

# BIOLOGY, INTENTION, LABOUR: UNDERSTANDING LEGAL RECOGNITION OF SINGLE MOTHERHOOD IN INDIA

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*In recent years, the state's conception of parenthood, giving priority to the father in the child's public identification, has been challenged before the courts in multiple ways. The cases are sociologically significant for they capture emerging modes of parenthood outside the patriarchal family model. But more importantly, the article argues, the terms on which identification through father is dispensed with in these cases show the judicial regard for the social. The "social" phenomenon of single motherhood in India encompasses a much broader set of mothers than how the statutory law imagines this category. In addition to mothers of "illegitimate" children, as single adoptive mothers or single mothers using artificial reproductive technologies, this group includes mothers whose husbands have died, divorced mothers, and mothers deserted or abandoned by their husbands, among others. The article shows that in according legal recognition to this broader social category, judges constructed single motherhood not only through biological relatedness or intentionality but also as a function of who performed the labour of parenting. Single motherhood then is a social phenomenon with multiple legal forms and normative bases.*

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## I. INTRODUCTION

The 1997 Bollywood film, *Mrityudand* (Death Sentence) has a scene between two sisters-in-law, Chandravati (Shabana Azmi) and Ketki (Madhuri Dixit).<sup>1</sup> Chandravati, whose husband is impotent, has had a brief affair with a lower caste man, Rambaran (Om Puri). Upon discovering that Chandravati is pregnant, an alarmed Ketki asks, “*Didi, yeh kiska bachcha hai?*” (Whose child is it?). To which, Chandravati reassuringly replies, “*Mera*” (Mine). As Nivedita Menon notes, Ketki’s question, though absurd – she can see that the “child” is inside Chandravati – makes complete sense in a patriarchal society.<sup>2</sup> A woman bears children *of* her male partner. The children inherit his name, property, group membership, and so on, if she is married to him. But even if she is not, they are still *his* illegitimate children. Anthropologists have documented the ubiquity of the seed and earth metaphors in the procreative ideologies prevalent in the subcontinent,<sup>3</sup> wherein “women are expected to behave like ‘earth’, as mere receptacles of male ‘seed’ and give back the fruit, preferably male children.”<sup>4</sup> While mother’s bodily contributions – blood and milk – are deemed significant for nourishing the child, they are not regarded as imparting identity to them, like the father’s.<sup>5</sup>

Like Ketki, until recently, the Indian state also mandatorily asked for the father’s name for a range of official purposes. A gendered (di)vision of parental roles in the patriarchal family underlay these practices, that associated the father with the public sphere and the mother with the private. While this relegated all mothers to a secondary status, the normalization of the patriarchal family model by the state has had disadvantageous consequences, particularly for single mothers – “women bringing up their children outside the conjugal framework.”<sup>6</sup>

Consider the following examples. Since hospitals refuse to record births without the father’s name, sex workers are forced to get strangers off the street and have them pose as fathers of their children before the hospital authorities.

<sup>1</sup> *Mrityudand*, Dir. Prakash Jha, 1997.

<sup>2</sup> NIVEDITA MENON, *SEEING LIKE A FEMINIST* 6 (Zubaan and Penguin Books 2012).

<sup>3</sup> Leela Dube, *Seed and Earth: The Symbolism of Biological Reproduction and Sexual Relations of Productions*, in *ANTHROPOLOGICAL EXPLORATIONS IN GENDER: INTERSECTING FIELDS* 119-153 (Leela Dube ed., Sage Publications 2001); Pushpesh Kumar, *Gender and Procreative Ideologies among the Kolams of Maharashtra*, 40(3) *CONTRIBUTIONS OF INDIAN SOCIOLOGY* 279-310 (2006).

<sup>4</sup> Kumar, *Id.*, at 281.

<sup>5</sup> Kumar, *supra* note 3.

<sup>6</sup> DEEPTI PRIYA MEHROTRA, *HOME TRUTHS: STORIES OF SINGLE MOTHERS* 6 (Penguin Books 2003).

While this allows them to obtain birth certificates for their children, it becomes a problem for those from the Scheduled Castes when they apply for the children's caste certificates,<sup>7</sup> if the "father" shown on the birth certificate happens to have an upper caste surname.<sup>8</sup> Poor single mothers, divorced/separated from or deserted by their husbands, find it difficult to avail of the seats reserved under the Right to Education Act for their children,<sup>9</sup> since schools would not accept mothers' identity and income documents to determine their children's eligibility for those seats.<sup>10</sup> Rape survivors and their children conceived as a result of rape also face similar problems, leading the Madhya Pradesh government to direct schools to not to insist on fathers' details in such cases.<sup>11</sup> Passport officials have reportedly refused to process applications by divorced/separated/deserted single mothers for their children, unless accompanied by proof of consent of their estranged former/absent husbands.<sup>12</sup>

Over the last few years, the state's conception of parenthood, giving priority to the father in the child's public identification, has been challenged before the courts in multiple ways. Thus, a Public Interest Litigation (PIL) filed before the Supreme Court of India in 2014 sought to make mother's name mandatory

<sup>7</sup> A state-issued proof of one's membership to a formerly untouchable caste listed in the Constitution (Scheduled Castes) Order, 1950 that forms the basis for claiming compensatory discrimination measures provided for by the Constitution of India for those castes.

<sup>8</sup> Personal communication with Debolina Dutta. Sex workers in Sangli, Maharashtra, narrated many such instances to Debolina during her fieldwork (2014-15) for doctoral research.

<sup>9</sup> Under S. 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009, private unaided schools are required to reserve at least 25% of the total number of seats in class I and pre-school education, for children from 'economically weaker sections' and 'disadvantaged groups' in the neighbourhoods. These categories and their eligibility criteria are specified in the Act and the Rules.

<sup>10</sup> *Single mothers fight a lonely battle*, DECCAN CHRONICAL, (Apr. 14), <https://www.deccanchronicle.com/nation/current-affairs/140418/single-mothers-fight-a-lonely-battle.html>; Ardhra Nair, *Dad's name not needed for RTE admission: Education officials*, TIMES OF INDIA, (Mar. 4, 2017), <https://timesofindia.indiatimes.com/city/pune/dads-name-not-needed-for-rte-admission-edu-officials/articleshow/57456718.cms>; *Deserving kids hit another roadblock in the RTE admissions quota barrier*, SCOONNEWS MAGAZINE, (May 11, 2016), <https://www.scoonews.com/news/deserving-kids-hit-another-roadblock-in-the-rte-admissions-quota-barrier-775>. Admittedly, the schools in these cases are non-state entities, but the eligibility criteria used by them for a state mandated purpose is based on the patrilineal format used by the state in the context of reservation. See, *Kendriya Vidyalaya Sangathan v. Shanti Acharya Sisingi*, 2010 SCC OnLine Del 3987: (2011) 176 DLT 341.

