

## **Inefficacy of Children’s Custody under the Present Socio- Economic and the Legal Conditions in India**

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### **ABSTRACT**

India being a Secular Country has diverse personal laws, it is a system of rules which are determined by reference to specific religion i.e., Hindu law, Muslim Law and Christian law. In India, personal laws govern interpersonal relationships including marriage, divorce, child custody and succession within the family. In ancient India marriage is considered as sacrament and divorce is a rare concept. But the advent of Muslim and British rule in India has paved the way for divorce followed by maintenance and child custody after divorce. Hence the question of custody, maintenance and education of minor children arises between the father and the mother under the various Matrimonial Acts. In spite of many laws such as Hindu Minority and Guardianship Act 1956, Hindu Marriage Act 1955, Special Marriage Act 1925, Indian Divorce (Amendment) Act 2001, Guardians and Wards Act, the innocent victim is children, and there is clear violation of child’s rights. No doubt Indian Judiciary is playing a vital role regarding custody of children. Even then, there are some hardships in providing custody especially in case of illegitimate child and neglected child. This paper has been highlighted on the issues regarding the custody of children and also suggestions for effective application of existing laws.

### **INTRODUCTION**

The family and marriage are the two basic institutions in our society. Marriage whether recognized as sacrament or contract is deemed to be for the whole of the life of the parties thereto smooth running of the family. The changing sociology and statutory innovations are rapidly altering the law and their basic concepts. Promiscuity, sexual behavioristic and otherwise in the modern age presents many new matrimonial problems. The modern life has placed a great stress and strain on marriage and family which paved the way for frequent broken homes. In a smooth harmonious marital life the custody of children doesn’t a matter. But in broken homes the question of custody of children arises between the father and mother. The juristic approach on this sociological feature can be summed up by saying that the fact of broken home and families is acknowledged and attempts are made to solve the aftermath problems of divorce such as custody, maintenance and education of children.

### **1. Guardianship VS Custody:**

The legal guardianship and custody are not one and the same there is appreciable difference between the two, Guardianship is a more comprehensive term and connotes more valuable right than mere custody. Guardianship of the person of the minor exists at law though it cannot be conferred by the court in guardianship proceedings under certain conditions. Though guardian may not have custody still by virtue of guardianship, he may exercise powers regarding marriage, education and move the court, if need to be reconsign to him custody or to make other appropriate orders. The custody is granted specifically on terms usually as a concomitant to matrimonial relief decreed to a parent. There is difference between the custody and guardianship of the person, for custody is right to keep and maintain the minor as distinct from the liability to pay for child's maintenance with or without a right of access being permitted to the other parent or any other person<sup>i</sup>.

### **2. Custody of Children under Personal Laws:**

India being a Secular Country has diverse personal laws such as Hindu Marriage Act, 1955 to Hindus, Muslims were governed by the principles laid down in Koran and Christians under Christian Marriage Act and Indian Divorce Act, 1869 etc. Hence the question of custody, maintenance and education of minor children arises between the father and the mother under the various Matrimonial Acts<sup>ii</sup> in India. When there is dispute or proceeding or any decree breaking the wedlock is passed and they are living apart.

These Acts empowers the courts to make reasonable provision for the custody, maintenance and education of the minor children of marriage, which is the subject matter of the decree. The various provisions of Matrimonial Acts:

\*Hindu Marriage Act, 1955

\*Special Marriage Act, 1954

\*Indian Divorce Act, 1869

In addition to the above Statutes, the Hindu Minority and Guardian ship Act, 1956, And Guardians and Wards Act, 1890 and personal law of Mohammedans also provides for the custody of children in custody proceedings. The personal laws of India consider the welfare of the child is paramount consideration<sup>iii</sup> for custody. The welfare has taken in wider sense i.e., the material and moral well being of the child. The welfare of a child is the moral and religious welfare of the child should be considered along with ties of affection and it cannot be measured in terms of money and physical comforts only. Rajesh K.Gupta V Ram Gopal Agarwala<sup>iv</sup>: The Court held that the legal right of the court is immaterial in child custody disputes where the paramount consideration is the welfare of the child.

