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## **GUARDIANSHIP UNDER HINDU LAW**

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### **ABSTRACT**

According to Hindu law, is defined as a man and a woman getting together to make a family and have kids. By performing rituals and making gifts to God, the children are expected to assist their parents in their old age and even after death. As a result, the parents must assume parental responsibility and exercise caution in order to anticipate his responsibilities. A parent's rights and responsibilities are governed by guardianship. Why is it necessary to write another essay about guardianship when the topic has already been extensively researched?

We will take a multi-dimensional approach to the problem in this study. The paper will go through guardianship in Hindu law from the beginning. Families have declined considerably apart in recent years as the divorce trend has progressed. Custody, rather than guardianship, has always been a source of controversy in marriages; this, too, will be addressed. There will be several axes, each moving in a new direction, but they will all cross at the center, which is the Hindu notion of guardianship.

## **Introduction**

There are certain natural relationships in our world that are self-existent and are produced by no one. Human society, on the other hand, has established some laws and conventions for itself. One such natural link is that which exists between parents and their offspring. Parents give birth to children, but their responsibility does not end there; it continues afterward. Parents are expected to safeguard and care for their children until they are fully integrated into society. As a result, this might be interpreted as a parental responsibility and a child's right. This is commonly referred to as guardianship. The purpose of guardianship is to ensure that a child's right to security and supervision is protected.

## **Object and purpose of writing the project**

The objectives of this work is to help the project team understand the issue better. The purpose of this effort is to provide a clear image of Hindu Law's Guardianship.

## **Research Methodology**

It isn't empirical or field-based research. With the aid of accessibility to the library and software, secondary data such as textbooks and other periodicals were employed for data collecting. The library, Google books, and articles from the internet were utilized to create the database for this project. The only constraint we discovered was that empirical research could not be conducted since the subjects were unaware of the requirements and it was impossible to obtain data in this manner.

## **Significance of the study undertaken for the project**

The study has helped us grow our knowledge about various aspects of Family Law. It enables us in understanding the real necessity of guardianship in the case of a minor. We have also learned a lot about Guardianship under Hindu law, its objectives, its provisions under Hindu law, and its provisions under Family Law.

## **Research Questions**

- How is custody different from Guardianship?
- What are the kinds of guardianship?
- Who is a natural guardian? How natural guardian has power over's minor property?

- How does a testamentary Guardian get assigned by the father or mother's will?

## Guardianship

Guardianship is a notion or relationship that arises from the inherent inability of children, mentally ill people, and other people to handle their own affairs.<sup>1</sup> A guardian is someone who has the power and responsibility of looking after the personal and property public's interest, known as a ward. A guardian is appointed also because the ward is unable to look after his or her own affairs owing to immaturity, infirmity, or handicap. In most countries and jurisdictions, A minor child 's parents are the child's legal guardians, and the parents can pick who will be the child's legal guardian in the case of death. "Guardian" refers to a person who is responsible for a minor's person, property, or both.<sup>2</sup> A guardian is usually those who have custody of a minor or someone who is disabled. Whenever there is a dispute, such as a divorce, the problem of custody arises because a natural guardian, such as a father, may not be awarded custody whereas a mother may be permitted to keep custody. According to Hindu guardianship law, the mother is 'allowed' to custody of a male child under the age of five and a girl child under the age of seven. This criteria is not rigorous, and the minor's welfare may allow the court to give custody basic guidelines based on the minor's age or the minor's relationship to the person to be appointed. A mother's claim to custody of a child is unquestionably hers. Court orders can be sought in pending marital proceedings well before any court of law or in a proper district court in which the minor usually resides. Courts have the power to assign a guardian for someone who requires special attention. A natural guardian is someone who is accountable for both the ward's personal and financial well-being. A special guardian, with limited authority over the ward's affairs, can also be assigned. For example, a special guardian could be given the legal authority to determine on the ward's property disposal without having jurisdiction or control over the ward's people. Guardian ad litem is a person who is chosen to defend the views of a person in a single legal action. Some countries enable a child's parent to act as a legal guardian without the need for a formal judicial appointment. In such cases, the person acting in that position is referred to as the natural guardian of the kid of that parent. The Guardian and Wards Act is the primary statute that governs the employment, treatment, custody, and management of assets of a minor ward. The Hindu Minority and Guardianship Act defines

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<sup>1</sup> Srivastava, M., 2022. *Comparative Analysis of Guardianship Laws in India*.

