

**Ms Githa Hariharan and another v. Reserve Bank of India and another (AIR 1999, 2 SCC 228)**

**1) Reference Details**

Jurisdiction: Indian Supreme Court

Date of Decision: 17 February 1999

Link to full case:

<http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=16993>

**2) Facts**

The petitioner and Dr Mohan Ram were married in Bangalore in 1982 and had a son in July 1984. In December 1984 the petitioner applied to the Reserve Bank of India (RBI) for 9% Relief Bond to be held in the name of the son indicating that she, the mother, would act as the natural guardian for the purposes of investments. RBI returned the application advising the petitioner either to produce an application signed by the father or a certificate of guardianship from a competent authority in her favour to enable the bank to issue bonds as requested.

This petition was related to a petition for custody of the child stemming from a divorce proceeding pending in the District Court of Delhi. The husband petitioned for custody in the proceedings. The petitioner filed an application for maintenance for herself and the minor son, arguing that the father had shown total apathy towards the child and was not interested in the welfare of the child. He was only claiming the right to be the natural guardian without discharging any corresponding obligation.

On these facts, the petitioner asks for a declaration that the provisions of s. 6(a) of the Hindu Minority and Guardianship Act of 1956 along with s. 19(b) of the Guardian Constitution and Wards Act violated Articles 14 and 15 of the Constitution of India.

**3) Law**

*National Law*

- Section 6 of the Hindu Minority and Guardianship Act 1956 (The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are ... in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother)
- Guardian Constitution and Wards Act 1879
- Constitution of India, Article 14 (Equality before the law) and Article 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth)

**4) Legal Arguments**

*The Applicant*

The applicant argued that the communication from the RBI is arbitrary and was opposed to the basic concept of justice under Article 32 of the Constitution. They therefore challenged the validity of s. 6 of the Hindu Minority and Guardianship Act of 1956 (the Act). Further they argued that the provisions of s. 6 of the Act seriously disadvantage women and discriminate against women in the matter of guardianship rights, responsibilities and authority in relation to their own children.

## 5) Decision

Giving the opinion of the Court, Banerjee J asserted the predominance of the child's welfare in all considerations. He considered the precedent of *Gajre v. Pathankhan* (1970 2 SCC 717) in which, although the father was alive, he was not taking any interest in the affairs of the child. In that case the mother was ruled to be the natural guardian of her minor daughter. He set out that the Hindu law and the Act held that the father is the natural guardian and after him the mother but in the above case, the Court held the opposite.

The judgment in *Gajre v Pathankhan* considered that:

*"... a rigid insistence of strict statutory interpretation may not be conducive for the growth of the child, and welfare being the predominant criteria, it would be a plain exercise of judicial power of interpreting the law so as to be otherwise conducive to a fuller and better development and growth of the child."*

Justice Banerjee noted that the judge in *Gajre v. Pathankhan* allowed the mother to be the natural guardian:

*"... but without expression of any opinion as regards the true and correct interpretation of the word 'after' or deciding the issue as to the constitutionality of the provision as contained in Section 6(a) of the Act of 1956."*

He felt strongly that a long established law should not easily be set aside; that a key point was interpretation of the word "after"; and that:

*"... the word did not necessarily mean after the death of the father, on the contrary, it [means] 'in the absence of' be it temporary or otherwise or total apathy of the father towards the child or even inability of the father by reason of ailment or otherwise."*

He concluded that ascribing the literal meaning to the word 'after' cannot arise having due regard to the object of the Act and the constitutional guarantee of gender equality, since any other interpretation would render the statute void which ought to be avoided.

Subsequently, he dismissed the petition regarding the constitutionality of the Act but directed the Reserve Bank to formulate appropriate methodology in the light of his observations. He also instructed the District Court, Delhi to take account of his comments when considering custody and guardianship of the minor child.