

HIGH COURT OF UTTARAKHAND AT NAINITAL

**Hon'ble Chief Justice Ms. Ritu Bahri
Hon'ble Justice Sri Rakesh Thapliyal**

06th March, 2024

Writ Petition (PIL) No. 28 of 2024

Shruti Joshi Petitioner

Vs.

State of Uttarakhand & Ors.Respondent

Counsel for the Petitioner :
Counsel for the respondent :

Ms. Shruti Joshi, in person.
Mr. S.N. Babulkar, Advocate
General with Mr. Rajeev Singh
Bisht, Standing Counsel for th State
and Mr. V.K. Kaparuwan, Standing
Counsel for Union of India.

Upon hearing the learned Counsel, the Court made the following Judgment:
(Per Ms. Ritu Bahri, C.J.)

1. A letter dated 11.01.2024, issued by Government of India, Ministry of Law & Justice to all the Law Secretaries and all the Registrar General of respective High Courts which relates to the proposal of Dr. Veena Madhav Tonapi, former Principal of JSS Sakri Law College, has been handed over to the learned Advocate General, which pertains to the qualification of counsellors and adjustments in the conciliation process within the framework of Family Courts. As per this letter, there is a proposal for amendment for effective counseling, appointment of marriage counsellors and qualification for appointment of marriage counsellors has been given. The proposed amendment does not lay down any criteria for appointment of any lawyer as a counsellor, so, in future, no lawyer can be appointed as a counselor to assist in the matter of mediation. Apart from this, at page 89, of the Shah Commission Report has recommended that **the Court should have the power to obtain an independent**

psychological evaluation of the child, in order to determine various related issues in the case of mediation, professional assistance may be required, as neither the court nor mediators may be qualified to understand child psychology.

2. Apart from this observation, Law Commission has recommended amendment of the Hindu Minority and Guardianship Act, 1956, which is Annexure-1 with this report.

3. In the present case, as per the information given to the Court in FAO No. 1378 of 2021, in the High Court of Punjab and Haryana, the Union of India has submitted the report that consent of all the States except State of Bihar has been received as on 09.12.2022.

4. Since the procedure for amendment in the pending Hindu Minority and Guardianship Act, 1956, is a lengthy procedure, a direction is being given that all the recommendations made by the Commission vide Annexure 1 should be made mandatory to be followed by the Family Courts and the letter dated 11.01.2024, issued by Government of India, Ministry of Law & Justice should also be followed for appointment of counsellors, who are Child Psychologist/General Counsellors, so that their report is scientific and can be taken as an evidence for granting custody of the child to any either of the parents and these guidelines have to be followed with respect to custody, even if divorce is granted to both the parents. If they want any counseling to be done at this stage, it is only a psychologist who can give them guidance for proper upbringing of the child.

5. This Court has been observing in the past that while dealing with the disputes of the parents the child's emotional needs and proper emotional growth has never been examined and by the time litigation reaches the High Court the children have already faced agony for at least 5 to 9 years. This Court is of the view that at this stage, this direction is necessary to be given that the child's custody has to be shared by both the parents as well as by the grand-parents so that his emotional growth is not affected. The child has to bear many peer pressure when he grows up. The individual who have to get married and their parents should be made aware that when the children get married and they have a child it is mandatory to follow the guidelines of share parenting laid down by the Shah Commission in its report dated 22.05.2015. As nine years have gone by and the amendment has not been carried out which may take more time, the responsibility of the next generation who has to get marry and their parents towards the child who was born should be crystallized and should be followed with emotional care and without any ego.

The recommendations of amendment proposed in the Hindu Minority and Guardianship Act, 1956, Annexure no. 1, and Guardianship and Wards Act, 1890 as Annexure No. 2 have laid down in detail the meaning of the word joint custody, procedure to be followed during mediation and procedure to be followed for grant of joint custody, preferential of the child and, fixing grand parenting time. They have laid down the parenting plan **that should minimize the child's exposure to harmful parental conflict and encourage parents to mutually agree on the division of responsibilities of the child's**

upbringing through agreements in the parenting plan, rather than by relying on court intervention.

6. This Court is not issuing writ of Mandamus for amendment. It is only giving directions that these proposed amendments should be mandatorily followed while dealing with the matrimonial disputes, custody cases dealt by the Family Courts and during mediation. The direction issued is mandatory subject to the amendment made by the Legislation.

7. This Court appreciates gesture made by Ms. Shruti Joshi, Advocate to initiate this PIL for the larger public interest of the children and facing agony during matrimonial proceedings and their parents.

8. In the present case, since Uttarakhand is a hilly State, steps have already been taken for effective mediation and counseling can be done through Whats App and other electronic mode so that parties have not to travel from far away places.

9. Let a copy of this order be given to learned Advocate General for the State, Deputy Solicitor General for Union of India.

10. Registrar General is directed to circulate the copy of this order to all the District Judges and District Legal Services Authorities in the State.

11. In view of the above, the present Public Interest Litigation is disposed of.

(Rakesh Thapliyal, J.)

(Ritu Bahri, C.J.)

06.03.2024

