



Custody And Guardianship Of Children: Issues And Interests Involved In Matrimonial Disputes.

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ABSTRACT

Legal guidelines for guardianship and child custody are intertwined. Custody, contrasted with, which more precisely refers to the minor's regular care and supervision by their parents. The rights and responsibilities of an adult with regard to a minor's person and property are collectively known as guardianship. In neither Indian secular law nor Indian religious law is the term "custody" defined. If a marriage ends in divorce, the children of the union are the ones who would suffer the most. The wellbeing of the child is given priority over all other considerations by Indian law when determining who should have custody of a minor kid, while still respecting the parents' entitlement to primary custody. In family law, the word "child custody" refers to the legal guardianship of a child under the age of majority, or 18 years old. The custody of the child is frequently a problem that the court must decide to settle during a divorce. A notion or relationship known as "guardianship" was developed in response to the inherent inability of infants, people with impaired mental capacity, and occasionally other categories of people, to take care of business alone. A guardian is a person who is legally appointed to protect the person or property of another (the "ward"). When someone is designated as a guardian, it is typically because the ward is too young, incapacitated, or disabled to look out for their own interests. The majority of nations and jurisdictions have laws that declare that a minor child's parents are that child's legal guardians and that they have the authority to name a replacement guardian in the case of their decease.

Key words: Minor, Guardian, Matrimonial, Marriage, Dissolution, Custody etc.

Introduction: Matrimonial Disputes in India

The institution of marriage is revered. It is the basis for a strong family and a civilized society. It grants the parties and their children prestige and security. Every time two people get married, they bring their own unique goals into the union. Some of these objectives have to do with the upbringing they went through, previous relationships, etc. Over the course of a marriage, these objectives are always shifting. Conflicts over the structure of the marriage result from this. Such arguments lead to envious behaviour, conflict and distrust if they can't get along. A person's priorities, which are based on their self-interest, dictate the degree of dedication they have to their goals. These competing priorities make it difficult to put aside disagreements and move forward toward a compromise. Matrimonial disagreements, which can devastate a person's life and take a long time to restore, are caused by unmet needs and desires. Having a divorce as a result of a marital conflict has a significant influence on the lives of those involved. Conflicts in marriages are unavoidable. They are not just a difference of opinion; rather, they represent a string of blunders that have seriously harmed the marriage. Each person is an individual with unique tastes and self-interests. Ideals of compromise and sacrifice must be put into reality if a marriage is to succeed. Nevertheless, giving in isn't always the smart move. Only when spouses demonstrate a willingness to compromise and partake in each other's interests and goals can their marriage flourish.

Stages of Marital Discord

1. Ignorance: Couples who are still learning how to resolve disagreements peacefully sometimes want to avoid it altogether. They avoid discussing the topic and always look for ways to avoid it. After a long period of this pattern's persistence, opinion begins to shift in favour of the next phase.
2. An articulation of demands: After a large amount of time, couples suddenly start demanding that their needs be met after realizing that this attitude has led to their pain. Kids begin expressing their ideas and opinions whenever they get the chance. Unfortunately, this stage also fails and leads to more conflict between the husband and wife.
3. Compromising and Negotiating: The demands and limitations of marriage, such as time management issues, hectic schedules, stress from parenting obligations, financial difficulties, etc., require the couple to negotiate and compromise. As a result, they start to doubt their compatibility as well.
4. Resignation: It is normal to feel fatigued from these never-ending fights and pessimistic about finding a solution. At this point, Many married people believe they have no choice but to seek marital counselling or, in extreme cases, legal representation.

