforts. The author notes how guardianship historically belonged to the sovereign under the doctrine of *parens patriae* and later transitioned into a primarily paternal right within the joint family system. The article critiques the HMGA for preserving this paternal preference, especially in its limited view of mothers as natural guardians only after the father. Pal explains the four types of guardians recognized by the Act natural, testamentary, court-appointed, and *de facto* and emphasizes that despite codification, judicial interpretation still plays a significant role in determining welfare outcomes. Although the article is descriptive rather than argumentative, its underlying message is clear: while the 1956 Act aimed to modernize Hindu guardianship law, it ultimately retained patriarchal biases that require updating to reflect contemporary family structures and constitutional equality.

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<sup>7</sup> R. Singh & S. Singh, Guardianship under Hindu Law, 28 J. INDIAN L. INST. 315, 322–324 (1986).

<sup>8</sup> Rajat Pal, *Minority and Guardianship under Hindu Law in India*, 45 J. INDIAN L. INST. 561, 568–570 (2003).

### **3. Hindu Minority and Guardianship: A Socio-Legal Study – Dwivedi and Dalal**

Dwivedi & Dalal<sup>9</sup> present a socio-legal analysis of guardianship under Hindu law, tracing its evolution from ancient scriptural norms to the statutory regime of the HMGA. They argue that Hindu guardianship continues to be shaped by the historical patriarchal structure of the joint family, where the father or male family head held exclusive control over minors and property. Their analysis shows that despite the advances in gender equality, the statutory presumption of paternal guardianship in Section 6 remains fundamentally unchanged, resulting in legal inequalities for mothers. The authors also highlight gaps in adoption law, particularly the gender-specific language of Section 7, which recognizes only the “adopted son” for guardianship purposes. Their review of court decisions demonstrates that the judiciary increasingly prioritizes child welfare over strict personal-law rules, but the inconsistency of judgments reveals structural ambiguities. The article ultimately recommends statutory revision to incorporate joint guardianship and gender-neutral language that aligns with constitutional ideals and modern caregiving realities.

### **4. Guardianship and Custody of a Minor Person – Arun Kumar**

Arun Kumar’s classic article<sup>10</sup> remains one of the most authoritative early doctrinal analyses of guardianship and custody under Indian law. He systematically examines how courts apply the Guardians and Wards Act, 1890, emphasising the centrality of the welfare principle in judicial decisions. The article provides an in-depth exploration of how courts evaluate parental fitness, child preference, character, financial stability, and emotional bonds when resolving custody and guardianship disputes. Kumar demonstrates that although personal laws especially Hindu law designate the father as the natural guardian, courts frequently override this presumption when it conflicts with the child’s welfare. Nevertheless, he argues that the judiciary’s reliance on discretion has created variability in outcomes, with some courts adhering closely to patriarchal personal-law norms and others adopting broader welfare-based interpretations. His analysis anticipates many modern reform debates by suggesting that statutory ambiguities lead to inconsistent judicial reasoning, highlighting the need for clear legislative guidance to ensure uniform child-centred outcomes.

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<sup>9</sup> R. K. Dwivedi & S. Dalal, *Hindu Minority and Guardianship: A Socio-Legal Study*, 40 J. INDIAN L. INST. 97, 104–106 (1998).

<sup>10</sup> Arun Kumar, *Guardianship and Custody of a Minor Person*, 16 J. INDIAN L. INST. 201, 208 (1974).

## 5. Custody and Guardianship of Children – Asha Bajpai

Bajpai's article<sup>11</sup> provides a comprehensive and comparative critique of custody and guardianship laws across India's religious personal-law systems. She shows how Hindu, Muslim, Christian, and Parsi guardianship frameworks—despite doctrinal differences—share the common presumption that the father is the natural guardian, while mothers receive only limited custodial preference for young children. Bajpai argues that this model is incompatible with modern child-rights standards and India's obligations under the UN Convention on the Rights of the Child. Drawing on case law, she illustrates how courts increasingly apply the welfare principle to counteract gender bias, sometimes awarding custody or guardianship to mothers against personal-law traditions. Still, Bajpai identifies serious systemic barriers: lack of uniformity across family courts, inadequate child-centred procedures, inconsistent judicial approaches, and the absence of statutorily mandated child representation. Her analysis strongly supports the need for a uniform, gender-neutral guardianship framework backed by procedural reforms to ensure that the welfare principle is applied consistently and meaningfully.