<sup>11</sup> *Father's name not necessary for admission of rape-survivor's child in MP schools*, ECONOMIC TIMES, (Oct. 26, 2017), <https://economictimes.indiatimes.com/news/politics-and-nation/fathers-name-not-necessary-for-admission-of-rape-survivors-child-in-mp-schools/article-show/61245694.cms>. Earlier, the Maharashtra government had issued a similar instruction to schools regarding children of sex workers and transgender persons. See, Sanjeev Shivadekar, *Kids of transgenders, sex workers don't need father's name for school admission in Maharashtra*, TIMES OF INDIA, (June 4, 2013), <https://timesofindia.indiatimes.com/home/education/news/Kids-of-transgenders-sex-workers-dont-need-fathers-name-for-school-admissions-in-Maharashtra/articleshow/20419097.cms>.

<sup>12</sup> Arpita Raj, *Single women seeking kids' passports run into red tape*, TIMES OF INDIA, (Dec. 10, 2016), <https://timesofindia.indiatimes.com/city/bengaluru/Single-women-seeking-kids-passports-run-into-red-tape/articleshow/55903908.cms>.

in all official documents and father's name optional, on the reasoning that "a father's name is only on hear-say basis, but the identity of a mother is always certain."<sup>13</sup> The judges were persuaded, who directed the state to respond, but no further development could be traced in the case. Another petition filed before the Madras High Court in 2016 sought to make both parents' names mandatory instead of only the father's, but was dismissed for want of sufficient evidence and appropriate jurisdiction.<sup>14</sup> As distinct from these, in a series of writ petitions, single mothers challenged various rules mandating the father's name in official identification documents like birth certificate, PAN card,<sup>15</sup> and passport. They not only got decisions in their favour, but the court decisions also nudged the state to change its rules governing parental names on identification documents.

This last set of cases, of single mothers demanding to be identified as lone parents of their children, is the subject of this article. The cases are sociologically significant for they capture emerging modes of parenthood outside the patriarchal family model. But more importantly, as I argue in this article, the terms on which identification through the father is dispensed with in these cases show the judicial regard for the social. Traditionally, the legal imagination of single motherhood has been limited to mothers of "illegitimate children". Over time, single adoptive mothers and more recently, single mothers using Artificial Reproductive Technologies (ARTs) have been included in that space, in recognition of their intention to be single mothers. The social phenomenon of single motherhood however, encompasses a much broader set of mothers. As can be gathered from the examples cited above, this category also includes mothers whose husbands have died; divorced mothers; and mothers deserted or abandoned by their husbands, among others. In according legal recognition to this broader *social* category, judges constructed single motherhood not only through biological relatedness or intentionality but also as a function of who performed the labour of parenting. Single motherhood then, is a social phenomenon with multiple legal forms and normative bases.

The article proceeds as follows: In section II, I discuss the Supreme Court's 2015 judgment in *ABC v. State* to delineate the gendered framework of parenthood in Indian law and identify the considerations that have a bearing on a single mother's claim to lone parental status in a framework of biological relatedness. In section III, I show how both petitioners and judges have been using the Supreme Court's holding in *ABC* to dispense with the father's name

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<sup>13</sup> PTI, *Supreme Court seeks response from states on plea for mother's name on documents*, DNA, (July 16, 2014), <https://www.dnaindia.com/india/report-supreme-court-seeks-response-from-states-on-plea-for-mother-s-name-on-documents-2002674>.

<sup>14</sup> PTI, *HC dismisses plea on column for writing mother's name in forms*, INDIA TODAY, (Feb. 11, 2016), <https://www.indiatoday.in/pti-feed/story/hc-dismisses-plea-on-column-for-writing-mothers-name-in-forms-554044-2016-02-11>.

<sup>15</sup> Permanent Account Number (PAN) is a state-issued number assigned to a tax paying individual or entity. The card bearing the PAN serves as an identification device.

on birth certificates of children of single mothers, in the process extending the scope of the intention framework. Finally, in section IV, I discuss a set of cases where recognition of single motherhood turned on the social and emotional significance of identification documents and the question of who performed the labour of parenting. Together, the three sections map the legal movements in contemporary India that make it possible for a child to be identified by the mother's name alone.

## II. SINGLE MOTHERS, UNINVOLVED FATHERS

Traditionally, legal parenthood has been a function of a parent's gender and their relationship to the other parent. Thus, a legal mother has been the woman who gave birth to the child, while a legal father has been the man who was married to the mother. These legal constructions cast legal motherhood as "biological", and legal fatherhood as "social". Consequently, in the absence of legitimate kinship – marriage in this case – the genetic father does not acquire the status of a legal father. The idea of single motherhood in this framework is limited to that of the mother of "illegitimate children".

The traditional legal constructions of motherhood and fatherhood have been undermined by the possibility of parenthood through adoption and ARTs, but they continue to have salience in the law governing guardianship of children. Guardianship is one of the attributes of legal parenthood, that involves the parent's authority to make decisions on behalf of the child and the duty to look after their overall interests, including their property. The Guardians and Wards Act, 1890 ('the GWA') is the common legislation governing guardianship. The GWA itself currently confers equal guardianship on both the father and the mother, though until 2010 it did not even contain the word "mother".<sup>16</sup> However, the GWA mandates judges to act in furtherance of the welfare of the minor, while also having regard to the personal law applicable to them.<sup>17</sup> Therefore, a common law notwithstanding, personal law dominates the issue of guardianship.

Under the Hindu Minority and Guardianship Act, 1956 ('the HMGA'), the father is the "natural guardian" of a child born within marriage.<sup>18</sup> The mother on the other hand gets to occupy that position if the father is unable or unwilling to assume that responsibility,<sup>19</sup> or if the child is born outside marriage.<sup>20</sup> Similarly, under Muslim law, a father is the guardian of the legitimate children, but it is the mother, for the illegitimate ones.<sup>21</sup> There is no group-specific

<sup>16</sup> The GWA was amended by the Personal Law (Amendment) Act, 2010 to confer equal guardianship status on both the mother and the father of a minor.