Causes of Marital Conflicts

Almost anything can cause a marital argument. Partners lament the roots of conflict that range from physical and verbal abuse to individual traits and actions. Other causes of conflict include drug or alcohol abuse, adulterous sex, problematic drinking, and marital discontent. Among the most common causes of divorce in India are:

1. Infidelity: Around one out of every five divorces involve infidelity. A partner is not in a steady relationship and the marriage is in trouble when there is another man or woman in their lives.
2. Family Violence: Domestic violence refers to a habit of physically and/or emotionally abusive behaviour toward another family member. Couples within the family experience unwelcome strain as a result.
3. Control: Marriage issues are not gender-specific when it comes to excessive Control and the desire to "have things done your way." It has the potential to ruin a marriage.
4. Finances: Conflicts will inevitably emerge between spouses who have different spending and saving tendencies. Conflict between different financial beliefs and techniques might exist in a marriage.
5. Lack of Commitment: Men may struggle to show their spouse and marriage a genuine sense of commitment. Each person will have a different set of causes for this insufficiency. Such a mindset invariably weakens the marriage bond and may lead to marital discord.
6. Inability to Communicate: In today's hectic social and professional environment, spouses seldom ever have enough time to speak to one another. Individuals frequently neglect to maintain track of their marital affairs, and disenchantment slowly seeps into their union. Such emotional and psychological pessimism frequently leads men to file for divorce.²

Effects on Children

Divorce disrupts the entire lives of two spouses, and is made substantially more difficult if the couple has children. Also, when parents are fighting bitterly in court, the interests of the kids are frequently disregarded. In addition to having a large negative impact on each individual in a pair, unhealthy relationships and marriages also significantly affect the offspring of the couple. Children who are exposed to such conflict between their parents throughout their development do not get desensitized to it, as is often believed, but rather become more sensitive to it. This implies that in these kids, even the smallest indication of animosity or violence causes a rapid rise in cortisol levels and heart stress.³

Also, parents might recognize indications in kids who experience chronic stress, such as persistent, unresolved marital strife. New-borns typically cry more frequently than usual and experience greater feeding difficulties. Infants' sleeping patterns can occasionally undergo a significant alteration. Children are affected by a variety of factors during a marriage, including:

1. Many parents and guardians spend little time talking to their children about academic concerns when there is family turmoil.
2. The majority of students avoid confiding in their classmates during parent-child conflict.
3. Due to their increased exposure to conflict and violence, more female students score averagely or poorly academically.
4. Conflict-affected students rarely attend class, which has a detrimental impact on the teacher-student interaction.
5. Children from violent households experience bad peer relationships, attend school infrequently, and do not have all of their educational needs covered by their parents.
6. The impact of school counsellors on students' academic success and relationships with classmates.

Child Custody

Children were treated as the father's property under ancient Roman law, and he had the only authority to sell them or force them to work as slaves. Mothers had no right to their children even if the father was dead. The law began to shift away from a gendered approach to custody in the early 20th century. Concluding that mothers were better equipped to raise children. Although it also considered the more pragmatic factor of the father's frequent departure as he worked to support the family, this was founded in part on a Freudian theory on baby attachment and relationships. Fathers started claiming their parental rights in the 1960s, and courts started deciding custody disputes based on "the child's best interest." **Child** custody refers to the legal and physical relationship between a parent and their kid. Custody refers to the legal right of one parent to exercise control over a child's upbringing, care, and decision-making. When it comes to a child's living situation, medical treatment, schooling, and spiritual development, the choices should always rest with the child's biological parents. However, any of these subjects might become contentious when a marriage is breaking up. When a dispute arises over the care and custody of a child, the law and the court will get involved. Explore this concept further with the help of the following definition of child custody: A judicial judgment of which parent will have physical custody of a kid. Custody might be awarded to one parent or shared by both. In *ABC v. S*, the Supreme Court ruled. In a ruling on gender equality, the State (NCT of Delhi) mandated that even an unmarried mother shall be acknowledged as the child's legal guardian without being required to reveal the identity of the child's biological father.

Kinds of Child Custody Arrangement in India

In *Gaytri Bajaj v Jiten Bhalla*, According to a Supreme Court decision, "the welfare of the child is the final consideration in determining the issue of custody of a minor child, not the greater rights of the parents." In most cases, a court in India will award one of the three following forms of custody:

Physical Custody

A parent who is awarded physical custody of their kid will have primary residential responsibility for the child and will be entitled to visiting rights with the other parent. An ideal custody arrangement would allow the kid to flourish in a stable, enriching setting while also preventing him or her from growing up without the affection of one parent.