### III. RESEARCH OBJECTIVES

- To trace the historical evolution of guardianship laws in India and demonstrate how religious norms, colonial legislation, and post-Independence codification entrenched paternal authority.
- To identify the specific provisions within the Hindu Minority and Guardianship Act, 1956 and the Guardian and Wards Act, 1890 that perpetuate gender bias.
- To examine how gender-biased guardianship laws operate in everyday contexts and shape the lived experiences of mothers and children.
- To recommend legal and administrative reforms necessary for establishing a gender-neutral and welfare-centric guardianship model.

### IV. RESEARCH QUESTIONS

- How did guardianship laws evolve historically to privilege paternal authority, and why

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<sup>11</sup> Asha Bajpai, Custody and Guardianship of Children, 52 J. INDIAN L. INST. 213, 220–222 (2010).

do these biases continue despite constitutional guarantees of equality?

- In what ways do statutory provisions embed gender bias within guardianship law?
- How have Indian courts interpreted guardianship provisions, and do these interpretations support or challenge patriarchal norms?
- What practical consequences do such legal biases impose on mothers and children, especially in cases of marital discord, abandonment, or single parenthood?
- How do international norms and comparative global models contribute to reforming India's guardianship regime?

## V. HISTORICAL AND LEGAL BACKGROUND OF GUARDIANSHIP

### 1. Guardianship In Classical Hindu Law

Guardianship principles in India find their earliest expression in classical Hindu legal texts such as the *Manusmriti*, *Mitakshara*, and *Dayabhaga*, which conceptualised the family as an inherently patriarchal institution led by the father as the ultimate figure of authority. These texts assigned him near-absolute control over a minor's life extending to education, mobility, religious rites, property management, and marriage framing his guardianship as both a legal right and a *dharma*-bound duty. The mother, though venerated within the cultural imagination, was positioned primarily as a caregiver whose nurturing role lacked independent legal force. Her authority was not recognised as equal or parallel; rather, it arose only as a contingency in the event of the father's death, insanity, or proven incapacity, and even then, her decisions could be overridden by male relatives or community elders. This structure reflected deep-seated social mistrust of women's legal and financial agency and sharply differentiated between domestic care and legal authority. These classical doctrines became the conceptual scaffolding upon which later legislative and judicial structures were built, embedding gendered hierarchy into the very foundation of guardianship norms. Classical Hindu jurisprudence treated guardianship as inseparable from patriarchal lineage and property control. Texts such as the *Manusmriti* explicitly linked guardianship to the preservation of family lineage (*gotra*) and ancestral property, thereby privileging male authority as a mechanism for social and economic continuity. The father's guardianship was justified on the assumption that men alone possessed the rational capacity and financial competence required to manage a minor's affairs. This

doctrinal association between masculinity, property ownership, and legal authority ensured that guardianship remained firmly embedded within male-dominated kinship structures. Even when mothers were permitted to act in a guardianship capacity, their authority was treated as derivative rather than inherent. Classical texts did not recognise maternal guardianship as a matter of right but as an emergency arrangement, permissible only in the absence or failure of male guardians. Moreover, maternal decisions were often subject to oversight or displacement by male relatives, reinforcing the idea that women could exercise authority only under male supervision. This conditional recognition effectively denied women full legal personality in matters concerning children and entrenched their dependence within familial hierarchies.

## **2. Colonial Codification and the Guardian and Wards Act, 1890**

With the arrival of British rule, the colonial government set out to create laws about family matters mainly to improve governance, but without challenging local patriarchal traditions. The Guardian and Wards Act of 1890 (GWA)<sup>12</sup> combined Victorian family ideals with Indian patriarchal practices, resulting in a legal framework that confirmed the father as the natural guardian while viewing the mother as a dependent caregiver, lacking legal rights in property and management. Victorian beliefs saw the father as the rational head of the family and the mother as the moral supporter, and this perspective significantly influenced judicial decisions under the Act. Mothers seeking guardianship especially over a child's property faced challenges like tougher evidence requirements, biases in decisions, and slow legal processes. Courts often questioned a mother's capability to handle finances or to advocate for her child in legal matters. Instead of addressing the gender inequality, colonial laws solidified it, turning long-held patriarchal traditions into strict legal rules. In doing so, the GWA<sup>13</sup> established a guardianship model that favoured male authority and marginalized women's claims for many years.

