

# HINDU MINORITY AND GUARDIANSHIP ACT, 1956

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An Act to amend and codify certain parts of the law relating to minority and guardianship among Hindus be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

## HINDU MINORITY AND GUARDIANSHIP ACT, 1956

### 1 Short title and extent [\[Top\]](#)

(1) This Act may be called the Hindu Minority and Guardianship Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

#### COMMENTS

The Hindu Minority and Guardianship Act, 1956 is an Act to amend and codify the law relating to minority and guardianship among Hindus. The objects and reasons for this enactment read: "This is another instalment of the Hindu Code and deals with the law relating to the minority and guardianship. Under the Indian Majority Act, 1875, a person attains majority on his completing the age of 18 years but before the completion of that age he has a guardian appointed by the court, he attains majority on completing the age of 21 years. That Act applies to all persons including Hindus but an exception is made with respect to the capacity of any persons to act in the matter of marriage, dower, divorce, and adoption. Marriage and divorce have already been dealt with so far as Hindus are concerned and the definition of minor in the Bill will ensure that the age of majority of 18 years for all practical purposes.

Guardians may be divided into three classes, namely:

- (1) natural guardians,
- (2) testamentary guardians, and
- (3) guardians appointed under the Guardians and Wards Act, 1890.

and the present Bill is supplemental to the Guardian and Wards Act, 1890, and deals with natural guardians and testamentary guardians incidentally abolishing de facto guardians.

This Act does not codify the entire Hindu Law relating to guardianship but only amends and codifies certain parts of the law relating to minority among Hindus, and it is only in respect of the points and matters specifically dealt within it that the law relating to minority and guardianship among Hindus is codified in this enactment, i.e., the Hindu Minority and Guardianship Act, 1956. The enactment does not purport to give the whole law on the subject guardianship. The Act is principally intended to declare as to who are the persons entitled to act as the natural guardians of a Hindu minor in respect of the person and property of the minor and to impose certain restrictions on the powers of such guardians. It is, therefore, both a codifying and a supplement enactment and its provision must be read in the context of the law laid down in the Guardians and Wards Act, 1890 - AIR 1986.Guj.116

This Act is intended to amend and codify only certain parts of the law relating to minority and guardianship among Hindus. The law relating to Hindu minors, in particular the law relating to minority and guardianship is contained in the Smritis, and the commentaries on them, as interpreted and applied by courts of law, and also the law contained in his statutes relating to minors namely the Guardians and Wards Act, 1890 and the Indian Majority Act, 1875, section 2 expressly provides that this Act is in addition to and not, save as expressly provided in derogation of the Guardian and Wards Act, 1890. By reason of section 5 of the present Act, any other law in force immediately before the commencement of this Act shall cease to have any effect to the extent of inconsistency with any provisions in this Act. In other words, this Act prevails over any other law in regard to matter provided by this Act. This is not complete code relating to the Hindu Law on minority and guardianship. Insofar as matter not covered by this Act are concerned, they are regulated by the old Hindu Law as well as other statutes on the subject. However, in respect of the subject-matter with which it deals it is a codifying enactment.-Krishankant, In re AIR 1961 Guj 68

### 2 Act to be supplemental to Act VIII of 1890 [\[Top\]](#)

The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890.

#### COMMENTS

Hindu Minority and Guardianship Act, 1956 does not codify the entire law of guardianship applicable to Hindus but amends and codifies only certain parts of law relating to minority and guardianship among Hindus. The provisions are to be read supplemental to the Guardians and Wards Act. The Act does not apply to minors with court guardians. Provisions of the Act are supplementary to that of Guardianship and Wards Act.- AIR 1981 Cal 206

### 3 Application of Act [Top]

(1) This Act applies,-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion and

(c) to any person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation: The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:-

(i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;

(ii) any child, legitimate, or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(iii) any persons who is a convert or re-convert to the Hindu, Buddhists, Jaina or Sikh religion.

(2) Notwithstanding any thing contained in sub section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

### 4 Definitions [Top]

In this Act-

(a) 'minor' means a person who has not completed the age of eighteen years

(b) 'guardian' means a person having the care of the person of a minor or of his property, or of both his person and property and includes-

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor's father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any Court of Wards;

(c) "natural guardians" means any of the guardian mentioned in section 6.

