
RETHINKING INDIAN LAWS FOR SINGLE MOTHERS: GUARDIANSHIP, DOCUMENTATION, AND WELFARE

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ABSTRACT

A contemporary trend in the evolving Indian Family structures is one wherein single parenthood, especially headed by single mothers are visible. Many reasons, including separation from spouse, divorce, widowhood, non-marital relationships, and voluntary choices against the social institution of marriage. The issue arises when the conventional legal and policy frameworks view the family in the model of two-parent, which is often father-centric, thereby creating hurdles for single mothers, despite the courts beginning to acknowledge such structures, in the spheres of legal recognitions such as guardianship, and implementation aspects of documentation for their children, as well as access to welfare schemes.

Undertaking a doctrinal and policy analysis with respect to the stance of single mothers in the Indian legal system, this paper essentially focuses on guardianship and documentation requirements within the general guardianship legislations, personal laws, and administrative practices, while also looking into the judicial rulings that affirm the rights of the single mothers to be represented as the sole guardian without compulsive disclosure of the father's identity, and to withstand the administrative procedures that treat father as the primary parent. This paper intends to explore the extent of judicial interventions that have provided some leniency to the statutory and bureaucratic norms that remain tied to the conventional, or rather to a patriarchal understanding of the institution of family.

Further, the paper also intends to assess the extent to which the many measures improve or respond to the economic and caregiving hurdles faced by single parents by bringing some of the welfare and social security measures affecting single mothers, widows and other single women, maternity and child-related benefits and schemes into the spotlight. The key argument remains that despite the progress in the recognition of single mothers within the Indian legal system, the already existing frameworks still lack to realize them as an autonomous legal parent or rather a distinct rights-holders within the family policy. This paper further deduces reforms in the law of guardianship, administrative practices like documentation, and scheme design, all this to with an aim to present the Indian family policy with the reality of single-parent families and the ultimate goal of inclusive governance.

INTRODUCTION

The traditional Indian family landscape is a witness to a profound demographic and sociological shift. In earlier times, the nature of the families were joint with a patriarchal headship. However, the contemporary times sees a rise in the single-mother households, which is caused by various factors such as, the rising divorce rates, increasing cases of desertion, and the rise in the conscious choice of women in realising their reproductive autonomy and choosing to have children outside the marital unions. The Indian legal policies, however, remains deeply engrained in the father-centric understanding of the family. Further, the law typically functions by creating certain systemic barriers for the single mothers spread across the different domains such as, the guardianship, custodial documentation, and the access to state-sponsored welfare schemes.

This paper addresses the essential question of “*how far does the Indian laws and policies recognise single mothers as autonomous parents?*” In order to answer the same the primary objectives pursued in this paper are firstly, to analyse the already existing statutory frameworks and the judicial interpretations that govern the guardianship and the identity documentation for the children of single mothers, secondly, to critically analyse the conditions for eligibility and the practical gaps in the current welfare schemes that are intended to support them, and thirdly, to suggest certain structural and the administrative reforms in order to harmonize law with the modern family realities.

This paper also argues that though there has been commendable progress with the judicial interventions and the selective administrative updates, the gaps still remain ingrained in the statutory and systemic biases. The Indian law grants single mothers limited, case-by-case solutions instead of the full and independent legal recognition or foundational autonomy. In the drive for achieving genuine gender justice and to safeguard the best interest of the child, it is required that the legislative frameworks are broadened to dismantle the existing patriarchal hierarchies in the Indian family law.

The Legal Framework (Guardianship and Documentation)

Guardianship Laws and Father-Centric Hierarchy

The main disadvantage that the single mothers in India face comes from the personal laws that

prioritise fathers or paternal authority. The Hindu Minority and Guardianship Act (HMGA), 1956 is the primary legislation that governs the guardianship for a huge Indian population. The provision of Section 6(a) of the HMGA states that the natural guardian of a Hindu minor boy or unmarried girl is, “the father, and after him, the mother.”¹ This wording establishes a clear statutory hierarchy wherein the mother is placed in a secondary status during the lifetime of the father. By default, the law presumes father to be the natural guardian while the right of the mother is left upon the contingency of the father’s absence or incapacity. It is argued by the scholars that this “after him” clause is the essential of a “patripotestas” model wherein the law presumes that the father is the sole parent capable of protecting the best interest of a child.² Scholars also argue that framework like this leads to the creation of a model wherein the biological labor and emotional care are legally undervalued when compared to legal paternity, essentially it is thus demanded that law recognizes both the parents, mother and father as deemed guardians jointly and severally.³