### **Concept of children under different personal laws:**

Section 26 of the Hindu Marriage Act, 1956 is a provision which safeguards the minor's right, but it fails to define either the term "Children" or "Minor" in the Act. This section has been applied to the legitimate children of both the spouses including their adopted children. But there is difference of opinion about the applicability of the section to

1. Children of husband only
2. Children of wife only
3. Illegitimate children of parties.

Some jurists are of the opinion that the relief is available only to children's of both the parties. A child born during the lawful wedlock, but not the child of the husband, would not be covered by this section, they maintain. There is no question of the safeguard of the section being available to children of a widow and widower who enters in to a second marriage and a matrimonial cause arises between them. But some other jurists are of different view and maintain that 'if one of the parties has his or her own child (though another husband or wife as the case may be) such a child to get the protection of section 26'<sup>v</sup> though the section or the Act does not spell out the term "Children", the rules framed by various High Courts under the Hindu Marriage Act, 1955 remove such doubts.

The rules have used the terms "Children of Marriage" and "living issues of marriage" and require their dates of birth, age, sex etc, to be mentioned in the petition along with the date of marriage of parties. Thus the children should not only be the 'children of the parties' but also 'children of marriage'. The phrase implies that the section does not apply to children born out of wedlock, i.e, the illegitimate children.

After the amendment of section 16 of the Hindu Marriage (Amendment) Act, 1976 relief has been provided to the children born out of void and voidable marriages were deemed to be legitimate. But still there is a class of children who no doubt are illegitimate, they are the children of the parties prior to their marriage and the children of the marriage whose parents must be void under section 7 (lack of ceremony) or illegal under section 15 (remarriage after divorce before the expiry of the period of appeal).<sup>vi</sup> Such children have not been declared legitimate under section 16 of aforesaid and it is doubtful whether court acting under sec 26 shall afford the protection to child.

Further the Parsi Marriage Act, and the Divorce Act, 1936, and the Christian Marriage Act, 1872, are silent with legitimacy of children born out of void marriages. Under Muslim Law also, the children of a "batil" marriage are illegitimate and there is no rule under that law providing guardianship to such children.

### **Concept of Minority:**

The Hindu Marriage Act neither defines the term minor nor indicates the law which shall determine the minority for the purpose of the custody. Under the Indian Minority Act, there are two different ages for attaining majority, one is 18 years in general and 21 years for those who are wards in respect of whose person or property a guardian has been declared or appointed by any Court of justice. There is no such difference made under the Hindu Minority and Guardianship Act, 1956 or the Hindu Maintenance and Adoption Act, 1956 appoints the mother as the guardian of a Hindu Minor and later there is matrimonial cause between the parents such a child, who completes his 18 years before the decree of dissolution, and the father applies for his custody under sec.26 of the Hindu Marriage Act, 1955, will the minority and Guardianship Act or in the Indian Majority Act?

Again the age of minority for purpose of custody is not uniform under all the matrimonial statutes which are identical on other points of custody. Under the Indian divorce Act, (which applies to Christians) the sons of Indian fathers cease to be minors on attaining the age of 16 and the daughters on attaining the age of 13.<sup>vii</sup> In other case it means unmarried children (where a daughter or son) who have not completed the age of 18 years. Under the Parsi Marriage and divorce Act, 1936, it is 16 years.

The position is therefore that, there is no uniform age limit for purpose of custody, education, maintenance of minor children. It is necessary that the legislature must take notice of it and bring uniformity.

### **Lack of Uniformity of Statutes:**

In the event of dispute over custody of the children in matrimonial proceeding, there are fair chances of the matter of custody and guardianship being raised in more than one courts exercising concurrent jurisdiction under different enactment and their personal laws<sup>viii</sup>, the general law of the land<sup>ix</sup>, and the matrimonial laws<sup>x</sup>. Different persons may be appointed by the different courts to act as guardians of the minor's person and different provisions may be made as to their maintenance. The plurality of the statutes on the point of custody, guardianship and maintenance all applicable simultaneously makes an ambiguity of the whole affair and creates twin problems of harmonious construction of the different provisions and that of conflicting orders. Many enactments including their state amendments and the rules there under have to be simultaneously interpreted.