## **3. Post-Independence Codification and the Continuity of Patriarchy**

Following Independence, India's legal system was intended to reflect commitments to equality, liberty, and gender justice. However, the Hindu Minority and Guardianship Act, 1956 (HMGA)<sup>14</sup> fell short of these goals. Instead, it maintained existing patriarchal structures. Section 6 of the Act designated the father as the natural guardian of a legitimate minor child,

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<sup>12</sup> Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

<sup>13</sup> Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

<sup>14</sup> Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

relegating the mother to a secondary role recognized only after the father. This language introduced gender discrimination into the law.

This approach legitimized paternal authority within families and undermined Articles 14<sup>15</sup> and 21<sup>16</sup> of the Constitution by permitting unequal treatment. It also overlooked the changing roles of women, who were increasingly providing financial support and primary caregiving. The HMGA did not recognize different types of families, such as single-mother households, separated parents, or families where mothers were the main caregivers. By prioritizing paternal status over the reality of caregiving, the Act upheld the patriarchal household model and created barriers for mothers in making decisions about their children. Rather than updating guardianship law, the 1956 Act reinforced gender hierarchies in the name of codification.

#### 4. Judicial Evolution and the First Cracks in Patriarchy

Early court interpretations of the HMGA strictly followed its father-focused language, the judiciary gradually began to challenge the legal hierarchy by prioritizing the child's welfare and aligning guardianship law with principles of equality. A key shift happened in the case of *Jijabai Vithalrao Gajre v. Pathankhan* (1971).<sup>17</sup> The Supreme Court ruled that a mother could be recognized as the natural guardian when the father was indifferent, absent, or had essentially given up his responsibilities. This case marked a significant change from earlier strict readings of Section 6<sup>18</sup> by focusing on actual caregiving rather than formal fatherly rights. The move toward a more gender-sensitive interpretation reached a major milestone in *Githa Hariharan v. Reserve Bank of India* (1999).<sup>19</sup> In this case, the Supreme Court interpreted the word “after” in Section 6(a)<sup>20</sup> to mean “in the absence of,” allowing mothers to serve as natural guardians during the father's lifetime if the child's welfare required it. Importantly, the Court based its ruling on constitutional guarantees of equality and India's international commitments under CEDAW,<sup>21</sup> the Beijing Declaration,<sup>22</sup> and the Convention on the Rights of the Child.<sup>23</sup> This created a clear recognition that fatherly dominance was not compatible with modern human

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<sup>15</sup> INDIA CONST. art. 14.

<sup>16</sup> INDIA CONST. art. 21.

<sup>17</sup> *Jijabai Vithalrao Gajre v. Pathankhan*, (1971) 2 SCC 451 (SC).

<sup>18</sup> Hindu Minority and Guardianship Act, 1956, § 6, No. 32, Acts of Parliament, 1956 (India).

<sup>19</sup> *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 (SC).

<sup>20</sup> Hindu Minority and Guardianship Act, 1956, § 6(a), No. 32, Acts of Parliament, 1956 (India).

<sup>21</sup> Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>22</sup> Beijing Declaration and Platform for Action, adopted 15 Sept. 1995.

<sup>23</sup> Convention on the Rights of the Child, adopted 20 Nov. 1989, entered into force 2 Sept. 1990, 1577 U.N.T.S. 3.



rights standards. These court actions started to chip away at the patriarchal foundation of guardianship law, but they remain interpretive rather than legislative wins. The statutory language still favours fathers, showing that while courts have tried to update guardianship norms, true gender equality will eventually need thorough legislative reform.