<sup>2</sup> The Guardians And Wards Act, 1890 Sec 4 (2)

natural guardian' powers to custody of a Hindu minor, as well as their authority to deal with the minor's assets.

### **A Guardian's Powers**

A guardian can be chosen for any or all of the above reasons.<sup>3</sup> A child's wellbeing is substituted for the child's judgement. In concerns of housing, schooling, and general upbringing, the right is vital. Without the authorization of the court, a minor's property cannot be sold, given, or encumbered. It will be voidable/ invalid if done by a natural guardian, but void if done by someone other than a natural guardian. The distinction is that in the latter case, the objection to the alienation must be made by a positive act, such as going to court or otherwise, within a specific length of time after the minor reaches majority, but in the former case, the minor might just disregard the transaction, as it is not binding. In a Hindu Undivided Family, a Karta has a greater right to deal with the property of a junior member, along with a juvenile, although the criterion of validity is determined by statutory need or family advantage. The individual who wishes to dispute the deal that affects the minor's property rights will have to prove both conditions. Similar concerns apply to the care and protection of a mentally ill person and the property protection, and the guardianship shall have complete authority over such a person's housing, medical treatment, property management, and other matters. The court is the last arbiter in all sorts of disagreement involving the affairs of a juvenile or a handicapped person owing to mental disorder or retardation. The court will always be led by the person's 'welfare,' which is a fluid term that the court will analyse case by case. If the court's view differs with the replacement choice of the guardian, the judge may overrule the latter's decision and proclaim and lead what should be done in the minor's greatest advantage. Even a settlement involving a minor's property will be legitimate only when the court has granted its approval. The court's judgement on whether or not to sell a minor's property is significant, as is the judge's decision on whether or not to keep or abort the foetus of a juvenile girl who is impregnated.

### **MEANING OF “MINOR” AND “GUARDIAN”**

#### **(A) Guardianship**

Guardianship is a term that refers to a person who protects a minor child. For the welfare of children, legislators have enacted special laws that provide some relief and assistance to minors'

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<sup>3</sup> Srivastava, M., 2022. *Comparative Analysis of Guardianship Laws in India*.

lives. A guardian, according to section 4 (a) of the Hindu minority and guardianship act of 1956, is a person who looks after a minor or his property, or both.

This comprises the following:

- i. Natural guardian
- ii. A guardian named in a natural guardian's will (testamentary guardian);
- iii. A guardian named in a court order.
- iv. A person who has been given the authority to behave as such by a judicial order. A person who looks after a minor without legal authorization is known as a de facto guardian. Self-appointed guardians and guardians by affinity are among these guardians.

## **(B) Minor**

A person under the age of 18 is considered a minor. According to section 4 (b) of the Hindu minority and guardianship act 1956, a "minor" is a person under the age of 18 who is intellectually and physically defective and undeveloped and hence need somebody's supervision.

## **Types of Guardianship for Minor**

There are 3 kinds of guardianship which is mainly discussed as :-

1. Natural guardian
2. Testamentary guardian
3. A guardian appointed by court

## **Natural Guardian**

“The term "natural guardian" is used under section 4 (c) of the Hindu Minority and Guardianship Act, 1956 to relate to the Minor's father and, following him, the Minor's mother. Her spouse is the natural guardian of the woman. According to Section 6 of the Act, the natural guardian might be one of three people:” -

1. **Father:** In the event of an unmarried boy or girl, the natural guardian is the father, who is followed by the mother as the guardian of a minor. As long as the child is under the age of five, the mother is the natural guardian.” “The mother of the minor was deceased in *Essakkayal nadder v. Sreedharan Babu*, but the father was still living, had not failed to be a Hindu or abandoned the world, and had not been deemed unfit. This does not provide anybody else the authority to act as the minor's natural guardian and alienate the minor's possessions. <sup>4</sup>
2. **Mother-** Even if the father is alive and after her, the mother is the guardian of the minor illegitimate male and an illegitimate unmarried girl.<sup>5</sup> Even though the mother no longer practices Hinduism, she retains her claim to natural guardianship. In the event of an adopted kid who is not a natural born child, the situation is the same. The mother might be regarded the natural guardian of the little girl in the case *Jajabhai v. Pathankhan*,<sup>6</sup> where a mother and father had fallen out and were living separately, and the small daughter was under the care and protection of her mother. The Supreme Court ruled in *Gita Hariharan v. Reserve Bank of India*<sup>7</sup> that, under some situations, even though the father is alive, the woman can function as a natural guardian. In Section 6(a), the term 'after' has been interpreted as 'in the absence of' rather than 'after the life-time.'
3. **Husband:** The parent of his underage wife is the husband.

