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Child Custody Disputes Under the Hindu Marriage Act,1955

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Abstract

In India, child custody is still one of the most delicate and divisive topics in marriage disputes, especially in light of the Hindu Marriage Act of 1955. The legal framework governing child custody conflicts between Hindu families following a divorce or judicial separation is examined in this research paper, with an emphasis on the interpretation and application of ***Section 26***[1] *of the Hindu Marriage Act, 1955. The study looks at the factors the courts consider when deciding custody, including the child's wellbeing, the parents' emotional and financial health, and, in certain cases, the child's own desires. It examines the judiciary's discretionary authority and how it strikes a balance between the rights of parents and the best interests of the kid. The study also explores court rulings and case legislation that have influenced how parenting rights, such as changing family structures, gender roles, and cultural values affect custody decisions. The study draws attention to flaws and difficulties in the current legal system, including insufficient enforcement of visiting rights, inconsistent rulings, and lengthy hearings. This paper seeks to give a thorough understanding of how child custody disputes are settled under the Hindu Marriage Act and suggests reforms to make the process more child-centric, effective, and equitable by analysing legal texts and practical implications. The ultimate goal of the study is to add to the current conversations regarding child welfare in relation to Indian family law.*

Keywords: *Child Custody, Hindu Marriage Act 1955, Section 26, Parental Rights, Shared Custody, Welfare of the Child, Guardianship, Indian Judiciary*

[1] Hindu Marriage Act, § 26, No. 25, Acts of Parliament, 1955 (India).

INTRODUCTION

In India, the legislation pertaining to custody is closely linked to guardianship. However, its scope is more limited than that of Guardianship. In cases where parents' divorce and go to court, custody of the kid is a crucial aspect of a married partnership. It is given expressly to a parent who requests such custody as a marital remedy. The father of the kid and the mother are not the ones who suffer the most when marriages fail. The youngster is always at fault. The wellbeing of the kid is therefore the most important factor that the courts take into account while addressing the custody problem. In India, there is no legislation that expressly addresses joint custody or shared parenting, even if there are regulations that protect the child's welfare in these situations. Many nations have laws allowing for shared parenting, and there has been a lot of desire for laws to be changed in India to incorporate this concept. Given that shared parenting is not covered by Indian law, the only way shared parenting is permitted in India is through court rulings. Therefore, while discussing the idea of custody following parental separation and divorce, this article mostly draws from court rulings. In modern society divorce has become rampant and the bad effects of that is that where do the children go or with home to the children live with. During any breakdown of marriage, "the custody of children is an important questioned to be solved. It is said, the child needs a mother the most, but it needs a father too". It is separated into three sections. The first section outlines the welfare concept that the courts use when awarding custody, where the child's best interests are the most important factor to take into account. The notion of shared parenting and joint custody is critically analysed in the second section, which also discusses the welfare principle and various issues that occur since there isn't specific legislation addressing these issues. This article's third and final section offers a personal perspective as well as a suggested resolution to the issues brought up in the previous sections.

RESEARCH QUESTIONS:

1. How does Section 26 of the Hindu Marriage Act empower courts in matters of child custody?
2. What rights does the non-custodial parent typically have regarding visitation and decision-making under Hindu Law?
3. Can joint custody to awarded under the Hindu Marriage Act, and what are its implication?

OBJECTIVES OF THE STUDY:

The current research involves a descriptive and prescriptive approach. Hence, the following are the study:

- Put the Child's Welfare First: The court's main goal is to make sure that custody judgements take the child's welfare into account, taking into account things like the child's physical, emotional, and educational requirements.
- To evaluate parental rights and obligations in custody disputes, taking into account the differences between guardianship and custody.
- To analyse judicial interpretations and landmark judgments that have shaped child custody laws in India.

STATEMENT OF RESEARCH PROBLEM:

Under the **Hindu Marriage Act of 1955**[2], child custody issues pose serious social, legal, and psychological difficulties. Although the Act gives the child's welfare top priority when deciding custody, judges frequently interpret "welfare" differently. Although the law allows for either parent or a third party to be awarded custody, concerns are raised about gender bias, non-custodial parents' rights, and how custody decisions affect the welfare of the children. The purpose of this study is to critically examine how Indian courts use and interpret the idea of "welfare of the child" in cases involving child custody under the Hindu Marriage Act. It will investigate whether the Act fairly balances the rights of parents and children, whether court rulings reflect current socioeconomic realities, and the significance of the guardian's financial security and emotional bond with the kid. The study will also look at possible changes that may be made to custody regulations to make them more child-centric while still being equitable for both parents.