## VI. FRAMEWORK

### 1. Statutory Structure of Guardianship

The statutory framework governing guardianship in India reflects an entrenched gender hierarchy that privileges the father as the primary legal authority over the child, a hierarchy that has persisted despite constitutional commitments to equality and social transformations in familial roles. The most explicit articulation of this patriarchal structure appears in section 6 of the Hindu Minority and Guardianship Act, 1956,<sup>24</sup> which designates the father as the natural guardian of a minor and relegates the mother to a secondary status by stipulating that her guardianship arises only “after him.” Although the Act is framed within a welfare-oriented approach, its textual language continues to reproduce the assumption that legal authority is a distinctly male domain. This formulation is neither incidental nor merely reflective of mid-twentieth century drafting norms; it represents the continuation of long-standing religious and colonial conceptions of the family, which historically positioned the father as the head of the household and the custodian of the child's person and property. Crucially, the mother's subordinate position in this statutory scheme is not based on empirical assessment of caregiving ability or contemporary social realities. Instead, it rests on deeply embedded traditional gender roles that cast mothers as nurturers confined to the domestic sphere while positioning fathers as rational, decision-making actors suited to legal authority. The statutory language thus cements a symbolic and functional hierarchy that is difficult to reconcile with the constitutional guarantees of equality under Articles 14<sup>25</sup> and 21.<sup>26</sup>

The Guardian and Wards Act, 1890 (GWA)<sup>27</sup> further reinforces this imbalance, even though its provisions appear formally gender neutral. The Act's jurisprudential underpinnings lie in colonial legal thought shaped by Victorian ideals of family structure, which presumed paternal superiority in matters involving property, financial administration, and long-term decision-

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<sup>24</sup> Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

<sup>25</sup> INDIA CONST. art. 14.

<sup>26</sup> INDIA CONST. art. 21.

<sup>27</sup> Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

making. Historically, courts applying the GWA interpreted guardianship through the lens of these assumptions, routinely favouring fathers over mothers, especially when decisions involved the management of a child's assets or the administration of property. Mothers were frequently perceived as emotional caregivers rather than autonomous legal actors capable of handling complex responsibilities. The Act's application thus produced a long-term pattern of administrative inequality, where the mother's caregiving labour was acknowledged but her legal competence undervalued.

Custody-related laws often recognise the mother's role during the child's early years invoking the "*tender years doctrine*" and courts may prefer maternal custody on welfare grounds. Yet, guardianship provisions simultaneously reserve legal authority for the father, creating a fundamental disconnect: the mother may be responsible for day-to-day physical and emotional care, but the father retains the ultimate power to make binding decisions concerning education, property, medical treatment, passports, and financial affairs. Even when the father is largely absent from caregiving responsibilities, his legal authority persists unless he is demonstrably unfit, incapacitated, or entirely absent. This dichotomy reflects an entrenched belief that caregiving is a natural extension of maternal identity while authority and decision-making belong to the father. The result is a statutory system that, while appearing to acknowledge maternal roles, stops short of recognising maternal autonomy.

## 2. Judicial Interpretation and Gender Bias

Judicial interpretation has played a pivotal role in moderating the gender bias embedded in guardianship statutes, although courts have traditionally adopted a paternalistic approach that reinforces the presumption of paternal primacy.

A significant development occurred in *Jijabai Vithalrao Gajre v. Pathankhan* (1971),<sup>28</sup> where the Supreme Court acknowledged that a mother assumes the role of natural guardian when the father is indifferent, absent, or has effectively abdicated his responsibilities. This decision marked an important shift from a rigid, text-based interpretation to a functional approach grounded in actual caregiving patterns. It introduced the principle that welfare considerations may override the statutory preference for paternal guardianship.

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<sup>28</sup> *Jijabai Vithalrao Gajre v. Pathankhan*, (1971) 2 SCC 451 (SC).

A more transformative interpretation emerged in *Githa Hariharan v. Reserve Bank of India* (1999),<sup>29</sup> in which the Supreme Court held that the expression “after” in section 6 should not be read as strictly chronological meaning after the father’s death but rather as “in the absence of,” encompassing situations where the father is unavailable or fails to discharge parental duties. By invoking constitutional guarantees of gender equality and drawing upon international norms such as CEDAW<sup>30</sup> and the Beijing Declaration,<sup>31</sup> the Court adopted an interpretive method that harmonised domestic guardianship law with global standards. However, the judgment refrained from striking down the discriminatory statutory text, relying instead on interpretative reconstruction, which leaves outcomes contingent upon judicial discretion.

In *Pannilal v. Rajinder Singh* (1993),<sup>32</sup> the Supreme Court distinguished between guardianship rights and maintenance obligations, clarifying that guardianship must be determined primarily through welfare considerations. Despite this clarification, the conceptual framework of paternal priority remained largely intact. A more decisive departure from patriarchal assumptions occurred in *ABC v. NCT of Delhi* (2015),<sup>33</sup> where the Court recognised that an unwed mother is the sole natural guardian of her child and need not obtain the father’s consent or disclose his identity to secure guardianship. The judgment acknowledged the autonomy of single mothers and rejected formalistic reliance on paternal authority, particularly where such authority is absent in practice.

