

The Guardians and Wards Act, 1890

February 12, 2013

Chapter I – Preliminary

1. Title, extent and commencement.-

(1) This Act may be called the Guardians and Wards Act, 1890.

(2) It extends to the whole of India ¹[except the State of Jammu and Kashmir] ²[***]; ³[***].

(3) It shall come into force on the first day of July, 1890.

1. Subs. by Act 3 of 1951, sec. 3 and Schedule, for "except Part B States".

2. Repealed by the A.O., 1948, for the words "inclusive of British Baluchistan".

3. The word "and" omitted by Act 40 of 1949, sec. 3 and Sch. II.

2. (Repealed by the Repealing Act, 1938 (1 of 1938), sec. 2 and Schedule)

(Repealed by the Repealing Act, 1938 (1 of 1938), sec. 2 and Schedule)

3. Saving of jurisdiction of Courts of Wards and Chartered High Courts.-

This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by ¹[any competent Legislature, authority or person in ²[any State to which this Act extends]]; and nothing in this Act shall be construed to effect or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by ³[any High Court ⁴[***]].

1. Subs. by the A.O., 1937 for "the Governor-General in Council or by a Governor or Lieutenant-Governor in Council".

2. Subs. by Act 3 of 1951, sec. 3 and Sch., for "Part A States and Part C States".

3. Subs. by the A.O., 1937, for "any High Court established under the Statutes 24 and 25 Victoria, Chapter 104 (an Act for establishing High Courts of Judicature in India)".

4. The words "established in Part A States and Part C States", omitted by Act 3 of 1951, sec. 3 and Sch.

4. Definitions.-



In this Act, unless there is something repugnant in the subject or context-

(1) "Minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is to be deemed not to have attained his majority.

2. "Guardian" means minor for whose person or property or both there is a guardian.

3. "Ward" means a minor for whose person or property or both there is a guardian.

4. "District Court" has the meaning assigned to that expression in the code of Civil Procedure, 1882 (14 of 1882)¹, and includes a High Court in the exercise of its ordinary original civil jurisdiction,

²5. "The Court" means-

(a) The District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian, or

(b) Where a guardian has been appointed or declared in pursuance of any such application-

(i) The Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian, or

(ii) In any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides, or

(a) In respect of any proceeding transferred under Section 4-A, the Court of the officer to whom such proceeding has been transferred.

(1) "Collector" means the chief officer in charge of the revenue-administration of a district and includes any officer whom the State Government, by notification in the official Gazette may, by name or in virtue of his office, appoint to be a Collector in any local area or with respect to any class of persons, for all or any of the purposes of this Act.

³[***]; and

(2) "Prescribed" means prescribed by rules made by the High Court under this Act.

1. See now the Code of Civil Procedure, 1908 (5 of 1908).

2. Subs. by Act 4 of 1926, sec. 2, for the original clause (5).

3. Clause (7) omitted by Act 3 of 1951, sec. 3 and Schedule.

4A. Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.-

¹[**4A. Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.**—(1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a district court, or authorise the



Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

2. The Judge of a district court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (1).

3. The Judge of a district court may at any stage transfer to his own Court or to any officer subordinate to him empowered under sub-section (1) any proceeding under this Act pending in the Court of any other such officer.

4. When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purpose of this Act, be deemed to be the Court which appointed or declare the guardian.

COMMENTS

(i) The term 'guardian' according to the section implies that it includes testamentary, certified, natural or de facto guardians too and not only statutory guardian; *Abdul Karim v. Akhtari Bibi*, AIR 1988 Ori 276.

(ii) The term 'guardian' does not necessarily imply that it has to be a natural person, even registered societies too can act as guardians in case of orphans.

(iii) The term guardian is used both by Hindus as well as Muslims and has nothing to do with their respective religions. A Muslim mother too can apply under section 25 of the Act for the custody of her child when the child is removed from her custody by the father who is the natural guardian like a Hindu mother can. A Muslim mother also has a right of Hizhat under the Mohamedan law; *Abdul Karim v. Akhtari Bibi*, AIR 1988 Ori 276.

(iv) The welfare of the minor child is of paramount consideration in the appointment of a guardian and Guardians and Wards Act, 1890 does not provide what the custody of child of any age should be with the mother only unlike section 6(a) of the Hindu Minority and Guardianship Act, 1956 which provides that the custody of child below five years of age should be with the mother only, because in some cases mother may be unfit to provide all the love, care, comfort for a child of such tender age; *Raj Kumar Gupta v. Barbara Gupta*, AIR 1989 Cal 165.