### **Rights of guardian of person**

The natural guardian has the following rights in respect of minor children:

- (a) Right to custody,
- (b) Right to determine the religion of children,
- (c) Right to education,
- (d) Right to control movement, and
- (e) Right to reasonable chastisement

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<sup>4</sup> AIR 1992 Ker 200

<sup>5</sup> Section 6(b), The Hindu Minority and Guardianship Act, 1956

<sup>6</sup> AIR 1971 SC 315; (1970) 2 SCC 717.

<sup>7</sup> AIR 1999 SC 1149.

These rights are conferred on the guardians in the interest of the minor children and therefore of each of these rights is subject to the welfare of the minor children. The natural guardians have also the obligation to maintain their minor children.<sup>8</sup>

### **Natural Guardian's Power over Minor's property**

The Hindu Minority and Guardianship Act, Section 8(1), establishes the broad powers of natural guardians. A guardian has the authority to do whatever is required or appropriate and suitable for the minor's benefit or for the realisation, preservation, or benefit of the minor's inheritance. Bogus, cartels, demarking, speculative, superfluous, or irrational transactions shall be excluded by the power's universality. These are broad rights that define the guardian's role, allowing the guardian to act securely in the minor's best interests while also allowing third parties to interact securely with the guardians inside the scope of these rights.

Section (2) states that a natural guardian could indeed mortgage or start charging any component of immovable property, or transmit any portion of such property by sale, gift, exchange, or otherwise, without the prior authority of law, or rental agreement out any portion of such estate for a term exceeding five years or for a term exceeding one year further than the deadline on which the minor would attain majority. Subsection (4) states that the court may not grant authorization to the natural guardian to perform any of the acts listed in subsection (2) unless it is necessary or in the children's best interests. Any disposition of immovable property by a natural guardian in violation of sub-section (1) or (2) is voidable at the request of the minor or any person who claims under him, according to sub-section (3). The Guardians and Wards Act of 1890 governs the procedure for getting the court's consent.<sup>9</sup>

The guardian's power to alienate a minor's immovable property is still based on necessity or advantage, though it appears that the terms 'necessity' and 'evident advantage' used in sub-section (4) of Section 8 are broader than their pre-1956 Hindu counterparts, namely, legal a need and receive support of estate. Because it is up to the courts to determine what these terms imply before granting authorization in a particular case, it is argued that courts are allowed to interpret them broadly. Where the father had died, the mother was authorised to sell a tiny piece of uncultivable property to a minor in which she had no vested interest. A proper notification was also sent. Such a sale was permitted on the condition that the proceeds be deposited in a

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<sup>8</sup> Diwan, P., 2021, Family Law, 296-307, Allahabad Law Agency

<sup>9</sup> Sub Section (5) of Guardians and Wards Act, 1956.

fixed deposit.<sup>10</sup> An application for alienation of minor's property brought under Section 8(5) is subject to the provisions of the Guardians and Wards Act under section 8(2).

At the minor's discretion, an alienation of property even without consent of the court is voidable.<sup>11</sup> A child's transferee can also protect the minor from the guardian's wrongful alienation. No court authorization is required when the guardian obtains property for the minor's benefit.<sup>12</sup>

The sale of a minor's undivided stake in joint family property by the mother, on the other hand, does not require prior approval.<sup>13</sup>

In two instances, Section 8 does not limit the guardian's authority, and he retains the same rights as under Hindu law. These are (a) moveable property alienation and (b) contracts.

A guardian might bind a minor by personal covenants, according to Section 8(1) of the Hindu Minority and Guardianship Act. This implies that the guardian can inflict financial duty on the minor's estate through his contract, but he can't make him accountable further than that. In no situation may the guardian hold the kid directly responsible. It is a well-established regulation that the guardian has the authority to engage into marriage or betrothal contracts, along with apprenticeship contracts, in place of the child. Similarly, the caretaker has the authority to make family arrangements on the minor's behalf. The guardian can also attach the child's estate for obligations incurred in providing the minor with necessities. It is argued that the minor is likewise accountable for the guardian's debt contracts, whether for valid cause or for the interest of the estate.