Collectively, these decisions reveal a gradual judicial movement toward gender-neutral guardianship principles. Nonetheless, the trajectory remains constrained by statutory language that continues to privilege paternal authority.

## VII. REAL LIFE CONSEQUENCES AND BARRIERS

### 1. Administrative Barriers

The gendered structure of guardianship law manifests in significant real-world barriers that affect mothers and children in their day-to-day lives. These consequences arise not only in

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<sup>29</sup> *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 (SC).

<sup>30</sup> Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>31</sup> Beijing Declaration and Platform for Action, adopted 15 Sept. 1995.

<sup>32</sup> *Pannilal v. Rajinder Singh*, (1993) 4 SCC 38 (SC).

<sup>33</sup> *ABC v. NCT of Delhi*, (2015) 10 SCC 1 (SC).

complex custody disputes but also in routine administrative and institutional processes. Mothers frequently encounter difficulties in performing essential tasks such as school admissions, passport applications, and opening bank or investment accounts on behalf of their children, as many institutions require the father's signature or consent based on the assumption that he is the natural guardian. This obstacle persists even in circumstances where the mother is the primary or exclusive caregiver, including in cases of separation, divorce, domestic violence, abandonment, or prolonged non-cooperation by the father. As a result, mothers may be compelled to produce affidavits, obtain guardianship certificates, or initiate litigation to complete tasks that fathers can perform by default.

## **2. Healthcare Barriers**

Healthcare settings also reflect these barriers. Hospitals occasionally decline to accept maternal consent for major medical procedures when the father is alive but unavailable, thereby delaying necessary treatment and heightening distress for both mother and child. For single mothers whether unmarried, divorced, widowed, or separated, the bureaucratic insistence on paternal details presents additional challenges. Administrative systems often presume the presence of a father regardless of reality, compelling mothers to maintain or disclose connections that may be unsafe, unwanted, or irrelevant to the child's upbringing. The *ABC v. NCT of Delhi*<sup>34</sup> decision arose from precisely this difficulty, illustrating how procedural norms can render the exercise of parental rights practically impossible for single mothers.

## **3. Psychological and Social Consequences**

These administrative hurdles have broader psychological and social consequences. Children may internalise gendered expectations when they observe their mothers consistently treated as secondary decision-makers by institutions. Mothers experience diminished autonomy, increased dependency, and heightened vulnerability when navigating systems that condition their legitimacy on paternal approval. In contexts involving domestic violence, the requirement of paternal consent becomes a mechanism for continued coercion, extending control over the survivor's daily life. Even ostensibly minor requirements such as mandatory inclusion of the father's name on school forms or identity records reinforce patriarchal norms and force ongoing

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<sup>34</sup>*ABC v. NCT of Delhi*, (2015) 10 SCC 1 (SC).

ties with absent or abusive fathers.

## VIII. SOCIO-LEGAL AND FEMINIST PERSPECTIVES

Guardianship laws in India operate as an analytical lens through which the relationship between law, gender, and social hierarchy becomes visible. The paternal preference embedded in these Acts is not merely a doctrinal artefact; it has substantive implications for the autonomy of mothers and the lived experiences of children. From a socio-legal perspective, these statutory provisions reflect a broader social structure in which patriarchal norms are naturalised, and legal authority is aligned with male identity. Feminist jurisprudence provides a critical framework for interrogating these structural biases by demonstrating how laws that appear neutral on their face often reproduce gendered inequalities in practice. Within this framework, caregiving is frequently feminised and reduced to an instinctive or emotional responsibility, while the attributes associated with guardianship, rationality, authority, and legal competence are aligned with masculinity. This division reinforces a legal hierarchy that privileges fathers as decision-makers and relegates mothers to subordinate positions despite their central role in childcare.

The decision in *Pannilal v. Rajinder Singh* (1993)<sup>35</sup> illustrates how statutory oversight mechanisms, especially in property matters, impose disproportionate burdens on mothers. Fathers are presumed capable of managing financial and legal responsibilities, whereas mothers often require judicial approval to exercise similar authority. Such distinctions are not grounded in empirical evidence but arise from entrenched social assumptions. These disparities intensify for single mothers, widows, divorced women, and survivors of domestic violence, for whom the procedural demands of the guardianship system may translate into economic dependency, constrained autonomy, and vulnerability to coercion.