<sup>17</sup> S. 17(1), The Guardians and Wards Act, No. 8, Acts of Parliament, 1890 (India).

<sup>18</sup> S. 6(a), Hindu Minority and Guardianship Act, No. 32, Acts of Parliament, 1956 (India).

<sup>19</sup> See, text accompanying footnote 30.

<sup>20</sup> S. 6(b), Hindu Minority and Guardianship Act, No. 32, Acts of Parliament, 1956 (India).

<sup>21</sup> PRINCIPLES OF MAHOMEDAN LAW 420 (20th edn., LexisNexis).

personal law on guardianship for Christians and Parsis, with the result that they are governed by the GWA on this issue. Unlike the personal law applicable to Hindus and Muslims however, the GWA does not specifically address the question of “illegitimate” children, which led to the Supreme Court’s 2015 judgment in *ABC v. State (NCT of Delhi)*.<sup>22</sup>

*ABC* arose out of an “unwed” Christian woman’s attempt to make her son the nominee in her financial documents. She was asked to name the child’s father in her application or in the alternative, submit a court order declaring her to be his sole guardian. Consequently, she filed an application under the GWA asking for the same. The lower court dismissed the petition on the grounds that Section 11(1)(a)(i) of the GWA required a court to serve notice on the “parents” of a minor before appointing a guardian, and Section 19(b) directed a court to not appoint a guardian, if the father was alive, who in view of the court, was not unfit to be a guardian.<sup>23</sup> The mother did not wish to involve the genetic father – a married man – in the legal process. She also did not wish to reveal his identity. Her claim to her son’s guardianship was based on the fact that she had given birth to him and had been raising him by herself and therefore, was his only parent. She appealed the lower court decision before the Delhi High Court, but it was dismissed on the ground that a “natural father could have an interest in the welfare and custody of his child even if there was no marriage” and hence, her claim to single motherhood could not be decided without notifying the father.

She appealed the High Court decision before the Supreme Court, which dispensed with the notice requirement and declared her to be the sole guardian of her son. The Supreme Court judges got around the notice requirement under Section 11(1)(a)(i) by interpreting it in light of two factors: first, the interest of the mother who had raised her child without the involvement of the genetic father, and second, the interest of the child. I will examine both issues by turns.

## A. Single Mothering

As stated above, both Hindu and Muslim law specifically address the issue of guardianship of children born outside marriage, but the law applicable to the Christians, namely the GWA, does not. It was then left to the judges to bridge this inter-group difference, by justifying a mother’s claim to guardianship of

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<sup>22</sup> *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1.

<sup>23</sup> The second ground was erroneous, since S. 19(b) had been amended by the Personal Law (Amendment) Act 2010, which inserted the word “mother” alongside father, implying that the direction was applicable with respect to guardianship claims by persons other than parents.

her child born outside marriage.<sup>24</sup> The following quote captures the essence of their justification:

Avowedly, the mother is best suited to care for her offspring, so aptly and comprehensively conveyed in Hindi by the word ‘mamta’. Furthermore, recognizing her maternity would obviate the necessity of determining paternity. In situations such [as] this, where the father has not exhibited any concern for his offspring, giving him legal recognition would be an exercise in futility. In today’s society, where women are increasingly choosing to raise their children alone, we see no purpose in imposing an unwilling and unconcerned father on an otherwise viable family nucleus. It seems to us that a man who has chosen to forsake his duties and responsibilities is not a necessary constituent for the wellbeing of the child.<sup>25</sup>

In her 1976 book, *‘Of Woman Born’*, Adrienne Rich made the distinction “... between two meanings of motherhood, one super imposed on the other: the *potential relationship* of any woman to her powers of reproduction and to children; and the *institution*, which aims at ensuring that that potential – and all women – shall remain under male control.”<sup>26</sup> Following Rich, in feminist literature, we find the term “motherhood” to refer to the patriarchal institution that naturalizes motherhood to women, casts childcare as the mother’s responsibility, and is oppressive of women, and the term “mothering” to mean the possibility of women’s experience of mothering or female-defined mothering outside the patriarchal mould, that is potentially empowering for women.<sup>27</sup> This analytical distinction is helpful in making sense of the judges’ characterization of the mother’s claim in the above quote.

The judges invoked women’s “natural” fitness for mothering and maternal affection – *motherhood* – along with acknowledging the emergent social phenomenon of *mothering* by agential single mothers. Indeed, the latter is an increasingly prevalent form of non-normative motherhood in India.<sup>28</sup> The

<sup>24</sup> Inter-group difference in Indian family law is bridged either by legislation, through judicial interpretation or both. See, Saptarshi Mandal, *Towards Uniformity of Rights: Muslim Personal Law, the Domestic Violence Act, and the Harmonization of Family Law in India*, in CONFLICT IN THE SHARED HOUSEHOLD: DOMESTIC VIOLENCE AND THE LAW IN INDIA 171-19 (Indira Jaising and Pinki Mathur eds., Oxford University Press 2019).

<sup>25</sup> *Supra* note 22, ¶9.

<sup>26</sup> ADRIENNE RICH, *OF WOMAN BORN: MOTHERHOOD AS EXPERIENCE AND INSTITUTION* 13 (W.W. Norton & Company, 1976).

<sup>27</sup> Andrea O’Reilly, *Introduction*, in *FROM MOTHERHOOD TO MOTHERING: THE LEGACY OF ADRIENNE RICH’S OF WOMAN BORN*, 2 (Andrea O’Reilly ed., State University of New York Press, 2004).

<sup>28</sup> AMRITA NANDY, *MOTHERHOOD AND CHOICE: UNCOMMON MOTHERS, CHILDFREE WOMEN* (Zubaan and New Text Publications, 2017). In contrast, see Mehrotra, *supra* note 6. The 2003 book about single mothers featured accounts almost exclusively of women whose single motherhood was the result of their husbands’ death or them leaving bad marriages.



invocation of women's intention to raise their children singly along with their "natural" capacity for mothering, in the above quote from the judgment, bears out Rich's point, that under patriarchy, female-defined motherhood is but a *potential*, struggling not to be coopted by the *institution* of motherhood. Thus, the construction of single motherhood remained moored in the understanding of legal motherhood as "biological", as opposed to legal fatherhood being "social" – the father can "choose" to "forsake" that social role.

