

# The Hindu Minority and Guardianship Act, 1956

February 12, 2013

## 1. Short title and extent.-

ACT NO. 32 OF 1956 [25th August, 1956.]

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

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

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

## 2. Act to be supplemental to Act 8 of 1890.-

The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890 (8 of 1890).

## 3. Application of Act. —

(1) This Act applies —

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

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

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

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

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

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

(iii) any person who is convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

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



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

#### STATEMENT AMENDMENT

Pondicherry: In section 3, after sub-section (2), insert the following:—

“(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.”

[Vide Act 26 of 1968, sec. 3 and Sch; Pt. I (w.e.f. 5-9-1968).]

## 4. Definitions.-

In this Act, –

- (a) “minor” means a person who has not completed the age of eighteen years;
- (b) “major” means a person having the care of the person of a minor or of his property or of both his person and property, and includes –
  - (i) a natural guardian,
  - (ii) a guardian appointed by the will of the minor’s father or mother,
  - (iii) a guardian appointed or declared by a court, and
  - (iv) a person empowered to act as such by or under any enactment relating to any court of wards;
- (c) “natural guardian” means any of the guardians mentioned in section 6.

#### COMMENTS

Guardian: Meaning

If a person donates property to a minor and appoints a guardian to look after the property he would not be a guardian within the meaning of the Act; *Rajalakshmi v. Ramachandran*, AIR 1967 Mad 113: ILR (1967) Mad 338: (1966) 1 MLJ 420.

## 5. Over-riding effect of Act.-

Save as otherwise expressly provided in this Act, –

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



to any matter for which provision is made in this Act;

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

## 6. Natural guardians of a Hindu minor.-

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

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

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

(c) in the case of a married girl – the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

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

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)

Explanation.—In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother.

### COMMENTS

#### Consideration for guardianship

The controlling consideration governing the custody of the children is the welfare of the children and not the right of the parents; *Rosy Jacob v. Jacob Chakramakkal*, AIR 1973 SC 2090: (1973) 3 SCR 918: (1973) 1 SCC 840.

#### Father as a natural guardian

Father is the natural guardian of a minor. In the absence of father, mother is the natural guardian. The mother of the minor children was dead, but the father was not residing with the children, who were being looked after by the aunty. It was held that though father was not residing with his children, he is still alive, has not ceased to be a Hindu or renounced the world and has not been declared unfit. This does not authorise any other person to assume the role of natural guardian and alienate the minor's property; *Essakkayal Nadder v. Sreedharan Babu*, AIR 1992 Ker 200.

#### Mother as a natural guardian

(i) In the phrase "the father and after him, the mother" the word 'after' need not necessarily mean after the lifetime of father. In the context in which it appears in section 6(a) it means 'in the absence of ', the word 'absence' therein referring to the father's absence from the care of minor's property or person for any reason whatsoever. If the father is wholly indifferent to the matters of the minor or if by virtue of mutual understanding between the parents, the mother is



put exclusively in charge of the minor or if the father is physically unable to take care of minor for any reason whatsoever, the father can be considered to be absent and mother being a recognised natural guardian can act validly on behalf of the minor as the guardian. Such an interpretation will keep the statute within the constitutional limits otherwise the word 'after' if read to mean a disqualification of a mother to act as guardian during lifetime of father the same would violate one of basic principles of our constitution i.e. gender equality; *Githa Hariharan v. Reserve Bank of India*, AIR 1999 SC 1149.

(ii) Where the mother and father had fallen out and were living separately and the minor daughter was under the care and protection of her mother, the mother could be considered as the natural guardian of the minor girl; *Jajabhai v. Pathankhan*, AIR 1971 SC 315: (1971) 2 SCR 1: (1970) 2 SCC 717.

## 7. Natural guardianship of adopted son.-

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

## 8. Powers of natural guardian.-

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

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

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

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

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

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

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

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

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



ordinarily lie from the decisions of that court.

(6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

#### State Amendments

Assam: For modified application of section 8 of the Hindu Minority and Guardianship Act, 1956, see Assam Act 7 of 1977, sec. 8 (w.e.f. 15-6-1978).

Punjab: For modified application of section 8 of the Hindu Minority and Guardianship Act, 1956, see Punjab Act 5 of 1979, sec. 22 (w.e.f. 18-6-1979).

