

An Overview of Guardianship Rights of Muslim Women in India

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ABSTRACT

Two schools of Muslim law in Indian can be found one is Sunni and another is Shia; numerically the Hanafi Sunnis are having dominant position in India. Thus the traditional Hanafi (*fiqh*) jurisprudence describes mainly a body of law which is regarded in India as 'the principles of traditional Muslim law'. This article attempts to give overview knowledge about the Muslim women rights of guardianship with specified allusion to guardianship laws in India. In India, Muslim personal law primarily regulates disputes over custody and guardianship affecting Muslim parties. In judicial decisions on matters of custody and guardianship, there still remains a continuous question as to what should be the prime concern when the traditional Muslim personal law or child welfare and best interest prevail in giving child custody to a particular person? The results in this study indicate that the movement towards child welfare is steady but inconsistent. It cannot, however, be inferred that in deciding guardianship right of child- child's welfare and interest is important or the primary concern of the courts. In this article, some of the Supreme Court's leading decisions on this matter are discussed in depth in this transition to welfare and best interest approach and also given a middle way which the court can adopt while there is an inconsistency between general principle of Muslim law and principles of child's best welfare and interest principle.

Keywords: Muslim law, Guardianship, Rights

INTRODUCTION

“Your right to custody of the child is greater as long as you do not remarry”

The Muslim Law does not codify and is founded on the Sharia law, which is based largely on the principles of the Holy Quran which is a divine communication or a book of God and narration of saying, and conduct of the Prophet Muhammad in his Sunnat and Ahadis. In some way, the Guardians and Wards Act 1890 (herein after called as the Act 1890) deals with the rights of guardianship and custody of parents with respect to their children. The father is always considering as the natural guardian of the child, whereas the custody vests with the mother. According to Hanafi law the custody with the mother will lie until the boy becomes of 7 years and the minor female until attainment of puberty i.e. 15 years, whereas according to Shialaw mother is entitled to male child's custody till attainment of 2 years and female child's custody up-till attainment of 7 years. Law under Islam establishes to be the first legal framework to make a strong contrast between custody and guardianship. It also specifically acknowledged the mother's right to custody and guardianship. The custody term known as "*Hizanat*" in Arabic considers mother to be better equipped and suitable for having responsibility with regard to children until attainment of a certain age, even in the course of the period of marriage and also beyond the marriage. A mother cannot be stripped of this right unless she is excluded on the ground of committing apostasy or misconduct, which turns her custody to be considered harmful in favour child's well-being. Courts have many times affirmed the custodial rights of minor towards her children in Islamic law where the case involve the law provided under Act 1890, and on other occasions the court have also stressed "the child's welfare" to be of primal consideration for minor's custody and rights of guardianship. The children are the most affected during proceedings of divorce and family breakdown. Maintaining the fundamental value of child protection in custody proceedings would help in ensuring that the future of the child, regardless of family circumstances, is safe and protected. Similar conclusions were reached in India by the courts. For example, the Bombay high court ruled that the child's welfare was the prime concern for deciding the final decision of the case, disregarding the pros and cons contended by parents.¹ The Supreme Court of India has ruled that a child's welfare should not only be determined by money or physical comfort provided by the parents, but the term welfare should be interpreted as widely as possible so that the bond of love must not be ignored.²

¹ Carla Gannon v. Shabaz Farukh Allarakha, Cr.W. Petition No. 509 of 2009

² Nil Ratan Kundu v. Abhijit Kundu, AIR 2009 SC 732

In the course of the years a principle was evolved that children's custody must be founded on the "best interests and welfare of the child", which aims for allowing every minor to live and to attain their maximum potential.³ It was also held that mother's right to possess her minor's custody persists even though she gets divorce from her husband, except in situations where she remarries with any other after the divorce.⁴

APPLICABILITY OF SHARIAT ACT IN THE MATTER OF CUSTODY

The only governing law in India that governs the appointment and declaration of guardians' rights, obligations and responsibilities is the Guardians and Wards Act 1890. The application of the Act is uniform over all people is a false presumption. The founding fathers of the Act 1890 were aware about the India's divergence of religious demographics as because of which India is called as country of unity in diversity. In view of that section 6 of the Act was incorporated, which expresses that, "in case of a minor, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property or both, which is valid by the law to which the minor is subject". Now question arises that whether the Shariat Act 1937 would be applicable to a proceeding where parties are Muslim or it will deal under the Guardianship Act. Now the answer can be found in the provision mentioned previously, Section 6 offers space to extend the personal law of the minor in a case of proceedings related to his or her custody and guardianship. In addition, Section 17 of the Act 1890 also includes the appointment of a guardian in according to the particular law regulating parties.

