
VOIDABILITY, CONSENT, AND CAPACITY: DOCTRINAL TENSIONS IN MINOR'S PROPERTY ALIENATION

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ABSTRACT

The legal framework governing the alienation of a minor's property in India presents a duality between statutory guardianship under the Hindu Minority and Guardianship Act, 1956 (HMGA), and the traditional autonomy exercised within the Hindu Joint Family system. While Section 8 of HMGA mandates prior permission of the court for alienation of a minor's separate immovable property, courts have consistently and repeatedly held in catena of judicial pronouncements that the statutory restriction does not extend to a minor's undivided interest in joint family property. In such cases, the Karta or a competent family manager may affect this alienation without judicial approval, provided it is for legal necessity of the minor or for the benefit of the minor's estate. Recent judgments of various High Courts viz., the Gujarat High Court, Allahabad High Court, and Bombay High Court reaffirm this doctrinal divergence, endorsing protection through statutory supervision in one sphere and preservation of family autonomy in the other.

Supreme Court decisions, including *N.S. Balaji v. Presiding Officer, DRT* (2023) and *K.S. Shivappa v. Neelamma* (2025), elucidate the principles of Section 8 but stop short of expressly engaging with the doctrinal complexities surrounding undivided interests. Classical precedents like *Krishnakant Maganbhai* (1961) and *Narayan Lal v. Sridhar Sutar* (1996) continue to shape contemporary jurisprudence by reaffirming the powers of the Karta over minors' joint family interests.

This paper undertakes a comprehensive jurisprudential study of this dual framework, evaluates its coherence, and argues that while courts have achieved functional harmonization, legislative clarification is essential to resolve the lingering conceptual tension between court-mandated guardianship and family-based management of minors' property.

INTRODUCTION

The legal framework governing the alienation of a minor's property in India is uniquely situated at the intersection of statutory guardianship and traditional Hindu family law. While the Hindu Minority and Guardianship Act, 1956 (HMGA), represents a post-codification attempt to regulate the powers of natural guardians—particularly through Section 8, which mandates prior judicial permission for alienation of a minor's immovable property—the Hindu Joint Family system continues to operate according to long-established customary principles. These principles confer upon the Karta or a competent family manager the authority to alienate the joint family property, including a minor's undivided coparcenary interest, without requiring court approval, provided such alienation is justified by legal necessity or demonstrable benefit to the estate.

This duality produces a persistent doctrinal tension. On one hand, the statutory regime seeks to ensure protective oversight and minimize misuse by imposing judicial scrutiny on every transaction involving a minor's separate immovable estate. On the other hand, the customary regime, grounded in Mitakshara jurisprudence, prioritizes familial autonomy and the cohesive management of joint family property. This results in two distinct standards of protection—one grounded in statutory command, the other one in customary trust—each justified by different historical and normative trajectories.

Recent decisions across various High Courts, including the Gujarat High Court in *Jagrutiben Suhagiya v. None* (2022), the Allahabad High Court in *Preeti Arora v. Subhash Chandra Arora* (2024), and the Bombay High Court in *Pooja v. State of Maharashtra* (2024), reaffirm the long-standing judicial consensus: Section 8 HMGA applies only to separate immovable property of a minor and not to undivided coparcenary interest, which remains governed by traditional Hindu law. Meanwhile, the Supreme Court's decisions in *N.S. Balaji v. Presiding Officer, DRT* (2023) and *K.S. Shivappa v. Neelamma* (2025) provide interpretative clarity on Section 8 but stop short of engaging expressly with the conceptual conflict between legislative guardianship and joint family autonomy.

This unresolved tension raises fundamental jurisprudential questions. Should statutory safeguards designed for the minor's protection yield to traditional authority structures? Is the distinction between separate and undivided interests normatively justified in contemporary India, where joint families are increasingly shrinking and property transactions increasingly

commercial? Most importantly, does the current dual framework adequately protect the economic rights of minors, or does it leave space for potential exploitation under the guise of family autonomy?

In this backdrop, the present study undertakes a comprehensive doctrinal inquiry into the jurisprudential divide between court permission and family autonomy, examining how courts have navigated these competing paradigms and whether the existing judicial approach ensures both coherence and adequate protection for minors.