West Bengal: For the purposes of West Bengal Agricultural Credit Operations Act, 1973 (34 of 1973) any reference to court in section 8 of the Hindu Minority and Guardianship Act, 1956, shall be construed as reference to the collector and the appeal against the order of the collector shall lie to the Commissioner.

[Vide West Bengal Act 34 of 1973, sec. 8 (w.e.f. 15-11-1973).]

#### COMMENTS

##### Alienation of minor's property

Alienation of minor's property by natural guardian (Mother) of the minor, without obtaining permission of court for such alienation, is void ab initio; Subhashappa P. Meti v. Maroti L. Sawarkar, AIR 2006 (NOC) 608 (Bom).

##### Consideration for guardianship: Welfare of the child

(i) It is well settled principle that in matter relating to the custody of the minor child the interest and welfare of the child is the paramount consideration and not the convenience or pleasure of the parents; Kumar v. Jahgirdar v. Chetana K. Ramatheertha, AIR 2001 SC 2179.

(ii) Immovable property contemplated in section 8 means a minor's definite property and not his fluctuating indefinite interest in the joint family property. Interest is ever fluctuating depending upon exit and entry in the family by natural process or otherwise. It is only upon a partition that a definite share can be culled out. Undivided interest of a minor is left untouched. Section 8 is in pari materia with section 29 of Guardians and Wards Act; Naryan Laxman Gilankar v. Uday Kumar Kashinath Kaushik, AIR 1994 Bom 152.

(iii) A contract for the purchase of immovable property which is likely to increase in price is for the benefit of the minor; Manik Chand v. Ramchandra, AIR 1981 SC 519: (1980) 4 SCC 22.

(iv) Where the guardian acquires property for the benefit of the minor no permission of court is necessary; Than Singh v. Barelal, AIR 1974 MP 24.

(v) An alienation of property without the permission of the court is voidable at the option of the minor; Irupakutty v. Cherukutty, AIR 1972 Ker 71.

##### Limitation on power of natural guardian



(i) Alienation made by the mother of the minor in contravention of section 8(2) are voidable at the option of minor and such alienation were required to set aside if minor wanted to avoid the transfers and regain the properties from the purchasers. If in plaint the prayer for setting aside the sale deeds was not there and such a prayer has been introduced after period of limitation which is three years from the date when minor attains majority, has elapsed, the claim for recovery of possession of property is not maintainable; *Vishwambhar v. Laxminarayana*, AIR 2001 SC 2607.

(ii) Sale transaction by a natural guardian even if beneficial for the minor is voidable and not void ab initio, if it is done without the previous permission of the court. Held that the minor can challenge only after attaining majority and not during his minority; *Naryan Laxman Gilankar v. Uday Kumar Kashinath Kaushik*, AIR 1994 Bom 152.

(iii) When the natural guardian i.e. the father dies leaving behind mother as the natural guardian and minor sons and daughters, section 8, would not apply as the interest of the minor daughter would be fluctuating undivided interest in the joint family property. But where the father dies leaving behind only his minor daughter and mother as natural guardian, the shares of the daughters become definite and the question of family property retaining the character of Joint Hindu Family property does not exist and section 8(3) is attracted and sale transactions done by mother without the previous permission of court becomes voidable at the option of minor. Held that the mother had no authority to alienate the shares of minor daughters; *Mangala v. Jayabai*, AIR 1994 Kant 276.

(iv) The notional partition between the plaintiff during his minority and his father before his death left him 3/4 share in the property and rest of the property to his mother. Held that as the minor had definite share in the property, the mother had no authority without the previous permission of the court to sell the separate property of minor; *Dhansekaran v. Manoranjthammal*, AIR 1992 Mad 214.

## 9. Testamentary guardians and their powers.-

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

(2) An appointment made under sub-section (1) shall have not effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

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

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

(5) The guardian so appointed by will has the right to act as 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 to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.



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

#### COMMENTS

##### Power to appoint testamentary guardian

(i) Where a grandmother appoints the mother as testamentary guardian for the property bequeathed to the minor, during the lifetime of the father, the mother cannot alienate the property of the minor as the grandmother has no power to appoint a testamentary guardian. Such alienation would be void ab initio; Sundaramurthy v. Shanmuganadar, AIR 1980 Mad 207.

(ii) Under this section power is conferred on the father or the mother in certain circumstances to appoint a guardian by will. This power does not extend to a donor of property; Rajalakshmi v. Ramachandran, AIR 1967 Mad 113: 1966 (2) MLJ 420.