The said legal argument was considered thoroughly by the Hon'ble High Court Delhi in **Akhtar Begum vs Jamshed Munir**⁵, where the court held that "In the determination of the question relating to matter of custody under the provision of Section 6 of the Act 1890, the personal law of the parties has to be kept in mind. In a case where the Court will not take this into account, it will behave unlawfully and irregularly".

³ Principle 4, Rule 3 , Juvenile Justice (Care and Protection of Children)Rules, 2007

⁴ Hashmat Ali v. Suraya Begum, AIR 1961, All. 260

⁵ AIR 1979 Delhi 67

Moreover, during a habeas corpus petition in Hon'ble High Court Delhi in **Mohammad Nihal vs State⁶**, "has taken the aid of Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 which states that, regarding matters pertaining to succession, inheritance, marriage, divorce, guardianship, etc, where the parties are Muslims, the Muslim Personal Law (Shariat) shall be applicable."

The Hon'ble High Court upheld that "if there is uncertainty as to the applicability of Shariat laws in matters of custody, it is clarified in accordance with Section 6 of the Act 1890. When a court is required to assess a minor's welfare with regard to the appointment of a guardian, this action must be decided according to the Shariat laws." The Hon'ble Court also affirmed that the Majority Act cannot be investigated in compliance with the provision of section 2 and nothing of its clauses shall apply upon the matter relating to marriage, dower, divorce and adoption. While deciding, the minor's age, the parties personal law is to be of paramount consideration.

Types of Guardianship and Women Rights

Islamic law divided guardianship rights in three categories in case of minor i.e. guardian person (*Hizanat*), guardian of property, and guardianship in marriage (*Jabar*)

1. **Guardian of the Person (Hizanat):** As already discussed mother have the custodian right of her ward for a definite period of time which differs in Hanafi and Shia law. A prime point to consider here is- the custody of any child who is illegitimate always belongs to his or her mother and relative of mother and to no one else.⁷ However Hanafi law also provides a category of female relatives who are eligible take minor child's custody in case of failing mother.⁸ They are as follows:
 - i) Mother's mother, and how high so ever
 - ii) Father's mother, and how high so ever
 - iii) Full Sister and her daughter
 - iv) Consanguine Sister and her daughter
 - v) Uterine sister and her daughter
 - vi) Maternal and Paternal Aunts.

⁶LNIND 2008 DEL 1329

⁷Gohar Begum v. Suggi, (1960) 1 SCR 597

⁸Sir Dishaw Fardunji Mulla, Principles of Mahomeda Law 437 (Lexis Nexis, Gurgaon, 20th Edition 2014)

- **Termination of Hizanat in certain cases:**

The mother remains the minor's guardian of person, even if she is divorced from the father of the minor. The proof of the fact that she used to neglect her child before divorce, will not absolve her from such right, if after divorce she leads a respectable life. Any female who is qualified to become custodian of minor loses her rights in following instances:

- i. If she is Immoral, i.e., -
 - a) has committed adultery,
 - b) has become a prostitute,
 - c) committed any criminal offence related to immorality,
 - d) a professional singer or mourner.
- ii. If she marries a person, to whom the child is not related or who lies inside prohibited degree of relationship by virtue of consanguinity.⁹ (the right to guardianship revives on the dissolution of such a marriage by death or divorce); or
- iii. If during the subsistence of marriage, she resides at such a distance place, separate from her husband's place where the child resides, which makes it impossible for her to frequently visit her minor child.
- iv. If she commits negligence or is incapable to take due proper care of the minor. It is however a fact that mother's custodian rights with regard to her children are not lost even if she is divorced from the father of the minor child.

2. Guardian of the Property: If minor is owner to any movable or immovable property, then such property will be managed by a guardian. Muslim law recognized three types of persons who can be guardian of a smaller property in an order of choice namely:

- i) **Legal (de jure) or natural guardian:** A mother does not possess the right to be legal guardians for the property of minor.¹⁰ However the father or father's father only consider as a legal guardian and they may appoint Mother of the child as executor or executrix and then only she shall hold as much power as the father or father's father holds.
- ii) **Court appointed Guardian:** The court is empowered to appoint mother as the guardian with regard to the property of the minor in case where legal guardian is absent.¹¹ The court at the time of appointment must consider the wishes of the minor's father and the interest and the welfare of the minor.