### **Hindu Marriage Act, 1955:**

Section 26 of Hindu Marriage Act<sup>xi</sup> deals with the question of custody of children during matrimonial proceedings in the following terms:

“In any proceeding under this Act, the court may, from time to time, pass such interim orders and, make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and matter, alter the decree, upon application by petition for the purpose make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provision previously made....”.

The section empowers the court to make provision for,

1. Custody of minor children
2. Their maintenance
3. Their education

The custody of minor children is determined according to the welfare of the child<sup>xiii</sup>. The custody of child who is less than five years old will, therefore ordinarily be with the mother<sup>xiii</sup>. *Chanderprabha V PremNathkapur*<sup>xiv</sup>: The Court held that a child under five years of age needs most of the tender affection and care of the mother than that of the father.

### **Section 38 of the Special Marriage Act, 1954:**

“In any proceeding the District Court may, from time to time, pass such interim orders and, make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, alter the decree, upon application by petition for the purpose make, revoke, suspend or vary from time to time , all such orders and provision with respect to the custody, maintenance, and their education of such children as might have been made

by such decree or interim orders in case the proceeding for obtaining such decree were still pending.

### **Indian Divorce Act, 1869:**

In cases of Judicial separation, the Court can make orders with regard to custody, maintenance and education of children of Christian parents<sup>xv</sup>. *Rosy Jacob V Jacob A. Charamakkal*<sup>xvi</sup>, the Court held that the custody of children vary according to the circumstances of the case. When a suit for divorce or a suit for nullity of marriage is filed in the High Court, the Court can make interim orders as to maintenance, etc<sup>xvii</sup>.

Even after the decree of Divorce or nullity of marriage is passed, the High Court can make orders for maintenance of child<sup>xviii</sup>. Hence the power to order maintenance, custody and education of children firstly, after decree of divorce or nullity of marriage is passed, are acquired by the High Court secondly, after the decree is ratified, the power are acquired by District Court.

### **Muslim Law:**

There are no separate statutory provision safeguards for the Muslim children. In Muslim Law there are no judicial proceedings when a marriage is dissolved except when a divorce application is filed by a Muslim wife file petition under Dissolution of Muslim Marriage Act, 1939. As per the customs governing of custody, the custody of Muslim child cannot be given by a court who is not a Muhirm<sup>xix</sup>. For eg the custody of female child the rule in Hanafi law or (Sunni) the child will be under the custody of the mother till she attains puberty<sup>xx</sup> but a male child will remain until the age of 7. The Shia school prescribes that the female and male child will remain custody till the age of seven and two years respectively. In general under Muslim law all the schools give priority to mother regarding the custody of children. Even though she has given the right of custody she never has right of guardianship even after the death of the father<sup>xxi</sup>. During such custody the father retains the right of general supervision<sup>xxii</sup>.

In *Suharabi v. D. Mohammed*,<sup>xxiii</sup> where the father objected to the mother's custody of the 1 1/2 years old daughter on the ground that she was poor, the Kerala High Court held that under Islamic law, the mother was authorized to have custody of a 1 1/2 years old daughter, her economical condition is not a bar to have the custody of the child.

In *Md. Jameel Ahmed Ansari v. Ishrath Sajeeda*,<sup>xxiv</sup> the Andhra Pradesh High Court held the custody of an 11 year old boy to the father, on the ground that Muslim law allowed the mother to have exclusive custody only until the age of seven in case of male children, and there was nothing to prove that the father was unfit to be a guardian in this case. In another case, the Madhya Pradesh High Court interpreted Mohammedan Law to allow custody for the mother.<sup>xxv</sup> *Arfathunissa v. T.I. Zeeuddin*<sup>xxvi</sup>: The Court held that the mother is not entitled for custody of child if she is having immoral character.

*Wahidunissa Begum V S.K. Abdullah*<sup>xxvii</sup>: The HC of Maharashtra held that, it doesn't matter what customary law applies, when dealing with custody of Muslim child, the court will give more importance to the welfare of the child than the provisions of customary law.