1. Ins. by Act 4 of 1936, sec. 3.

Chapter II – Appointment and Declaration of Guardians

5. Power of parents to appoint in case of European British subjects.-

(Rep. By the Part B States (Laws) Act, 1951 (3 of 1951), sec. 3 and Schedule.

6. Saving of power of appoint in other cases.-

In the case of a minor ¹[***], nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property or both, which is valid by the law to which the minor is subject.

1. The words "who is not an European British subject", omitted by Act 3 of 1951, sec. 3 and Sch.

7. Power of the Court to make orders as to guardianship.-

(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made- Appointing a guardian of his person or property or both, or declaring a person to be such a guardian the Court may make an order accordingly.

An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

Where a guardian has been appointed by will or other instrument or appointed or declare by the Court, an order under this section appointing or declaring another person to be guardian in his stand shall not be made until the powers of the guardian appointed or declare as aforesaid have ceased under the provision of this Act.

COMMENTS

(i) It is true that father being a natural guardian of a minor child has a preferential right to claim custody of his son. However, the paramount consideration is the welfare of the minor and not the legal right of a particular party; *Goverdhan Lal v. Gajendra Kumar*, AIR 2002 Raj 148.

(ii) Minor child expressed her willingness to stay with natural grandparents. The Court considers interest and welfare of minor child and directed custody of child to her maternal parents; *M.K. Hari Govindan v. A.R. Rajaram*, AIR 2003 Mad 315.

(iii) 'Declaration' of a guardian by the Court is recognition of pre-existing rights of that person according to the will of the last guardian of the minor child whereas in 'appointment' there is no such pre-existing right and a person has to apply to the Court to be appointed as a guardian.

(iv) Welfare of the minor child is of paramount consideration in the appointment of a guardian. The term guardian has to be taken in its widest possible sense. It has to be measured not only in terms of money and physical comfort but also should include moral and ethical welfare of the child. Welfare of the child depends on facts and circumstances of each particular case; *Bimla Devi v. Subhash Chandra Yadav*, AIR 1992 Pat 76, see also *Elizabeth Dinshaw v. Arvand M. Dinshaw*, AIR 1987 SC 3.

(v) The term custody should not be interpreted in its strict sense as physical custody. Custody means custody in the sense of supervision and control over the child. In some cases of recognized institutions for orphans the children have to be kept in the care of suitable private persons or private nursing homes either because the institution does not have proper facilities for healthy upbringing of the child or it is undergoing some treatment in some nursing home and in these cases even though the child is not in actual physical custody of the institution they are deemed to be in custody of the recognized institution; *Jay Kevin Salerno (in re:)*, AIR 1988 Bom 139.

(vi) The father's right to the custody of his minor child is no longer absolute, it is circumscribed by the consideration of the welfare of the minor. The legal right or financial affluence is not



decisive but the welfare of the minor which is decisive for the claim of custody; A.V. Venkatakrisnaiah v. S.A. Sathyakumar, AIR 1978 Kant 220. See also Tarun Ranjan Majumdar v. Siddhartha Datta, AIR 1991 Cal 76; Vijayalakshmi v. Inspector of Police, Karur Police Station, Karur, AIR 1991 Mad 243.

(vii) In case of dispute between mother and father for the custody of the child the Court is expected to strike a just and proper balance between the requirements of welfare of the minor child and the rights of the parents over the minor child. The Court should also take into account the preference of the minor child to stay with either parent or grandparent if he is old enough to form an opinion; S. Abboy Naidu v. R. Sundara Ram, AIR 1989 Mad 129.

(viii) The claim for custody of a child by any person should be for bona fide reasons, i.e., out of genuine love and affection for a healthy upbringing of the child in a congenial atmosphere. It should not be for ulterior purposes or to avoid giving maintenance to the mother who is competent to look after the child with all love, care and affection. The only consideration of the Court should be welfare of the child; Dolku Nihal Singh v. Nihal Singh Karnail Singh, AIR 1992 HP 3; See also Thrity Hoshie Dolikuka v. Hoshiam Dolikuka, AIR 1982 SC 1276.

(ix) The parent or grandparent of the child whose custody has been given to the other parent has visitation rights at frequent intervals. In case where the child has attained the age of five years the father of the child can claim custody of the child from the mother who had been given the custody of the child because of its tender age; Mohamed Jameel Ansari v. Ishrath Sajeeda, AIR 1983 AP 106.