(iii) A testamentary guardian cannot sell minor's property without prior permission of the court; Duraiswamy v. Balasubramanian, AIR 1977 Mad 304.

## 10. Incapacity of minor to act as guardian of property.-

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

#### COMMENTS

There is no conflict between this provision and section 21 of the Guardian and Wards Act as the latter relates to guardianship of the person, whereas this provision is concerned with the guardianship in respect of property and, therefore, both provisions can co-exist; Budhi Jainar v. Dhobai Naik, AIR 1958 Ori 7: ILR (1957) Cut 574.

## 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.

#### COMMENTS

##### Right of De facto guardian

(i) Alienation done by a de facto guardian is void and the alienee is in the position of a trespasser who has no right in the property. Held that the aunty of the plaintiff had no authority to sell the property and the alienation done was invalid and not binding on the minors, i.e., the plaintiffs; Essakkyal Nadar v. Sreedharan Babu, AIR 1992 Ker 200.

(ii) The provisions of section 11 apply to both the categories of property of a minor, i.e., separate property and the undivided interest of a Hindu minor in the joint family property. If a distinction is made between the categories the object of section 11 of preventing the de facto guardian from dealing with the property of a minor would be frustrated. The de facto guardian would be at liberty to deal with the undivided interest of the minor in the Joint Hindu Family property; Dhanasekaran v. Manoranjthammal, AIR 1992 Mad 214.

(iii) Where there is a sale of minor's property by the maternal grandfather during the minority by the minor's mother, it is void. After attaining majority, the mother as natural guardian of the



minor cannot ratify the sale as the maternal grandfather's sale as de facto guardian is void; Kanchi Kamamma v. Appanna, AIR 1973 AP 201: (1973) 2 An WR 74.

## 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 the welfare of the minor shall be the paramount consideration.

### COMMENTS

Appointment of guardian for minor's undivided interest

(i) The management of the Joint Family and its affairs can be taken up not only by an adult male member of the family but also by a female member of the family like the mother; Dhanasekaran v. Manoranjthammal, AIR 1992 Mad 214.

(ii) A guardian can be appointed in cases where the minor is the sole surviving coparcener; Ratnabai v. Sitabai, AIR 1952 Bom 160.

## 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.

### COMMENTS

Custody of father

(i) The welfare of the child is determined neither by the economic affluence nor a deep mental or emotional concern for the well being of the child. The answer depends on the balancing of all these factors and determining what is best for the child's total well being. Held that the father being a Sergeant in the Indian Army who had a record of disciplined life with a regular income, was willing to get posted to Kozhikode for the education of the minor and the parents of the father were affluent enough to look after the minor unlike the parents of the mother (who was dead) were old, had no proper source of income and also had a mentally retarded son to look after, was in a better position to look after the welfare of the minor; Munnodiyl Peravakutty v. Kuniyedath Chalil Velayudhan, AIR 1992 Ker 290.

(ii) Recognition of father's absolute right to the custody of the child would render the child an inanimate property or chattel, which could be possessed and used as the owner pleases. Held that though the father was not found unfit as a guardian of his minor children keeping them in the custody of maternal grandmother subject to certain conditions; Baby Sarojam v. S. Vijaykrishnan Nair, AIR 1992 Ker 277.

Mother attending night clubs



Money alone is not sufficient to record finding regarding the welfare of the child. In case mother of minor is in the habit of attending night clubs and coming late at home during which period the minor has to be left in some care house, there is likelihood of his coming into contact with undesirable elements due to the negligence of mother. Therefore in the interest of child it will be proper that he is not left with his mother; *Amit Beri v. Sheetal Beri*, wife of Amit Beri, AIR 2003 All 18.

#### Minor left with relatives

The minor child had been left in the custody of his mother's sister and maternal grandparents due to the mother's illness. It was held that as the father is the natural guardian and was employed as a Lecturer a noble profession, the welfare of the minor is with his father and mother and not other relatives; *Ankur Tripathi v. Radhey Shyam Pandey*, AIR 1994 All 250.

#### Welfare: Paramount consideration

Though the natural guardians are enumerated in section 6 the right is not absolute and the court has to give paramount consideration to the welfare of the minor; *Mohini v. Virendra*, AIR 1977 SC 1359: 1977(3) SCC 513.