The judiciary serves as a site of negotiation between patriarchal statutory frameworks and constitutional commitments to equality. Feminist legal analysis highlights this conflict by emphasising that the law must move beyond welfare-based exceptions toward structural change that recognises mothers as equal legal authorities. Without such transformation, the guardianship regime remains a mechanism through which social norms of gendered power are

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<sup>35</sup> *Pannilal v. Rajinder Singh*, (1993) 4 SCC 38 (SC).

legally validated.

## **IX. INTERNATIONAL NORMS**

### **1. CEDAW**

A careful look at guardianship law requires considering international legal agreements that set standards for gender equality and child welfare. The Convention on the Elimination of All Forms of Discrimination Against Women, which India ratified in 1993, requires countries to eliminate discrimination against women in all family-related matters. Articles 5(a)<sup>36</sup> and 16<sup>37</sup> clearly mandate the questioning of traditional gender roles. They also ensure equal parental rights in guardianship, custody, and decision-making. These provisions define parental responsibility not by gender but as equal participation and shared authority.

### **2. Beijing Declaration**

The Beijing Declaration and Platform for Action from 1995<sup>38</sup> reinforces these requirements. It urges countries to remove discriminatory family laws and empower women to have equal legal authority in decisions about children. It acknowledges that bias in family law adds to broader gender inequality. Reform must address both legal frameworks and administrative practices.

### **3. Convention on the Rights of the Child**

The Convention on the Rights of the Child, ratified by India in 1992, offers an additional perspective that focuses on the child's welfare. Articles 3,<sup>39</sup> 7,<sup>40</sup> 9,<sup>41</sup> 12,<sup>42</sup> and 18<sup>43</sup> collectively stress that the best interests of the child should guide all legal decisions. They also state that

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<sup>36</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 5(a), adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>37</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 16, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>38</sup> Beijing Declaration and Platform for Action, adopted 15 Sept. 1995.

<sup>39</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 3, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>40</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 7, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>41</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 9, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>42</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 12, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

<sup>43</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 18, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, 1249 U.N.T.S. 13.

parental responsibilities should be shared fairly. The CRC highlights the need to recognize children as individuals with rights. Their welfare is at risk when formal guardianship depends on gender assumptions instead of real caregiving.

Indian courts have increasingly turned to these international agreements to support gender-sensitive views in domestic law. In *Githa Hariharan v. Reserve Bank of India*, the Supreme Court used CEDAW and the Beijing Declaration to reinterpret section 6 of the Hindu Minority and Guardianship Act, reducing its discriminatory impact. Similarly, in *ABC v. NCT of Delhi*, the Court used principles of the CRC to prioritize the welfare of children and recognize the rights of single mothers as natural guardians, independent of fathers' claims. These rulings show that international standards can serve as persuasive guides, helping to shape domestic reforms toward gender neutrality and a focus on welfare in guardianship.

## X. COMPARATIVE ANALYSIS

Comparative legal analysis reveals that India remains one of the few jurisdictions with statutory provisions that explicitly privilege paternal guardianship. In contrast, many legal systems have moved toward gender-neutral frameworks that align guardianship with caregiving involvement and the welfare of the child. The United Kingdom's Children Act 1989<sup>44</sup> confers parental responsibility automatically upon mothers, while fathers acquire such responsibility through co-registration of birth or court order, thereby linking legal authority to demonstrated commitment rather than biological identity alone. In the United States, although guardianship laws vary across states, the prevailing standard is the "best interests of the child," which operates independently of gender and prioritises parental involvement and stability.

Ireland's post-2015<sup>45</sup> guardianship reforms similarly link guardianship rights to actual caregiving involvement, granting unmarried fathers' automatic guardianship only upon cohabitation for a specified period. This model recognises that parental rights should correspond to active participation in the child's life. In the Philippines, the Family Code<sup>46</sup> assigns sole guardianship of children born outside marriage to mothers, with fathers' rights contingent on formal recognition and active involvement. New Zealand's Care of Children Act, 2004,<sup>47</sup> adopts a comparable approach by granting equal guardianship to married parents and

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<sup>44</sup> Children Act, 1989, No. 41, Acts of Parliament, 1989 (U.K.).