Joint Custody

Although Indian courts often presume this to be the case, having joint custody of a child does not mean that both parents are compelled to live together for the child's welfare. If both parents have legal custody of a kid, then they will take turns caring for the child. The youngster might spend time with each parent once a day, once a week, or once a month. A kid benefits from this arrangement since both parents may maintain an interest in and focus on their upbringing.

Legal Custody

Having a child in your legal custody is not the same as having physical custody of that child. When a parent has legal custody of their kid, they have the authority to make decisions on the child's behalf about his or her education, medical care, and other matters. If the divorce is very contentious and the parents can't come to an agreement over custody, the court may grant sole legal custody to one parent.

Who Can Claim Custody of a Child?

Mothers or fathers may file for custody of their children in court. If for whatever reason, such as the application of other laws or the parent's death, neither parent can be traced, the child's maternal or paternal grandparents or another family may seek for custody out of compassion. The court will often designate the third party as the minor's legal guardian. In *Bimla and others v. Anita* [2015(3) RCR (Civil) 153 (SC),] the court declared, "Mother is the best person to raise up her minor son and to effectively look out for his interests and in fact, the welfare of the child lies with his or her mother."

The court ruled in *Ruchi Majoo v. Sanjeev Majoo* that an interim custody agreement in favour of one parent "shall not shield the minor from parental contact or the influence of the other parent," as stated in [AIR 2011 SC 1952].

Legislations Governing Child Custody Under Different Laws In India:

Though India is nominally a secular nation, its residents follow many different religions. Consequently, the religious community's own rules on child custody will determine the procedure by which a parent seeks custody of their child. Hindu law specifies that visitation rights and child custody agreements must comply with Section 26 of the Hindu Marriage Act (1955) and Section 38 of the Special Marriage Act (1954)

Custody Under Hindu Law

Article 26 of the Hindu Marriage Act of 1955.

The custody of a kid is acknowledged only if both parents are Hindu and participate in the child's upbringing, care, and education. The court must determine whether to issue the pending decree within 60 days of the notification date and may make decisions, judgments, modifications, etc. regarding child support at any time in accordance with this legislation.

Hindu Minority and Guardianship Act 1956

Under the abovementioned statute, only a child's biological parents may file for custody of a minor Hindu kid. According to the Supreme Court's ruling in *Gaurav Nagpal v. Sumedha Nagpal* stated that "In any process under the said Act, the Court may from time to time make such interim orders as it may judge reasonable and proper with respect to custody, support, and education of minor children, consistent with their wishes, whenever possible." When it comes to the custody of a young kid, the law is clear. When determining who should have custody of a minor, the "wellbeing of the kid" should take precedence over the parents' legal parental rights.

Custody Under Muslim Law:

As long as she hasn't been found guilty of any wrongdoing, only the mother has the right to ask for custody of her kids under Islamic law, known as the Right of Hizanat. In accordance with Islamic law, a child's mother retains custody of him or her until the kid reaches the age of puberty or majority for girls, or seven for boys. Because the father is thought of as the child's natural protector, custody of the child remains with him until the boy becomes seven and the girl achieves the age of majority or puberty.

Custody Under Christian Law

In matters of child custody, Christians are bound by the provisions of Section 41 of the Divorce Act of 1869. In addition to this regulation, the custody of a child after a judgment of separation is determined under Sections 42 and 43 of the same statute. The kid is entrusted to a caretaker who has shown to be more capable of meeting the child's needs. If the court rules that neither parent can provide the kid with a safe and nurturing home setting, the claim will be thrown out.

Custody Under Parsi Law

The Guardians and Wards Act of 1890 governs matters of child custody in Parsi law. The child's safety is its first priority, and it will stop at nothing to prove it.