### COMMENTS

"Minor" is defined as a person who has not completed 18 years of age. Under s. 3 of the Indian Majority Act, 1875, it is provided that when a guardian is appointed by a court except under Order 32 of the Civil Procedure Code, or in the case of ward under the Court of Wards, a person is deemed to have attained majority on the completion of 21 years of age. Sec. 3 of the Indian Majority Act further gives overriding effect to that Act as against all other enactments which are inconsistent with the provision of that Act. Section 5 of the this Act however gives overriding effect to the provisions of the present Act against all other enactments which are inconsistent with any or the provisions of the present Act.

A guardian is one who has the care of the person or the property of a minor or of both his person and property. There are four categories of guardians specifically referred to in s.4, viz., the natural guardian, testamentary guardian appointed by and under a will of the minor's father or mother, a guardian appointed or declared by a court, and a person empowered to act as guardian by or under any enactment relating to court of wards. Sec. 6 specifies who are the natural guardians and s. 8 deals with the power of a natural guardian. Sec.7 provides that on adoption of a minor, the natural guardianship passes to the adoptive father and after him to the adoptive mother. Sec.9 deals with testamentary guardians and their powers. The appointment of guardians by court and their powers are dealt with under the Guardians and Wards Act and the fourth category mentioned in the section is dealt with under Acts relating to court of wards.

Apart from the above four categories specifically referred to in section 4(b)(i) to (iv), under the old law, another category, viz., a de facto guardian was recognised for certain purposes. Though a de facto guardian is not one of the categories specifically mentioned in this sub section it has been held in Ratan v. Bisan AIR 1978 Bom 190 that as the definition is an inclusive definition there is no reason why a person who acts as a de facto guardian should not within the definition of a guardian.

### 5 Overriding effect of Act [ Top ]

Save as otherwise expressly provided in this Act.

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect insofar as it is inconsistent with any of the provisions contained in this Act.

### COMMENTS

The provisions of this Act have to prevail over any law, statutory or otherwise, immediately in force before the commencement of this Act, which is inconsistent with any of the provisions contained in this Act to the extent of the inconsistency. The expression "save as otherwise expressly provided in this

Act" occurring the beginning of this section read with s.2 would however exclude the Guardians and the Wards Act from the operation of this section.

## 6 Natural guardians of a Hindu minor [Top]

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or unmarried girl- the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father;

(c) in the case of married girl -the husband:

PROVIDED that no persons shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) If he has ceased to be a Hindu ,or

(b) If he has completely and finally renounced the world becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)  
Explanation In this section, the expression "father" and "mother" do not include a step- father and a step-mother.

### COMMENTS

If the minor is a boy or an unmarried girl, the father and in his absence the mother is the natural guardian. In the case of illegitimate children, however, the natural guardian is the mother and after her, the father. The natural guardian of a married girl is her husband. The section speaks of natural guardianship in respect of a minor's person and also of his property (excluding his or her undivided interest in joint family property). A special right is conferred under the proviso to s.6(a) on the mother, to have the custody of the person of the minor girl until she completes the age of five years.

As the section does not speak about the custody or management of the property of a minor girl below 5 years, it follows that the father, if alive, who is the natural guardian shall have the custody and management of the property of such minor girl.

Even if the father neglects to look after, or to discharge his obligations towards, the minor, or refuses to act natural guardian, the mother cannot be the natural guardian of the minor so long as the father is alive .-Sundara Murthy V. Shanmuga Nadar AIR 1980 Mad 207 and Ramachandra V. Annapoorani AIR 1964 Ker 269. Merely because the father is not residing with the family, he does not cease to be the natural guardian. The natural guardian ceases to be so only under the two ground mentioned in the proviso to the section.- Michayel Nadar v. Sreedharan Babu 1992 (2) HLR 17 (Ker). In such an event, the only course open to the mother is to take legal proceedings and obtain appropriate orders of the court to act as the guardian of the minor.- Narain Singh v. Sapurna kher AIR 1968 Pat.318. In a case where the mother and father had fallen out and were living separately and the minor daughter was under the care and protection of her mother (though her father was alive) the Supreme Court held that the mother should be considered as the natural guardian of the minor girl.-Jijabhavi v. Pathankhan AIR 1971 SC 315. ' 3 ^ ^ ^

## 7 Natural guardianship of adopted son [ ]

The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

### COMMENTS

From the moment the minor is adopted by a person it is the adoptive father that becomes the natural guardian and the natural parents cease to be the natural guardians. The comments under s.6 would equally apply to the adoptive parents as natural guardians of the minor. In the case of death of the adoptive parents, though the natural parents are alive, necessary proceedings have to be taken under the Guardians and Wards Act, 1890 for the appointment of the guardian.