But, the single mother's intention or ability to raise her child by herself was not determinative in the judges' reasoning. What really enabled the judges to decide the key question of whether the genetic father should be notified or not, was his non-involvement in the child's life. The judges rebuked him for being an irresponsible man/father: "Any responsible man would keep track of his offspring and be concerned for the welfare of the child he has brought into the world; this does not appear to be so in the present case ...."<sup>29</sup> Consequently, they found him unnecessary to the wellbeing of the child. What must be noted here is that rather than the expressed intention by the single mother, it was the assumed abandonment by an irresponsible father that weighed with the judges in determining parental status.

To be sure, judges in the past have used the same reasoning to recognize married mothers as guardians under the HMGA, the most notable example being the Supreme Court's 1999 judgment in *Githa Hariharan v. RBI*<sup>30</sup> that emerged out of a case similar to *ABC*. In *Githa Hariharan*, the mother, who was married to the legal father, had applied to the Bank to purchase certain bonds in the name of her minor son, with herself as the legal guardian for investment purposes. The Bank returned the application with the direction that it should either be signed by the father or should be accompanied by a court order attesting her to be the guardian. Under Section 6(a) of the HMGA, which governed the parties in this case, the natural guardian for a Hindu minor boy was "the father, and after him, the mother". Githa challenged the constitutional validity of the Section for violating her right to equality (Article 14) and non-discrimination on the ground of sex (Article 15) under the Indian Constitution. Unwilling to strike it down, a three-judge bench of the Supreme Court relied on an alternative interpretation to the word "after" in Section 6(a), which according to it, met the legislative objective of welfare of the child, the constitutional guarantee of non-discrimination, as well as maintained the integrity of the statute. Building on the holding of an earlier Supreme Court judgment, *Jijabai Vithalrao Gajre v. Pathankhan*,<sup>31</sup> the judges held that the word "after" must be understood as "in the absence of" rather than "after the death of" the father. Consequently, they held that if the father was absent in the child's life, either on account of indifference, or mental or physical incapacity,

<sup>29</sup> *Supra* note 22, ¶11.

<sup>30</sup> *Githa Hariharan v. RBI*, (1999) 2 SCC 228; AIR 1999 SC 1149.

<sup>31</sup> *Jijabai Vithalrao Gajre v. Pathankhan*, (1970) 2 SCC 717; AIR 1971 SC 315.



or on account of an agreement between the parents, then the mother can be the natural guardian for a minor Hindu, even during the lifetime of the father.

While these cases concerned the status of married mothers as guardians under Hindu law, in *ABC*, the judges extended the same idea to a single Christian mother in a comparable situation – the genetic father, though alive, was “absent”, having abandoned his paternal role. Further, since this was a case under the GWA, the holding became applicable to all mothers whose personal law did not specifically address this issue. To that extent, one of the crucial outcomes of *ABC* was the universalization of the idea that an uninvolved father had no “natural” claim to the guardianship of his children.

## B. Competing Interests of the Child

The second factor considered by the judges was the interest of the child. Like many jurisdictions, in Indian law, any decision pertaining to children is meant to be guided by their welfare or best interests,<sup>32</sup> with judges enjoying vast discretion in determining what those interests are. The welfare or the best interest principle as it is also known, has long been criticized for being, among other things, indeterminate i.e. it does not articulate a clear rule to guide the actions of those it seeks to govern;<sup>33</sup> non-transparent i.e. it allows judges to pursue their own beliefs, biases, and ideologies in the name of furthering the child’s welfare;<sup>34</sup> and unfair i.e. it seeks to prioritize the interests of the child over that of the other family members.<sup>35</sup> Some scholars have called for its abolition, while others have proposed that the discretion available to judges under the principle be curtailed through statutory presumptions, a list of factors that judges must consider, or by specifying the rights of the child.

Reviewing a wide array of criticisms of the welfare principle, Jonathan Herring notes that most critics do not object to the principle as such, but to specific instances of its bad application.<sup>36</sup> Herring argues that the problems of application can be addressed if judges are honest and clear in their reasoning, careful not to make generalizations, or pit the interests of the children against that of the parents. In the Indian context, Archana Parashar has similarly argued against abandoning or restricting the welfare principle. Like Herring,

<sup>32</sup> S. 17, Guardians and Wards Act, No. 8, Acts of Parliament, 1890 (India); S. 13, Hindu Minority and Guardians Act, No. 32, Acts of Parliament, 1956 (India).

<sup>33</sup> Robert Mnookin, *Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy*, 39 *LAW AND CONTEMPORARY PROBLEMS* 259-364 (1975).

<sup>34</sup> John Eekelaar, *Beyond the Welfare Principle*, 14 *CHILD AND FAMILY LAW QUARTERLY* 237-250 (2002).

<sup>35</sup> Helen Reece, *The Paramountcy Principle: Consensus or Construct?*, 49 *CURRENT LAW PROBLEMS* 267-289 (1996).

<sup>36</sup> Jonathan Herring, *Farewell Welfare?*, 27(2) *JOURNAL OF SOCIAL WELFARE AND FAMILY LAW* 159-171 (2005).

she argues in favor of building a culture of judicial reasoning that would consider a wide array of contextual factors:

This context would take into account how the child was brought up before separation, it would avoid assuming gender parity, it will acknowledge the true costs of child-care and the mother's share in bearing that cost and thus reach a conclusion that would be socially just. Rather than pretending that the rights of the child exist independently of the mother and father, it would acknowledge that members of a family exist in a symbiotic relationship.<sup>37</sup>

In *ABC*, the judges held that the child's welfare was not undermined if the uninvolved genetic father was not notified. On the contrary, they reasoned, allowing the mother to keep the father's name confidential, and not involve him in the legal process in fact protected the child from "social stigma and needless controversy."<sup>38</sup> Dispensing with the "purely procedural"<sup>39</sup> requirement under Section 11, they held, furthered the child's welfare in the specific circumstances of the case. But the judges also turned the specific into the general and held that in all cases involving "illegitimate children", the neutral term "parents" in Section 11 of the GWA would mean only that parent who had been the sole caregiver of the child.<sup>40</sup> Viewing the child's welfare thus, helped the judges align the child's interest with that of the mother's.

However, after finding the father to be redundant for the purpose of guardianship through the above reasoning, he was brought back into the picture through the child's right to know his genetic parentage. The fact of being a genetic parent without being a legal one, did not attract any legal consequence until recently. With the growing recognition of a child's right to know their genetic origin, however, the status of being a genetic parent without being a legal one, has acquired legal relevance.<sup>41</sup> The United Nations Convention on the Rights of the Child ('CRC') that India is a party to, provides that a child shall have the right to know the identity of his parents and casts an obligation on the state to protect the same.<sup>42</sup> In view of India's commitment under the CRC and their *parens patriae* obligation in a guardianship case, the judges felt

<sup>37</sup> Archana Parashar, *Paternalistic Law, Autonomous Child and the Responsible Judges*, in *REDEFINING FAMILY LAW IN INDIA*, 111 (Archana Parashar and Amita Dhanda eds., Routledge 2008).