(x) Adoption of orphaned children should be first offered to Indians and if any Indian is not coming forward to adopt the child the recognized institution can offer it to foreigners for intercountry adoption. The Supreme Court has laid down guidelines for the adoption of children from recognized institutions; Laxmi Kant Pandey v. Union of India, AIR 1986 SC 272. The child should be in the custody of the recognized institution for a period of at least one month before it can give in the child for adoption. An unrecognised institution or agency can give a child for adoption only through a recognized agency, reaffirmed in; Jay Kevin Salerno (in re:), AIR 1988 Bom 139; Society of Sisters of Charity St. Gerosa Convent v. Karnataka State Council for Child Welfare, AIR 1992 Kant 263; K.S. Council for Child Welfare v. Society of Sisters of C.S.G. Convent, AIR 1994 SC 658.

(xi) Section 7 of the Guardians and Wards Act, 1890 and section 9 of the Hindu Minority and Guardianship Act, 1956 are not inconsistent with each other and operate in two different fields; Shoba Kshirsagar v. Janaki Kshirsagar, AIR 1987 MP 145.

8. Persons entitled to apply for order.-

An order shall not be made under the last foregoing section except on the application of the person desirous of being, or claiming to be, the guardian of the minor, or any relative of friend of the minor, or the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or the Collector having authority with respect to the class to which the minor belongs.

COMMENTS

Section 8 of the Act is invoked only when the person desirous of claiming guardianship of the minor child makes an application to the Court. If the person does not file an application for guardianship, he cannot claim guardianship; Laxmikant Pandey v. Union of India, AIR 1986 SC 272.



9. Court having jurisdiction to entertain application.-

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

If the application is with respect of the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in the place where he has property.

If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly on conveniently by any other District Court having jurisdiction.

COMMENTS

(i) The expression 'ordinarily resides' signifies something more than a temporary residence. Even though the period of such temporary residence may be considerable, the place where the minor generally resides and would be expected to reside but for special circumstances may be taken to be the place denoting a place where the minor ordinarily resides; Jagdish Chandra Gupta v. Vimla Gupta, AIR 2003 All 317.

(ii) The words 'ordinarily resides' are advisedly used. These words should be given their natural meaning so as to advance the intention of the legislature; Dr. Giovanni Marco Muzzu (in re:), AIR 1983 Bom 242.

(iii) The legislature by the expression 'ordinarily resides' meant that it is something more than a temporary resident. A temporary resident at a particular place under compulsion however long cannot be termed as place of 'ordinarily resides'. The term 'ordinarily resides' does not mean casual or factual residence of the minors; K.C. Sashidhar v. Roopa, AIR 1993 Kant 120.

(iv) The words 'ordinarily resides' are not identical and do not have the same meaning as "residence at the time of application". The legislature used the words 'ordinarily resides' probably to avoid the mischief like the minor may be secretly removed to some other place and kept at that place under compulsion, the application for custody of minor has to be filed in ordinary place of residence of minor. Residence at the time of application is not decisive of jurisdiction; Konduparthi Venkateswarlu v. Ranavarapu Viroja Nandan, AIR 1989 Ori 151.

(v) When a person leaves his residence for good with no intention of returning and goes to some other place to live, the latter becomes his ordinary place of residence; Dr. Giovanni Marco Muzzu (in re:), AIR 1983 Bom 242.

(vi) It is not the place of residence of the natural guardians that gives jurisdiction to the Court under section 9(1) but it is the place of ordinary residence of the minor; Aparna Banerjee v. Tapan Banerjee, AIR 1986 P&H 113.

10. Form of application.-

(1) If the application is not made by he Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure, 1882 (14 of 1882),¹ for the signing and verification of a plaint, and stating, so far as can be ascertained-

the name, sex, religion, date of birth and ordinary residence of the minor,



where the minor is a female, whether she is married and if so, the name and age of her husband,

the nature, situation and approximate value of the property, if any, of the minor,

the name and residence of the person having the custody or possession of the person or property of the minor,

what near relations the minor has and where they reside,

whether a guardian of the person or property or both, of the minor has been appointed by any person entitled to claiming to be entitled by the law to which the minor is subject to make such an appointment

whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property or both, of the minor and if so, when, to what Court and with what result,

whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both.

Where the application is to appoint a guardian, the qualifications of the proposed guardian.