This subordination is also reflected in the older Guardians and Wards Act (GWA), 1890, which applies to various religious lines, within the provision Section 19(b) which had originally stated that a court could not appoint a guardian for a minor if the father was alive and was not considered unfit.⁴ Though there was an amendment to this Section with the 2010 amendment, the practical application continues to default to the paternal preference. Saptarshi Mandal notes that while the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956 were updated, the Hindu Minority and Guardianship Act, 1956 remained “curiously left untouched” by the legislature, thereby leaving a continuing statutory gap. Further, the scholar contends that the legal framework in India suffers from a “proprietary view” of the paternity, thereby prioritizing “legal paternity” and the biological lineage over the actual “intention and the labour” that is given by the mother while rearing the child.⁵

The framework remains paradoxical even in the case of unwed mothers. While Section 6(b) of the HMGA grants the mother primary guardianship of an “illegitimate” child,⁶ the strange situation that arises is wherein a women’s complete authority as a parent is recognised subject

¹ Hindu Minority and Guardianship Act, No. 32 of 1956, § 6(a) (Ind.)

² Amita Punj & Nikita Samarnath, *Guardianship of Hindu Minor: A Critique of the Law*, 63 J. INDIAN L. INST. 172 (2021).

³ Saptarshi Mandal, *Biology, Intention, Labour: Understanding Legal Recognition of Single Motherhood in India*, 15 SOCIO-LEGAL REV. 131 (2019).

⁴ Guardians and Wards Act, No. 8 of 1890, § 19(b) (Ind.)

⁵ Supra note 3.

⁶ Hindu Minority and Guardianship Act, No. 32 of 1956, § 6(b) (Ind.)

to the absence of a legally recognized husband. Effectively, the law gives autonomy in a way that also indirectly stigmatizes the mother and the child. The critical reviews underscores the difference between the legitimate and illegitimate child, emphasizing that it must give a way to a law that goes beyond such distinctions and does not differentiate among the children and also does not stigmatize them or their parents.⁷

Key Judicial Interventions

The Indian Judiciary has often intervened to reduce the harsh effects of the law, even with the rigid legal hierarchies. The major shift in the father-first approach had come with the landmark judgment of *Ms. Githa Hariharan v. Reserve Bank of India*, wherein the Supreme Court had to examine the constitutionality of Section 6(a) of the HMGA, 1956 and the court while deciding had failed short on striking down the provision as unconstitutional with respect to the provisions of Article 14 and 15 of the Indian Constitution,⁸ the court managed to take a harmonizing interpretation. The court had held that the word “after” does not strictly mean “after the lifetime” of the father, and instead, it can be understood as “in the absence of” of the father, possibly when the father is indifferent, physically away, or when incapable of taking care of a child.⁹ This had permitted the mothers to act as the natural guardians without the requirement to prove the father’s death. However, the statutory hierarchy remained untouched.

A much stronger assertion of the single mother’s autonomy came in the 2015 case of *ABC v. State (NCT of Delhi)* wherein a single unwed mother had applied to be appointed as the sole guardian of her child, the lower courts had rejected the application due to the refusal of disclosing the name of the putative father, and further citing the requirement to serve notice to him as per Section 11 of the GWA. The Supreme Court, reversing the decision had held that an unwed mother as the sole natural guardian of her child cannot be forced to disclose the identity of the father or be required to serve notice to him if she has raised the child without assistance from him. Additionally, the court had underscored the best interest of the child and their right to privacy in order to override the procedural necessity of giving notice to an absent father.¹⁰ This ruling was significant in order to protect the future welfare of the child and subsequently the privacy of the mother, especially in the cases wherein disclosing the details

⁷ Supra note 2.

⁸ INDIA CONST. art. 14; INDIA CONST. art. 15.

⁹ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 S.C.C. 228.

¹⁰ *ABC v. State (NCT of Delhi)*, (2015) 10 S.C.C. 1.

of a “putative father” might bring in unnecessary legal controversy and social harm to the family.¹¹ Scholars also note that the mandatory requirement to disclose the father’s name in scenarios like this presents huge difficulties in protecting the future welfare of the child, particularly in cases where the putative father is already married to another woman.¹²

Continuing the trend, more recently, many High Courts have adopted this progressive approach. For instance, the Bombay High Court had observed that recognizing a single mother as a complete parent cannot be considered an act of charity, but rather the fulfilment of her fundamental rights. Such interventions highlight that the maternal rights are to be evaluated in the light of Article 21 that guarantees an individual dignity and personal liberty.

Documentation Issues and the Administrative Barriers

The progress in the courts has not really been helpful for the single mothers as they still face difficulties with the bureaucratic systems in their attempt to secure the basic documentation for their children. The standard administrative procedures to issue birth certificates, school admissions, and the insurance policies has for decades required the mandatory mention of the father’s name, thereby creating a “domino effect” wherein without providing the father’s name it would result in the denial of the basic rights to the child.

