BLOGS

Natural Guardians – Hindu Minority and Guardianship Act 1956

Aparna Shukla · 22 Jan 2021

In the previous posts, we have already discussed that the Hindu laws apply only to a person who is Hindu by religion. The Hindu Minority and Guardianship Act 1956 (hereinafter referred as HMGA) deals with the adoption laws of a hindu child by the hindu parents and who are the natural guardians.

Definitions

Minor: Section 4(a) of the HMGA defines Minor as any person who is below the 18 years of age.

Guardian: Guardian is defined under section 4(b) of the HMGA as the person who takes care of the person (body) and the property of the minor.

Natural Guardian: Under Section 4(c), Natural Guardian means any guardian mentioned in Section 6 of HMGA.



Free image/jpeg, Resolution: 1600×1200, File size: 75Kb, Black silhouette of the walking family clipart

Natural Guardian of Hindu Minor

According to Section 6 of the Act, the Guardian has to take care of minor's person (body) as well as the property. But by virtue of Section 12 of the same Act, the Joint Hindu Family Property has

been excluded from the word 'Property' under Section 6. The natural guardian would not be the guardian with respect to the minor's share in undivided coparcenary interest. Karta of that Joint Hindu Family will be taking care of minor's undivided coparcenory interest.

But proviso of Section 12 of HMGA states that only High Court has the power to change the guardian for undivided coparcenory interest from Karta to any other person, only if it deems fit.

Section 6(a) of HMGA states that in case of a minor boy or minor unmarried girl, father is the natural guardian and after father, its the mother who is the natural guardian. This provision is violative of Article 14 and promotes Patriarchy.

Geeta Hariharan v. Reserve Bank of India (1999) (SC)

The court held that the word 'after him' used in Section 6(a) of the Act does not necessarily mean after the death of the father, rather it means in the absence of father.

Shalu Nigam & Anr. v. The Regional Passport Officer & Anr. (2016) (Delhi High Court)
It was held that in the absence of the father, mother will be the natural guardian.

Section 6 (b) of HMGA lays down that in case of an Illegitimate boy or girl, the natural guardian would be the mother and after her, it would be the father.
You will be surprised to know that in Muslim Law (Sunni), for Illegitimate child, mother is the Natural guardian always and father is never the Natural Guardian. Whereas under Shia Law, neither mother nor father is the guardian of the illegitimate child.

Section 6(c) talks abut the minor married girl and as per the Act, the husband would be the natural guardian. This provision treats child marriage as a valid marriage. If the bridegroom himself is a minor, he will be the guardian of the person but not the property and property willl be looked after by the father.
It is absurd as under Prohibition of Child Marriage Act 2020, it is a void marriage and on the other hand you are making him the natural guardian. This is like legalising child marriage. This was challenged in the case below.

T Sivakumar v The Inspector of Police, Thiruvallar (2011) (SC)
It was held that the child marriage is an offence under PCMA and the law aims at eradicating evil menace of child marriages. By declaring the adult male who will be marrying the female child, will be her natural guardian, it would only defeat the purpose of the Act. Therefore, by committing an offence punishable under Section 9 of the PCMA, the adult male cannot acquire the status of the

natural guardian of the female child bride.

As per Section 7 of the of the Act, the natural guardian of an adoptive son would be an adoptive father, and after him, the adoptive mother. The word ‘son’ includes daughters as well. But a more gender neutral term like ‘child’ should have been used.