Where the application is to declare a person to be a guardian, the grounds on which that person claims,

The cause which have led to the making of the application, and

Such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

If the application is made by the Collector, it shall be by letter addressed to the Court forwarded by post or in such other manners as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

COMMENTS

(i) Application not supplying details and addresses of near relation of minor and taking steps to serve them as required under Civil Rules of 1957 was held improper; *Jagdish Chander Gupta v. Vimla Gupta*, AIR 2003 All 317.

(ii) An application for guardianship has to be attested by two witnesses as laid down in section 10 of the Guardians and Wards Act, 1890. The Court at the time of presentation of the application is competent to dismiss the application in limine if it is not in accordance with law. But once the application has been entertained and evidence recorded and the party has not raised any objection, the party cannot invoke the provisions of section 10 later on in appeal, when trial is completed and judgement pronounced; *Aisha v. Bashir Ahmad*, AIR 1987 J & K 68.

(iii) Non-mention of names of near relations of the minor under section 10(1)(a) will not make the application not maintainable particularly when the mother is the applicant; *Abul Karim v. Akhtari Bibi*, AIR 1988 Ori 279.



1. See now the Code of Civil Procedure, 1908 (5 of 1908).

11. Procedure on admission of application.-

(1) If the court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof and cause notice of the application and of the date fixed for the hearing.

To be served in the manner directed in the Code of Civil Procedure, 1882 (14 of 1882) ¹on

the parents of the minor if they are residing in ²(any State to which this Act extends)

the person, if any, named in the petition or letter as having the custody or possession of

the person or property of the minor the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

any other person to whom, in the opinion of the Court special notice of the applicant should be given, and to be posted on some conspicuous part of the court-house and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

The state Government may, by general or special order, require that when any part of the property described in a petition under sec. 10, sec-section (1) is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

COMMENTS

Section 11 provides that before an order appointing a guardian is passed an opportunity has to be given to all persons having an interest in the minor of being heard and producing evidence showing where welfare of minor lies; Society of Sisters of Charity St. Gerosa Convent v. Karnataka State Council for Child Welfare, AIR 1992 Kant 263; See also Salamat Ali v. Majjo Begum, AIR 1985 All 29.

1. See now the Code of Civil Procedure, 1908 (5 of 1908).

2. Subs. by Act 3 of 1951, sec. 3 and Sch., for "a Part A State or a Part C State".

12. Power to make interlocutory order for production of minor and interim protection of person and property.-

(1) The Court may direct that the person if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it appoints,



and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

If the minor is a female who ought not to be compelled to appear in public, the claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

Any person to whom the temporary custody and protection of the property if a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property

COMMENTS

(i) By sub-section (1) of section 12, the Court is authorised to direct a person who has the custody of the minor but has not yet been appointed guardian to produce the minor in Court; *Kirtikumar Maheshakar Joshi v. Pradip Karunashakar Joshi*, AIR 1992 SC 1447.

(ii) If the Court has power under section 12 of the Act for the grant of temporary custody during the pendency of the proceedings it will have power as well to modify or vary that order if the circumstances so demand; *Narinder Kaur v. Parshotam Singh*, AIR 1988 Del 359.

13. Hearing of evidence before making of order.-

On the day fixed for the hearing of the application or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

COMMENTS

Parties have a right to produce evidence that the welfare of the minor child lies with them; *Salamat Ali v. Majjo Begum*, AIR 1985 All 29.

14. Simultaneous proceedings in different Courts.-

(1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those courts shall, on being apprised of the proceedings in the order Court or Courts, stay the proceedings before itself.

¹In any other case in which proceedings are stayed under sub-section (1), the Courts shall report the case to and to be guided by such orders as they may receive from their respective State Governments.

1. Subs. by the A.O. 1937, for the original sub-section (3).

15. Appointment or declaration of several guardians.-

(1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property or both, the Court may, if it thinks fit, appoint or declare them.

¹[***]

Separate guardians may be appointed or declared of the person and of the property of a minor.



If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

1. Sub-sections (2) and (3) omitted by Act 3 of 1951, sec. 3 and Sch.

16. Appointment or declaration of guardian for property beyond jurisdiction of the Court.-

If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian accept him as duly appointed or declared and give effect to the order.

17. Matter to be considered by the Court in appointing guardian.-

(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

In considering what will be for the welfare of the minor, the Courts shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

If the minor is old enough to form an intelligent preference, the Court may consider that preference.

The Court shall not appoint or declare any person to be a guardian against his will.