<sup>38</sup> *Supra* note 22, ¶13.

<sup>39</sup> *Supra* note 22, ¶16.

<sup>40</sup> *Supra* note 22, ¶16.

<sup>41</sup> See, Jayna Kothari, *The Child's Right to Identity: Do Adopted Children have the Right to Know their Parentage?*, NATIONAL CHILD RIGHTS RESEARCH FELLOWSHIP REPORT, [https://www.cry.org/resources/pdf/NCRRF/NCRRF\\_ReportBy\\_Jayna.pdf](https://www.cry.org/resources/pdf/NCRRF/NCRRF_ReportBy_Jayna.pdf).

<sup>42</sup> United Nations Convention on the Rights of the Child Arts. 7 and 8, Nov. 20, 1989, 1577 UNTS 3.

duty bound to “ensure that the child’s right to know the identity of his parents is not vitiated, undermined, compromised or jeopardized.”<sup>43</sup>

This new angle then not only split the convergence achieved earlier between the mother’s interest (privacy)<sup>44</sup> and the child’s (protection from stigma), but also set them against each other (mother’s privacy vs. child’s right to know), and revealed two competing interests of the child (protection from stigma and right to know). The judges’ balancing of these multiple interests in this case exemplifies the responsible, contextual deployment of the welfare principle that Herring and Parashar envision. They declared the mother to be the sole guardian of the child, and directed that the particulars of the genetic father that they had obtained from the mother in confidence, were to be kept in a sealed envelope and opened only upon the orders of the Court if the child at some point wished to know who his father was. This remedy allowed them to uphold the mother’s claim, which was the reasonable thing to do in this case, while making sure that the child’s welfare was ensured, and his right to know the paternal identity, protected.

The significance of *ABC* goes beyond the issue of guardianship. Extending the same reasoning, the judges also declared that should a single mother seek a birth certificate for her child, the officials may only require her to furnish an affidavit stating that she was a single mother. The next section examines how this specific direction has been used by both litigants and judges, to render the father’s name unnecessary.

### III. RECORDING BIRTH, PROVING PARENTHOOD

Biological relatedness is no longer the sole basis of parenthood in Indian law. In the case of parenthood through adoption or ARTs, intention provides the normative basis for parenthood. The discourse of intention is the most evident in the context of surrogacy where a person who contracts a surrogate to give birth to their child is referred to as the “intended parent”. Intent-based parenthood has undermined the traditional legal constructions of motherhood and fatherhood, as it has broken the linkages between marriage, conception, and parenthood. Consequently, a single woman (or a man) can be a legal parent without encountering notions on legitimacy/illegitimacy in this framework. This shift is reflected in the process of birth registration that issues birth certificates reflecting only the “intended” parent/s as parent/s of the child. In this section, I will discuss how the Supreme Court’s verdict in *ABC* is being used by single mothers and judges alike to extend the scope of the intention framework beyond the adoption and ART contexts.

<sup>43</sup> *Supra* note 22, ¶18.

<sup>44</sup> It was argued by the mother’s lawyer that compelling her to reveal the genetic father’s name would amount to a violation of her “fundamental right of privacy” [sic]. See, *supra* note 22, ¶11.

Registration of births in India dates back to the late 19<sup>th</sup> century, when the colonial state enacted the Births, Deaths and Marriages Act, 1886, for the voluntary registration of the named events. Post-independence, this statute was replaced by the Registration of Births and Deaths Act 1969, ('the RBDA'), making registration compulsory and providing for a uniform process throughout the country. The RBDA casts upon certain actors – the head of household, the midwife, the medical officer in charge of a hospital, and so on – the duty to give information<sup>45</sup> about births to the Registrar. The Registrar upon registering the same, issues a birth certificate bearing the name and sex of the person born, the date and place of birth, and the names of the parents.<sup>46</sup> Notably, the 1886 Act provided for the registration of birth by a single mother of her “illegitimate” child with her name alone as the parent, unless she sought inclusion of the father’s name as well, who also acknowledged himself as the father of the child.<sup>47</sup> These clauses were omitted by the RBDA, without specifying if a birth could be registered with the mother’s name alone, resulting in the predicament of the sex worker mothers mentioned at the beginning of this article.

In a 2018 case, *Mathumitha Ramesh v. Chief Health Officer*,<sup>48</sup> a divorced, single mother approached the Madras High Court to direct the municipal authorities to omit the father’s name from the birth certificate of her daughter, who she had conceived through intrauterine insemination<sup>49</sup> with donor sperm. The mother’s case was that the hospital had entered the name of a male acquaintance who happened to be present at the time of the delivery, as the father of her child, which led to the mistaken entry in the birth certificate. She requested the Municipal Corporation to remove his name from the birth certificate, stating that since she had conceived with the sperm of an anonymous donor, she alone was the legal parent of her daughter. This submission however ran up against bureaucratic sensibility. The concerned official of the Municipal Corporation rejected her application on the ground that the law provided for rectification of the father’s name in the birth certificate, but not its deletion. The mother filed a writ petition before the High Court, which directed her to approach a different official with her request. The second official also rejected her application on the same ground as the first, leading her to file a second writ petition.

The High Court held that as per Section 15 of the RBDA,<sup>50</sup> it was within the authority of the Registrar to address the problem and that the purported

<sup>45</sup> Ss. 8 and 9, The Registration of Births and Deaths Act, No. 18, Acts of Parliament, 1969 (India).

<sup>46</sup> S. 12, The Registration of Births and Deaths Act, No. 18, Acts of Parliament, 1969 (India).

<sup>47</sup> Ss. 19(b) and 22(3), Births, Deaths and Marriages Registration Act, No. 6, Acts of Parliament, 1886 (India).

<sup>48</sup> *Mathumitha Ramesh v. Chief Health Officer*, 2018 SCC OnLine Mad 2153.

<sup>49</sup> In this procedure the sperm is artificially placed in a woman’s uterus when she is ovulating.