If the mother's financial situation is worse than the father's yet the father has remarried and has children, who will get custody of the child?

Because she makes less money than the father, the mother of a youngster cannot be disqualified from being the guardian. Given that the father would be at work all day and the legal premise that a stepmother has a primary duty of love to her own children, the mother would be the preferable guardian for the minor child's welfare in this case. The father is responsible for providing for the child's needs.

Relocation to Abroad with Child

Although the Indian legal system does not have a formal procedure for relocation, the same legal rules that govern disputes over child custody would also apply to relocation problems. As previously stated, Indian Law places a high priority on the wellbeing of children as held in the judgement of *Abhijit Kundu v. Ratan Kundu & Associates*¹⁰ [(2008) 9 SCC 413]

The Supreme Court has always held that a child's best interests must come first. When reaching a judgment, the court must consider the child's wishes, and if the child is of sufficient age to make a well-informed decision, that want must be given weight. The custody of the kid must be decided on the primary criteria of the minor's welfare, it was said in the *Chandrakala Menon v. Vipin Menon* case¹¹.

General Principles Followed In Case Of Child Custody

"The Central Government, State Governments, the Board, and other agencies should, in accordance with Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015), as applicable, shall be guided by the following fundamental principles when implementing the provisions of Juvenile Justice Act, 2015, namely:

Principle of Presumption of Innocence

Any minor under the age of 18 should be presumed innocent of any malicious or criminal intent." This idea presumes that any illegal act committed by a minor or a minor was not done intentionally or maliciously. This regulation shall run concurrently with the proceedings and continue through the aftercare program. It only asserts that until shown otherwise, the presumption should be that the actor had no ill will against the victim, whether acting alone, under the influence of adults, or in the company of peers. That is to say, the presumption of innocence ought to be given to everything that fits this description.

Principle of Dignity and Worth

All people must be treated equally and with respect for their rights. This concept requires the JJ Act's participating agencies to treat children with dignity and respect, and to refrain from labeling, stigmatizing, or discriminating against them. "Additionally, it requires that from the time of the child's initial detention until the end of the aftercare, the authorities respect the child's personal identity and other relevant matters."

Principle of participation

In accordance with their age and developmental stage, Children have the right to be included in, and their input valued in, all decisions and discussions that pertain to them. Developing age-appropriate channels of communication, encouraging active participation in life choices, and offering locations for discussion and debate are all necessary to protect a child's right to be heard.

Principle of best interest

The greatest benefit of the child and their future development must always come first in all choices regarding the child. Children differ from adults in that they have different emotional and intellectual needs, as well as different physical and psychological maturation. The basis for children's diminished culpability in legal conflicts lies in these variances. Due to these and other characteristics, children must be treated differently, necessitating the establishment of a distinct juvenile justice system. For example, when dealing with child offenders, restorative justice and rehabilitation aims must take precedence over traditional criminal justice goals like repression and punishment in order to safeguard the child's best interests.¹²

The Family Obligation Principle

A youngster is first exposed to feelings like love and security in a family. Children are best cared for, nurtured, and protected by their biological families or, if necessary, by adoptive or foster families. A child's social and cultural norms are mostly instilled within the context of the family. The family is still vital as a part of and building block for all societies and communities, despite the fact that many family activities, such as education, health care, and entertainment, have been taken up by other social groups.¹³

Safety Principle

While in the care and protection system and beyond, the child must be protected from all forms of damage, abuse, and exploitation. abuse, neglect, etc. Furthermore, it forbids the state from enforcing restrictions in the name of a child's protection.

Positive Measures:

All available resources, including those of the family and society, must be marshalled to reduce children's vulnerabilities and the likelihood of intervention under this Act. These tools should be put to use to foster happiness, aid in the formation of personal identities, and make the world a better place for everybody. Aspects of wellness, learning, connection, earning a living, free time, imagination, and fun are all covered under the umbrella phrase "positive measures." The goal of the principle is to enable the child to create their own personal identity and to give them the tools they need to succeed in all processes related to their personal development.