COMMENTS

(i) The Court is under a duty to appoint the most suitable person amongst the rival claimants for guardianship. Under section 17 of the Act a person who under the personal law would be entitled to the custody of the child in preference to anyone else should be appointed as the guardian. This, is however a flexible rule. The scope of section 17 of the Act is that the Court has to see who of the several applicants has a preferential right to be appointed as guardian of the minor under the personal law keeping also in view the welfare of the minor. According to Hanafi law mother is entitled to the custody of child below seven years of age but would lose that right if found unfit. Minor child should be fit enough to form an intelligent preference, held that mother has the capacity to look after the child; *Mohd. Ramzan Magrey v. Taja*, AIR 1983 J&K 70; See also *Mohd. Jameel Ahmed Ansari v. Ishrath Sajeeda*, AIR 1983 AP 103.

(ii) The Court should be guided by the sole consideration of the welfare of the minor, and the welfare of the minor in each case depends on facts and circumstances of each particular case. Father is the natural guardian of the minor, so is the mother. The rule that father should get custody of child is always subject to exceptions and not universally applicable. In claim of custody between mother and father, the Court does not always give custody to the father, it can deny him custody if he is found to be unfit. In the absence of mother too the father can be denied custody of the child if the welfare lies either with grandparents or other relative of the child. Held that the children would be scared to be in the custody of father who was accused of



murdering the mother and hence custody was given to maternal grandparents; *Bimla Devi v. Subhas Chandra Yadav*, AIR 1992 Pat 76.

(iii) Under Muslim Law father is entitled to the custody of son who is above seven years of age but this is subject to exceptions, i.e., if welfare lies with mother, she gets custody of the child but in certain cases father can get custody of the child. Mother was getting only Rs. 100 as maintenance and was unable to maintain herself. Held that ordinary rule of Muslim law should be adhered to and custody should be given to the father; *Farjanbai v. Ayub Dadamiya*, AIR 1989 Bom 357.

(iv) According to Hindu Law father is the natural guardian of a minor and in the next place mother is the natural guardian and mother too can be deprived of the guardianship if it can be shown that she is unfit to act as guardian; *Nirmal Jain v. The State*, AIR 1983 Del 120.

(v) In intercountry adoption, the petitioners are directed to give undertaking to take proper care, look after, properly educate and to bring up the minor as if it were their own child and to treat the said minor on an equal footing with his natural or adopted children, if any, in all matters of maintenance, education and succession; *Johannes Philipus Vadde Venee v. State of Rajasthan*, AIR 1990 Raj 124.

1. Sub-section (4) omitted by Act 3 of 1951, sec. 3 and Sch.

18. Appointment or declaration of Collector in virtue of office.-

Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property or both, of a minor, the order appointing or declaring him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property or both, as the case may be.

19. Guardian not to be appointed by the Court in certain cases.-

Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person of a minor who is married female and whose husband is not, in the opinion of Court, unfit to be guardian of her person,

¹[***] of a minor whose father is living and is not in the opinion of the Court, unfit to be guardian of the person of the minor; or

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

COMMENTS

If the father is living, then in view of section 19(b) thereof; no one else can be declared of appointed to be the guardian of the person of the minor, unless the Court is of opinion that the father is 'unfit' to be a guardian; *Raj Kumar Gupta v. Barbara Gupta*, AIR 1989 Cal 166.

1. The words "subject to the provisions of this Act with respect to European British subjects" omitted by Act 3 of 1951, sec. 3 and Sch.

Chapter III – Duties, Rights and Liabilities of Guardians

20. Fiduciary relation of guardian to ward.-

(1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by his act, he must not make any profit out of his office.

The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor and generally all transactions between them while the influence of the guardian still lasts or is recent.

COMMENTS

The mother would not be denied her right to relief even though she has filed the application for custody of children after 21/2 years; *Ran Prasad v. Poornima*, AIR 1985 NOC 14 (Del).

21. Capacity of minor to act as guardians.-

A minor is incompetent to act as guardian of any minor except his own wife or child or where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.



22. Remuneration of guardian.-

(1) A guardian appointed or declared by the Court shall be entitled to such allowances, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the State Government, by general or special order, directs.

23. Control of Collector as guardian.-

A Collector appointed or declared by the Court to be guardian of the person or property or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the State Government or of such authority as that Government, by notification in the official Gazette, appoints in this behalf.

24. Duties of guardian of the person.-

A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

25. Title and guardian to custody of ward.-

(1) if a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882 (10 of 1882).

