NOTES

Guardianship under Indian Law

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Concept and Governing Frameworks

Guardianship refers to the legal responsibility one person holds over the person and property of a minor who cannot independently manage their own affairs.

Indian law regulates guardianship through a mix of the general secular statute, the Guardians and Wards Act, 1890, and personal law statutes such as the Hindu Minority and Guardianship Act, 1956, alongside uncodified Muslim law principles governing Hijanat and Wilayat.

These frameworks operate together, with personal law generally governing questions of natural guardianship and the Guardians and Wards Act supplementing them wherever personal law remains silent or a court-appointed guardian becomes necessary.

Guardians and Wards Act, 1890: General Framework

The **Guardians and Wards Act, 1890 applies to all communities** in India and empowers courts to appoint or declare guardians of a minor's person, property, or *both, wherever necessary for the minor's welfare.*

Section 4(2) defines a "*guardian*" broadly as a person having the care of the person of a minor or their property, or of both, while **Section 4(1)** defines a minor as a person who has not completed eighteen years of age.

The Act operates as a residuary framework, filling gaps left by personal law and providing a judicial mechanism through which any interested person may seek appointment as guardian where the natural or testamentary guardian is unavailable, unfit, or absent.

Welfare of the Minor: Section 17

Section 17 directs the court, *in appointing or declaring a guardian*, to be guided primarily by what appears in the circumstances to be for the welfare of the minor, having regard to the *minor's*

age, sex, and religion, the character and capacity of the proposed guardian, and the closeness of relationship to the minor.

The Section further requires the court to *consider the wishes of the minor where they are old enough to form an intelligent preference, and, if the minor is already under the guardianship of another, to have regard to that person's wishes as well.*

Indian courts have consistently treated the welfare principle as the paramount and overriding consideration in guardianship disputes, subordinating even the statutory preference for natural guardians where welfare demands otherwise.

In ***Gaurav Nagpal v. Sumedha Nagpal***, the Supreme Court held that the welfare of the child must override purely legal or technical considerations, including the strict statutory hierarchy of guardianship claims, whenever a conflict arises between the two.

Kinds of Guardians

Indian law recognises several categories of guardians *distinguished by the source of their authority.*

A ***natural guardian*** derives authority directly from their relationship to the ***minor***, typically the father or mother under Hindu law, ***without requiring any court order or private appointment.***

A ***testamentary guardian*** is ***one appointed by the will of a natural guardian,*** taking effect *only after the guardian's death* and only within the scope the will itself provides.

A guardian appointed or declared by the court, sometimes called a ***certificated guardian***, *derives authority from a judicial order made under the Guardians and Wards Act*, typically where no natural or testamentary guardian exists or where the existing guardian is found unfit.

A ***de facto guardian***, recognised primarily under Hindu law, is a person who has *voluntarily assumed the management of a minor's affairs without any legal authority,* and **Section 11 of the Hindu Minority and Guardianship Act** significantly curtails such a guardian's power to deal with the minor's property.

Natural Guardianship under Hindu Law: Section 6, HMGA

Section 6 of the Hindu Minority and Guardianship Act, 1956 identifies *the natural guardians of a Hindu minor as, in the case of a legitimate boy or unmarried girl,* the **father, and after him, the mother, with the proviso that custody of a child below the age of five years shall ordinarily be with the mother.**

For an **illegitimate child, the mother is the natural guardian, and after her, the father, while for a married girl, the natural guardian is her husband.** The Section also disqualifies a person from acting as *natural guardian if they have ceased to be a Hindu or have completely and finally renounced the world.*

Githa Hariharan v. Reserve Bank of India: Reading Down Section 6

In Githa Hariharan v. Reserve Bank of India, the Supreme Court examined a challenge to ***Section 6(a) of the Hindu Minority and Guardianship Act, which appeared to position the mother as natural guardian only "after" the father, effectively relegating her to a secondary role.***

The petitioner, whose application to invest in bonds on her son's behalf was rejected for want of the *father's signature, argued that this provision violated the constitutional guarantee of equality under Articles 14 and 15.*

The Supreme Court read down the word **"after" to mean "in the absence of," clarifying that absence could include not merely the father's death but also circumstances such as the father's disinterest in the child's affairs, incapacity, or the couple's separation, so that the mother could function as natural guardian even during the father's lifetime in appropriate circumstances.**

This interpretation preserved the statute's constitutional validity while ensuring that a mother actually caring for the child could exercise real legal authority over the child's affairs.

Powers of a Natural Guardian: Sections 8 and 9

Section 8 of the Hindu Minority and Guardianship Act empowers the natural guardian to do all acts necessary or reasonable and proper for the benefit of the minor or the realisation, protection, or benefit of the minor's estate, subject to significant restrictions on alienating immovable property.

The **natural guardian** cannot *mortgage, charge, transfer by sale, gift, exchange, or otherwise, or lease any part of the minor's immovable property for a term exceeding five years,* or exceeding one year beyond the minor's attaining majority, without the previous permission of the court.