Can a guardian's agreement for the sale or purchase of immovable property bind the minor? The general consensus is that the caretaker has this authority, and that an agreement for the acquisition of immovable property put into by the guardian can be explicitly implemented. The contract can be particularly enforced when the guardian obtains previous court approval to alienate the minor's property and make an agreement of sale."<sup>14</sup>

### **Testamentary Guardian:**

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<sup>10</sup> Santra Devi v. Nitin, AIR 2016 P&H 62.

<sup>11</sup> Irrupakutty v. Cherukutty, AIR 1972 Ker 71.

<sup>12</sup> Than Singh v. Barelala, AIR 1974 MP 24.

<sup>13</sup> Sankhla Kantaben v. Rabari Panchabai Chelabai.

<sup>14</sup> Chatar Bhuj v. Gurpreet Singh, AIR 1983 P & H 406



When Hindus were granted testamentary powers during the British period, testamentary guardians were established. It was up to the father to name testamentary guardians. The father could remove the mother from her natural guardianship of the children after his death by appointing a testamentary guardian. After his death, the children were placed in the natural guardianship of the Hindu mother. Both father and mother now have testamentary power to appoint a guardian under the Hindu Minority and Guardianship Act of 1956. “The father may designate a testamentary guardian, but if the mother survives him, the testamentary guardian will be rendered ineffective, and the mother will become the natural guardian. If the mother appoints a testamentary guardian, the testamentary guardian will be her appointee, and the father's appointment will be rendered ineffective. If the mother does not appoint, the guardian will be appointed by the father.” “Section 9(1) vests testamentary power on a Hindu father in respect of legitimate children, therefore it appears that he cannot appoint a guardian for his minor illegitimate children even though he is authorized to function as their natural guardian.<sup>15</sup> In the case of illegitimate son/daughter, Section 9(4) gives the mother sole authority. Only a will can appoint a testamentary guardian under Section 9 of the Hindu Minority and Guardianship Act.<sup>16</sup> On her marriage, the guardian of a minor girl ceases to be the guardian of her person, and the guardianship cannot be reinstated even if she becomes a widow while still a minor. Acceptance of the guardianship by the testamentary guardian is required.” “Acceptance might be explicit or oblique. A testamentary guardian may decline or disclaim the appointment, but once accepted, he cannot refuse to act or resign unless the court gives him permission.”

### **Powers of testamentary guardian**

The testamentary guardian has all of the authorities, rights, and obligations of a natural guardian to the degree that they are not limited by the will, albeit his obligation to give maintenance is not personal and only exists to the extent that the minor owns property. It is, however, his responsibility to seek out his support.

### **Guardians Appointed by The Court**

The Guardians and Wards Act of 1890 gives courts the authority to appoint guardians. The High Courts also have inherent authority to appoint guardians, but this authority is rarely used.

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<sup>15</sup> Section 9(1) OF Hindu Minority and Guardianship Act, 1956

<sup>16</sup> Section 9(4) of Hindu Minority and Guardianship Act, 1956

The Hindu Minority and Guardianship Act is a supplement to the Guardians and Wards Act, not a replacement for it.<sup>17</sup> The District Court has authority under the Guardians and Wards Act of 1890, which states, "The District Court may appoint or declare any person as the guardian whenever it finds it essential in the welfare of the child. The court considers a number of considerations when appointing a guardian, including the child's age, gender, parental wishes, and personal law. The safety and well-being of the children is of paramount importance."<sup>18</sup> The District Court has the authority to appoint or declare a guardian for the minor's person and separate property. The authorized High Courts have inherent jurisdiction to appoint guardians for minor children's person and property. This power extends to a coparcener's undivided interest. The court-appointed guardian is referred to as a certificated guardian and the court appoints guardians.

### **Powers of Certificated Guardians**

The rights of certificated guardians are governed by the Guardians and Wards Act of 1890. He can only do a few actions even without permission of the court. Finally, his responsibilities are co-extensive with the sovereign nations, and he has the power to do everything the sovereign can (with the agreement of the court). A certificated guardian is responsible to the court's supervision, direction, and control from the time he is appointed.