CONCEPTUAL FRAMEWORK

The legal architecture governing a minor's property rights in Hindu law stands upon two distinct but concurrently operating pillars: the **statutory guardianship model** envisioned by the Hindu Minority and Guardianship Act, 1956 (HMGA), and the **customary collectivist framework** of the Hindu Joint Family under Mitakshara law. These two regimes, though historically intertwined, are conceptually divergent and often doctrinally incompatible. Understanding their interaction is essential to appreciating the judicial choices that shape the contemporary law on alienation of a minor's separate and undivided interests.

A. Statutory Guardianship under the Hindu Minority and Guardianship Act, 1956

The HMGA is a post-independence codification that seeks to introduce discipline, oversight, and uniformity into guardianship law. It replaces diffuse custom with structured statutory control. Although the Act in totality plays very important role when it comes to the minor's estate/property but the most relevant and specific sections are Section 6, 8 and 12. These are some of the sections which make the concept of minor's property/estate so important and interesting.

From Custom to Codification

Section 6 of the Act defines natural guardianship in hierarchical terms—father, then mother—reflecting a shift from diffuse family management to a model grounded in *personal guardianship*. This conceptual shift narrows the circle of authority and imposes individual accountability.

Section 8: The Statutory Brake

Section 8 is the cornerstone of the statutory regime and embodies the legislative intention to insulate minors from economic vulnerability/disability. Its key features include:

- A **duty-based framework** requiring the guardian to act solely in the minor's benefit.
- A **prior-permission rule** mandating court approval for any alienation of immovable property.
- A **protective remedy** making unauthorized transfers voidable at the minor's instance.
- The minor can seek the remedy even by his conduct not only by filing of the suit if the alienation is not done for minor's legal necessity. The same has been reiterated in catena of judicial pronouncements of various Judicial Forums viz., High Courts, Supreme Courts.

This structure represents a deliberate move toward *state-supervised guardianship*, premised on the belief that judicial scrutiny is the most reliable safeguard against misuse.

B. The Hindu Joint Family: A Parallel Legal Universe

Running parallel but not subordinate to this statutory scheme is the Hindu Joint Family, a collectivist legal institution with its own norms, values, and mechanisms of property governance.

Communal Ownership and Fluctuating Interests

Under Mitakshara law, a minor does not own a discrete parcel of property but holds a **fluctuating, undivided interest** in a pool of joint family assets. This interest expands and contracts with births and deaths and is inherently incapable of precise quantification.

This structural feature alone renders Section 8 inapplicable: one cannot seek judicial permission to alienate what is not separately defined.

The Karta's Authority: Power Rooted in Tradition

The Karta whether male or female after recent jurisprudence acts not as a "guardian" in the

statutory sense but as a **manager of a recurring economic institution**. Their powers include alienation of joint family property, including the minor's undivided interest, in three situations:

- **Legal necessity**
- **Benefit of the estate**
- **Discharge of indispensable duties**

These principles serve as **customary safeguards**, substituting judicial permission with collective wisdom, managerial competence, and the presumption of family good faith.

The Internal Logic of Custom

Unlike Section 8's rigid supervisory structure, Mitakshara law flows from a dynamic understanding of family economics. Joint families often require swift decision-making e.g., for protecting property, settling debts, or seizing commercial opportunities where judicial delays could be detrimental.

Thus, the system prioritizes:

- managerial efficiency,
- communal trust, and
- intergenerational continuity.

C. Jurisprudential Divergence: Two Regimes, Two Philosophies

The doctrinal divide between the HMGA and joint family law is not merely procedural; it reflects deeper philosophical commitments.

Individual Consent vs. Collective Necessity

- Under Section 8, a minor's property is conceptualized as the **subject of personal guardianship**.

- Under joint family law, the minor's interest is part of a **collective economic unit**, where managerial autonomy supersedes individual consent.

State Oversight vs. Familial Autonomy

- The HMGA embodies a *paternalistic model*—the State stands in protective vigil.
- The joint family system embodies a *decentralized model*—the family regulates its own economic affairs.

Voidability vs. Binding Effect

- Transactions contrary to Section 8 are voidable.
- Valid alienations under joint family law are binding even on minors, and only improper transactions may be challenged via filing of suit or even by the conduct of minor on becoming major.

This contrast produces a functional divergence in outcomes and interpretive methodologies.