COMMENTS

(i) To invoke section 25 of the Act, the sine qua non is a ward leaving or being removed from the custody of his guardian. A guardian can by voluntary agreement vest another person with the custody of his child such an agreement can be remarked and the guardian can also invoke section 25 of the Guardians and Wards Act, 1890 that the ward has been removed from his custody. But once a custody has been decreed or ordered by the Court, the guardian cannot alter or revoke such custody unilaterally and extrajudicially, but can only move the Court for the variation, revocation or suspension of the order; *Sibani Banerjee v. Tapan Kumar Mukherjee*, AIR 1990 Cal 4.

(ii) If the natural or legal guardian vests another person with the custody of his child, he can demand return of the child, but if the other refuses to hand over the child, the child would be deemed to have been removed from the custody of the guardian so as to invoke section 25 of the Act. The maternal grandparents of the granddaughter were old, unable to maintain themselves, had misappropriated jewellery of the mother worth Rs. 7500, held that the child had been removed from custody of father and it is in the welfare of the child to return to her father; *S. Abboy Naidu v. R. Sundara Rajan*, AIR 1989 Mad 131.

(iii) The Court can order the return of the child if it feels that the welfare lies with the guardian. Whether the jurisdiction under section 25(1) is mandatory or directory, it can order a return only and only if it is of opinion that such return is for the welfare of the ward. The expression 'may' clearly invests the Court with the discretion to order or not to order return and 'may' order return only if it is of opinion that it will be for the welfare of the ward; *Rajkumar Gupta v. Barbara Gupta*, AIR 1989 Cal 166.

(iv) Where the child is in the factual custody of one who has no legal right and is detained against the will of the legal guardian, the child shall be deemed to have been removed by that other within the meaning of section 25(1). But change of custody can be ordered only if it is for the welfare of the child; *Tarun Ranjan Majumdar v. Siddhartha Datta*, AIR 1991 Cal 76.

(v) Welfare is to be considered in the widest sense of the term, though the father as natural guardian has a prima facie right to minor's custody this may be negated if infant's welfare lies in keeping him in his mother's or grandparents' custody because children cannot be treated as chattel or property; *Mohamed Khalid v. Zeenat Parveen*, AIR 1988 All 252.

(vi) For determining 'welfare' of the child the questions to be considered are: (a) Who would have the better care and better consideration for the welfare of the infant? (b) Where is he likely to be more happy? (c) By whom the physical and mental development and comfort of the child can be better looked after? (d) Who has not only the desire but a determination, not only concept but also capacity to provide for a better education and round the clock nursing of the child? (e) Who would be available by the side of the child when the child would need love and affection, the care and counselling, the protection and patting up? In this case the Court held that welfare of child lies with mother as she was working as a teacher in a reputed school while the father was still in the process of establishing his business and had no time and money to care for his child; *Jayant Barar v. Deepa Barar*, AIR 1994 NOC 269 MP.



(vii) Personal law of the applicants has also to be considered while considering the welfare of the child. According to Hanafi School of Mohamedan Law mother is entitled to the custody of her daughter until she attains puberty while according to Shajjii and Maliki Law the mother is entitled to the custody of the minor child until her marriage. Held that the mother was entitled to the custody of her minor daughter also according to personal law and also the welfare was with the mother even though she was not financially sound as father; *Suharabi v. D. Muhammed*, AIR 1988 Ker 30.

(viii) A father can be deprived of the custody of his child if it is proved: (a) that the father completely neglected to maintain the child and (b) he had remarried and the step-mother may not treat the child kindly which may have adverse effect on mental and physical growth of the child; *Jaswant Kaur v. Manjit Singh Marwah*, AIR 1985 Del 159; See also *Km. Sunita v. Shyam Kali*, AIR 1982 All 2.

(ix) Guardian includes every kind of guardian known to law and that not only actual physical custody but also constructive custody of the guardian. If the persons who are not legal guardians were intended to be excluded from invoking section 25 of Guardians and Wards Act, 1890, it would have been very easy by incorporating such a limitation into section 25 or even under section 4(2) of the Act; *Suresh Babu v. Madhu*, AIR 1984 Mad 186.

(x) While considering an application under section 25 of the Act it is open to the Court to make any arrangement relating to the minor which he considers to be in the best interest of the minor. The Court directed that the child should be sent to a Boarding School as the acrimonious atmosphere in the house would have a bad effect on the proper growth of the child; *Amrik Rai v. Satpal*, AIR 1983 P&H 304; See also *Meera Devi v. Shyam Sunder Aggarwala*, AIR 1985 Ori 65.