<sup>50</sup> S. 15, The Registration of Births and Deaths Act, No. 18, Acts of Parliament, 1969 (India) reads: “Correction or cancellation of entry in the register of births and deaths.— If it is proved

distinction between rectification of error in the name and its deletion was unjustified. Significantly, the judge asked if the officials were at all authorized to insist on the father's name for the birth certificate. Indeed, neither the Act, nor the Rules mandated it, but the form for birth registration contained a column for the father's name.<sup>51</sup> The format of the form, the judge held, was incompatible with the idea of conception through the sperm of an anonymous donor, whose identity the law was bound to protect. In fact, this incompatibility had long been addressed through a circular directing registrars to leave the column for the father's name blank in the birth records, in the cases of children born through *in vitro* fertilization<sup>52</sup> or artificial insemination with donor sperm.<sup>53</sup> This case then illustrated the failure of the new rules to percolate through the bureaucratic machinery, causing the petitioner to make rounds of different government departments and file two writ petitions.<sup>54</sup>

Coming back to the judge's reasoning in this case, it was not just the ethico-legal concern specific to this case that made mandating father's name on the birth certificate a problem, but also the interest of justice where fathers had been "unwilling and unconcerned partners",<sup>55</sup> who had deserted their wives thereby forcing the latter to raise the children on their own. Drawing support from *ABC*, the judge noted, "It would be totally unjustified to insist such single or unwed mothers to compel them to declare the name of the father of the child who has chosen to abandon the child."<sup>56</sup> In this framing, the birth certificate is located outside the logic of vital statistics and efficiency of governance, and accorded a different rationality. The birth certificate here is imbued with an emotive significance – a theme I will explore in greater detail in the next section. What is important for the present discussion however, is the wider case made here for not mandating the father's name on the birth certificate.

Two judgments delivered by the Bombay High Court concerning birth certificates further illustrate *ABC* shaping judges' attitude towards

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to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, ... correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, ..."

<sup>51</sup> The Birth Report form records information under 22 heads, divided into "Legal information" and "Statistical information". The former includes identifying information such as the child's name, date and place of birth, sex, and both genetic parent's name. The latter on the other hand includes demographic information such as religion, parents' education and occupation, mother's age of marriage and delivery, location and type of delivery, and so on. While the former is recorded in the birth register, the latter is used for statistical analysis.

<sup>52</sup> Here an egg is fertilized outside a woman's body in a laboratory, and then placed in her uterus.

<sup>53</sup> Clarification issued by Office of Registrar General of India vide letter no. 1/37/2004 VS CRS dated Feb. 23, 2009 (on file with the author).

<sup>54</sup> Pursuant to the judgment, the Municipal Corporation re-issued a birth certificate with only the mother's name on it.

<sup>55</sup> *Supra* note 48, ¶13.

<sup>56</sup> *Supra* note 48, ¶13.

single motherhood. In both *ABC v. Bombay Municipal Corporation of Greater Mumbai*<sup>57</sup> and *Bhavika Jaywant Lohar v. Mumbai Municipal Corporation*,<sup>58</sup> single mothers filed writ petitions to direct the Municipal Corporation to delete the names of the genetic fathers from their children's birth certificates drawing upon the holding of Supreme Court's *ABC* judgment. In both cases, the mothers alleged that they were not married to the genetic fathers whose names appeared on the birth certificates, and that the hospitals had gotten them to sign blank forms and entered the fathers' details on their own without the mothers' knowledge. In both cases, the hospitals refuted these allegations, and the Municipal Corporation refused to accede to the requests on the ground that it was not authorized to change entries made in the Birth Register, governed by the RBDA.

In both cases, the judges pointed out, correctly, that the Supreme Court's direction in *ABC* concerned the issuance of birth certificates, but not the deletion of fathers' names from the already issued ones. Indeed, this had not posed a problem in the Madras High Court decision discussed above, as that case involved an anonymous sperm donor. The cases before the Bombay High Court however, were different. In the first case, the genetic father was known, who consented to the deletion of his name from the child's birth certificate. The facts of the second case were less certain: the mother first claimed that father's name was filled in by the hospital without her knowledge, but later amended her petition to claim that she had conceived with anonymous donor sperm, and therefore could not have known the father's name or furnished it to the hospital. And yet, the outcomes of the three cases were effectively the same.

Given the factual claims and counterclaims involved, in both cases, the judges declined to adjudicate the issues as part of writ petitions. And yet, they gave the mothers their desired reliefs. Since the Supreme Court in *ABC* had emphasized a child's right to know their genetic parents, the judges did not wish to order deletion of the fathers' names from the birth records. Hence, they adapted the balancing act done by the Supreme Court in the case of guardianship in *ABC* to birth certification. In both cases, the judges directed the Municipal Corporation to keep the original birth certificate containing the putative fathers' names confidential – in sealed envelopes, to be opened only on the Court's orders – and issue fresh ones with only the mothers' names.

The purpose behind describing these cases in some detail is to highlight (a) the ways in which the primacy, even the relevance, of the father's name to the child's public identification is being questioned, and (b) the multiple interests and issues at stake in addressing these questions. All three cases show the proactive role being played by judges in this process, in attempting to bridge the dissonance between governance mechanisms such as birth certification and

<sup>57</sup> *ABC v. Bombay Municipal Corporation of Greater Mumbai*, 2018 SCC OnLine Bom 868.

<sup>58</sup> *Bhavika Jaywant Lohar v. Mumbai Municipal Corporation*, 2018 SCC OnLine Bom 1019.

emerging forms of being and becoming parents. ABC enabled greater space for individual volition in what was earlier the exclusive domain of the state. It enabled the Bombay High Court judges to effectively extend the intention framework beyond adoption and ART, to include single mothers who “intended” to be known as the only parents of their biological children.