Principle of Non-Stigmatizing Semantics

Avoid using accusatory language while communicating with children. Examples of banned words in dealing with juvenile offenders include the ones listed below. The words "inmate," "delinquent," "neglected," "custody," "indictment," "warrant," "summons," "trial," "conviction," "warrant," "trial," "charge sheet," "trial," "warrant," and "conviction" are all included.

Principle of non-waiver of rights

The request of the child, the child's agent, the Board, or the Committee for a concession of a basic right does not constitute a surrender of that right.

Principle of equality and non-discrimination

No child shall be subjected to discrimination on the basis of gender, race, national or ethnic origin, disability, health, status, employment, activity, or behavior that is illegal or contrary to the conduct of the child's parents or guardians, or the child's civil or political status. All children, according to this theory, should be provided with equal opportunities and care.

Principle of right to privacy and confidentiality

"Every minor has the right to privacy, including the right to be hidden from prying eyes, throughout the whole judicial process. No publication, magazine, newssheet, audiovisual medium, or other form of communication regarding any inquiry, investigation, or judicial procedure shall disclose the name, address, school, or any other information that could identify a child in trouble with the law, a child in need of care and protection, or a child

who is a victim or witness of a crime. No employee or stakeholder may discuss or divulge any matter regarding CNCP (Children Needing Care and Protection) or CCL (Children in Conflict with the Law) or their identity.¹⁴

Principle of institutionalization as a measure of last resort

Depriving a child of their freedom has a severe impact on their healthy development and seriously hinders their ability to reintegrate into society. Deprivation of liberty, such as arrest, detention, and jail, should only be used as a last option and for the shortest time possible in order to fully respect and preserve the child's right to development. A child should only be institutionalized as a last option after a thorough inquiry has been conducted. Institutionalization and detention in the juvenile justice system should be used primarily to ensure the offender stops engaging in criminal behavior as soon as possible.¹⁵

Principle of repatriation and restoration

Each child in the juvenile justice system has the right to be restored to the same social, economic, and cultural standing he had before to coming within the purview of this Act, if at all feasible. unless doing so would not be in his best interests. This principle ought to be read in conjunction with the one about family duty.¹⁶

Principle of fresh start

Every child has the potential to change for the better and must be given a second chance—a right to a fresh start—while offenders must be held accountable for their actions. The idea of a fresh start denotes a new chapter in a child's life who is in legal trouble. Unless under exceptional circumstances, all prior records of any kid involved in the juvenile justice system should be destroyed.¹⁷

Principle of diversion

Unless it is in the child's or society's best interest, measures for coping with minors who are in legal trouble without turning to court proceedings must be encouraged.

Principles of natural justice

“The right to a fair hearing, rules against bias, and the option for appeal are all important procedural elements that all persons and organizations acting in a judicial capacity under this Act” must uphold.¹⁸

Welfare of childre

The wellbeing of the child remains the primary issue, regardless of the statutory position or law. The children are not only their parents' toys, as the Supreme Court noted in *Jacob v. Jacob*¹⁹

“In today's evolving social climate, parental absolute control over their children's futures and daily lives has given way to the concern of their welfare as people. The only way to gauge a child's welfare is through their level of financial or physical comfort. Welfare must be understood in its broadest sense. Along with bodily wellbeing, consideration must be given to moral and religious welfare.”²⁰

Though they have a place, material concerns are only incidental. A child's character, personality, and abilities can only grow if they are provided with stability, security, loving and understanding care and direction, as well as warm and caring interactions.

The welfare concept must be followed when a child or any other person who needs help taking care of himself or their property is placed under guardianship, according to Section 13 of the Hindu Minority and Guardianship Act, 1956. The law stipulates that any guardian who is chosen, whether by the parents, their will, or the law, must be chosen after considering whether or not the choice is made for the welfare and best interests of the kid and would not hurt the child.

