

MOOT PROBLEM

1. Mrs. Divya Seth is an Indian lawyer famous for her activism for LGBT+ community . She is married to another lawyer Mr. Sanjay Behta . Mr. Behta describes himself as a person of traditional and orthodox thoughts. Both of them used to practice in Allahabad High Court, Lucknow Bench. Although the couple had extreme opposing views, but they never let their views to come in between their matrimonial life.
2. In the year 2009, the couple was blessed with a biological boy Anubhav Seth. Anubhav was not like other boys. He liked to play with dolls instead of cars. In school, he felt more comfortable in company of girls than that of boys.
3. Anubhav didn't have many friends in school. Although he was excellent in studies, art and dance, but he was always made fun of by the boys in school. In the year 2019, when Anubhav was in 6th standard, some of his classmates started to call him gay. The poor Anubhav didn't know what all these meant.
4. He was subjected to consistent bullying by his classmates. The boys used to beat him, pull his pants down and call him all kind of slangs. Even the girls used to tease him by saying that he was one of them.
5. Hurt by these constant bullying, Anubhav started to avoid going to school by making one excuse after another. On 01.08.2019, His parents asked him as to what was wrong, then he told entire scenario to them. He accepted that it was true that he didn't like to do what other boys were doing and he felt more comfortable in the company of girls than that of boys.
6. His mother Mrs. Seth quickly came to a conclusion that Anubhav was not actually a boy but he was a "Woman trapped in a man's body". She told him not to worry about it as

it was completely normal. However his father Mr. Sanjay was worried that what his son told him might be sign of a psychological disorder . He suggested to his wife that they should take Anubhav to a psychologist to understand if there is something wrong with him. Mrs. Seth however outrightly dismissed the suggestion of his husband.

7. Nevertheless, On 10.08.2019 Mr. Sanjay took him to one of the India's best psychologist Dr. Aditya Shrivastava who had a clinic near bhool-bhulaiya in Lucknow. After thorough examination, the doctor came to conclusion that Anubhav was suffering from Gender dysphoria. The doctor suggested that gender dysphoria can be treated if the treatment is started early. The treatment was to include Hormone therapy, counselling etc.
8. Mr. Sanjay told this to his wife who got very angry. She accused Sanjay of being homophobic and said that she was proud of her son and she won't allow anyone to subject her son to any kind of medical treatment.
9. Mrs. Seth was extremely supportive for her son. She always told him that there's nothing wrong if he feels that he is a woman or if he identifies as a woman. She assured him that she will always stand by his side even if the world was against him.
10. Anubhav also started to feel that he was a woman trapped in a man's body. He started to watch documentaries about persons who claimed that they were trapped in wrong gender identity. Anubhav was deeply inspired by the story of Caitlyn Jenner.
11. Of all the documentaries Anubhav watched, many of the persons had undergone gender reassignment surgeries also commonly known as sex change operation.
12. Anubhav decided that he also wants to undergo sex change operation and become a woman. He told his wish to her mother who quickly agreed to it. Mr. Sanjay however was totally against this. He told his wife that Anubhav was too young to take such big

decisions of his life . He also told her that it's possible that Anubhav was just confused about his identity, and as he grows up, he might grow out of this confusion. And if not, then surely, he will become mature enough to take such big decisions about his own life.

13. Mrs. Seth however, again rebuked him and called him homophobic. She told him that she has had enough and she will decide what's good for his son and what's not. If her son wants to become a woman, she will make sure that he becomes a woman.
14. On 01.09.2019 the couple had an ugly fight. Mr. Sanjay told her that she cannot always have the last word, and that too in such big decisions of life of their son. He said that he also had a right to decide as to what is right or wrong for their son. Mrs. Seth however said that it is her who has given birth to Anubhav and thus she has the exclusive right to take decisions about good or bad about her son. She also said that it was her mistake that she married a man with such a bad mentality. The quarrel between the couple grew worse and in the heat of quarrel, Mr. Sanjay slapped Mrs. Divya.
15. The next morning, Mrs Seth along with Anubhav left her matrimonial home and went to house of her father. Mr. Sanjay apologized to her for what had happened and requested her to return back. Mrs. Seth however told him that she will return with only if he will support her in her decision for Anubhav's sex change operation. To this, Mr. Sanjay said that whatever she was doing was against the welfare of Anubhav and he too had a right to decide as to what is in the best interest of his child. Upon this, both of them again had a fight and Mr. Sanjay returned to his home.
16. On 20.01.2020, Mrs. Divya took Anubhav to Delhi against wishes and consent of Mr. Sanjay for gender reassignment surgery. The surgery was successful and Anubhav was now a girl.

17. Deeply hurt by actions of his wife, Mr. Sanjay Behta filed a petition for divorce on 06.02.2020 on the ground of cruelty before the family court, Lucknow. Mr. Behta has also filed a petition for custody and guardianship of Anubhav. All of the petitions were filed in accordance with the provisions of Hindu Law. Mrs. Behta contested all the petitions. All the petitions/applications were clubbed together.
18. In custody suit, statement of Anubhav was recorded before the court in which he stated that his father was a very nice person and he always fulfilled all of his demands. He never acted cruelly with him. However, his father didn't support him and his mother in their decision of gender reassignment surgery. He further stated that he wants to live with both of his parents.
19. The family court vide its common judgment and decree dated 02.03.2021 granted divorce to Mr. Sanjay on the ground of cruelty. The family court also granted custody of Anubhav to Mr. Sanjay for the reason that it was in the interest of greater welfare of child. The family court also declared Mr. Sanjay as Guardian of Anubhav.
20. Aggrieved by the judgment and decree of family court, Mrs. Divya filed an appeal before Hon'ble Allahabad High Court, Lucknow bench.
21. The High Court vide its judgment and order dated 06.04.2022 set aside the judgement and decree dated 02.03.2021 passed by the family court. The High Court held that supporting her son in his decision for undergoing sex change operation doesn't amount to cruelty. The High Court also held that right to determine one's own gender is an essential part of welfare of a child and actions of a mother supporting his decision cannot be termed as cruelty. The High Court also held that Mr. Sanjay acted against the welfare of his son by not supporting him in his decision to undergo gender reassignment surgery and thus he is not entitled to custody and guardianship of Anubhav and that it was in interest of welfare of Anubhav that his custody remains with Mrs. Seth. Mrs. Seth was also declared as legal guardian of Anubhav.

22. Aggrieved by the judgment and order dated 06.04.2022 passed by the High Court, Mr. Sanjay filed an appeal before the Hon'ble Supreme Court on 18.04.2022.
23. The Supreme Court had issued notices to Mrs. Divya while framing the following issues-
1. Whether a child of tender age of 11 years can take decision upon his own welfare especially when such decision relates to complex issues of gender identity?
 2. Whether actions of Mrs. Divya Seth supporting and taking Anubhav for his gender reassignment surgery without consent of Mr. Sanjay amount to cruelty and acting against welfare of child?
 3. Whether actions of Mr. Sanjay not supporting Anubhav in his decision to undergo gender reassignment surgery can be termed as acting against the welfare of child?
24. Pleadings have been completed and the matter has been kept for final hearing.

Note: Participants are allowed to frame only sub issues which are necessary in the facts of the case, however main issues cannot be altered/changed.

This moot problem has been drafted by Mr. Avinash Srivastava, Advocate. Participants are not allowed to contact him for any clarification or help.