*Athar Hussain V Syed Siraj Ahmed*<sup>xxviii</sup>: In matters of custody the welfare of the children is the sole and single yardstick by which the court shall assess the comparative merits of the parties contesting for the custody.

### **The Role of Judiciary:**

It is crystal clear that the rules revealed under the various Acts are silent on these concepts hence the Court has to play important role to safeguard the children's right. The court has absolute discretion to decide the matter 'as it may deem just and proper'. The justness may be looked at, it is submitted, from three points to view, that of the parties to petition, the children's interest or the court itself. The just and proper means nothing other than a "balance of convenience". The Supreme Court of India<sup>xxxix</sup> and almost all of the High Courts have held that, in custody disputes, the concern for the best interest or welfare of the child supersedes even the statutory provisions on the subject highlighted above.

The proceedings of the court under sec.26 may be exercised during the proceedings, in the decree or after the decree and the court has power to revoke, suspend or vary its orders from time to time or any number of times. The section does not lay down that court shall pass such orders in consonance with the laws of guardianship or maintenance or that the children's welfare should be paramount consideration or that the age, sex or health of children should be factors in arriving at such decisions provided under the guardianship laws.<sup>xxx</sup> Thus section 26 confers an absolute discretion on the matrimonial courts to pass order in respect of custody and maintenance of the children of marriage, subject perhaps only to the doctrine of precedent.

*In Githa Hariharan V Reserve Bank of India and Vandana Shiva V Bandhopadhyaya<sup>xxxi</sup>*: The Constitutional validity of sections 6(a) of the Hindu Minority Act, 1956, and Sec 19(b) of Guardians and Wards Act, were challenged as being violative of Articles 14 and 15 of the constitution, adopting the rule of harmonious construction, the court held that the word "after" in section 6(a) of Hindu Minority and Guardianship Act, 1956 need not necessarily mean "after the life-time", but "in the absence of". The court clarified that the prior consideration in every case would be the welfare of the child.

The Bombay High Court held that for determining the final decree, the child's welfare was the first and foremost consideration, irrespective of the rights and wrongs that the parents contend<sup>xxxii</sup>. The Supreme Court has said that the welfare of a child is not to be measured merely by money or physical comfort, but the word welfare must be taken in its widest sense that the tie of affection cannot be disregarded<sup>xxxiii</sup>. From the early period there is no compromise regarding the principle to decide the custody of children is only on the basis of 'best interest and welfare of the child' which attempts to enable each child to survive and reach his or her full potential<sup>xxxiv</sup>.

### **Jurisdiction Not Obligatory:**

The Jurisdiction and power conferred on the court under Section 26 are permissive and obligatory. To seek a relief under that section, certain High Courts require an independent and original petition to be presented while under other High Courts either the relief under the section has to be specially claimed in the main matrimonial petition or a separate application supported by an affidavit has to be moved. Only the parties to main petition can move such application. Thus the court's power under section 26 has to be invoked and seldom has the court exercised such powers *suomotu*. Again it is the discretion of the Court whether it wishes to exercise such jurisdiction or notice must be made obligatory for the Courts to invoke their power under sec 26 *suomoto*, where no relief is sought by the parties in respect of the children and satisfy itself those children are suitably provided for.

### **Plea for Neglected children:**

There may be another situation when the court finds either none of the parents is found fit or willing to have the custody of the children, or there is no other paternal or maternal relation to provide custody or maintenance to the children. The question arises before the Court is to whom the custody will be given. The Indian Divorce Act, 1936, applicable to the Christian children, makes provisions for such a contingency and the court 'may' if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court.<sup>xxxv</sup> This is the oldest matrimonial statute and strange enough while all subsequent marriage and divorce statutes have borrowed much of its phraseology, in relation to the 'custody, maintenance and education provisions, they have failed to include its good point of providing facility of placing such children under the protection of the court. The court dealing with the matters of custody, guardianship and maintenance may be conferred with an authority to send the neglected children to the 'Children's Home' established under various children's Act.