RESEARCH METHODOLOGY:

In order to scrutinize the topic at hand and provide a better understanding on the topic CHILD CUSTODY DISPUTES UNDER THE HINDU MARRIAGE ACT,1955 in India. The research conducted involved analysis of qualitative and valuable data such as book, law journal, articles, website and judgements. These were collected from online database.

LITERATURE REVIEW:

This research paper draws attention towards the Child Custody Dispute under the Hindu Marriage Act, 1955 etc. along with certain outline drawn by the court and Hindu Law and some statutes which are about to come into force in the near future. This paper also throws lights on our various topics regarding custody dispute under HMA, 1955. **Saraswati Shripad Ved vs. Shripad Vasanji Ved[3],**

[2] Hindu Marriage Act, § 26, No. 25, Acts of Parliament, 1955 (India).
[3] Saraswati Shripad Ved v. Shripad Vasanji Ved, AIR 1941 BOMBAY 103.

Gourav Nagpal vs. Sumedh Nagpal[4] etc. These cases help to reduce the differentiation which generally arise when there is a question about the applicability of specific provision and common laws.

This literature reviewed in this paper provides brief knowledge about the child custody dispute under HMA and its provision which are there to prevent harm to child or parents after divorce. It also gives significant practical case studies which helps to understand the real- life impact of the child and parents that will help them to stay peaceful life after the separation or child custody.

HISTORICAL PROSPECTIVE:

Historically, child custody conflicts under the Hindu Marriage Act, 1955 have been settled with the kid's welfare first priority. Under Hindu law, custody rulings first mostly shaped by patriarchal traditions frequently favoured the father as the natural guardian. But the focus turned to the child's best interests with the **Hindu Minority and Guardianship Act, 1956** [5]passed and further court interpretations adopted. Courts have progressively realised over time—especially for younger children—the mother's responsibility, as shown by different Supreme Court and High Court decisions. Modern judgements place more emphasis on the kid's emotional, academic, and general well-being than rigorously following traditional guardianship rules, reflecting the growth of child custody legislation under the Act and broader cultural shifts. When determining custody, Indian courts now take a more balanced stance, taking into account the child's preferences as well as the talents of both parents. These changes were codified with Section 26 of the former addressing custody, maintenance, and educational during divorce proceedings.

TYPES OF CHILD CUSTODY:

1. **Physical Custody:** Physical custody is the type of custody where the parents have the rights to keep the child, either father or mother can keep the child in their residence. This implies that one parents acts as a primary guardian and child stays with him/her, while the other parents is granted visitation rights and can meet and spend time with the child.
2. **Joint Custody:** It refers to a legal arrangement in which both parents have the equal responsibilities for raising their child after their separation or divorce. It has divided into two main types: -
    - **Joint Legal Custody:** Decisions pertaining to the child's education, medical treatment, and religious beliefs may be made by both parents.

[4] Gourav Nagpal v. Sumedh Nagpal, 2008 AIR SCW 7687.
[5] Hindu Marriage Act, § 26, No. 25, Acts of Parliament, 1955 (India).

- **Joint Physical Custody:** Although not always an equal division, the child lives with both parents for a considerable amount of time.

3. **Sole Custody:** Sole custody is basically awarded by the court one parents have the full responsibilities of the child in case it believes that one parent in not fit to raise the child properly or he/she is deemed unfit due to drug abuse, alcohol, violent, abusive nature which will later affect the child lifestyle and career. In these cases, the sole physical custody goes to the other parents' ad child primarily resided with that parent.
4. **Legal Custody:** Legal custody refers to having that both the parents have equal rights to take the decision for the child, they can collectively and mutually decide the well-being of child for his/her future. Like Schooling, Health care, Day-to-day routine, etc.
5. **Third party Custody:** In this if both the parents are unfit to take care of the child custody financially or physically, or an abusive, then court will provide the child custody to the third party such as relatives or a grandparent for the welfare of the child future.

LEGAL PROVISION: SECTION 26 OF HMA,1955:

Section 26 of the HMA, 1955 deals with custody, maintenance, care and education of minor child during and after legal proceeding of the act. It only applies when both the parents follow Hindu religion, the custody of child validated. The court has the authority to issue orders, judgement or modification concerning child custody at any stage. If any decree remains pending regarding child maintenance it must be resolved within 60 days from the date of notice.