Under the Hindu Adoption and Maintenance Act, 1956 either a male or a female, though not married, provided he or she is of sound mind and not a minor and who has not completely and finally renounced the world or has ceased to be a Hindu, has got the power to take a son or daughter in adoption. If one such unmarried male or female validly adopts a boy or girl without violating the conditions imposed under s.10 and 11 of the said Act, either the male or female adopter would be the natural guardian of the adoptee minor boy or girl from the moment the adoption takes place. Again, a married female also may adopt if her husband renounces worldly affairs or is converted to another religion. Sec.7 of the Hindu Minority and Guardianship Act does not deal with such a case.

## 8 Powers of natural guardian [ Top ]

(1)The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2)The natural guardian shall not, without the previous permission of the court-

V " 13 ^ ^ ^ ^

(a)mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b)lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3)Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section(2), is voidable at the instance of the minor or any person claiming under him.

(4)No court shall grant permission to the natural guardian to do any of

the acts mentioned in sub-section (2) except in case of necessity or for

an evident advantage to the minor.

(5)The Guardians and Wards Act, 1890, shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular-

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2),(3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) in this section, " court " means the City Civil Court or a District Court or a court empowered under section 4A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

Sec. 8 statutorily recognises some of the powers which used to be enjoyed by the natural guardian under the old Hindu law and imposes two important restrictions on him in dealing with the property of the minor. The first restriction is that the guardian can in no case bind the minor by a personal covenant. The second restriction is that he shall not mortgage or create a charge or transfer by sale, gift, exchange or otherwise or even lease out the property for a term exceeding five years or for a term extending more than a year beyond the date on which the minor will attain majority, without the previous permission of the court. These restrictions on the natural guardian in relation to the property of the minor apply only to the separate or absolute property of the minor. Though the expression used is "minor estate" it cannot include the minor's undivided share in the joint family property as under s.6 there cannot be a natural guardian in respect of such property which is specifically excluded.- *Miriyalu v. Bodireddi Subbayamma* 1966 (1) An WR 368, *Sri Narayan Bal v. Sri Sridhar Sutar* 1996 (1) HLR 174 (SC)

Under s.12 in regard to the undivided interest of the minor in joint family property no guardian can be appointed. Courts have consistently held that under the Guardians and Wards Act, no legal guardian can be appointed for the undivided interest of the minor in joint family property governed by the Mitakshara law unless the minor is the sole surviving coparcener or unless all the coparceners are minors. Under the old Hindu Law, the manager or the karta of the family of the minor can alienate the minor's undivided interest in the joint family property without the permission of the court, where the alienation is for legal necessity or for the benefit of the minor and this right is left untouched by this Act.-*Krishnakant, In re* AIR 1961 Guj 68

On the other hand, this is recognised by the present Act by providing in section 12 that when the joint family property is under the management of an adult member of the family, no guardian shall be appointed for the undivided interest of the minor in the joint family property.

## 9 Testamentary guardians and their powers [Top]

(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian. aT^-'

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children and Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is girl, cease on her marriage.

### COMMENTS

Under the old Hindu law, a Hindu father alone and no other had the power to appoint a testamentary guardian of his minor children. A husband had no power to appoint his minor wife's father as her testamentary guardian under his Will.-*Kapila Annapumamma v. Ramanujeya Ratnam* AIR 1959 AP 40. A father was entitled to appoint by will a guardian of the person of his minor children even to the exclusion of their mother.-*Alagappa v. Mangatrai* IL 40 Mad 672

A Hindu mother cannot appoint by Will a guardian even for the person of a minor. Under Mitakshara law, the management of the whole property including the minor's share in joint family property would be vested not in the mother but in the eldest male member. It would be otherwise where the family is divided or where the minor has separate property.-*Anusitavathi v. Siromani* 1938 ILR 40 (Mad) A Hindu father or other senior coparcener of a Mitakshara family has no power to appoint, by will or otherwise, testamentary guardians for the coparcenary property of the minor.-*Chidambaram Pillai v. Rangaswami* AIR 1941 Mad 561

The present Act preserves the old law insofar as it excludes the undivided interest of the minor in joint family property from the operation of s.9. A father cannot appoint a testamentary guardian in respect of the undivided interest of a minor in joint family property- *Pattayee v. Subbaraya* 1980 HLR 500 (Mad).

## 10 Incapacity of minor to act as guardian of property. [Top]

A minor shall be incompetent to act as guardian of the property of any minor.