### **Children's not included as Parties to the Matrimonial Proceedings:**

The necessary parties to a matrimonial proceeding under the Hindu Marriage Act, 1955 are the spouses<sup>xxxvi</sup>. In some petitions, the parents and other relations of the spouses are also impleaded as respondent, if there are some allegations against them or some ancillary relief is claimed against them. But neither as a rule nor as a practice the children are made parties in a matrimonial petition.

### **Structural and Functional Limitations of the Court:**

A matrimonial proceeding is initiated in a District Court under its original Civil Jurisdiction<sup>xxxvii</sup> and in the context of the relief to children there are two-fold limitations of this court, one pertaining to its structure and the other to its functioning. The two aspects, however, are inter-related.

The district Courts exercising jurisdiction under the Hindu marriage Act as a Civil Court, are as a rule also conferred jurisdiction as session judges under the code of Criminal Procedure. Thus the same court simultaneously exercises jurisdiction not only under hundreds of the civil laws in both its original and appellate side, but also shoulder the burden of administering justice under the whole body of criminal laws of no less magnitude. Thus, there will be quick disposal of cases.

### **Suggestions made by the Law Commission:**

Although all the matrimonial statutes of the different religious communities in India contain some provisions are formal recitals on an ancillary matter repeated in the matrimonial statutes, one after the other and the legislature does not seem to have given a serious thought to the welfare of such children so far, the law commission Report No.257 Reforms in Guardianship and Custody Laws in India May 2015 had recommended the following suggestions to be implemented for the protection of the children

### **Factors to consider for the best interest standard:**

The Law commission report says that the following factors should be considered before determining the custody of the children. They are the following, the physical and mental condition of the child, each parent and the child's relationship with each parent and other important relations in the family (siblings, extended family members, peers, etc.). Secondly,

the role of each parent in child's care and the ability to support the child's conduct and relationship with the other parent. And thirdly way to resolve in case of any dispute regarding the child, the child's preference, any history of abuse, and the health, safety, and welfare of the child.

#### **Determining the Preference of the Child:**

Generally if the child is proved to be intelligent and mature the custody will be decided according to the wish of the child. But the preference must be reasonable the child's wishes will not be considered by the court if, e.g., it is based on which parent's home has more toys. Some courts in the presence of Attorney will determine the preference of the child by way of interviewing the child in the chambers after seeking permission from each parent's to do so in their absence. The judge will usually make a record of the interview and the same may kept confidential to protect the interest of the child

The Law commission has recommended an alternative method instead of an interview; the court can appoint a guardian ad litem to represent the child's interests. The duty of ad litem is to submit the report of the child regarding preference. In addition to the guardian ad litem the court can also have a social worker or other mental health professional to find out the child's opinion.

#### **Access to Records of the Child:**

The Law commission also suggested that both parents are generally allowed access to a child's records (medical, educational, etc.). However, the court may prevent disclosure of the information in order to protect the interest of the child, where disclosure of information (for example, the present address of a parent or the child) could present a risk of harm.

#### **Grand-parenting Time:**

When considering the best interest of a child for a custody order, courts are generally empowered to consider the child's relationship to friends, extended family members (including grandparents), and other important persons. Next to parents the Grand parents are the relations who were closely related with the child. Thus the Law commission supports legal visitation rights can be given to grandparents as it was a provided in many countries. For eg, Virginia state law, requires a court to consider "the needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members."

#### **Mediation:**

Mediation is the widely preferred method in present scenario for resolving all the matters, hence custody and other parenting disputes, and many jurisdictions provide guidelines as to when and how mediation should be employed in such disputes. In cases involving abuse or other mistreatment, for instance, mediation is not seen as appropriate. Some jurisdictions provide free mediation (at least to a point) for divorcing couples, which can further encourage collaborative resolution (as an alternative to costly litigation).