### **Guardianship by affinity**

A guardian known as a guardian by affinity existed in Hindu law prior to 1956. A minor widow's guardian is appointed by affinity. "The husband's related, if any, within the degree of sapinda, is the guardian of a minor widow in preference to her father and his relations," Mayne stated.<sup>19</sup> The father-in-law is the legitimate guardian of a minor widow, according to Paras Nath v. State, Allahabad HC 1960<sup>20</sup>. The Nagpur High Court, on the other hand, has not agreed with this viewpoint. The Madras High Court disagreed, holding that the welfare of the child should take precedence over all other considerations. The wellbeing of the child takes precedence in the appointment of a guardian under Section 13 of the Hindu Minority and

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<sup>17</sup> Guardian and Warden Act, 1890

<sup>18</sup> Mohini v. Virendra, AIR 1977 SC 1359: 1977(3) SCC 513

<sup>19</sup> Diwan, P., 2021, Family Law, 296-307, Allahabad Law Agency

<sup>20</sup> AIR 1960 All 479.

Guardianship Act. The fact that the father-in-law has a preferred right to be designated as guardian under Hindu law is simply a minor influence.<sup>21</sup>

### **De facto Guardian**

A de facto guardian is someone who takes a particular concern in the minor's well-being or the supervision of his property without having legal authority. Hindu jurisprudence has long recognised the notion that if obligation is acquired on behalf of another in a justifiable instance, then the person whose duty is incurred, or at the very best his property, is accountable, even though no authority was granted for the liability to be incurred. The term 'de facto guardian' is not used in any of the publications, despite the fact that his presence under Hindu law has never been disputed. Kanta asserted in *Sriramulu* that Hindu law tried to come up with a solution to two tough circumstances: first, when a Hindu child does not have a legal guardian, there is no one to control and manage his estate in law, and thus the child does not obtain any income for his property; and second, a person without title cannot be allowed to intrude with the child's estate in order to induce him loss." "Under Hindu law, de facto guardians are granted legal status, which resolves this issue. A simple intermediary isn't just about a De facto guardian. A single or unclear conduct by a person in connection to the property of a kid does not qualify him as a De facto guardian. A person must continue a continuous pattern of action in order to become a De facto guardian. In other words, a De facto guardian is someone who is not a legal guardian and does not have the legal authority to act as one, but has took responsibility for the child's things as if he were one. A scenario in which previous acts have culminated in current status is referred to as de facto guardianship. The word roughly translates to "from what has been done." The de facto guardian was recognised in Hindu law as early as 1856. 'Under Hindu law, the privilege of a bona fide incumbrancer who has chosen to take a De facto guardian a fee of land, created truthfully, for the goal of safeguarding the estate, or for the advantage of the property, is not hindered by the loss of union of the De facto with the de jure title,' asserted the Privy Council in *Hanuman P.d.*<sup>22</sup>

### **The Present Legal Regime**

One who properly assumes guardianship of a minor and, as such, is presumed to make final decisions about the child's welfare is known as the minor's "natural guardian." As long as the

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<sup>21</sup> Section 13 of Hindu Minority and Guardianship Act, 1956

<sup>22</sup> (1856) 6 MIA 393.

"Guardian and Ward's Act" or the will of the child's natural guardian has not been overruled, the natural guardian has the legal authority and ability to act as the child's guardian in accordance with their wishes. The natural guardian does not have to appear in court to be named guardian. Personal individual laws decide who the child's natural guardian is. A child's father is the child's natural guardian if he is still alive and in good health. There are several different ways in which someone can be elevated to his position of authority. Under both Hindu and Muslim law, a minor's father is their natural guardian, while the mother is their chosen guardian for a new minor child. Despite the fact that these rules outline who is entitled to custody of children, they are not always decisive. Personal laws or acts may be overruled in the best interests of children under custody and guardianship regulations, which require courts to give the most weight to the child's best interests. For Hindus, the "Hindu Minority and Guardianship Act 1956 (HMGA)" lays down the legal rules of guardianship and the marriage and divorce norms of Hindus, Muslims, Parsis, and Christians, which are partly customary and partly codified in statutory provisions, governs guardianship and custody of minor children in India. Unified Convention Proceedings the right of a child (CRC) was ratified by India, which is responsible for ensuring that the fundamental rights granted by the Convention are upheld in the country constitution.<sup>23</sup>

