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# **TYPES OF GUARDIANSHIP IN INDIA**

AUTHORED BY - KUMARAPPAN M

## **Abstract:**

This text provides an overview of the Hindu Minority and Guardianship Act, 1956, outlining the roles and powers of natural, testamentary, and court-appointed guardians. It discusses the historical context of guardianship, including the concept of de facto guardianship and guardianship by affinity for minor widows. The document highlights key legal provisions, relevant court cases, and the importance of guardianship in protecting the rights and property of minors in Hindu law.

## **Keywords:**

Hindu Minority and Guardianship Act, 1956, Natural guardian, Testamentary guardian, Court-appointed guardian, De facto guardian, Guardianship by affinity, Legal provisions, Minor widow, Property protection, Hindu law

## **Types of guardianship**

### **Natural Guardian**

According to Section 4(c) of the Act, the natural guardian assigns to the father and mother of the minor. For a minor wife, his husband is the guardian.

Section 6 of the Act gives 3 types of natural guardian in the following:

Father– A father is the natural guardian of a boy or unmarried girl, the father is the first guardian and the mother is the next guardian of the minor. It is given in the Act that only up to 5 years the mother is the natural guardian of the child.

Case- Essakkayal nadder Vs. Sreedharan Babu. In this case, the mother of the minor died and the father was also not living with the child, but the child was alive. the child was not declared to be a Hindu or renounced the world and he was also not declared unfit. These facts do not authorize that any other person adopts the child and be the natural guardian and transfer the property.

Mother– The mother is the first guardian of a minor illegitimate child, even if the father is existing.

Case- Jajabhai Vs. Pathakhan, in this case, the mother and father got separated for some reason and the minor daughter stayed under the guardianship of the mother. Here, it will be determined that the mother is the natural guardian of the minor girl.

Husband– For a minor wife his husband is the natural guardian.

Under Section 6, it is given that no person will be designated to perform like the natural guardian of a minor under this portion, which is in the following:

1. If he/she ceased to be a Hindu.
2. If he/she has completely renounced the world that they are becoming an ascetic (sayansi) or hermit (vanaprastha).

Note: In Section 6, the terms “Father” and “Mother” do not include the step- father and the step-mother.

## **Powers of a natural guardian**

As per Section 8, the powers of the natural guardian to impose on the child are as follows:

1. The natural guardian of a Hindu minor has the power to do all work, which are compulsory and which are beneficial for the minor’s interest. Protection or benefits of the minor’s condition.
2. The natural guardian should bring the prior permission from the Court, for the use of the gift transferred to him, mortgage or any other valuable things of the minor.
3. For the lease of any part of minor’s property for about exceeding 5 years or for a term of extending one year beyond the date on which the minor attains the majority. The prior permission from the Court is very much needed for doing so.
4. Violation of any disposal of the immovable property by a natural guardian, it will be voidable at the case of the minor or any other person claiming on the behalf of him.
5. No Court shall grant permission to the natural guardian to do any act which is not in the interest of the minor.
6. The Guardians and Wards Act, 1890 shall apply to the application for getting the permission of the Court if the application is for getting the permission of the Court under Section 29 of

that Act and in these grounds:

1. The natural guardian requires permission from the District Court or under the Court which empowered by the Guardians and Wards Act, 1890.
2. Should submit the application to the Court within the local limits of whose jurisdiction, portion of the property of minor is placed.
3. An appeal would be declined, when the Court rejects the permission to the natural guardian to do any acts of property transfer and this remedy is usually the result of this Court decision.

## **Testamentary Guardian**

Under Section 9, of the Hindu Minority and Guardianship Act, 1956 testamentary guardian only authorized by a will. It is compulsory for the testamentary guardian to receive the guardianship adoption which may be expressed or implied. A testamentary guardian has the right to decline the appointment, but once he /she receives the guardianship then he/she can not decline to perform or resign without the permission of the Court.

According to the Hindu Minority and Guardianship Act, 1956 testamentary power of choosing a guardian has been provided on both, father and mother. If the father chooses a testamentary guardian but the mother rejects him, then the chosen guardian of the father will be inefficient and the mother will be the natural guardian thereafter. If the mother chooses a testamentary guardian, her chosen guardian will become the testamentary guardian and father's appointment will be void. If the mother does not want to choose any guardian then father's appointee will become the guardian. It appears that a Hindu father can not choose a guardian of his minor illegitimate children even when he is allowed to perform as their natural guardian.