Section 9 governs the **appointment of a testamentary guardian, empowering a Hindu father, entitled to act as natural guardian**, to appoint a guardian for the person or property of his minor legitimate children by will, *though this appointment becomes ineffective if the mother survives him unless the mother herself was disqualified from acting as natural guardian.*

Where the mother appoints a testamentary guardian by will for her minor legitimate children, that appointment takes effect *only if the father predeceases her or is otherwise disqualified from acting as natural guardian.*

Guardianship under Muslim Law

Muslim law distinguishes between **Hizanat**, meaning the *right to custody of the minor's person,* and **Wilayat**, meaning *guardianship of the minor's property and legal affairs*, treating these as conceptually distinct forms of authority that need not vest in the same person.

The father is recognised as the natural guardian of the minor's property and person under Wilayat, and in his absence, this authority passes to the father's executor, then to the paternal grandfather, and thereafter to their respective executors, following a defined hierarchy under Sunni law.

The mother, though generally not recognised as a natural guardian of property under traditional Muslim law, possesses the **right of Hizanat,** entitling her to custody of male children *until they attain the age of seven years and of female children until they attain puberty, subject always to the paramount consideration of the child's welfare.*

Courts examining custody disputes under Muslim law nonetheless apply the welfare principle as the overriding test, often extending or modifying customary Hizanat periods where strict adherence would not serve the child's actual interests.

ABC v. State (NCT of Delhi): Guardianship Rights of Unwed Mothers

In ABC v. State (NCT of Delhi), an unwed Christian mother sought to be appointed the sole guardian of her son without disclosing the father's identity, and the trial court and High Court declined her application on the ground that the father's name must be furnished as a matter of procedure under the Guardians and Wards Act.

The Supreme Court examined whether an unwed mother could be recognised as the natural guardian of her child without notifying or naming the putative father.

The Supreme Court held that an unwed mother, who has raised her child without any contribution from the father, is entitled to be recognised as the sole natural guardian, and **courts need not compel disclosure of the father's identity where doing so would breach the mother's and child's right to privacy and dignity under Article 21.**

This ruling recognised that the welfare of the child and the mother's autonomy could outweigh a rigid procedural insistence on identifying the biological father in guardianship proceedings.

Custody versus Guardianship

Guardianship and custody, though often discussed together, represent conceptually distinct legal categories, since **guardianship refers to the overall legal authority and responsibility over a minor's person and property**, while custody **refers more narrowly to the physical care and day-to-day upbringing of the child.**

A person may hold guardianship without actual custody, as often occurs where the father remains the legal guardian while the mother retains custody following a matrimonial dispute, illustrating that the two concepts can be allocated between different individuals simultaneously.

Courts adjudicating custody disputes, whether under the Hindu Minority and Guardianship Act, the Guardians and Wards Act, or Muslim personal law, apply the ***welfare principle as the predominant standard, examining factors such as the child's age, emotional needs, educational continuity, and the capacity of each parent to provide a stable and nurturing environment.***

This welfare-centric approach ensures that custody determinations remain flexible and child-focused rather than mechanically following statutory presumptions favouring either parent.


Concept and Governing Frameworks
Guardianship = legal responsibility over the person and property of a minor.
Governed by: Guardians and Wards Act, 1890; Hindu Minority and Guardianship Act, 1956; and Muslim law (Hijanat & Wilayat).
Personal law governs natural guardianship; G&W Act supplements where personal law is silent or a court-appointed guardian is needed.
Guardians and Wards Act, 1890 (General Framework)
Applies to all communities.
Empowers courts to appoint/declare guardians of a minor's person, property or both.
Section 4(2): "guardian" = person having care of a minor's person or property.
Section 4(1): minor = person below 18 years.
Residual framework, fills gaps in personal law.
Welfare of the Minor – Section 17
Court must be guided by the minor's welfare.
Factors: age, sex, religion, character & capacity of guardian, closeness of relationship.
Consider minor's wishes (if old enough).
Consider existing guardian's wishes (if any).
Welfare is the paramount consideration.
Gaurav Nagpal v. Sumedha Nagpal: welfare overrides legal/technical considerations.
Guardianship under Indian Law
Kinds of Guardians
Recognised categories (based on source of authority):
Natural guardian – by relationship (no court order).
Testamentary guardian – appointed by will (effective after death).
Court-appointed (certificated) guardian – under G&W Act (when no natural/testamentary guardian or existing guardian is unfit).
De facto guardian – voluntarily manages affairs without legal authority (Section 11, HMGA limits powers).
Natural Guardianship under Hindu Law (Section 6, HMGA)
Legitimate boy / unmarried girl – father (after him, mother); custody of child < 5 years ordinarily with mother.
Illegitimate child – mother (after her, father).
Married girl – husband.
Disqualifies a person who has ceased to be a Hindu or renounced the world.
Githa Hariharan v. RBI
SC read down Section 6(a) HMGA, which seemed to give father absolute preference.
Held: mother can be natural guardian even during father's minority, subject to "welfare of the child".
Recognised equality of parental rights.
Key Takeaway
Multiple statutes work together.
Welfare of the minor is paramount.
Guardianship can be natural, testamentary, court-appointed or de facto.
Hindu law gives priority to father (with important exceptions).
Courts can read down provisions to ensure the child's best interests.