#### **A. The Guardians and Wards Act, 1890 (GWA)**

The processes for selecting guardians are outlined in this Act. The "Guardians and Wards Act" governs guardianships of minor children and property. If both natural and testamentary guardians failed, the issue is governed by "The Guardians and Wards Act" of 1890. When a guardian is assigned by a court of law, the rights of a natural or testamentary guardian are terminated. This Act applies to all children involved of any caste, although the judge will examine the minor's personal law while appointing or recognizing an individual as the minor's guardian. If any part of the GWA contradicts with the personal law of minor children, the minor's personal law will hold sway. The Act empowers the District Court to appoint or designate someone as a guardian. The District Court appoints or declare any individual as the guardianship of the minor's person or property when it is necessary for the minor's wellbeing, taking into account the minor's age, gender, and needs or requirements, as well as the minor's personal latitude.<sup>24</sup> Section 7 lays forth the basic rule for guardianship and custody

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<sup>23</sup> India ratified this convention on Dec 11,1992.

<sup>24</sup> See Guardians and Wards Act, 1890? 17 (India).

determinations (i). It states that the law court should just appoint a guardian if the assignment is absolutely necessary for the child's well-being. Regardless of the fact that sections 7(i) and 17 of the 'Guardians and Wards Act' do not clearly indicate that the "welfare of the child is the principal concern," Supreme Court and High Court decisions have interpreted those clauses to suggest that the kid's well-being should come first.

To preserve Hindu minorities, the 'Hindu Minority and Guardianship Act' of 1956 was established (HMGA) Much of the legislation governing guardianship is included in the GWA, but it is reinforced by the 'Hindu Minority and Guardianship Act', 1956 (HMGA), which applies only to Hindus, i.e., the HMGA's rules exist in addition to the GWA's. Because the father is the natural guardian of a legal minor child and his property under the HMGA, 1956, the mother is granted guardianship.<sup>25</sup> The mother has become the natural guardian, as per the Supreme Court. As a result, if the kid's father designates a custodian in his will, the mother of the minor cannot be removed from guardianship after his death. Even if the father is still living, the lady retains custody of her minor children.

### **During Matrimonial Proceedings, Custody and Guardianship**

Except for the Dissolution of Muslim Marriages Act, 1939, all marriage or matrimonial laws have provisions regarding the allocation of child custody in a matrimonial dispute. "The Hindu Marriage Act of 1955," as Section 26, agrees with child custody. The Hindu Marriage Act, as Section 26,<sup>26</sup> and Section 38 of the 'Special Marriage Act,' 1954,<sup>27</sup> are nearly identical. The similar issue is also addressed in the Section 49 of the 'Parsi Marriage and Divorce Act 1936.' For Christians, the matter is covered in Part XI (articles 41 to 44) of the 'Indian Divorce Act, 1860,' under the heading "Custody of Children."

The marital law judicial courts may be called upon to resolve issues of child custody, educational, and support at any point of the divorce process. The interval here between filing of an appeal and its final decision is referred to as pending matrimonial processes. These sorts of instructions are referred to as interim recommendations or temporary orders. When the petition is approved by a decree. They're referred to as permanent orders. After the issuance of a decree granting the appeal. At this point, the inquiry may take one of two forms: A fresh

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<sup>25</sup> For the latest interpretation of "after him," see *Geeta Hariharan v. Reserve Bank of India* (1999) 2 S.C.C. 228 (India).

<sup>26</sup> Section 26 of Special Marriage Act, 1954

<sup>27</sup> Section 38 of Special Marriage Act, 1954

petition for custody, schooling, and maintenance of the children may be submitted after the decree if no application for custody, education, or support of the children was made during the marital process. Uncertainty If the court has previously granted a permanent order of custody, etc., an application to amend, cancel, or change the order may be made. In India's statute law, there are no specific laws dealing to access. The 'Guardians and Wards Act of 1890' and the 'Hindu Minority and Guardianship Act of 1956' do not address this. Despite this, temporary and permanent admission has been allowed by the courts.