#### IV. SENTIMENTAL CLAIMS, PRAGMATIC JUDGES

While for the state, recording parents’ names on identification documents serves the instrumentalist purpose of establishing identity through lineage, it has a different significance for their holders. A 2003 feature article, for instance, reports a man’s reason for not wanting his father’s name on the PAN card: “I lost my self-confidence when I was growing up because I saw my mother and sisters being brutalized by the man who was my ‘father’. I didn’t want to use his name for anything after that.”<sup>59</sup> The article notes that he wrote to the income tax authorities, requesting that he be issued a card with his mother’s name on it. While he was allotted a PAN, he never got the card, since the application form did not provide the option to mention the mother’s name. In a 2013 case, a young woman approached the Delhi High Court with a similar grievance. She pleaded that her father had abandoned her and her mother when she was seven months old, and hence, she wanted a PAN card with her mother’s name on it and not father’s, but the income tax department had turned down her request. The judges directed the government to issue her a PAN card without mentioning parentage, and suggested that it consider allowing greater volition to citizens regarding the contents of the PAN card.<sup>60</sup>

The affective dimension of identification documents is illustrated most vividly in a series of cases pertaining to the passport. In these cases, children or a parent on their behalf, sought judicial intervention against the passport authorities’ insistence that the children’s passports must mandatorily bear only and both legal parents’ names. In challenging the state’s conception of lineage, some of these petitioners emphasized the change in the marital status of the parents following divorce or/and remarriage. In other cases, they foregrounded feelings of hurt, disappointment, or emotional distance to argue for deletion or substitution of a legal parent’s name. For instance, in *Kavneet Kaur v. Regional Passport Office*,<sup>61</sup> a daughter petitioned the Delhi High Court asking that she be allowed to either have her step-father’s name on the passport along with the mother’s or only the mother’s, but not the legal father’s, of whom she did not have any memory, the parents having separated when she was a child. In *Vibhu*

<sup>59</sup> Priya Ganapati, *Why can't I use my mother's name?*, REDIFF.COM, (Aug. 1, 2003), <https://www.rediff.com/money/2003/aug/01spec2.htm>.

<sup>60</sup> PTI, *Delhi High Court seeks Centre's stand on use of mother's name for PAN card*, ECONOMIC TIMES, (Aug. 11, 2013), <https://economictimes.indiatimes.com/news/politics-and-nation/delhi-high-court-seeks-centres-stand-on-use-of-mothers-name-for-pan-card/articleshow/21756239.cms>.

<sup>61</sup> *Kavneet Kaur v. Regional Passport Office*, 2014 SCC OnLine Del 3884.



*Kalra v. Regional Passport Office*,<sup>62</sup> a son sought inclusion of his step-mother's name on the passport instead of the mother's, since it was the former who had looked after his needs and provided "the necessary love and affection of a parent", which he did not receive from the latter. Following Sameena Mulla, the passport in these cases captures "the changing nature of kin relations over time, not simply as a matter of (re)signification, but through various renegotiations over the affective range through which intimacy is expressed and understood."<sup>63</sup> If the passport represents the state deploying lineage to govern, then these cases show citizens using that very tool of governance to make and remake lineage.

In all these cases, the passport officials' rejection of the petitioners' requests was based on instructions contained in the Passport Manual – a compendium of administrative instructions regulating the passport which is periodically updated. One of the instructions asked officials not to accept requests for deletion of a divorced parent's name since divorce dissolved the relationship between the two parents but not the one between parents and the child, "unless the parent has legally disowned the child".<sup>64</sup> This rule referenced Article 7 of the CRC requiring states to respect children's right to know their parents, and instances of judicial affirmation of the same. Another instruction provided that step-parents' names could replace that of the genetic parents' only on the death of the latter, if the former had been appointed legal guardian of the child by a court or if the former had adopted the child from the latter.<sup>65</sup> Upon rejection of their requests, petitioners approached the High Courts, where we find their appeals for judicial intervention to be dominated by narratives of non-performance of the parental role by a legal parent, whose name they wanted removed/replaced. We find the petitioners claiming sentimental injury inflicted by the passport officials' rejection of their desire to claim the identity of the parent that had undertaken the parental role and being forced to bear the identity of the one that had not.

Judges are receptive to these claims. In all these cases, they decided in favour of the petitioners, either on the ground of expediency or to positively recognize the person who had actually performed the parental role. In doing so, judges looked to social practices constitutive of kinship rather than formal processes of breaking and making of the parent-child relationship, as instructed by the Passport Manual. Thus, in *Mohit v. Union of India*,<sup>66</sup> judges held that the since the step-father had acted like a father to his wife's son from the

<sup>62</sup> *Vibhu Kalra v. Regional Passport Office*, 2015 SCC OnLine Del 8868.

<sup>63</sup> Sameena Mulla, *Introductions to Forging Family: Legal Documents as New Kinship Technologies*, 7(3) LAW, CULTURE AND THE HUMANITIES 352-358 (2011).

<sup>64</sup> Compendium of Instructions/Guidelines Relating to Issue of Passports in India/Abroad, [https://portal2.passportindia.gov.in/AppOnlineProject/pdf/Passport\\_Manual\\_16\\_Chapters\\_to\\_be\\_disclosed.pdf](https://portal2.passportindia.gov.in/AppOnlineProject/pdf/Passport_Manual_16_Chapters_to_be_disclosed.pdf).

<sup>65</sup> *Id.*

<sup>66</sup> *Mohit v. Union of India*, 2016 SCC OnLine P&H 10157.

previous marriage from the time he was little, he would be deemed to be the son's legal guardian "for all intents and purposes" even without a court appointing him as one. Similarly, in *Mohd. Armaan v. Union of India*,<sup>67</sup> where the step-father had neither adopted his wife's son from the previous marriage (Muslim law does not recognize adoption), nor been appointed his guardian by any court, the judges reasoned, "... what is important is the relationship of an individual as a father or a guardian to an abandoned child through an arrangement of a subsequent marriage accepted by the society and recognized by law."<sup>68</sup> Here, the fact that a "Mohamed" was prefixed to the young boy's name after his mother married Mohamed Mansoor, signified the transfer of paternity, as it were, from the genetic-legal father to the step-father. In both cases, the authorities were directed to issue passports with the step-fathers' names.

The attitude of judges towards parental name that I have sketched above, and the principle we saw earlier in the case of guardianship – that an uninvolved parent need not be given any legal role in the life of the child – are different expressions of the same phenomenon. As we have seen throughout the article, on questions pertaining to parental status, judges prioritize the actual performance of parenting over biological relatedness, even when the latter is preferred by legislation or administrative rules. Arguably, judges deploy the trope of abandonment as the master category for all types of non-performance of parenting – be it with the consent of the other parent, by rejecting the child, or by giving up custody post-divorce – to justify sidestepping these rules. Sentiment-based arguments advanced by petitioners in these cases, whether catering specifically to such judicial attitudes or developed independent of them, then only lend greater moral reinforcement to what judges already perceive as the right thing to do.

The affirmation of single motherhood in the case of passport is enabled by the convergence of all these factors. In *Shalu Nigam v. Regional Passport Officer*,<sup>69</sup> a divorced, single mother approached the Delhi High Court against the passport authority's refusal to re-issue her daughter's passport without the father's name. The mother's case was that the officials had issued her a passport on two occasions in the past, without insisting on the father's name, but this time they refused to do so. She and her husband had divorced soon after the birth of their daughter, and she had brought up the daughter by herself. She argued that compelling the daughter to have the father's name on an identification document would not only alter the identity that she had had since birth, but would also inflict on her the injury of having to bear the name of a father who had rejected her for being a girl.