D. The Overlap Question: Does Section 8 Override Custom?

Indian courts have repeatedly confronted the central doctrinal question:

Does Section 8 HMGA restrict the traditional powers of the Karta?

Judicial consensus firmly says **no**, for three conceptual reasons:

1. **Textual Limitation:** Section 8 applies only to property "*belonging to the minor*," not to a notional undivided share.
2. **Structural Distinction:** The Karta is not necessarily a "natural guardian" under Section 6; therefore, Section 8 cannot regulate their managerial powers.
3. **Legislative Intent:** Codification did not extinguish the Hindu Joint Family system; absent explicit repeal, customary law continues to govern undivided interests.

Thus, the two regimes coexist: one regulates personal guardianship, the other preserves family

management.

E. Why This Duality Matters Today

In a contemporary India marked by nuclearization of families, increased monetisation of family assets, and complex banking transactions involving minor co-owners, this dual framework raises pressing concerns:

- Does customary autonomy still offer adequate protection to minors?
- Should statutory supervision be extended to joint family property?
- Is doctrinal reform necessary to harmonize the two systems?

These questions animate the present inquiry and set the stage for examining the judicial landscape in subsequent chapters.

THE JUDICIAL LANDSCAPE: DOCTRINAL CONSISTENCY AND EMERGING NUANCES

This chapter navigates this doctrinal terrain, weaving together contemporary rulings from the Gujarat, Allahabad, and Bombay High Courts, recent Supreme Court pronouncements, and foundational precedents from the post-codification era. Taken together, these decisions reveal how Indian courts balance statutory protection with customary autonomy, shaping a jurisprudence that is simultaneously protective, deferential, and deeply rooted in historical legal consciousness. However, more especially if we go into the recent rulings of the Supreme Court, we will find that the Supreme Court only talks about the Section 8 i.e., prior permission of court in case of minor's divided estate and does not expressly talk about the minor's undivided estate. In this way the last resort for interpretation is various High Court's Ruling but this resort is limited to the extent that no recent development took place in the same case by the Apex Court.

High Courts on Section 8 HMGA: A Doctrine of Strict Statutory Control

1. Jagrutiben Dharmeshbhai Suhagiya¹

¹ First Appeal No. 4894 of 2022

In this very Judgment, the learned coordinate bench has discussed and relied upon “*Krishnakant Maganbhai vs State of Tamilnadu*². In this very case the arguments of B.J. Shelat have been discussed. He argued that the restriction provided under Section 8 is not limited to the separate property of the minor but also extends to the undivided share of the minor in joint family property. The words mentioned in this section viz., “minor’s estate and immovable property of the minor” should not be read in isolation or in a narrow sense meaning thereby the undivided share of the minor in joint family property is as much as the part of his estate as his separate property. He also argued that if the text mentioned in the said section would be given plain and natural meaning then the restriction contained in the said section would apply equally in respect of undivided share of the minor. Therefore, as per his arguments, natural guardian even though he is the Karta/manager of the family, cannot alienate the undivided share of the minor in joint family property without the previous permission of the court. He opined that the court is bound to consider other parts of the statute when any specific provision is interpreted so as to find out the real intent of the legislature. No part of the statute should be considered in isolation.

However, the arguments placed by the B.J. Shelat was not accepted by the coordinate benches of the same case. The bench opined that the constructions suggested by Mr. Shelat would have effect of placing major and serious restrictions on the manager of the family whether the manager/karta is natural guardian, son, uncle, cousin or whomsoever. Therefore, the court held that while reading sections viz, 4(c), 6, 8 and 12 of HMGA only suggests that the undivided interests of minor in joint Hindu family is not barred by the restrictions imposed by Section 8 alone.

In the same case the reference of *Narayan Lal vs Sridhar Sutar*³ is also made wherein Paragraph 5 is quoted as this paragraph has same view as that of *Krishnakant Maganbhai vs State of Tamilnadu*⁴. In this case the Apex Court held that legislative intent of the Act comes out as a manifest meaning thereby section 12 carves out as an exception to section 8 of HMGA 1956. It may also be noted that in the same paragraph it is also pointed out that the joint family by itself is a legal entity capable of acting through Karta and other adult members of the family therefore, Hindu Joint Family property having minor’s undivided share if alienated by Karta

² 1961 GLR 108.