⁹ Syed Khalid Rashid, Muslim Law, 171 (Eastern Book Company, 5th Edition, 2017)

¹⁰ Syed Shah Gulam Ghoshe v. Syed Shah Ahmad, AIR 1971 SC 2184

¹¹ Salamat Ali v. Smt. Majjo Begum, AIR 1985 All. 29

iii) De facto guardian: A de facto guardian is only the custodian of the minor's

person and property with having no right over it. The mother and all relations other than the father and father's father are de facto guardians unless they are appointed executors by the will of the father or father's father or appointed guardians by the court.

3. Guardianship for Marriage: Mother's position as a guardian of a minor child in case of marriage came after child's father, father's father, brother and other male relations from father's side. But under Shia law, only father and failing him the father's father how high so ever is recognized as a guardian in case of marriage.¹² It is also the fact that a person loses this right as soon as he/she converted to another faith.

“Welfare of the Child” Principle Explained

The Guardians and Wards Act was passed by the British Government, preserving the common law practices of child custody and the dominance of the parental right. Sections 7 & 17 of the Act stipulates that the court must take actions in favour of the child's welfare, but supremacy of the parent remained subject to Sections 19 & 25 of the original Statute.

In **Rashida Patel vs Yusuf**¹³ a petition was filed by a lady for the custody of her minor girl aged about seven years from her husband. The court gave privilege to the provisions of Mohamadden law over the welfare principle and gave its decision in favor of the father to continue guardianship of the minor child after granted minor's care and maintenance in fathers's hands.

But in **Akbal AhAMD vs Jamila Khatoon and Another**,¹⁴ the Allahabad High Court took a different view. Two children of approximately 7 years and 3 years lived along with their mother. The Court considered that, unless compelling and justifiable reasons exist, a mother's company is more valuable if it does not deprive a child from the mother's company. The mother's company always serves the child's well. The mother gives a young child the best protection. Every child in his mother's company grows up very naturally. No one can show a child the same type of love, affection, attention and sympathies as a mother can show.

¹² Iqbal Ali Khan, Mohammedan Law 216 (Central Law Agency, Allahabad, 24th Edition, 2013)

¹³ O.S.A. No 173 of 2011

¹⁴ MANU/UP/4463/2017

“Best interests of the child” Principle Explained

Under Islamic law, a woman has the custodial of children together with her husband. She is responsible for their care and protection as the primary caregiver for her children. The issue of child care arises when, due to dispute between spouses, either of the parties or both wishes to live apart from one another, the best way to maintain child custody is to let the child stay with mother. The only condition which is applied in taking decisions with respect to the custody of child is - **the best interest of the child.** (Indian Courts base their decisions on this principle as enshrined under the UN Declaration of the Rights of the Child, while determining parental custody rights of children.) This means that custody is given to the individual best suited to caring for the child or to the parent who is the child's principal caregiver. Usually this person is the mother in the Indian system. Now the question arises what factors are considered into account by the court in determination of "the children's best interests?" The most important

factor is the love and care given to the child. The general growth of the child, the wellbeing of the child, advancements in the school, the preferences of the child and the atmosphere in the home are factors that are taken into account when deciding on the best interests. However, best interest standard for issues of custody is subject to two main criticisms.

First of all, it is unforeseeable and rigorous in information. Parents obtaining divorce are guessing how custody decisions will be taken by the courts; this may result in unnecessary pre-trial negotiations that are harmful for both the child and child's parents. A more predictable standard based on rule could resolve this problem and delineate the set standard of the best interest principle. However, on contrary, it is probable that rule-based standard will prove inflexible and will in no way take into account each individual case. Secondly, the best interest principle focuses fundamentally on the challenges to be faced by the child and fails to consider the parent's emotion, affinity and love aspect into account. Parents are bases for constitution of a family institution and their rights and well-being should be taken under consideration.