The meaning of Section 13 of the 1956 Hindu Minorities and Guardianship Act has evolved throughout the years. The dynamics around this idea of the “Welfare Principle” have been outlined in many ways in the recent decisions mentioned above, and it is crucial to follow these rulings to safeguard the child's best interests, which is the core of this legislation. The reader will learn the justifications for considering welfare principles as well as when and when not to do so through this essay. In order to provide the reader with a more comprehensive response to any situational questions they may have, many legal decisions are mentioned.

Factors to be taken into account:

1. The child's wishes, if they can be made when the child is old enough to do so.
2. The child's age is an important consideration when deciding whether to grant someone guardianship. A mother is typically chosen as the guardian if the child is extremely young.
3. The child's gender must be taken into consideration while choosing a guardian. It is vital for the guardian to live with a female when the child is a girl.
4. Information about any drugs the child could need should be given to the person receiving guardianship.

5. When appointing a guardian, religious and cultural considerations must be made. A person of the same religion is typically assigned guardianship of a child so that the child develops his or her own religious convictions.
6. Prior child-handling experience is taken into consideration. Preference is given to those who have experience caring for children, are familiar with their routines, and can provide good care.
7. No one is appointed as a guardian if they have ever been the subject of civil or criminal proceedings that would have resulted in a court order prohibiting them from caring for others.
8. The family's financial situation of the person requesting guardianship. A guy who can support his family, including his child, is typically preferred by the court.

Guardianship

A notion or relationship known as “guardianship” was developed in response to the inherent inability of infants, people with impaired mental capacity, and occasionally other categories of people to handle their own affairs. A person who is appointed as a guardian has the responsibility and legal authority to look after another person's physical or financial needs, including those of a child, disabled person, elderly person, etc.²² Ward is a term used to describe anybody who is someone else's responsibility. According to family law, a guardian is a person who looks after a person under “the age of 18 and his personal affairs because he is unable to handle them on his own.

Who Are Guardians and What Are His Rights?

A guardian is a person who” has significant influence over the lives of the kids. He/she assumes all of the responsibilities, rights, and authority that come with raising that child. A guardian may be appointed by the court or be defined as natural, by relationship (testamentary), or by other criteria. A guardian's rights include the following:

1. Protective custody,
2. Parental autonomy in religious upbringing,
3. Inalienable right to an education,
4. Possession of the Legally Protected
5. Legal protection against excessive punishment,
6. Advocate for the child's behalf in court,
7. Recoup your legal fees from the minor's assets,
8. To recoup costs associated with the minor's basic needs, file a lawsuit once he becomes 18.
9. If it's in the child's best interest, the dispute should be sent to arbitration.

The Guardian and Wards Act governs the processes of appointing a guardian, providing for their care and custody, and handling their property. “The Hindu Minority and Guardianship Act details the duties of natural guardians, such as handling the minor's finances. Islam's guardianship law is precedent-driven.

Guardianship Under Hindu Law”

Concerning guardianship law, the Dharmasastras make no mention of it. The courts developed guardianship law throughout the British era. It has been determined that the father is the children's natural guardian, and that the mother will take over that role after he passes away. No one else is permitted to serve as the children's natural guardian.

Hindu law likewise adopted the concept of testamentary guardians: “It was acknowledged that the State, acting in its capacity as *parens patrie*, held the highest guardianship over young children, which was exercised by the courts. Hindu law regarding guardianship of minors was established and updated in 1956 with the passing of the Hindu Minority and Guardianship Act. This may be discussed under the following headings: Person (i), property (ii), *de facto* guardians (iii), and affinity (iv) guardianship of children. Hindu law regarding guardianship of minor children was updated, legislated, and defined with the passing of the Hindu Minority and Guardianship Act in 1956. According to Section 4(b) of the Act, everyone under the age of eighteen is deemed a minor.” He is viewed as a person who requires protection since he is flawed physically and cognitively and is immature.