³ 1996 8 SCC 54

⁴ Ibid 2

then no prior permission is needed.

The court in 2022 case placed reliance on 1961 Judgment of Gujarat HC and 1996 Apex Court Ruling and opined that the law does not require any judicial permission for alienating the minor's undivided interest in joint family property, therefore, an application for permission is misconceived. So, to conclude the 2022 case, the observations of learned Gujarat HC and Apex Court would be equally applicable *mutatis mutandis* to the facts of present case.

2. Smt. Preeti Arora vs Subhash Chandra Arora & Another⁵

In this case, the Allahabad HC has the same point of view as discussed in above-mentioned case. To summarise the observation, it should be noted that the law does not envisage about the natural guardian of undivided interest of a Hindu Minor in Joint Family Property and therefore, no prior permission is needed under section 8. Section 6,8 and 12 should be read cumulatively and not in isolation.

3. Pooja W/o Ganesh Popalghat vs The State of Maharashtra⁶

In this very case as well, it has been reiterated that the HMGA only deals with individual and definite immovable property of minor and scheme of the Act itself suggests that undivided interest of minor in joint family property is kept outside the purview of the Act and natural guardian has been left to exercise the power in accordance with the customary Hindu Law. It is also pointed out by the Judgment that it does not expressly exclude the undivided interest of minor in joint family property. However, it was also stated that Section 8 should not be read in isolation, which would have to be read harmoniously along with Section 6,9 and 12. In the same case, the reference of *Sri Narayan Bal and Others vs Sridhar Sutar and Others*⁷ was given. And it may also be noted that the case of *Sandhya Rajan Antapurkar and Others vs State of Maharashtra*⁸, it has been held that the permission of the court is not needed for alienating the minor's undivided interest provided that the alienation is for legal necessity or for the benefit of the minor and this right is left untouched by the HMGA 1956.

⁵ 2024: AHC: 42478

⁶ First Appeal No. 2760 of 2024

⁷ 1996 8 SCC 54

⁸ 2000 2 Mh.L.J. 158

Supreme Court Approach: Interpretative Clarity Without Explicit Expansion

1. N. S. Balaji vs The Presiding Officer Debt Recovery Tribunal & Ors.⁹

In this case, the Apex Court had discussed about the minor's undivided interest in HUF. It has been observed that the Karta of HUF has right to alienate an HUF Property, even if a minor of the family has undivided interest. The reason behind the same is that an HUF is capable of acting through its Karta or an adult member of family in management of the HUF Property. In the same case it has been pointed out that post alienation, a coparcener may challenge the Act of the Karta, if the alienation made is not for the legal necessity or for welfare of the minor's estate.

2. K.S. Shivappa vs Smt. K Neelamma¹⁰

In this case, the very interesting thing about Section 8 is discussed. The important thing what has been discussed is repudiation by the minor. The minor can avoid the transaction made by the natural guardian in two ways and these are by conduct and by filing suit. Therefore, it is not made mandatory for the minor, upon attaining majority, to file suit for the cancellation of the alienation made by the natural guardian in contravention of Section 8(2) of the HMGA. On attaining majority, the minor can repudiate the transaction within prescribed limitation period under Article 60 of Limitation Act 1963 either by instituting a suit or by repudiating the same by his unequivocal conduct. And the effect of avoidance is that, the transaction made by the natural guardian in derogation of Section 8(2), it becomes void-ab-inito and the same relates back to the date of transaction by the virtue of relating back doctrine.

In this very case, Only Section 8 is discussed in detail and to be very specific only discussion about the repercussions of alienation of minor's property without following Section 8(2) discussed. And no discussion about the alienation of minor's individual property and minor's undivided property is made in this very specific case.

The judicial decisions collectively establish a dual legal regime for alienation of a minor's property. Courts consistently hold that Section 8 HMGA applies only to a minor's separate and definite property, requiring prior court permission. Any alienation made without such

⁹ 2023 Live Law (SC) 853

¹⁰ 2025 LiveLaw (SC) 981

permission is voidable, as clarified by the Supreme Court in *K.S. Shivappa*, allowing the minor to repudiate it either through a suit or clear conduct upon attaining majority.