### **Suggestions**

Indian courts have accepted the well-being and happiness of the child or best interests of the child principle notwithstanding significant differences in personal laws governing custody rights. The finest interest standard is applied to each case in a unique way. In addition to financial support and education, courts take into account a variety of other factors such as the child's gender, age, and other specific needs, as well as whether or not the parent has remarried, whether or not the child has been sexually abused, and a host of other personal and legal considerations. In conflicts between a mother and a father, a "fair and adequate balance" must be formed between the minor child's well-being and the parental rights, according to the Supreme Court of law. However, the Court determined that the most essential consideration when it comes to determining child custody is whether or not the children are safe and secure. In India, the "best interest" test has been shown to have severe shortcomings by case law.

An appellate court usually rules in favour of the appellate court because the criteria is so vague. Higher courts must be contacted when the welfare concept is incorrectly interpreted or neglected by trial judges, which costs both time and money. Many cases do not reach the higher courts because of a lack of resources, and the interests of children are harmed as a result. Even if the case goes to a higher court, the youngster will still have to go through the ordeal. Legal battles can also lead to a child staying with someone they shouldn't be, which can be dangerous for the youngster. The right of a child to a speedy trial is also violated. Trial courts should be more sensitive to the rights of children and more child-friendly in their procedures. There are a number of factors that make it difficult for judges to accurately assess a child's actual desires and to discern the influence of extrinsic influences. The best interests of the kid must be taken into consideration by a variety of experts and organizations, all of which must be presented to

the judge. Even if the minor children don't have their own legal representation in marriage matters, the counsellors appointed in Family Courts under the Family Courts Act should be educated to analyse what is in the best interest of the minor children. As a result, we need to integrate the opinions of people who have been excluded by previous policies, who have been denied access to knowledge, or who have been given participation (as they do not vote). Courts tend to adopt a paternalistic stance when considering the needs, happiness, or best interests of children. It's up to the parents to make sense of it all. In the courts, children's voices must be heard clearly.

### **Conclusion**

The term "guardian" refers to the one who is in charge for the minor's person, property, or both. The 'natural guardian' of a minor child or a single female is the father of that female, and in the absence of the father, the natural guardian is the mother. On marriage, the husband turns out to be the natural guardian of a minor girl child, and if the kid is illegitimate, the mother is the only guardian. A natural guardian is not a stepfather or stepmother. A testamentary guardian is someone who is named as a guardian by a will. A court guardian is a person who is appointed by a court to look after the person or property of a minor child or to pursue litigation proceeding the minor's behalf. A court may appoint or declare someone other than a parental as a guardian if the minor's safety is in risk. Aside from minors for whom guardians may be appointed, courts may appoint guardians in the case of those who are unable to care for themselves owing to mental illness. A well-being institution with custody of a juvenile, psychologically challenged individual, or uncontrolled kid might be a guardian or be nominated as one. Even a foreign national in search of adoption may be designated as a guardian with instructions to adopt according to the regulation of the nation to which the foreign national might belong in inter-country adoption proceedings.

Hindu minorities and guardianship rules were established in the Hindu Minority & Guardianship Act of 1956. It has supported the higher right of father, as it has in the case of uncodified legislation. It specifies that a youngster is a minor child until he or she reaches the age of eighteen. The father, then the mother, is the natural guardian for equally boys & unmarried girls. Only for the protection and custody of minor children under the age of five is the mother's claim to precedence recognized. The mother has a stronger right than the putative father in the event of illegitimate children. Because the law makes no difference between the minor's person and minor's property, guardianship entails power over both. The primary

natural guardian of a Hindu minor child or unmarried minor girl is their father, according to the Hindu Minority and Guardianship Act of 1956. Mother is the natural guardian after the father. However, S.C. has now ruled that a Hindu minor's father as well as mother are both natural guardians. The issue is not necessary for the father to be the natural guardian initially, followed by the mother.

There is not any question that a father's claim to the property and person applies to both property and person. And even if the mother takes guardianship of the minor kid, the father retains the broad right of monitoring and controller. Mother, on the other hand, can be named as a testamentary guardian through the father. As a result, even if mother of the minor child is not recognized as a natural guardian, there is no reason why she cannot be nominated under the father's will.

The Guardians & Wards Act of 1890 governs guardians as well as wards in general. This specifically specifies that the father's capacity to be nominated comes first, and that no one else would be nominated except if the father is found unsuitable. This Act also specifies that the courts must examine the child's welfare while assigning a guardian.



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