#### **Relocation:**

The other issue is relocation of either parent, when both parents have legal rights regarding a child. On the one hand, in today's highly mobile society, parents should be allowed to relocate for job opportunities or other important considerations. On the other hand, such relocation can interrupt the other parent's visitation schedule with the child. Courts generally

approach such disputes by resorting to several principles. First, in some jurisdictions, if it is only a local move without affecting the visiting schedule of other parent, the relocating parent does not need permission either from the court or the other parent. Secondly, a parent who intends to relocate must give advance written notice to the other parent.

Thus the law Commission has suggested the prior notice of relocation. Hence, this gives the other parent time to contest the move in court. The other important consideration is whether the proposed relocation is in the best interest of the child and it is the duty of the court to find out whether it is for legitimate purpose, both for seeking or opposing the relocation. The impact of the relocation on the quantity and the quality of the child's future contact with the non-relocating parent; the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and the feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements.

### **Decision Making:**

There Law commission has reported several key areas that should be addressed in a custody order or parenting plan—these are common areas of dispute, so it is best if there are clear rules specifying each parent's role (i.e., which decisions may be made individually, and which must be made jointly):

- Medical: whether the child is to be hospitalized, and whether a non-emergency surgical procedure is to be performed on the child.
- Education: the choice of school, enrichment classes, courses, and subjects, and whether the child is to attend a particular school trip or outing, or tuition.
- Religion: the religious instruction of the child, attendance at places of worship, undergoing religious ceremonies, etc.
- Extra-curricular activities: choice of extra-curricular activities, taking into consideration the child's interests and aptitude.
- Travelling with one parent: where the child will spend holidays, and information that the parent has to provide to the other parent (e.g., a detailed itinerary).

### **Parenting Plan:**

The parenting plan is one of the important suggestion given by the law commission, to submit a shared parenting plan to the court. The plan must address major areas of decision making, including: the child's education, health care, religious upbringing; procedures for resolving disputes between the parties with respect to child-raising decisions and duties; and the periods of time during which each party will have the child reside or visit with him, including holidays and vacations, or the procedure by which such periods of time shall be determined. Some jurisdictions provide additional guidance regarding communication (between parents and between the child and the non-custodial parent); transportation to and from the other parent's residence; what to do if a parent wishes to relocate; how to change scheduled parenting time; and exchanging information about the child. The parenting plan itself is not a legal document; it must be approved by a court to have legal effect.

### **Visitation:**

Last but not the least regularization of visiting process as because the number of jurisdictions have detailed visitation schedules that courts can use verbatim or modify as needed. These serve as templates so that the court does not have to start from scratch. Although these sample schedules vary across jurisdictions, there are some common themes. Generally, the schedule will depend on the child's age and the distance between the parents' homes. There must be a fair allocation of holidays, birthdays, and school vacations. A child must have time with his/her siblings and other important people in the child's life (grandparents, etc.). A parent's ability to care for a young child (especially infants) may be considered. ]<sup>xxxviii</sup>

### **Conclusion:**

It is no doubt that the legislature and judiciary is fully alive to the changing needs of the society and has provided number of safeguards for the custody, maintenance and education of minor children. But under the present socio-economic and legal system prevailing in India, all these legislative measures are of little value to the society. No doubt implementation of Uniform Civil Code<sup>xxxix</sup> will avoid plurality of laws. In addition to Statutory provisions, the Institutional care services like child Welfare Committees, Government Orphanages, District child Protection societies, child help line, and the like have been set up in order to provide special protection to children is clumsy and confusing regarding their functions it should be made proper.

The final cause of law is the welfare of the society. The welfare of the society can be nurtured only by a court that exercises its judicial prerogatives. Children's court should be established in every district and the jurisdiction should be extended to allow them to make orders under the Family Law. Neither the orders of the custody nor of maintenance can fill the vacuum of parental love and affection and the emotional setting of a natural family, once caused in the life of a child, on account of the dissolution of marriage of his parents. Although the steps taken by the law commission is appreciative something more is needed by our Indian society, we must also hit the root cause of this problem by making the divorce laws more stringent "to strengthen the family ties"<sup>xl</sup>.

### **End Notes**

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<sup>i</sup>Derret, Introduction to modern Hindu Law,(1965) at 47.