Sections 6 to 9 discuss the idea of the numerous guardian kinds recognized by Hindu law, as well as the guardian's obligations and privileges, in addition to his obligations and constraints.

In certain circumstances, one parent may be appointed as the child's legal guardian:

Example 1: If a couple has a boy or a girl who is not married (legitimate), the father will be the child's first guardian, followed by the mother. However, if the child is under the age of five, custody will always belong to the mother unless the father, before his death, named another person as the child's guardian.

Example 2: If a couple has an illegitimate kid, whether a boy or a girl, the mother is the child's first guardian and the father is the child's second, unless the mother, before she passed away, designated someone to be the child's natural guardian.

Example 3—His husband will serve as the daughter's guardian if the couple has a daughter who is married.

Removal of A Guardian

According to Section 13 of the Hindu Minority and Guardianship Act, 1956, the court has the authority to discharge any guardian:

If any of the following three conditions are met:

1. He ceases to be a Hindu;
2. He has become a hermit or an ascetic; and
3. His interests are at odds with those of the minor, the court may order his removal. While making such decisions, the minor's wellbeing comes first.

Guardian Under Muslim Law

“Islamic guardianship and custody law is based on a few ahadis and a few chapters from the Koran. The Koran, the De facto, and other sources of Muslim law have clear provisions for guardianship of a minor's property, but guardianship of the minor's person is only assumed.” The following provisions of guardianship and custody legislation would be addressed:

1. The Protector's Might
2. Influence of estrangement,
3. Tenant Approval Authority,
4. The legal authority to act on a minor's behalf in commercial matters,
5. The ability to enforce a divide,
6. Capacity for taking on debt and making legal commitments.

Despite the lack of codification in Muslim law, there are principles for every area of life, including guardianship. These include natural guardians, testamentary guardians, and courtappointed guardians. It also includes the very important and precisely defined in Muslim law concepts of custody (including de facto custody and guardianship).

Guardian Under Christian Law

The Guardianship and Wards Act of 1890 governs Christian law because it has any special laws of its own. Sections 19 to 29 and other sections cover the title, responsibilities, powers, and constraints of the guardian.

“According to Section 17 of the aforementioned Act, the court must take the circumstances into account while appointing a guardian. When appointing or declaring a guardian of a child, the Court shall follow the requirements of this section, taking into account what seems to be for the minor's welfare under the legislation to which the minor is subject.

(2) The Court will consider the minor's age, gender, and religion, the prospective guardian's capacity and proximity of kin to the minor, the desires of the dead parent (if any), and the proposed guardian's present and past ties with the minor or his property.

(3) If the kid is old enough to have an understandable choice, the Court may give weight to that desire.

If certain criteria are satisfied, the Court will not appoint guardians according to Section 19. The Court may not appoint or proclaim a guardian of the property of a minor whose estate is administered by a Court of Wards, and nothing in this Chapter gives the Court the authority to do so.

(a) Of a married underage girl whose husband is not deemed incompetent to be her guardian by the Court; or
 (b) Of a minor if the child's father is alive and not deemed incapable by the Court to act as guardian of the person, or

(c) A minor whose estate is managed by a court of wards with jurisdiction to appoint a guardian of the child's person.

S.24. Responsibilities of the Person's Guardian. -A guardian of the person is responsible for the ward's care and must consider his sustenance, health, and education, as well as any other requirements imposed by the law to which the ward is subject.

S.25. The guardian has legal responsibility for the ward: 1) If a ward runs away or is taken from the care of a guardian, the court may issue a restitution order and the guardian can be detained and given custody of the ward to carry out the restitution order.

(2) The Court has the same power to make an arrest that a Magistrate of the first class has under Section 100 of the Code of Criminal Procedure, 1882.”

(3) A guardianship does not automatically end if a ward lives with someone against the wishes of his guardian who is not also his guardian.