Certain administrative reforms that were prompted by judicial pressure has brought in some progress. For instance, the 2016 amendment to the Passport rules wherein the earlier requirement was such that for a child’s passport the names and the consent of both the parents were required, with the recommendations from the Ministry of Women and Child Development and the subsequent notifications,¹³ it is now required in the online application form the name of only one parent or a legal guardian. This has essentially allowed the single mothers to leave out the father’s name without having to face rejection. Similarly, the changes applied to the Permanent Account Number (PAN) card applications also permits an individual to provide the mother’s name only if she is a single parent.

However, these continue to function as exceptions instead of a standard practice as it is also noted that in the PAN applications, the listing mother’s name is permitted only when she is

¹¹ Mukund Sarda, *Unwed Mothers and Putative Fathers Vis-a-Vis Guardianship Rights of Children: A Study*, 8 INT’L J. CURRENT RSCH. 29919 (2016)

¹² Id. at 10.

¹³ Passports (Amendment) Rules, 2016, G.S.R. 1171(E) (Ind.).

officially recognized as a single parent and in most of the situations the father's name perpetuates to be treated as "mandatory" while the mother's name is then considered to be "optional". Further, the scholars have highlighted that even with such changes, the passports and PAN cards becoming flexible, the local state authorities that handle birth registrations or the school admissions still ask for the father's name as default, thereby treating the single mothers as exceptions instead of standard applicants.¹⁴ This results in a gap between the updated policies and the outdated laws and therefore, continuing to reinforce the bureaucratic resistance and permitting the administrative practices to lag behind the social realities. Additionally, it had been realized and emphasized that the rights of the children who are born from rape or unwed mothers requires personal laws in being harmonized to be more inclusive and non-discriminatory secular rules that would eliminate the unjust limitations that are based on legitimacy or the marital status.¹⁵

Welfare Schemes for the Single Mothers

Another major challenge faced by single mothers pertains to the economic survival and their access to the state support. The households run by single mothers are particularly financially vulnerable, as they carry the double burden of primary caregiving as well as breadwinning. In India, there are several schemes aimed to support women; however, their eligibility criteria reflects a strong bias towards the traditional, marriage-based family structures.

PMMVY 2.0 Breakthrough

An essential instance of a positive change is the Pradhan Mantri Matru Vandana Yojana (PMMVY),¹⁶ which is a centrally sponsored maternity benefit scheme. The application process for this required the details of the husband earlier, this created some strong barriers for the unmarried or abandoned mothers. This issue was acknowledged and thus came in the revised PMMVY 2.0 guidelines by the Ministry of Women and Child Development,¹⁷ this took effect from April 1, 2022. The updated rules permitted unmarried or separated women to apply for maternity benefits without necessarily giving her husband's Aadhaar details or the written

¹⁴ Supra note 3.

¹⁵ Anushka Akanksha, *Legal Rights of Children Born from Rape or Unwed Mothers*, 6 JUS CORPUS L.J. 18 (2025).

¹⁶ Ministry of Women and Child Development, *Pradhan Mantri Matru Vandana Yojana Guidelines* (2017) (Ind.).

¹⁷ Ministry of Women and Child Development, *Mission Shakti — Guidelines for Implementation of 'Pradhan Mantri Matru Vandana Yojana' (PMMVY) 2.0* (2022) (Ind.).

consent. Moreover, the registration software (PMMVYSoft) was also updated to allow the registrations for single parent.

This is definitely a step ahead towards a progressive recognition and inclusive policy. However, the design is not without limitations. For instance, the benefit for the second child is limited to ₹6,000 and is available only if the child is a girl. Though the condition is aimed to address the prevalent female infanticide, this essentially puts the single mothers in a dire state who are in need of the economic support irrespective of the gender of their second child.

Pension Schemes: The Widowhood Trap

Moving ahead from the maternity benefits, another crucial gaps in social security for single mothers is presented via the pension schemes. Focusing on Indira Gandhi National Widow Pension Scheme (IGNWPS),¹⁸ this falls within the National Social Assistance Programme (NSAP) and is entirely built around the legal status of “widowhood”, within this scheme the eligibility requires that an applicant must be a widow between the ages of 40 and 79, must belong to a Below Poverty Line or the BPL household and the essential evidentiary requirement is the death certificate of the husband.

The fixation on “widowhood” essentially means that the exclusion takes among the divorced, separated, or the abandoned single mothers from the necessary support. It is difficult to prove “abandonment” or desertion” in the legal terms and often requiring some minimum duration for desertion (such as five years), along with a certificate from the local authorities that are hard to obtain as well. This results in a woman who was abandoned by her husband to be excluded from the central safety net merely because her husband is alive, at the same time while she is left to face the social stigma and economic marginalization or hardships as a widow.