In contrast, for the minor's undivided coparcenary interest, courts reaffirm that HMGA does not impose Section 8 restrictions. Drawing from *Krishnakant Maganbhai* and *Narayan Lal v. Sridhar Sutar*, High Courts and the Supreme Court maintain that the Karta or family manager may alienate joint family property without judicial permission, provided the act is justified by legal necessity or benefit of the estate.

Recent Supreme Court decisions such as *N.S. Balaji* only restate the principles relating to Section 8 and do not disturb the long-settled doctrine regarding undivided interests. Thus, the jurisprudence remains stable: separate property is governed by statutory control, while undivided interests remain governed by customary Hindu law.

REFORMING THE LEGAL ARCHITECTURE: STATUTORY GAPS AND THE WAY FORWARD

Despite a rich judicial discourse, the statutory framework governing the alienation of a minor's undivided and separate property remains fragmented, conceptually inconsistent, and practically inadequate. The *Hindu Minority and Guardianship Act, 1956* (HMGA) coexists uneasily with classical Mitakshara principles, resulting in doctrinal overlap and operational ambiguity. Courts have repeatedly stepped in to resolve disputes case-by-case, yet the absence of legislative clarity continues to burden families, guardians, and financial institutions.

A meaningful reform agenda must therefore address **three foundational gaps**: definitional ambiguity, procedural uncertainty, and lack of institutional oversight. First, the HMGA does not explicitly recognise the position of a natural guardian over a minor's *undivided coparcenary interest*, thereby leaving courts to navigate this space by stretching classical Hindu law to contemporary contexts. Second, the process of seeking *Court Permission* suffers from inconsistent standards across jurisdictions, leading to delays that often defeat the welfare-oriented objectives of guardianship law. Third, the law does not contemplate modern economic realities such as joint ventures, housing finance, or minors' self-acquired assets—areas where disputes are rapidly increasing.

To remedy these deficiencies, a **calibrated statutory revision** is necessary. Parliament may

consider expressly defining the scope of “minor’s property” to include separate, self-acquired, and undivided interests, along with a harmonised procedure for alienation. The establishment of specialised “Family Property Benches” within existing courts could ensure faster adjudication of applications for transfer, mortgage, or sale of minors’ property. Additionally, digitised guardianship registries and mandatory welfare-impact assessments could bring transparency and accountability to the guardian’s conduct.

Reform must also ensure **proportional respect for family autonomy**. Traditional family structures have long governed property decisions, and excessive judicial intrusion could undermine household stability. A tiered model—where routine transactions require only administrative approval, while high-value or irreversible transfers require judicial scrutiny—would strike a sensible balance.

In sum, the path forward requires a coherent statutory blueprint that reduces reliance on judicial improvisation, acknowledges evolving socio-economic contexts, and maintains the constitutional commitment to the minor’s welfare. Such reforms would not merely modernise the guardianship law but align it with India’s broader jurisprudence of dignity, autonomy, and responsible state oversight.

CONCLUSION

As far as Section 8 of the Hindu Minority and Guardianship Act 1956 is concerned the Hon’ble Courts stated that the natural guardian shall not, without previous consent of the Court, alienate/transfer any immovable property of the minor. The learned benches of various High Courts have differentiated between undivided interest of the minor in joint family property and the property of the minor/minor’s estate. So, the law laid down is that the restrictions contained in section 8 i.e., requirement of obtaining previous consent/permission of the court is limited to the extent of alienating immovable property of the minor and the same would not apply in respect of the undivided interest of the minor in a joint family property. It is also made clear by the Hon’ble courts that the concept of Guardian in respect of the undivided interest of the minor in the joint family property has been made excluded from the purview of the HMGA 1956.

The court emphasised on words “minor’s estate” and “immovable property” mentioned in section 8. These words must be construed in such a way that these do not account for the

minor's undivided interest in the joint family property. Therefore, an application for such permission is misconceived for the minor's undivided interest in the joint family property as per the recent rulings of various High Courts. Courts further also stated that the joint family property by itself is a legal entity capable of acting through its manager/Karta/other adult members of the family in the management of the joint family property.

Therefore, various times it has been reiterated by various Courts that no part of the statute should be read/construed in isolation for knowing the real intention of the legislature and the intention of can not be found in one part of the statute and not detached from its very context but in connection with the whole context. Every clause of a statute should be construed with reference to the context and other clauses in the statute, as far as possible, to make a consistent enactment of the whole statute.