

Family Laws & Custodial Rights

Rajya Sabha TV programs like 'The Big Picture', 'In Depth' and 'India's World' are informative programs that are important for UPSC preparation. In this article, you can read about the discussions held in the 'Big Picture' episode on "Family Laws & Custodial Rights" for the [IAS exam](#).

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Guests: Rekha Agarwal, Advocate, Supreme Court; V Rajyalaxmi, Sociologist; Janki Devi Memorial College, DU; Shyam Suman, Legal Correspondent, Hindustan.

Context:

The Supreme Court (SC) has asked for the centre's response to the [Public Interest Litigation](#) (PIL) which confronts the efficacy of sections 6,7, and 9 of the Hindu Minority and Guardianship Act, 1956. The PIL was filed by Sakshi Bhattacharya on the basis that it violated Article 14 particularly in terms of gender discrimination and the Right to equality of a mother.

Background:

1. Article 14

- The petitioner stated that the laws governing child custody and guardianship are in violation of [Article 14](#).
- The Article states that:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

2. Hindu Minority and Guardianship Act, 1956.

- This states details regarding the natural guardianship of the children who are Hindu, Buddhist, Jain or Sikh by religion.
- It states that the natural guardianship of a minor will first go to the father after which it will go to the mother:
 - **"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."**
 - **"The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother."**
- Since the Act was made in 1956, it's no longer applicable to the current situation as the socio-economic situation of the present is different from the time the Act was formulated.
- Hence, the petitioner feels that the personal laws with regard to the custody of the child in matrimonial disputes have to be revisited.

What's the Issue?

- Sakshi Bhattacharya filed a PIL against the laws which governed child custody and guardianship.
 - The petitioner has filed the PIL, stating that the sections of the Shariat Act of 1937 and the Hindu Guardianship Acts were outdated with relation to the current situation.
 - The petitioner has also alleged that the Act is in violation of the right to equality as per Article 14 of the mother and establishes a bias on the basis of gender discrimination by stating that the father is a natural guardian of the child until they attain majority, in the event of a divorce.
- Another activist had filed a petition in which she had argued that the Shariat Act along with the Hindu Guardianship Act violated the mother's right to equality under Article 14.
 - The issue raises a doubt whether the PIL was based on discrimination, or fundamental rights of women or fundamental rights of the child or the custody/matrimonial rights?
- The bench headed by Justice Arun Mishra had issued a formal notice to the centre.
- The apex court issued a similar notice to the centre in October 2019, on another petition which was asking for all the personal laws of the country governing the custody of the child in the case of marital disputes to be revisited and modified according to the present-day condition.
 - The 257th report by the [Law Commission of India](https://byjus.com/law/commission-of-india/) had also suggested certain amendments to the currently available statutory provisions so that the provision for shared custody/joint custody could be included.

Observations of the Supreme Court:

- The Supreme Court (SC) observed that the child needs to have the love and support from both the parents irrespective of their fights.
- The gender bias eliminates the chance of equal opportunity and in some situations, women tend to stay in abusive relationships and suffer from domestic abuse only for the fear of giving up their children.

Solutions

- **Introduction of Gender Neutral Law:** The solution to eliminating the issue of discrimination on the basis of gender can be accomplished by the introduction of gender-neutral laws which are child-centric.
 - Amendments in the Protection of Children from Sexual Offences ([POCSO Act](https://byjus.com/law/pocso-act/)), 2012 which was enacted in 2013 which ensured that the welfare of children, both girls and boys was taken into account.
- **Introduction of a Balancing Act:** We have to safeguard women and protect the welfare of the children who fall into another genre completely and that's why while ensuring justice to one section it has to be maintained for all other sections. Hence a balancing act has to be made while reviewing the PIL.
 - The laws also have to be time-friendly.
- **Introduction of shared parenting within the law:**
 - Women are no longer the weaker sex. As far as adoption laws are concerned which talks about guardianship and custody we could take an approach of a sharing concept wherein one could give the guardianship to one parent and the physical custody to the other parent, such that the child doesn't suffer.
 - A child-centric focus has to be maintained.
 - We are pre-supposing that a father is the natural guardian while making the law thereby, giving him an edge. If we're continuing with that pre-supposition, women will be on the weaker side, making her go through a lot to prove that she's equal if not better.
- **Remodification of custody acts in case of remarriage:**
 - The case of remarriage and custody also needs to be revisited as, just because one parent tends to move on doesn't mean the child can be treated as a chattel, shifting their homes.

- The rights of the child should be respected and a complete analysis of the situation has to be done before handing the custody to one parent.
- All of this has to be done with just one principle in mind that it should be child-centric as it is the child who is at the centre of the entire saga and the onus of each party should be that the child doesn't suffer.

CONCLUSIONS:

- Keeping in mind that India is a heterogeneous society and one law will not be applicable to all sections of the societies, the introduction of gender-neutral laws is important.
- The custody laws in the event of remarriage should be revisited, keeping the principle as child-centric.
- All the personal laws need to be revisited to ensure that they're relevant to the current situation and aren't biased on the basis of gender.