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<sup>67</sup> *Mohd. Arman v. Union of India*, LPA No. 249 of 2016, decided on January 23, 2017 (P&H).

<sup>68</sup> *Id.*

<sup>69</sup> *Shalu Nigam v. Regional Passport Officer*, 2016 SCC OnLine Del 3023: (2016) 230 DLT 473.

All these arguments found favour with the judge. The facts further revealed an arbitrary gap in the state's policy. There were instructions issued by the Ministry of External Affairs way back in 1999 that allowed passports to be issued to children born of a class of single mothers – those abandoned by the fathers after conception or birth, or those who conceived as a consequence of rape – but not those who became single mothers on divorce.<sup>70</sup> In prior cases however, judges had interpreted the rule liberally to give relief to even divorced single mothers.<sup>71</sup> Along with these and other cases where the High Court had allowed petitioners to determine parental names on their passport, the judge invoked the rationale underlying key Supreme Court judgments like *Githa Hariharan* and *ABC*, and concluded: “mother's name is sufficient in certain cases like the present one to apply for Passport, especially as a single woman can be a natural guardian and also a parent.”<sup>72</sup>

Similar to the Supreme Court judges in *ABC*, the judge built on the refrain of the emergent social phenomena of single motherhood to prod the state to change its policies and practices in keeping with the times. But unlike them, he posed single motherhood not only as an expression of the ‘new’ woman's agency, but also lack thereof:

This Court also takes judicial notice of the fact that families of single parents are on the increase due to various reasons like unwed mothers, sex workers, surrogate mothers, rape survivors, children abandoned by father and also children born through IVF technology.<sup>73</sup>

Other High Courts have also given similar rulings. In *Rabeeha v. Ministry of External Affairs*,<sup>74</sup> the Kerala High Court allowed a woman to apply for passport for her daughter, without proof of consent of the father, who had deserted them (the mother was in the process of obtaining divorce on that ground). In *Prerna Katia v. Regional Passport Office*,<sup>75</sup> a single mother, who was the sole custodial parent post-divorce, wanted to have her former husband's name deleted from the daughter's passport and change the daughter's surname from that of the former husband's to her maiden one, as per the terms of the divorce settlement. The passport authority rejected the request citing the Passport Manual. But the Punjab and Haryana High Court set it aside, holding, that the father had “virtually disowned his daughter”<sup>76</sup> by not seeking custody

<sup>70</sup> These instructions are quoted in the case.

<sup>71</sup> *Ishman v. Regional Passport Office*, 2011 SCC OnLine Del 5630; *Priyanshi Chandra v. Regional Passport Office*, WP(C) No. 845 of 2015, order dated February 20, 2015 (Del).

<sup>72</sup> *Supra* note 69, ¶20.

<sup>73</sup> *Id.*, ¶19.

<sup>74</sup> *Rabeeha v. Ministry of External Affairs*, 2015 SCC OnLine Ker 16785.

<sup>75</sup> *Prerna Katia v. Regional Passport Office*, CWP No. 26805 of 2015, decided on August 5, 2016 (P&H).

<sup>76</sup> *Id.*

or even visitation, thus clearing the way for the mother to be declared the lone parent on the passport.

## V. CONCLUSION

Despite the commonality that they raise their children outside the patriarchal family model, single mothers are a heterogeneous category. Single mothers include women giving birth without getting married to the genetic fathers, single women adopting or conceiving through ARTs, as well as widowed, divorced, and deserted women raising children singly. In this article, I have mapped the recent case law that illustrates the multiple ways in which the claims of such mothers as lone parents of their children are affirmed. I have argued that single motherhood is a social phenomenon with multiple legal forms and normative bases.

Nudged by the court rulings, the state amended the rules for PAN card and passport. In November 2018, the Ministry of Finance notified changes to the application form for applying for a PAN card.<sup>77</sup> Departing from the previous format that required applicants to mandatorily state the father's name only, the new form allows one to have their PAN cards reflect both the father's and mother's names, or only the mother's name if she is a single parent. The next month, the Ministry of External Affairs amended the passport rules, allowing single parents, including separated, divorced, deserted parents, and parents of children born through surrogacy, to apply for passports for their children, singly.<sup>78</sup>

These concrete changes backed by judicial pronouncements like *ABC* and *Shalu Nigam* have created a discursive space where single mothers have autonomous legal status as parents of their children. But while these developments have meant state affirmation of family forms outside the patriarchal family model, the legal basis of the latter itself has remained intact. Consider the case of guardianship. While in *ABC*, the Supreme Court invoked the principle developed originally in cases concerning married Hindu women to hold single mothers to be autonomous guardians of their children under the GWA, married Hindu women themselves are still not "natural guardians" of their children by default. In 2010, the legislature carried out amendments to rectify the sex unequal provisions in the GWA and the Hindu Adoption and Maintenance Act, 1956, but curiously left the HMGA untouched.<sup>79</sup> In 2016, Aam Admi Party (AAP) Member, Dharam Vira Gandhi moved a Private Member's Bill in the

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<sup>77</sup> Ministry of Finance (Department of Revenue), Notification dated Nov. 19, 2018, G.S.R.1128 (E) (on file with the author).

<sup>78</sup> Ministry of External Affairs, Notification dated Dec. 23, 2018, G.S.R.1171 (E) (on file with the author).

<sup>79</sup> The Personal Law (Amendment) Act, No. 30, Acts of Parliament, 2010 (India).

Lok Sabha to amend Sections 6 and 7 of the HMGA.<sup>80</sup> But it was not taken up for debate, and subsequently, lapsed.

Consider also, the new application form for PAN mentioned above. The new form allows a person to have a PAN card bearing the mother's name alone, *only* if she is a single parent. For all other cases, the new rules maintain, that the father's name is "mandatory" and the mother's, "optional".<sup>81</sup> In other words, in the context of the patriarchal family, Ketki's seemingly absurd question to Chandravati – "*Yeh kiska bachcha hai?*" – continues to make sense.

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<sup>80</sup> The Hindu Minority and Guardianship (Amendment) Bill, Bill No. 243, Bills of Parliament, 2016 (India).

<sup>81</sup> *Supra* note 77.