The court determined in learned case of Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka that the legal rules governing a minor's custody are well established. It is a wellknown fact that every issue involving a minor must be seen only through the lens of the minor's welfare and best interests. When hearing a matter involving a juvenile, the court has a special responsibility to look out for the child's best interests and protect his or her rights. When making a custody determination, the Court's only concern should be the child's best interests.

Guardian Under Parsi Law

There is no general rule governing guardianship under Parsi law, but it is still permissible under a Hindu statute and by custom for select statistically insignificant categories of people, for whom they must apply in

accordance with the Guardians and Wards act of 1890. Since there are no adoption laws in the Muslim, Parsi, or Christian faiths, when a juvenile child in foster care turns 18, he is free to end all of his relationships, and the legislation that applies to the guardian is from another country. When a minor in foster care reaches adulthood, he is free to cut all ties. Additionally, such a child is not legally entitled to an inheritance. Under the aforementioned Act, Adoption of Indian children by foreigners requires a court filing. If the court grants permission for the child to be transported abroad, the adoption will take place in accordance with The Foreign Legislation Or The Law Applicable To The Guardian.

Conclusion

One of the most crucial tools for empowering children is legislation. It displays the state's dedication to advancing a perfect and progressive set of values. Some significant changes in child rights law, policy, and practice have occurred in recent years. "The adoption of the United Nations Convention on the Rights of the Child in 1989 marked a significant turning" point in the global debate over children's rights, with a rights-based approach increasingly gaining traction. The courts have taken nongovernmental organizations' actions and tactics into account when advising on policy. In the event of a custody dispute, the court will look to the personal law of the parents at issue to decide who will have physical custody of the kid. However, the best interests of the child will always take precedence over the parents' wishes. The religious and philosophical practices of Indians span a broad spectrum. Marriage and divorce, as well as inheritance and guardianship, are within the purview of several personal law systems. Similar to other areas of family law, guardianship of a minor child is not standardized. The Guardians and Wards Act of 1890, Muslim Law, and Hindu Law are all distinct legal systems that are still widely used today. In 1956, lawmakers in India established the Hindu Minority and Guardianship Act. The father of a minor Hindu boy and the father of a minor Hindu girl are the children's first legal guardians. The mother is the natural choice as a guardian second only to the father. The Supreme Court has recently held that a juvenile Hindu's biological parents are both legally responsible for their upbringing. The mother need not take precedence over the father as the child's natural guardian. Guardianship is a relevant subject matter under Hindu law and the purpose behind the legislation that has been constructed for this subject matter is to take definite and proper care of the minor individuals. The majority of the cases that have been discussed in this article show an inclination towards the welfare of the minor as provided under Section 13 of the Hindu Minority and Guardianship Act, 1956. In Muslim law, the father is given priority. Also, the distinction between legal custody and guardianship is made clear. Sunnis believe that a father is the best choice for guardianship, which in most cases means property guardianship and, in his absence, an executor. When a father dies without appointing an executor, the responsibility of guardianship falls on the paternal grandpa. While he is still alive, both institutions agree that only the father may act as guardian. After the father's death, the woman still isn't given legal custody of the kid. A guardian may be appointed by the court, named in a will, or be the child's natural parent. When considering guardianship, it's important to look at the minor's person and his property separately. Usually, you can't entrust one to another individual. However, personal law cannot be ignored entirely when deciding on a custody arrangement for a kid since it is crucial to the child's well-being. Neither Christian nor Parsi personal law addresses issues of guardianship or minors. There is also no clear law governing the situation. The father is automatically considered to be the legal guardian and financial manager of his children. The father dies, and the mother is assumed to take on the role of guardian. A testamentary guardian must be appointed for minor children in Christian and Parsi households under Section 60 of the Indian Succession Act 1925. The issue of the mother naming a guardian in her will is not discussed. The Guardians and Wards Act of 1890 and Indian personal law both have implications for the rearing of a kid. If a kid cannot get welfare without custody being granted, then all other personal law practices and norms are secondary. Ultimately, the court will determine who will have custody of the child, although parents and children will be given precedence and welfare of child will be thought.

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