### **A Guardian appointed by the Court**

In the earlier days of Smritis, the overall jurisdiction for the children was sanctioned over the king. The king had the power to choose a closet relation of the minor as guardian. Only priority was given to the relatives on the paternal side over the maternal side. Only for the security of the child, this type of laws was formulated by the ancient lawgivers.

Now, this type of powers are applied by the Courts under the Guardians and Wards Act, 1890.

The guardian who is appointed by the Courts, he/she will be known as a certified guardian. Under Section 13 of the Hindu Marriage and Guardianship Act, 1956, while the appointment of any person as guardian is going on by a Court, the advantage of the minor shall be the primary consideration.

Therefore, in both the ancient and modern times the king or the Court has been given the responsibilities to appoint a guardian for the defence of a minor.

Additional grounds where a guardian is appointed

### **Guardianship of Minor's property (De Facto guardian)**

A minor, who is under the tender age may achieve some property which is given by inheritance, gift etc. because of child underage, he/she can not take proper care of the property.

The Smritis gave the opinion that the king has to guard the property of the minor. In this statement, Manu says that the king should protect the inheritance accepted by a child till his study is completed or till he attains majority.

Vasistha states that the king should guard the property of a person who is unfit to transact any business but in a minor's case when he attains majority, the property will be handed over to him.

In modern law, the natural guardian will take care of the minor. This statement is also used in the testamentary and certified guardian and in some cases the guardian will protect only those property for which they were appointed, but not for the excluded property of the minor and the guardian has no rights to claim for protecting that property.

Therefore, both the ancient and modern lawmakers are interested in the security of the person and his property. Nowadays there are many laws that are incorporated for the changing need of the society.

According to Section 11, De Facto guardian is not allowed to dispose or deal with the property of the minor and it is given that the guardian does not have the rights to take any debt.

Case- Smt. Beti Bai Vs. Jagdish Singh and Ors, in this case Aparbal Singh was the father of plaintiff, who is no more. Aparbal Singh had 2 wives because, during his lifetime his first wife died due to some problem, then his second wife came to his life who was the respondent. And the child of the second wife also died due to some reason. At last after the Aparbal Singh died, the second wife captured all the property then the son of the first wife filed a complaint.

It was held that, according to Section 4, Section 6, Section 8, Section 11 of the Hindu Minority and Guardianship Act, 1956, the answer was in the favour of the plaintiff and plaintiff enjoyed the property. The Court also held that, as the respondent was also had a relation with that person, therefore, she has the

right to get one third of the property, when she will ask for the partition before the competent authority.

Hindu law tried to find a result from two difficult conditions: one, when a Hindu child has no legal guardian, there would be no person, who would manage his property under law and therefore, without a guardian the child would not receive any advantages for his property and second, a person having no designation could not be allowed to interfere with the child's property as to cause loss to him. The Hindu law got a result of this difficult condition by an according to legal status to De Facto guardians.

### **Guardianship of a minor widow (guardianship by affinity)**

Earlier days of the Smritis child marriage was very common. After the marriage happened of a minor girl with the husband, then the husband became the guardian of the girl. In any situation, if the husband died then the minor widow should not feel unsafe.

According to Narada, when a minor girl becomes a widow then the husband's relatives have the duty to protect and maintain her if in husband's family no one is there, then the father of the widow takes the responsibilities of the widow to protect her.

Before 1956, there was a guardian called guardianship by affinity. It was the guardian of a minor widow which was given by the Guardianship and Wards Act, 1850.

No provision is given under the Hindu Minority and Guardianship Act, 1956 for the guardianship of a minor widow.

Case- In Paras Ram Vs. State, it was held that the father-in-law of a minor widow vigorously took away the widow from her mother's control and married her to an improper person without the widow's consent. The Court held that the father-in-law guilty of displacing the girl without her consent.

The Allahabad High Court held that he was not guilty because he was lawfully a guardian of the widow.

A question has arisen in the Court, whether the nearest blood relatives of the husband undoubtedly becomes a guardian of the minor widow on the death of her spouse or whether he is simply as a choice get into the guardianship and therefore, he can not perform as guardian but he is appointed as such? Paras Ram seems to subscribe to the previous view.

## **Conclusion**

Adoption of a child by any guardian is creating a relationship of the child and the guardian, it creates the subject matter of personal law and for a minor, it is mandatory to protect his property and for that reason, there is a guardian who will take care of him and his property. Special thanks to the lawmakers who invented these types of laws for protecting the minor and his property and for the unmarried girl and widow. In this way, no one can steal the property of anyone who is a minor.

Therefore, the guardian is very necessary for a minor to protect himself physically or mentally and secure