Joint Custody

The face of arrangements for childcare is evolving. Several nations around the world have taken shared parenting systems as a priority over sole custody. Studies show that children usually get better when parents share custody, while in some countries some jurisdictions have presumptions of joint custody that are legally regulated.¹⁵ But scholars and courts warn that joint custody suspicions may run counter with the standard of "Best Interests of the Child," chiefly in the case of domestic violence, where for fear of further violence, abused women may agree to joint custody.¹⁶

The Law Commission of India in November 2014 (referred to as the Commission hereinafter) accoutered a Consultation Paper on "Adopting a Shared Parenting System in India".¹⁷ The paper examined parenting systems employed among the United States, Canada, Australia, UK, South Africa, the Netherlands, Thailand, Singapore and Kenya. The examination of parenting systems round the world in the paper represented a vast range of approach to custodial arrangements after separation. In addition to that, the Paper reviewed India's present law relating to custody and relevant decisions of Supreme Court and High Courts, adducing a conclusion that Indian custody law has evolved to the point that the idea of parental sharing should be debated. In this regard, a number of questions concerning joint parenthood and public comment were raised in the Consultation Paper.

Response in favour of shared custody.

1. Children requires both their parents in various circumstances they obtain guidance from them.
2. Children need adequate ties with both of the parents.
3. Sharing child's physical custody without sharing legal custody may escort one child in conclusion that the parents does not possess the same moral dominion. Sharing child's legal custody would prohibit a infant from linking up with both parents if child does not have shared physical custody.
4. Shared custody between the parents may minimize acrimony.

¹⁵ Glover, R & Steel, Comparing the Effects on the Child of Post-Divorce parenting Arrangements, Journal of Divorce, Vol. 12 No. 2-3 (1989)

¹⁶ Department of Legislative Services, Child Custody: background ad Policy Implications of a Joint Custody Presumption 6 (2011)

¹⁷ Law Commission of India, Department of Legal Affairs, Government of India, "Adopting a Shared Parentage System in India, available at <http://lawcommissionofindia.nic.in/Consultation%20Paper%20on%20Shared%20Parentage.pdf>

5. Certain women misuse protection in order to take children away from their fathers by use of the Domestic Violence Act of 2005, and section 498A of the Indian Penal Code. Nevertheless, in Shared custody arrangements, only child abuse, neglect or mental illness will be the sole ground to preclude parental contact. Children would continue contact with both the parents, even though they get back.
6. Gender-based stereotypes—e.g., that mother is ideal to raise a girl child and father is ideal to raise a boy child is musty. Either parent makes valuable benefaction to children of both sexes.

Reasons against a shared parenting law:

1. In the case of divorce, child custody is used by husbands to coerce their wives for abandoning their maintenances or drop criminal cases against them.
2. A child cannot move between two homes. It is not healthy. The best option is a stable, anchored home.
3. Ensuring safety of the child could be a problem in a societal regime of patriarchy where often harassment is being fated upon women and children.
4. If parents have unresolved problems, they can't agree on joint child decision-.
5. India does not have the required supporting measures, including: marital property division laws; the right to stay in marriage homes; the future security financial plan of the guardian wife; and the child support home.

Suggestions for Joint Custody in India:

1. The courts are not suitable for adjudicating disputes over custody. Parents must submit a "Parenting Plan" which will include personal profile of both the parents, educational qualification of both the parents, place of their residences, and income of both parents, respectively.
2. A joint bank account only to be employed in expanses for child should be opened by the parents.
3. Parents will provide a "parenting plane" that includes the personal profile of the parents with the details of their income, residence and education qualification.

The Commission constituted a sub-committee, consisting of Chairman Justice A.P.Sha, in consideration to a large number of responses to the Paper. The committee examined legal provisions relating to sharing of custody in both developmental and already developed countries and focused particularly on the circumstances under which joint custody is granted or denied. In addition, the committee discussed the scope, nature and size of sharing parentage in India and pin-pointed provisions in the existing legislation that needs an amendment. All these were discussed in a series of meetings with legal experts, practitioners and other stakeholders involved in child custody disputes.