Some progressive states like Kerala have expanded their state-level guidelines to also include divorced women in such pension schemes, at the central level, they still lack the recognition they deserve as a separate beneficiary category, instead they are treated as some fragmented legal identities, who are either widows or merely as standard poor households. Therefore, the essential requirement of acknowledging the unique and intersectional challenges of single

¹⁸ Ministry of Rural Development, National Social Assistance Programme (NSAP) Guidelines (2014) (Ind.).

parenting is overlooked.

Challenges and Reform Suggestions

Persisting Challenges

The extensive analysis mentioned above presents three crucial challenges to be addressed that is preventing the complete realization of the rights of the single mothers in India.

These are:

- The patriarchal assumptions- the statutory laws, such as, Section 6 of the HMGA, 1956¹⁹ and the administrative systems are built on the core idea of a nuclear family headed by a male, thereby placing the single mothers to a default status or position wherein they are viewed with a legal suspicion or as having a secondary authority.
- The bureaucratic and evidentiary challenges- the process of proving the status of a single mother is overly complicated. When the widows can rely on the death certificate, abandoned or unmarried mother are usually mandated to submit self-declarations, produce witnesses, or respond to intrusive questions from the administrative officials.
- The flaws in welfare design- the Central welfare schemes are usually based on the status, such as widowhood, instead of being needs-based. This essentially overlooks the financial and caregiving challenges and burden faced by single mothers.

Proposed Reforms

It is fundamental that these challenges are addressed through systematic legislation and administrative reforms.

- Amendment of Guardianship Acts- amending Section 6(a) of the HMGA, 1956²⁰ is crucial in order to include and recognize both the parents as the deemed natural guardians “jointly and severally”, along with eliminating or striking out the phrase “and after him” would help in bringing the statutory law in consonance with the

¹⁹ Supra note 1.

²⁰ Supra note 1.

constitutional guarantee of equality principle. Thus, the legislature should seriously consider acting on the recommendation that were made in the Law Commission of India's 257th Report (2015)²¹ and the Rajya Sabha's 118th Report (2022)²².

- Reconsidering Legitimacy distinction- It is further suggested that a child's right to maintenance, inheritance and guardianship is to be derived from the parental relationship instead of the marital status of the parents, thus the distinction among legitimate and illegitimate children in the personal laws is suggested to be reconsidered.
- The unified "Single Parent" welfare framework- it is essential that the state looks for introducing a dedicated "Single Parent Welfare Fund", wherein the eligibility is determined by realizing the actual living condition of raising a child as a single parent, which is also certified through a simplified documentation system. This would ensure that the abandoned and divorced women are also included and not excluded because they remain left out from being understood within the narrow definition of a widow.
- Administrative protocols to be standardized- the centrally necessitated binding guidelines to all the state governments and private entities, such as, schools and hospitals, is essential that would prohibit the mandatory requirement of the father's name on any application forms wherein the applicant is a single parent.

CONCLUSION

The Indian family structure is witnessing an evolving landscape in the contemporary times, this presents new challenges and the need to shift the perception of the State to support such changes. One such shift is required in supporting the single parent sphere of the family structures. Even though the judicial pronouncements have been crucial and progressive for the single mothers to assert their autonomy, the statutory frameworks and the bureaucratic machinery still remains embedded in the patriarchal, and the traditional father-centric paradigm.

The movement towards true gender neutrality in the family law remains hindered by the deep-

²¹ LAW COMM'N OF INDIA, REP. NO. 257, REFORMS IN GUARDIANSHIP AND CUSTODY LAWS IN INDIA (2015).

²² PARL. STANDING COMM. ON PERS., PUB. GRIEVANCES, LAW & JUST., 118TH REP. ON REVIEW OF GUARDIANSHIP AND ADOPTION LAWS (2022) (Ind.).

rooted institutional hurdles and resistance that do not give much importance to the maternal emotional and biological labor. It thus becomes essential to bridge the gap between the progressive judicial intent and the rigid statutory text, however, ensuring this also goes beyond mere administrative issue to also include constitutional necessity to safeguard the human dignity and to ensure that the best interests of the child is upheld.

In order to achieve this, a fundamental reform is required of both the statutory law and the administrative practices in order to recognise the single mothers as an autonomous legal parent. This means that legally, it is important to remove the hierarchical rules of guardianship and subsequently recognising parents as guardians both jointly and severally. It is also necessary that the arbitrary distinction between “legitimate” and “illegitimate” children across the personal laws is dissolved. In the administrative sense, it is essential to evolve from the narrow and status-based welfare eligibility towards the functional, needs-based support, thereby eliminating the mandatory requirement for the father’s details across the state procedures.

Ultimately, in order to recognize the rights of the single mothers requires a shift beyond the case-by-case judicial leniency towards a more foundational, statutory autonomy. Further, as long as the maternal authority is continued to be judged based on the presence of or on the absence of a male head, the ideals of equal citizenship and gender justice will remain incomplete or unfulfilled in the Indian family policy domain.

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