WELFARE OF THE CHILD[6]:

The welfare of the child is the primary consideration for both the parents and court. It is very important for the child to assurance of **best environment for the growth of the child.** The child's educational, emotional, and physical health are important factors in this assessment. A child needs a physical environment that is safe, healthy, and free from abuse or neglect. Equally vital is emotional stability since children flourish in settings where they feel supported, safe, and loved. Healthy emotional development depends on mental well-being, supportive relationships, and a feeling of community. In terms of education, having access to high-quality learning opportunities enables a child to reach their full potential and contribute to society. It is essential to provide regular attendance at school, intellectual stimulation, and assistance for any unique requirements. The **public interest linked with the proper growth of the child** as now a days its important for the child to

[6]Manupatra Article, Welfare of child after parent's divorce, https://articles.manupatra.com/article-details/WELFARE-OF-THE-CHILD-AFTER-PARENTS-DIVORCE-OR-SEPARATION-KEY-ANALYSIS, 4th April.

socially active for the more knowledge and proper growth, as was reiterated by the Supreme Court in the case of **Vivek Singh v. Romani Singh[7].**

WHAT ARE THE FACTORS CONSIDERED BY THE COURT FOR CHILD CUSTODY?

1. **Age of the child:** If the child is under the age of 5year the court often give the custody to the mother. According to the tender year's doctrine, unless there are strong grounds to the contrary.
2. **Financial Capacity of the Parents:** In this the court will see the paying ability of the parents for the betterment of the child future, needs, education, health-care, and overall wellbeing. If anyone parent will unfit for the financially take care of the child then the court will give custody to another parent who is stable.
3. **Child's Preference:** The court will also ask the child whether he/she want to stay with Mother or Father after the divorce usually under 9year age or old.
4. **History of cruelty, Abuse, or Neglect[8]:** If any of the parents have neglect, abuse or act cruelty with the child in past, then it will get hard for that parent to get favour of the court decision for the custody of child.

MODIFICATION OF THE CUSTODY ORDERS:

- The parent who got the custody of a child has faced any income loss or financially unstable due to loss of employment or Substantial increase in income it will affect the basic needs of the child.
- The court will give the custody to the other parents who is now stable to take care of the child. As children grow, their educational, emotional, and social needs involve and increase in day-to-day life. Courts often consider this especially with older children so that it will not harm the future of the child or he/she has to suffer financially or emotionally.
- If the custodial parent will abuse, neglect or harm the child in any cause the court will change the decision and give the custody to other parents or the Third-party, also court will punish the parent who try to cause harm to the child.

UNDERSTANDING A FATHER's CUSTODY RIGHTS:

The father is acknowledged as a child's natural guardian under the **Guardian and Wards Act of**

[7] Vivek Singh v. Romani Singh, (2017) 3 SCC 231.
[8] Juvenile Justice (Care and Protection of Children) Act, § 75, No. 2, Acts of Parliament, 2015 (India).

1890[9], and this right can only be taken away if it is shown that the father is not suitable to act in the child's best interests. Indian courts have, nevertheless, deviated from this rule. The court stressed in **Vegesina Venkata Narasia v. Chintalpati** that a child shouldn't be taken from their comfortable surroundings just to protect the father's rights. In a similar vein, the court rejected the father's guardianship in **L. Chandran v. Venkata Lakshmi,** stating that children are not property and that, even in cases when the father is fit, the children's welfare must come first under **Article 21**[10]. On the other hand, because the father was still alive, a devout Hindu, and not unfit, the court maintained his legal status as guardian in **Essakayal Nadder v. Shreedhan Babu**. The Supreme Court ruled in **Gaurav Nagpal v. Sumedha Nagpal** that even in cases where the mother is granted custody, the father is still entitled to visitation rights. Because the child was older than seven and the father was judged acceptable, custody was awarded to the father in **Jameel Ahmed Ansari v. Ishrath Sajeeda**[11] under Muslim personal law. These cases demonstrate how courts strike a balance between a child's wellbeing and their legal rights.

UNDERSTANDING A MOTHER's CUSTODY RIGHTS[12]:

With the welfare of the child as the top priority, the court may issue temporary orders pertaining to minor children's custody, maintenance, and schooling under **Section 26 of the Hindu Marriage Act, 1955**. According to **Section 6**[13] of the **Hindu Minority and Guardianship Act of 1956**, the mother is often granted custody of a child under the age of five. The Supreme Court brought attention to gender inequality in cases such as **Padmaja Sharma v. Ratan Lal Sharma**[14], stating that even while the mother is not the child's legal guardian, she nevertheless bears equal financial responsibility for the child's maintenance. Given the father's violent actions and incapacity to establish a stable home, the court in **Sheela v. Jeevanlal**[15] awarded the mother custody even though she remarried a Christian. The court stressed that a mother's claim to custody is not negated by religion or remarriage alone if she continues to practise Hinduism.