<sup>45</sup> Children and Family Relationships Act, 2015, No. 9, Acts of the Oireachtas, 2015 (Ireland).

<sup>46</sup> Family Code of the Philippines, Exec. Order No. 209, 1987 (Philippines).

<sup>47</sup> Care of Children Act, 2004, No. 90, Acts of Parliament, 2004 (N.Z.).

recognising mothers as the initial guardians of children born outside marriage unless fathers demonstrate sustained engagement. South Africa's Children's Act, 2005<sup>48</sup> represents one of the most comprehensive gender-neutral models, evaluating guardianship based on caregiving, financial contribution, and commitment rather than gender.

These comparative frameworks demonstrate that statutory gender neutrality produces more equitable and welfare-centric outcomes. Such models reduce administrative conflict, prevent procedural delays, and recognise diverse family structures without subordinating mothers' authority. They also illustrate that legal systems can move beyond patriarchal presumptions without undermining the role of fathers; instead, they create structures in which parental rights reflect actual responsibility and engagement. The divergence between Indian law and international practice underscores the need for statutory reform. While judicial interpretation has mitigated some aspects of paternal primacy, reliance on case-specific exceptions cannot substitute for comprehensive legislative change. Global experiences provide both doctrinal support and practical pathways for embedding gender neutrality directly within statutory provisions, thereby ensuring consistency, reducing litigation, and aligning Indian guardianship law with constitutional and international obligations.

## **XI. POLICY AND LEGISLATIVE REFORM FOR A GENDER-NEUTRAL GUARDIANSHIP LAWS**

The ongoing gender bias in India's guardianship laws needs clear legislative and policy changes that match constitutional principles and international human rights standards. Although cases like *Githa Hariharan v. Reserve Bank of India* (1999)<sup>49</sup> and *ABC v. NCT of Delhi* (2015)<sup>50</sup> have reduced some of the discrimination in section 6 of the Hindu Minority and Guardianship Act, 1956,<sup>51</sup> these changes are more about interpretation than real transformation. Courts can reinterpret laws, but they can't change the text itself. Consequently, the preference for paternal authority is still present in the law and continues to influence administrative practices. This inconsistency in judicial decisions highlights the urgent need for reform to create a truly gender-neutral guardianship system.

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<sup>48</sup> Children's Act, 2005, No. 38, Acts of Parliament, 2005 (S. Afr.).

<sup>49</sup> *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 (SC).

<sup>50</sup> *ABC v. NCT of Delhi*, (2015) 10 SCC 1 (SC).

<sup>51</sup> Hindu Minority and Guardianship Act, 1956, § 6, No. 32, Acts of Parliament, 1956 (India).



Changing section 6 of the Hindu Minority and Guardianship Act<sup>52</sup> to state that both parents are natural guardians from the time of the child's birth would provide clarity and remove the conditional aspect of maternal authority. This reform should clarify that guardianship is based on caregiving, responsibility, and the child's best interests, rather than the parents' gender. A new statutory provision could require courts to evaluate guardianship based on actual involvement, thus eliminating the assumption that fathers have priority. Similarly, updates to the Guardian and Wards Act, 1890,<sup>53</sup> especially regarding mandatory notifications and paternal consent, should focus on the child's welfare and stability, in line with the principles set out in the ABC ruling. A unified, religion-neutral guardianship law that applies to all communities would promote consistency, reduce fragmentation, and prevent patriarchal values from continuing through personal religious laws.

Policy actions are also crucial to ensure effective execution of these legislative changes. Administrative agencies handling documentation, education, healthcare, and financial transactions must establish protocols that clearly recognize both parents as co-guardians in routine matters. Awareness campaigns targeting mothers and community members would help ensure that rights under the new legal framework are well understood and exercised effectively.

A gender-neutral guardianship system would bring significant social and developmental benefits. It would recognize mothers as equal legal authorities, remove dependence on fathers for procedures, and encourage a collaborative approach to parental involvement focused on the child's best interests. This reform would enhance children's access to education, healthcare, and social services by eliminating delays caused by the need for paternal consent. Including the welfare principle from the Convention on the Rights of the Child, particularly Article 3,<sup>54</sup> ensures that the child's needs are prioritized over maintaining paternal hierarchy. Experiences from places like the United Kingdom, United States, Ireland, the Philippines, New Zealand, and South Africa show that gender-neutral guardianship laws lead to fairer outcomes, lower litigation costs, and clearer understandings for families and institutions. These examples demonstrate that legal rights based on caregiving and responsibility, not gender, create a more stable, child-focused guardianship framework.