Guardianship rights in Adoption

Adoption is a procedure through which a person takes a minor child into custody and transfer to him all of the lawful rights of the legitimate biological child. This means that it is a child's legal affiliation. No adoption is recognized by Muslim personal law. A child can be cared for but he has no right to a natural biological child which is quite legitimate. The property of his adoptive parents cannot be inherited, although the adoptive parents may give it to him like a gift. The JJ Act 2000 allows for general adoption but is in conflict with personal adoption law. Mahmood J observed that "there is nothing similar in Muslim law to the Roman and Hindu adoption system. The Muslim law does not recognize acceptance of child in adoption as a filial method."¹⁸ In 1972, in order to make Uniform Civil Law of adoption applicable on all Indian citizens irrespective of their faith, the adoption of Children's Bill was introduced in parliament. It was retracted by the Government in 1978 and could no longer be approved.

In landmark judgment by the Supreme Court of India, the court passed the rule- any person is entitled to adopt minor child under the law of Juvenile Justice (Care and Protection of Children) Act 2000, irrespective of his or her religious beliefs and even if their respective personal law object such adoption. The bench led by Chief Justice P. Sathasivam also ruled that personal beliefs and faiths cannot, dictate how the provisions of the enabling legislation are to be applied, although they must be respected, ".¹⁹ Prior to this judgment the Muslim had only the power of guardianship, in which he or she had legal rights only over the minor until attainment of adulthood. During that period, natural parents are entitled to intervene.

¹⁸ Muhammad Allahdad Khan v. Muhammad Ismil, IL.R. (1888) 12 All. 289

¹⁹ Shabnam Hashmi v. Union of India, (2014) 4 SCC 1

How Custody differ from guardianship

According to the traditional Muslim law principles, custody and guardianship are two different concepts. The Muslim law holds that a mother is more suitable to look after a child during its early years. South Asian writers often use the Arabic term '*Hizanat*' referring to custody of a child. *Hizanat* means to take care of a child and raise him or her. On the other hand, guardianship or *Waliyat* (in Arabic), is the right or power as well as the duty of a person towards another person who is in a position to be taken care of, such as an infant or a disabled person. This right or duty is given to the person either legally or on the grounds of blood relationship. Also, guardianship can mean either guardianship of person or property. As stated in the Shariah and unanimously agreed upon by Islamic jurists, guardianship of the child and his property rests with the father. However, mother has the custody of the infant. She is enabled to claim for custodial rights in respect of her minor at an early age, during marriage or after separation from the husband. That is, it is the mother's responsibility to nurse the infant till it reaches a certain age, after which the father becomes the legal and natural guardian.

Religion and the Rights of Guardianship

Under Indian law with respect to every religion a child born should always be assumed to accept the religion of father so it is important to understand what will be the effect of mother's religion on her rights of guardianship and custody.

In **Skinner vs. Orde**²⁰ a minor girl of a father who was Christian by religion conceived in a Christian marriage but was brought up by mother to be Christian. The father died, after passing of some days the mother converted into Islam and married another person who was Christian but accepted Islam. The minor girl after attainment of the age of fourteen years also expressed her desires to embrace Islam. Moreover, the relative of the deceased Christian father made an objection on it and requested from the court to remove the daughter from her mother's custody and to place her under Christian guardian. The Privy Council in an appeal of this case allowed the request of the relative and confirmed the decision of the court and observed that "It would very easy for mother to convince her minor daughter and be with her and become a Mohammedan other than to practice her deceased father's religion of Christianity."

²⁰(1871) 14 MIA 309

Their Lordship, therefore, opined that the order, in so far as removal of the minor girl from the custody of her mother and place her under a Christian guardian is concerned, was right. It is also held by the court in its various judgments that the conversion of the mother in any other religion will not affect her right of custody of her minor child.

Judicial Interpretation

In the context of custody dispute, the Apex Court of India and nearly every High Court held that the concern for the best interest and benefits of the child even replaces the above mentioned provisions of statute. Although the old cases under Guardianship and Wards Act strongly state that father can only be stripped from his position of being a natural guardian if he is found unable to act as the guardian, many cases have been invoked by the courts which exceptions to this notion.

In cases involving the right of custody of Muslim children's, the Courts have held the custodial rights in favor of child's mother only on instances where it is supported by Muslim law. In **Suharabi v. D. Mohammed**,²¹ the High Court of Kerala, held that mother is entitled to have custody under Islamic law of her daughter who is one and half year old. The father objects minor child's custody to her mother on account of her being poor. In similar case, **Md. Jameel Ahmed Ansari v. Ishrath Sajeeda**,²² the High Court of Andhra Pradesh gave custody to the father for an eleven-year-old kid, on reason that Muslim law only permits mother to be custodian exclusively for male children by the age of seven and there was nothing that proved that the father was not suitable for the custody. The Madhya Pradesh High Court in a case interpreted Muslim Law and allowed custody to mother.²³ The legal and judicial system mentioned above can be seen as having two issues. Firstly, father's position being superior being natural guardian in case of guardianship, but not strictly for custody matters and secondly, determining the welfare and best interest principle of a child, despite its widespread usage.