[9] Guardian and Wards Act, § 5, No. 8, Acts of Parliament, 1890 (India).
[10] Constitution of India, art. 21 (India).
[11] Jameel Ahmed Ansari v. Ishrath Sajeeda, AIR 1983 AP 106.
[12] Joshita Mohanty, An overview of child custody laws in India, VOL 6, International journal of law, 66, 69(2020).
[13] Hindu Marriage Act, § 6(c), No. 25, Acts of Parliament, 1955 (India).
[14] Padmaja Sharma v. Ratan Lal Sharma AIR, 2000 SC 1398.
[15] Sheela v. Jeevanlal, AIR1988 AP 275.

CASE LAWS OF CHILD CUSTODY DISPUTE UNDER HINDU MARRIAGE ACT,1955:

1. **Seema vs. Sanjeev Godha (1993)[16]**

Facts: In this case, the custody of a minor child aged below five years was contested between the parents.

Judgement: The court held that, as per **Section6(a)[17]** of the Hindu Minority and Guardianship Act, 1956, the custody of a minor who has not completed the age of five years should ordinarily be with the mother. The court emphasized that a female child of tender age requires the love, affection, and care of the mother.

2. **Vikram Vir Vohra vs. Shalini Bhalla (2010)[18]**

Facts: Vikram Vir Vohra and Shalini Bhalla, after a mutual consent divorce, had agreed on custody and visitation rights for their son, Master Shivam. Shalini Bhalla later wanted to move to Australia for work and take the child with her. Vikram opposed this and sought permanent custody.

Judgement: The Supreme Court allowed the mother to take the child to Australia, emphasizing the child's welfare. It considered the child's preference, the mother's caregiving ability, and stability. The father was granted visitation rights in India.

3. **Gita Hariharan vs. Reserve Bank of India (1999)[19]**

Facts: Gita Hariharan applied to the RBI to be her son's natural guardian for investment purposes, but her application was denied since it omitted the father's name. She argued that the Hindu Minority and Guardianship Act, 1956's Section 6(a) discriminated against women in violation of Article 14 of the Constitution.

Judgement: The Supreme Court decided that Section 6(a) should not be seen as giving the mother guardianship just when the father has passed away, but also in situations where the father is not present or incapable of carrying out his responsibilities. The Court upheld gender equality and did not violate Article 14 by ruling that the mother had equal guardianship rights during the father's lifetime.

[16] Seema v. Sanjeev Godha 1993(2) WLC 730.
[17] Hindu Marriage Act, § 6(c), No. 25, Acts of Parliament, 1955 (India).
[18] Vikram Vir Vohra v. Shalini Bhalla 2010 AIR SCW 2261.
[19] Gita Hariharan v. Reserve Bank of India 1999 AIR SCW 811.

4. Priyanka vs. Santosh Kumar (2022)[20]

Facts: In a restitution of conjugal rights proceeding, the husband was granted interim custody of the minor child.

Judgement: In proceedings under Section 9 of the Hindu Marriage Act (Restitution of Conjugal Rights), the Supreme Court noted that decisions granting visiting rights or temporary child custody should not be issued, stressing that these issues should be handled independently.

5. Sugirtha vs. Gowtham (2024)

Facts: Following their split, the father requested visitation rights for his little daughter while the divorce was still pending.

Judgement: In order to protect the child's welfare, the Supreme Court changed the lower court's ruling, permitting the father visiting rights but modifying the conditions. The child's and mother's travel burden were lessened when the father was allowed to visit the child in the city where she lived.

CONCLUSION:

A complex interaction of legal rules, judicial discretion, and sociocultural elements is shown in child custody conflicts under the Hindu Marriage Act. The child's welfare is given top priority in the Act, which is mainly governed by Section 26 of the Hindu Marriage Act, 1955 and enhanced by the Hindu Minority and Guardianship Act, 1956. Courts have always placed a strong emphasis on a child-centric approach, striking a balance between parental rights and the minor's emotional, physical, and mental health. The resolution of these disagreements is nonetheless made more difficult by issues including gender prejudice, conflicting judicial interpretations, and the absence of a standardised framework for shared custody. The need for legal adjustments to suit contemporary circumstances is highlighted by the developing body of law as well as cultural trends towards gender neutrality and shared parenting. In the end, maintaining the values of justice and equity under Hindu law while protecting the child's best interests depends on making sure the adjudication procedure is impartial, quick, and comprehensive.

[20] Sugirtha v. Gowtham, 2024 SCC OnLine SC 102.

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