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<sup>52</sup> Hindu Minority and Guardianship Act, 1956, § 6, No. 32, Acts of Parliament, 1956 (India).

<sup>53</sup> Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

<sup>54</sup> Convention on the Rights of the Child, adopted 20 Nov. 1989, art. 3, entered into force 2 Sept. 1990, 1577 U.N.T.S. 3.

The legal rulings in *Jijabai Vithalrao Gajre v. Pathankhan* (1971),<sup>55</sup> *Pannilal v. Rajinder Singh* (1993),<sup>56</sup> *Githa Hariharan*, and *ABC* showcase the flaws and inconsistencies in India's guardianship laws. *Jijabai* and *Githa Hariharan* emphasize that maternal guardianship becomes crucial when fathers are missing or neglectful. *Pannilal* highlights the procedural hurdles mothers encounter, particularly concerning property issues. *ABC* affirms the autonomy of single mothers by separating guardianship from paternal involvement when such involvement is impractical or unhelpful. These cases reveal the potential and limits of judicial reform, stressing the need to legally embed equal principles, so that gender equality in guardianship is rooted in law rather than reliant on judicial interpretation.

Changing guardianship laws also supports broader goals of gender justice. By eliminating the outdated belief that equates authority with masculinity and caregiving with femininity, the law can address long-standing social hierarchies and foster fairer family structures. Recognizing mothers as equal guardians affirms their independence and authority while benefiting children who need timely and coordinated parental decisions. Moreover, shifting the focus from paternal assumptions to child welfare as the central legal standard guarantees that guardianship disputes are resolved in ways that prioritize stability, safety, and developmental needs. International agreements like CEDAW and the Beijing Declaration support this need by urging states to eliminate discriminatory legal norms and promote equal parental responsibilities. Altogether, these reforms lay the groundwork for a modern guardianship system that reflects our commitments to equality, dignity, and child welfare.

## XII. CONCLUSION

India's guardianship laws remain grounded in patriarchal assumptions that privilege fathers and impose structural disadvantages on mothers despite considerable social transformation and significant judicial intervention. While decisions such as *Githa Hariharan* and *ABC* have expanded the scope of maternal guardianship through gender-sensitive interpretation, the underlying statutory framework continues to enshrine paternal authority, resulting in inconsistent outcomes and persistent barriers in administrative and legal processes. The statutory privileging of fathers, the procedural burdens placed on mothers, and the absence of a uniform, religion-neutral guardianship code all contribute to a system that inadequately

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<sup>55</sup> *Jijabai Vithalrao Gajre v. Pathankhan*, (1971) 2 SCC 451 (SC).

<sup>56</sup> *Pannilal v. Rajinder Singh*, (1993) 4 SCC 38 (SC).

reflects contemporary family dynamics and constitutional mandates.

Legislative reform is therefore essential to eliminate gender-based presumptions and establish both parents as equal natural guardians from the outset. A revised guardianship regime must explicitly prioritise the welfare of the child, ensure that caregiving and responsibility determine legal authority, and provide mechanisms that protect children and mothers from administrative delays and paternal obstruction. Complementary policy measures, such as administrative recognition of co-guardianship, judicial training, and public awareness initiatives are necessary to operationalise statutory reforms and ensure consistent compliance across institutions.

International norms and comparative global models demonstrate that gender-neutral guardianship frameworks enhance both child welfare and parental equality. The experiences of jurisdictions such as the United Kingdom, United States, Ireland, the Philippines, New Zealand, and South Africa offer practical and doctrinal evidence that equitable guardianship laws foster cooperative parenting, reduce litigation, and promote stability within families. Incorporating these insights into Indian law would bring domestic guardianship practice in line with global human rights standards and the constitutional guarantees of equality and dignity.

By adopting a comprehensive, gender-neutral guardianship regime, India can dismantle the patriarchal assumptions embedded in its legal framework, affirm mothers as equal legal authorities, and prioritise the welfare and rights of children. Such reform represents not only a necessary legal correction but also a broader social commitment to equality, justice, and the realities of contemporary family life.