

News

Allahabad High Court: Child custody laws should be gender-neutral and reflect the shift away from patriarchal viewpoints.



"True progress demands that the legislature codify evolving norms to ensure a consistent and gender-neutral approach," the Supreme Court stated.

The Allahabad High Court has emphasized the need to update outdated guardianship legislation to reflect changing standards and provide a gender-neutral approach when deciding child custody disputes.

Justice **Vinod Diwakar** specifically addressed Section 6 of the Hindu Minority and Guardianship Act, 1956, which stipulates that a juvenile boy or unmarried girl's father should be considered their natural guardian before their mother.

The Court noted that patriarchal standards had a significant impact on social and legal thought at the time the law was adopted. It further stated that the clause is out of date in India's modern 21st-century reality and smells of patriarchal bias.

The Court recognized that since then, social shifts and judicial interpretations have given the mother preference custody rights, particularly in situations involving a female child. It further stated that such progressive viewpoints must likewise be reflected in codified legislation.

"The legislative gap has been admirably filled by the legal interpretation, particularly in acknowledging the favored custodial rights of mothers of female children. But in order to guarantee a uniform and gender-neutral approach nationwide, real progress necessitates that the legislature codify these changing standards," the ruling stated in a May 30 ruling.

A woman's request for custody of her daughter, a Class VI student, was before the court. The trial court's decision to deny her temporary custody of the child was something she had contested.

The High Court ultimately decided in favor of the mother in this case after concluding that the father had contested the temporary custody request on false and deceptive grounds.

It further stated that the father had deliberately and dishonestly taken the girl away from her mother's care.

Essentially, the husband first planned a false narrative to take the girl away from the mother in order to keep custody of her. He then forced his wife to leave the government housing under the guise of buying a private apartment after dishonestly winning her trust. He successfully kept the wife away from the child's company through this plan, and he has had custody of the child for almost two years. However, the husband at that time behaved more like a cunning scam artist than a responsible individual who sincerely wanted to keep the marriage intact, the Court stated.

As a result, the court mandated that the father give the child's mother custody. The Court further mandated that the Child Welfare Committee, with the help of the police, ensure the child's transfer to the mother in the event that he disobeys this order.

Additionally, it mandated police monitoring of the man until the custody transfer directive was followed.

"Prima-facie, it appears that the husband is a liar who may abuse his official position to influence the proceedings and obstruct the applicant-wife's lawful right. Therefore, the Commissioner of Police, Lucknow shall ensure that the opposite party no. 2-husband shall be closely monitored until this order is complied with, so that he cannot frustrate the terms of this order," the statement stated.

The mother of the kid was represented by advocate Vijeta Singh.

The child's father was represented by Shubham Tripathi and advocate Chandra Sharma.

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