²¹ AIR 1988 Ker 36

²² AIR 1983 AP 106

²³ Mumtaz Begum v. Mubarak Hussain, AIR 1986 MP 221

Conclusion

The cases mentioned above show the efforts of the Indian courts to achieve the child's welfare or best interests. In India, the courts applied the principle of child's welfare and principle of best interest despite of large differentiations in the existing personal law dealing in the right of custody. Interpretation of best interests varied from case to case. Each case is different. However, some factors that have been taken into account by judiciary includes education, financial support, love, morals as well as stability of maintaining, remarrying, personal law of parents, bases on child, child's gender, wishes and child's age. There are various instances which does not set proposals or principles. However, Courts application of child principle's best interests lead to emergence of certain understandings, for example:

- Minor Children requires mother's love and care.
- A principle must be set up in which not the father nor mother automatically get custody of the minor child and the welfare and best interest of the child must be taken in account.
- A woman who commits a "marital fault" may be granted a custody of her minor child, because objective of custodial dispute should not be punishing culprit but guaranteeing the child's welfare and best interest.;
- Grant of minor's custody can not only be on the basis of financial soundness;
- Judiciary determine children's wish who are able to express them;
- No refusal of mother from having a custody of her minor child just because she works; and
- Visiting is a child's right to see their parent rather than a parent's right to be imposed on their children.

Moreover, the Supreme Court ruled that a "just and proper balance" must exist in-between the child's welfare and the parent's rights in disputes between a father and a mother. However, the welfare of the child should be seen as ultimate. Court ruled the overriding factor affecting children's custody is protection of concerned children and not their parents interest. However, case laws indicated a variety of issues with the Indian "best interest" test. Firstly, the standard is so uncertain that courts of appeal often find an error in the proceedings of the trial courts. If the principle of welfare is not properly applied in the trial court and if the appellate courts are disregarded the principle, approach must be made to the High Court at significant expense. For lack of resources, many cases do not even reach higher courts, and in this instance the child's interest is suffering. Child also undergoes unnecessary trauma and further litigation such cases that

reach superior courts. Secondly, sometimes long legal battles lead the child to stay with a person that the child ought not to be with. It also violates the child's right to a speedy trial. Courts must be sensitive to children's right, and they must be more children friendly. Judges are trained for determining the child's wishes and observe external influences. Different experts and organizations, to achieve a true determination of the best interests of the child, must make multidisciplinary opinions available to the judge. Under the Family Court Act, counsel appointed in the family court must be trained of being able for determination of the children's best interests until children receive a separate statutory representation in matrimonial disputes. Children are normally considered by courts in a paternalist discourse whether they are talking about the children's "welfare", "needs" or "best interests". It's adults who do this. In the courts, children's voices must be listened and understood.

For Muslim dominated regions to deal with the progressive laws in the modern world and the Spirit of Shariat, a common law may be drafted for the determination on custody cases. When child custody is given to divorce mothers, it is proposed that she also have custodial rights on the child with regard to travel, education and financial issues. The main purpose of determining the custody and guardianship matter in a case of minor should must be to protect the religion and the welfare of the minor child. Both parents' visitation rights should be preserved and children's access to both parents should be allowed. The presumptions of a mother maintaining child custody until the child is growing up and attending preschool should be rejected. Normally this is 7 years of age. Only after this age remarriage and religion of the mother should be taken into account for custody matter and in these sensitive years of the child, fathers should not questions regarding custody matter. Therefore, mother presents as the perfect candidate for bestowing the guardianship pf minor not only in tender age but also beyond that. The courts must make approach to recognize mother's parentage a natural as fathers. Gradually the society is moving towards gender neutral dominion and in this scenario where either gender is performing the natural roles of either genders, it would be regressive to restrict natural parentage of a child to father. The courts can verily construct these progressive changes in personal law sphere, instances of it can be drawn from past. An excuse of not ribbing the personal law realm in order to not recognize mother's right of guardianship is unacceptable.