(xi) Even in guardianship cases, if assertions of immorality, adultery or living in adultery are made there should be the same standard of proof as has been applied in matrimonial cases; *Madhu Bala v. Arun Khanna*, AIR 1987 Del 81.

(xii) The mother of the minor was driven out of the house by the in-laws after the death of the father and the children were forcibly kept by them. It was held that as the mother was the natural guardian after the death of the father and also because the mother was in a better position to maintain the children, custody was directed to be given to mother; *Ram Prasad v. Poornima*, AIR 1985 NOC 14 Del; See also *Salamat Ali v. Majjo Begum*, AIR 1985 All 29.

(xiii) Mother was seeking maintenance from the father. Held that as mother was unable to maintain herself, the custody of children should be given to father; *Master Zubeen v. Principal Judge, Family Court, Lucknow*, AIR 1984 All 147.

1. See now section 97 of the Code of Criminal Procedure, 1973 (2 of 1974).

26. Removal of ward from jurisdiction .-

(1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

The leave granted by the Court under sub-section (1) may be special or general and may be defined by the order granting it.



27. Duties of guardian of property.-

A guardian of the property of a ward is bound to deal with as carefully as a man of ordinary prudence would deal with it, if it were his own and subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realization, protection or benefit of the property

28. Power of testamentary guardian.-

Where a guardian has been appointed by will or the other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable p

29. Limitation of powers of guardian of property appointed or declared by the Court.-

Where a person other than a Collector, or than a guardian appointed by will or other instruments, has been appointed or declared by the Court to be guardian of the property of award, he shall not, without the previous permission of the Court,- Mortgage or charge or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

COMMENTS

Guardian is bound by the order of the Court and is under an obligation to return the property of the minor heirs for whom he had acted as guardian. The guardian is responsible to the Court and is obliged to act in the best interest of the minor. The guardian cannot part with the property of the minor without the Court's permission and is not authorised to sell the property of the minor to its detriment; Vice Chancellor Sampurnanand Sanskrit Vidyalaya, Varanasi v. Brahm Gopal, AIR 1993 All 233; See also Gyasuddin v. Allah Tala Waqf Mausuma, AIR 1986 All 39.

30. Violability of transfers made in contravention of section 28 or section 29-

A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is violable at the instance of any other person affected thereby.

COMMENTS

Section 30 has no retrospective effect. The statutory prohibition against the disposal of property by certified guardian without sanction of the Court cannot refer to transactions antecedent to the Act.

31. Practice with respect to permitting transfer under section 29-

(1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission, and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

The Court may in its discretion attach to the permission the following among other conditions, namely:- That a sale shall not be completed without the sanction of the Court.

That a sale shall be made to the highest bidder by public auction before Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court subject to any rules made under this Act by the High Court, directs,

That a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and convenience as the Court directs.

That the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

Before granting permission to a guardian to do an act mentioned in section 29, the court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application

32. Variation of powers of guardian of property appointed or declared by the Court.-

Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject..

33. Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.-

(1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the person interested in the application as the Court thinks fit.

The guardian sitting in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.



34. Obligations on guardian of property appointed or declared by the Court.-

Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall, - If so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed engaging duly to account for what he may receive in respect of the property of the ward.

If so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such other time as the Court directs, a statement of the immovable property belonging to the ward, of the money and other movable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward.

If so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs.

If so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs, and

Apply for the maintenance, education and advancement of the ward and of such person as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be party, such portion of the income of the property of the ward as the Court from time to time directs, and , if the Court so directs, the whole or any part of that property

34A. Power to award remuneration for auditing accounts.-

¹[**34A. Power to award remuneration for auditing accounts.**—When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property.

1. Ins. by Act 17 of 1929, sec. 2.

35. Suit against guardian where administration-bond- was taken.-

Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such term as to security, or providing that any money received by or paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof.

36. Suit against guardian where administration-bond- was not taken.-



(1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

The provisions of such-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 4400 of the Code of Civil Procedure as amended by this Act, 1882 (14 of 1882).

1. See now Order XXXII, rules 1 and 4(2), in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

37. General liability of guardian as trustee.-

Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

38. Right of survivorship among joint guardians.-

On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivor until a further appointment is made by the Court.

