



2026:AHC:65179

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 835 of 2025

Smt Rizwana And 2 Other

.....Petitioner(s)

Versus

The State Of U.P. And 3 Other

.....Respondent(s)

Counsel for Petitioner(s) : Dharmraj Chaudhary, Pradeep Kumar Singh

Counsel for Respondent(s) : G.A., Ravindra Prakash Srivastava

Court No. - 89

HON'BLE ANIL KUMAR-X, J.

1. Shri Dharmraj Chaudhary, learned counsel for the petitioners, Shri Ravidnra Prakash Srivastava, learned counsel for the respondent no.4 and Shri Amrit Raj, learned AGA for the State respondents are present.

2. This habeas corpus writ petition has been filed with a prayer to command the respondent nos.2 to 4 to produce the minor children (Abu Hasan aged about 10 years and Kaniz Fatima, aged about 5 years) (corpus) before this Court and hand over them to the custody of petitioner no.1 being their natural mother.

3. Learned counsel for the petitioners submitted that marriage of petitioner no.1 was performed with respondent no.4 in the year 2013 as per Muslim rituals. Petitioner nos. 1 and 2 (corpus) were born out of their wedlock. The petitioner no.1 was driven out from her matrimonial home by respondent no. 4 after she failed to fulfil his demands for dowry. The petitioners (corpus) are below 10 years of age. They were snatched from the custody of the petitioner no.1 before she was driven away from her matrimonial home. The petitioner no.1 and respondent are governed by

Muslim personal law. Custody of minor children, in the case of parties professing Muslim law, lies with the mother. This Court, in **Habeas Corpus Petition No. 12616 of 2014 (Amal Irfa vs. State of U.P. and others)**, has considered the law relating to custody of minors belonging to Muslim couples and has held that custody of an infant child lies with the mother, and she is entitled to the custody of a male child till the age of seven years.

4. Learned counsel further submitted that custody of minor children belonging to Muslim couples cannot be decided under the Guardians and Wards Act in view of the provisions laid down under Section 6 of the Act. Guardians and Wards act only discuss about guardianship and not about custody of minor. He submitted that the judgment delivered by this Court in **Amal** (supra) further strengthens the above view that custody of a minor under Muslim law can only be decided in a habeas corpus writ.

5. Learned AGA and the learned counsel appearing for respondent no.4 submitted that custody of minor with their father is not prohibited under Muslim personal laws.

6. Heard learned counsels for the parties and considered the submission raised by the petitioners.

7. Under the Guardians and Wards Act, 1890, Section 4(2) defines a guardian as a person having the care of the person of a minor or of his property, or of both his person and property. Similarly, under the Hindu Minority and Guardianship Act, 1956, Section 4(b) defines a guardian as a person having the care of the person of a minor or of his property or of both his person and property, and includes a natural guardian, a guardian

appointed by the will of the minor's father or mother (testamentary guardian), a guardian appointed or declared by a Court, and a person empowered to act as such by or under any enactment relating to any Court of Wards. Thus, a guardian is a person having legal authority and responsibility for the care and protection of a minor, which may extend to the custody and upbringing of the minor, management of his property, or both. The term "guardian" is of wide import and is inclusive in nature, which encompasses within its ambit the concept of "custody" and does not exclude the same.

8. Now, let's address the next part of the argument: Section 6 is not applicable if the aggrieved parties are Muslim. At the outset, it is pertinent to note that Section 6 of the Guardians and Wards Act, 1890 does not exclude Muslims from invoking the provisions of the Act. Before discussing it, it would be relevant to refer the language used therein:-

"Section 6- Saving of power to appoint in other cases - In the 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."

9. In fact, the said Act is a general law relating to guardianship and is applicable to all persons, irrespective of religion, subject to their personal laws. Section 6 of the Act does not bar any class of persons from approaching the Court; rather, it operates in the context of recognizing certain categories of guardians. The Act nowhere provides that persons professing Muslim law are precluded from seeking relief under it. On the contrary, the scheme of the Act makes it clear that it is a supplementary and procedural law, which enables the Court to appoint or declare a guardian in appropriate cases.

10. It is well settled that in matters of custody and guardianship, even where parties are governed by personal law, the jurisdiction of the Court under the Guardians and Wards Act remains intact. Personal law may guide the Court in determining the rights of parties; however, the paramount consideration is always the welfare of the minor, which overrides all other considerations. Thus, merely because the parties are governed by Muslim personal law, it cannot be said that they are barred from invoking the provisions of the Guardians and Wards Act for seeking custody of a minor.

11. In continuation of the above provisions of the Guardians and Wards Act, 1890, it would be relevant to take note of the jurisdiction vested in the Family Court under clause (g) of the Explanation to Section 7 of the Family Courts Act, 1984. The said provision specifically confers jurisdiction upon the Family Court in respect of suits and proceedings relating to the guardianship of the person or the custody of, or access to, any minor. Thus, even in cases where custody of a minor is sought, including between parties governed by personal laws such as Muslim law, the Family Court is duly empowered to entertain and decide such matters. The jurisdiction so conferred is wide in nature and encompasses issues of guardianship as well as custody, to be adjudicated primarily on the touchstone of the welfare of the minor. The remedy under the Guardianship and Wards Act as well as Family Courts Act is available, and the Court is competent to adjudicate such disputes, keeping in view both personal law principles and the welfare of the child.

12. In view of the aforesaid discussion, it is evident that custody of a minor child cannot be determined in a mechanical manner without

arriving at a definite conclusion regarding the welfare of the child, which is the paramount consideration. Such an evaluation necessarily requires appreciation of evidence, interaction with the parties, and a comprehensive inquiry into all relevant circumstances affecting the welfare of the minor.

13. Such an exercise is not feasible in proceedings under a writ of habeas corpus, which are summary in nature and not intended for detailed adjudication of disputed questions relating to custody. Therefore, it would be appropriate for the petitioner no.1 to avail the remedy before the competent Family Court, which is duly empowered to examine all aspects relating to guardianship and custody and to pass appropriate orders in accordance with law.

14. Accordingly, this petition is **disposed of**.

(Anil Kumar-X,J.)

March 25, 2026
SK