<sup>ii</sup> Sec.26 of Hindu Marriage Act, 1955, Sec.38 of Special Marriage Act,1954, Sec 41,42, 43 and 44 of Indian Divorce Act, 1869, Sec.49 of the Parsi Marriage and Divorce Act,1936.

<sup>iii</sup>Gaurav Nagpal V Sumedha Nagpal AIR 2009 SC 557

<sup>iv</sup>AIR 2005 SC 2426

<sup>v</sup>Tahir Mehmood, Hindu Law, 189 (1981).

<sup>vi</sup>Mulla, Hindu Law , 763 (1974)

<sup>vii</sup>Sec 3(5) of Indian Divorce Act.

<sup>viii</sup> The Hindu Minority and Guardianship Act, 1956: The Hindu Adoption and Maintenance Act,1956.

<sup>ix</sup> The Guardians and Wards Act, 1936; The Code of Criminal Procedure, 1973 Sec.173.

<sup>x</sup> The Indian Divorce Act, 1869; The Special Marriage Act,1954; The parsi Marriage and Divorce Act,1936, the convert's marriage Dissolution Act,1966; The Foreign Marriage Act,1969.

<sup>xi</sup> Act 25 of 1955

<sup>xii</sup>Sec 13 Hindu Minority and Guardianship Act, 1956.

<sup>xiii</sup>Proviso to sec. 6(a) of Hindu Minority and Guardianship Act, 1956.

<sup>xiv</sup> ILR (1969) I Del 291

<sup>xv</sup>Sec 41 of Indian Divorce Act, 1869.

<sup>xvi</sup> 1973 I SCC 840.

- <sup>xvii</sup> Ss41 and 42 of Indian Divorce Act, 1869.  
<sup>xviii</sup> S.44 of Indian Divorce Act, 1869.  
<sup>xix</sup> Muhirm means a person who is in relation with child and is within the prohibited degree  
<sup>xx</sup> UlfaBiBi V Bafati, AIR 1927 All581.  
<sup>xxi</sup> Imambandi V Mustaddi, (1917-18) 45 IA 73.  
<sup>xxii</sup> Paras Diwan, Law of Parental Control, Guardianship and Custody of Minor Children (Eastern Book Company, Lucknow, 1973)  
<sup>xxiii</sup> AIR 1988 Ker 36.  
<sup>xxiv</sup> AIR 1983 AP 106.  
<sup>xxv</sup> Mumtaz Begum v. Mubarak Hussain, AIR 1986 MP 221.  
<sup>xxvi</sup> (2011) 1 LW 21 (Mad)  
<sup>xxvii</sup> (2000) 1 Mah LJ 136  
<sup>xxviii</sup> (2010) 2 SCC 654  
<sup>xxix</sup> Mausami Ganguli v. Jayant Ganguli, (2008) 7 SCC 673.  
<sup>xxx</sup> The Hindu Minority and Guardianship Act, 1956, s.6; The Guardians and wards act, 1890, s.17.  
<sup>xxxi</sup> AIR 1999 SC 1149.  
<sup>xxxii</sup> Carla Gannon v. Shabaz Farukh Allarakhia, Bombay High Court, Criminal Writ Petition No. 509 of 2009.  
<sup>xxxiii</sup> Nil Ratan Kundu v. Abhijit Kundu AIR 2009 SC (Supp) 732.  
<sup>xxxiv</sup> Principle 4, Rule 3, Juvenile Justice (Care and Protection of Children) Rules, 2007.  
<sup>xxxv</sup> Ss 41-44 of The Indian Divorce Act, 1869.  
<sup>xxxvi</sup> However, where adultery is a ground, the adulterer or adulteress has also to be arrayed as respondent.  
<sup>xxxvii</sup> The Hindu Marriage Act, 1955, S.19.  
<sup>xxxviii</sup> Law Commission Report, No.257, Reforms in Guardianship and Custody Laws in India, May 2015  
<sup>xxxix</sup> Art 44 of Indian Constitution, The State shall endeavour to have uniform civil code to all of its citizens.  
<sup>xl</sup> The national policy for Children (1974), Police 3(xv)

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