39. Removal of guardian.-

The court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :- For abuse of his trust for continued failure to perform the duties of his trust, for incapacity to perform the duties of his trust, for ill-treatment, or neglect to take proper care, of his ward, for contumacious disregard of any provision of this Act or of any order of the Court, for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward.

For having an interest adverse to the faithful performance of his duties.

For ceasing to reside within the local limits of the jurisdiction of the Court.

In the case of a guardian of the property, for bankruptcy or insolvency, By reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject.

Provided that a guardian appoint by will or other instrument, whether he has been declared under this Act, or not, shall not be removed- For the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that person made and maintained the appointment In ignorance of the existence of the adverse interest, or for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian



40. Discharge of guardian.-

(1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

If the court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application is the Collector and the State Government approves of his applying to be discharged, the Court shall in any case discharge him

41. Cessation of authority of guardian.-

(1) The powers of a guardian of the person cease.- By his death, removal or discharge by the Court of wards assuming superintendence of the person of the ward, by the ward ceasing to be a minor in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit, or in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

The powers of a guardian of the property cease- by his death, removal or discharge, by the Court of Wards assuming superintendence of the property of the ward, or by the ward ceasing to be a minor.

When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present of the ward.

When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered

42. Appointment of successor to guardian dead, discharged or removed.-

When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

Chapter IV – Supplemental Provisions

43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders –

(1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the

Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the day, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1), or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, 1882 (14 of 1882)¹, in a case under sub-section (1) as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

1. See now Order XXXIX, rules 1 and 2 in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

44. Penalty for removal of ward from jurisdiction.-

If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

45. Penalty for contumacy.-

(1) In the following cases, namely :- If a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

If a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (C) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section.

If a person who has ceased to be guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3).

The person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until the undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and recommitted to the civil jail.

46. Reports by Collectors and subordinate Courts.-

(1) The Court may call upon the Collector, or upon any court subordinate to the court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of witnesses to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure, 1882 (14 of 1882)¹

1. See now the Code of Civil Procedure, 1908 (5 of 1908).

47. Orders appealable.-

An appeal shall lie to the High Court from an order made by a ¹[***]Court- under Section 7, appointing or declaring or refusing to appoint or declare a guardian, or under Section 9 sub-section (3) returning an application, or under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian, or under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto, or under Section 28 or section 29, refusing permission to a guardian to do an act referred to in the section, or under section 32, defining, restricting or extending the powers of a guardian, or under section 39, removing a guardian, or under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians or enforcing the order, or under section 44 or section 45, imposing a penalty.

1.The word "district" repealed by Act 4 of 1926, sec. 4.

48. Finality of others orders.-

Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, 1882 (14 of 1882)¹ an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

1. See now section 115 of the Code of Civil Procedure, 1908 (5 of 1908).

49. Costs.-

The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the court in which the proceeding is had.

50. Power of High Court to make rules.-

(1) In addition to any other power to make rules conferred expressly or implied by this Act, the High Court may from time to time make rules consistent with this Act- As to the matters respecting which, and the time at which, reports, should be called for from Collectors and subordinate Courts.

As to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted.

As to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in section 28 and 29.

As to the circumstances in which such requisitions as are mentioned in clause (a), (b), (c) and (d) of section 34 should be made.

As to the preservation of statements and accounts delivered and exhibited by guardians.

As to the inspection of those statements and accounts by persons interested.

¹As to the audit of accounts under Section 34-A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them.

as to the custody of money, and securities for money, belonging to wards,

As to the securities on which money belonging to wards may be invested.

As to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court, and

Generally, for the guidance of the Courts in carrying out the purposes of this Act.

Rules under clauses (a) and (I) of sub-section (1) shall not have effect until they have been approved by the ²(State Government) nor shall any rule under this section have effect until it has been published in the official Gazette.

1. Ins. by Act 17 of 1929, sec. 3.

2. Subs. by A.L.O. 1950, for the words "Provincial Government".

51. Applicability of Act to guardians already appointed by Court.-

A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. Amendment of Indian Majority Act-

(Rep. By the Repealing Act, 1938 (1 of 1938) section 2 and Schedule).



53. Amendment of Chapter XXXI of the Code of Civil Procedure.-

(Rep. By the code of Civil Procedure, 1908 (5 of 1908) section 156 and Sch. VI).

THE SCHEDULE.-

Enactment repealed.- (Rep. By the Repealing Act, 1938 (1 of 1938), section 2 and Schedule).