### COMMENTS

Under the old Hindu Law, so long as the members of the family remain undivided, as a general rule, the father if alive or in his absence the senior member of the family who is the Karta or manager is entitled to and is presumed to manage the joint family property. He is entitled to possession of the joint family property and has absolute powers of the management.-*Bhaktavatsaludu v. Narasimharao* ILR (1940) Mad 752 and *Bhaskaran v. Bhaskaran* AIR 1931 Mad 318

## 11 De facto guardian not to deal with minor's property [Top]

After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.

### COMMENTS

For all acts of a person who is not a natural or testamentary guardian or a guardian appointed by the court, s. 11 would apply if he deals with the minor's property in any manner.-Rajalakshmi v. Ramachandra AIR 1967 Mad 113. If any de facto guardian issues notice on behalf of the minor, to the tenants in respect of the rents payable it cannot be said that he was dealing with the property of the minor.-Janardan Prasad v. Girija Prasad AIR 1981 All 86. During the lifetime of a natural or testamentary guardian or a guardian appointed by the court, any person who gifts the property to the minor, cannot appoint some other person in the gift deed, as the guardian. It would be of no avail and such person can not act as guardian of the property gifted. But any person as a next friend of the minor can file a suit on behalf of the minor.-Girdhari v. Anand AIR 1967 Pat 8 and Danial v. Raghu AIR 1967 Ori 68.

### **12 Guardian not to be appointed for minor's undivided interest in joint family property [Top]**

Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

PROVIDED that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

Where a Hindu father dies leaving behind his sons who are coparceners and also daughters and the widow, by applying the fiction of partition on the date of death of the father, the female heirs along with the sons have the right to an equal share in the father's share of the property. Having such an individual share in the joint family property there is a chance for an adult female member of the family to be in management of the joint family property. According to the present provision, it can be said in such cases also that no guardian can be appointed for the undivided interest of the minor in the joint family property as it applies to a case where the property is under the management of any adult member and not necessarily an adult male member. There may be a case where there is an adult member of the family but he or she may not be in management of the joint family property for some reason. In such a case, this provision is not applicable. This provision does not indicate that the adult member in management of the joint family property should be the senior adult member. According to the notions of Hindu Law, in the absence of the father, the eldest male member is to be the manager of the joint family property, though it is permissible for a junior member to become the manager with the consent of the other members of the family.-Ramakrishna v. Manikka 1937 (1) MLJ 587. But under s.12 of the Act, it is sufficient if any adult member is in management of the joint family property in order to attract the prohibition contained in this section.

### **13 Welfare of minor to be paramount consideration [Top]**

(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

#### **COMMENTS**

The word "welfare" has the widest amplitude, it is to be understood so as to cover the material and physical well being, education, health, happiness and moral welfare of the child-Rosy Jacob v. Jacob Charamakkal AIR 1973 SC 2090 and Reddy (CS) v. Yamma Reddy AIR 1975 Kant 134 What constitutes the welfare of the minor has to be determined by the court after a careful consideration of the facts and circumstances of the case, as the Act does not lay down any tests or guidelines to determine what is for the welfare of the minor.

The court has to take into account all relevant facts on record and to decide whether father or mother should be appointed as a guardian of the minor. While arriving at this conclusion, the welfare of the minor alone will be supreme consideration. It is not necessary for the court to appoint father alone as a guardian in preference to mother under s.6. That section is further controlled by s.13 (2) which gives ample power and jurisdiction to the court not to appoint a person as a guardian if it is the opinion of the court that such appointment was not in the interest of the minor.-(1985) 1 HLR 690 (Bom).

By virtue of s.2 the courts are obliged to read together and harmonise the provisions of s.19 of the Guardians and Wards Act and s.13 of the Hindu Minority and Guardianship Act, construing them together, the rigour of the prohibition contained in cl. (b) of s.19 of the Guardians and Wards Act must be considered to have been relaxed to a great extent in the interest of the minor's welfare as laid down in s. 13 of the Hindu Minority and Guardianship Act. If the circumstances so warrant, the father's prayer under s.25 of the Guardian and Wards Act can legitimately be disallowed in the better interests of the minor's welfare-AIR 1961 Punj 51.

The expression "welfare" is wide enough to include material as well as spiritual welfare. The court has to consider as to what order would be best for securing the welfare and happiness of the minors. The welfare of the children cannot at the same time be confined to either physical comfort or the comfort that money can secure. The children have to be properly brought up, educated in healthy surroundings in order to enable them to have the benefits of educations and also to secure a footing in life later on. Where mother of minor children aged above 5 years, was unable to maintain herself or her children while father was earning substantial amount and as a position to look after the children and educate them, held, the welfare of the children compels that they should be allowed to remain with the father, rather than with the mother-AIR 1983 Mad 9.