



DAYANAND COLLEGE OF LAW, LATUR  
FAMILY LAW I  
LLB I

# **The Hindu Minority & Guardianship Act, 1956**

## **Preliminary –**

This Act was passed in 1956 & came into force from **25<sup>th</sup> August 1956**. It applies to whole of India, except the state of J & K ( also to Hindus domiciled in the territories to which this Act extends, who are outside the said territories). It is both codifying & supplemental enactment. It deals with the law relating to Minority & Guardianship among Hindus. ( 13 Sections ).

**The Indian Majority Act, 1875 & The Guardians & Wards Act, 1890** are the other Statutes, which deal with the minority & guardianship.

**Object-** To provide for the effective governance of the institution of minority & guardianship & also to provide law relating to these institutions.

# MEANING OF MINORS & GUARDIANS

- **Preliminary-**
- **Manu** opines that minority ends at 16. the king should keep minors estate under his custody so long his minority does not come to an end.
- **Minor (S.4)-**
- Minor means a person who has not completed the age of **18 years** ( S.3 of Indian Majority Act,1875 is similar) & in case, any guardian is appointed by the court under the Guardians & Wards Act, 1890 to look after minors person or property, the minority extends till attaining the age of **21 years**.

A guardian is defined under **Section 4 (b) of The Hindu Minority and Guardianship Act, 1956**

"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, (Testamentary Guardian)*
- *(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;*

## Natural Guardian and their powers

Defined under **Section 6** of the **Hindu Minority and Guardianship Act, 1956**

If it is a legitimate minor child then the guardianship is with father and after him the mother But If the child is less than 5 years old then the custody of the child is generally with the mother.

- **section 7**

In case of adopted minor child also the adoptive father is the natural guardian and after him the mother

- If the minor child is illegitimate then the guardianship is with mother and after her the father.
- In case of a minor married girl-her husband (if husband is also minor then Mother/Father of girl)
- Disqualification from natural guardianship
  - (a) if he has ceased to be a Hindu, or
  - (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)

## **Powers of Natural Guardian (Section 8)**

- To do all acts which are necessary or reasonable and proper for the benefit of the minor, or for the benefit of the minor's estate but cannot bind the minor under a contract.
- Guardian can lease the property but not for more than 5 years or for a term which extends more than a year of the date of the minor attaining majority.
- Guardian cannot transfer/ mortgage/ charge/ sale/gift/exchange any immovable property in name of the minor without prior permission of court. The court will grant such permission only if there is a necessity or there is an evident advantage to the minor.

## **Ram Krishan Gupta v. Nootan Agarwal (2007)**

- The mother, as guardian of property of minor sons, applied for sale of vacant plots belonging to minor sons. In fact, she wanted to sell these plots and with the sale proceeds buy built flats in an established residential colony where most of her relatives also had flats.
- While the lower court denied permission, on appeal the court held that the sale of vacant land to buy flats in the names of the sons in a residential colony where most of their relatives also had flats, would be in their interest and hence permission was granted
- If the guardian makes a contract regarding the guardian or his immovable property which violates any of these conditions then the contract shall be voidable at the instance of minor.

## Testamentary guardian and their powers (Section 9)

- There is a **Father(F)** and **Mother(M)**
- **F** died and appointed **X** as guardian but **mother(M)** is alive then **M** is the guardian because she is the natural guardian Later **M** died (without appointing a guardian) then **X** would be the guardian.
- But if **M** died and appointed **Y** as the guardian in her will then **Y** would be the guardian and not **X**.
- A testamentary guardian has the right to act as the 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

## **Court Appointed Guardian And Court of wards appointed Guardian**

If there are no natural guardian or testamentary guardian then court will appoint the guardian.

## **Other Provisions of Hindu Guardianship and Minority Act, 1956**

### **Section 10-**

- *A minor can be a guardian of another minor but cannot be guardian for another minors property.*
- Example-if mother is 17 years old and the child is 1 year old, they both are minor but still one minor (mother) will be guardian of another minor (her child) but she will not be guardian of the minors property.

## Section 11-

➤ De facto guardian not to deal with minors property. 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.

➤ A de facto guardian is a person who takes continuous interest in the welfare of the minor's person or in the management and administration of his property without any authority of law.

## Section 12-

➤ Guardian not to be appointed for minors undivided interest in joint family property. 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.

## Section 13-

Welfare of minor to be paramount consideration.

(1) In the appointment of 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.

## **Kirtikumar Joshi v. Pradip Kumar Joshi (1992)**

- Custody of two minor children was sought by father as also by maternal uncle.
- Mother of the children died an unnatural death and the father was facing charge under section 498-A of the IPC Children were staying with the maternal uncle and they also expressed their desire to stay with him and not with the father The court granted custody in favour of maternal uncle.

## **Ram Nath v. Ravi Raj Dudeja (2006)**

- A custody dispute between the father and the maternal grandparents. The mother of the minor had died under suspicious circumstances, and the father was tried under s. 304 of the Indian Penal Code, 1860, and convicted by the trial court, but acquitted by the appellate court. When the child's father was taken into custody, the child was only four years old, and ever since then, he was being looked after very well by the maternal grandparents.
- The child who was by now sixteen also preferred to live with maternal grandparents. The court held that the interest of the child lies with the grandparents and not the father.