
HAS CHILD WELFARE OUTGROWN THE GUARDIANSHIP ACT, 1890? RELEVANCE OF THE GUARDIANS AND WARDS ACT, 1890

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ABSTRACT

The Guardians and Wards Act, 1890 is one of the oldest laws in India dealing with guardianship and child custody. It was enacted during British rule to provide a legal framework for appointing guardians for minors and protecting their interests. Although the Act has remained in force for more than a century, Indian society has changed a great deal. Family structures, social values, and the understanding of children's rights are very different today from what they were in 1890. As a result, questions have been raised about whether such an old law is still suitable for dealing with the child custody disputes we see today.

This paper examines the purpose, importance, and present relevance of the Guardians and Wards Act, 1890. It explains the important provisions of the Act, including what a guardian actually is and what duties come with that role, and studies how the Act works together with different personal laws governing Hindus, Muslims, Christians, and Parsis, since India follows different personal laws. The paper therefore looks at how these personal laws interact with the Guardians and Wards Act and how courts balance them while protecting the interests of children. This paper also explains how the approach of Indian courts has changed over time. Instead of discussing a large number of cases, this paper focuses on a few landmark judgments that have had the greatest impact on child custody law in India. The paper concludes that although the Guardians and Wards Act, 1890 continues to play an important role in deciding child custody matters, many of its provisions no longer reflect the needs of modern society.

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Introduction

Children are among the most vulnerable members of society and need care, protection, and guidance to grow up physically, emotionally, and mentally healthy. Most of the time, parents naturally take care of this. But situations like divorce, separation, the death of a parent, domestic violence, abandonment, or other family disputes can make it hard for parents to raise a child together. When this happens, the law has to step in and decide who should be responsible for the child. These decisions are never easy, because they involve balancing what parents want with what is actually best for the child.

In India, the main law dealing with guardianship and child custody is the Guardians and Wards Act, 1890.² It was passed during the colonial period to create one common legal procedure for appointing guardians for minors. The Act itself explains what a guardian is in simple terms, a person who has the care of a minor, or of the minor's property, or of both.³ In other words, a guardian is a person who is legally responsible for taking care of a child when the parents are unable to do so. Being a guardian is not just a right; it also comes with the responsibility of looking after the child's needs and welfare. It comes with real duties, such as protecting the child and using the child's property honestly, and a court can always step in if a guardian fails to meet these duties. Back when the Act was written, the law was mostly concerned with figuring out who had the legal authority to act as a guardian, rather than what the child actually needed. This reflected nineteenth century family life, where fathers were generally seen as the primary decision makers and children's own views received very little attention. Over the last century, though, Indian society has changed a great deal. Nuclear families, single parent households, remarried families, live in relationships, and families living across different countries are now common, and alongside these changes there has been a growing recognition of children's rights. Custody is no longer viewed simply as a dispute between parents. Courts now try to see how a decision will affect a child's emotional wellbeing, education, health, safety, and overall development.

The Guardians and Wards Act does not operate on its own. India follows different personal laws for different religious communities, and these also contain provisions relating to guardianship and custody. For Hindus, the Hindu Minority and Guardianship Act, 1956⁴ plays

²The Guardians and Wards Act, 1890, No. 8 of 1890 (India).

³The Guardians and Wards Act, 1890, No. 8 of 1890, section 4, sub section 2 (India).

⁴The Hindu Minority and Guardianship Act, 1956, No. 32 of 1956 (India).

an important role. Muslim law follows its own principles on guardianship and custody, which are discussed later in this paper.⁵ Christians and Parsis mainly rely on the Guardians and Wards Act, along with the Indian Divorce Act, 1869⁶ and the Parsi Marriage and Divorce Act, 1936.⁷ Because these different legal systems exist side by side, similar custody disputes may sometimes be decided differently depending on the religion of the parties involved. This has led to discussions about whether India should move towards an approach that is more uniform and more focused on the child.

At the same time, courts have quietly done a great deal of the heavy lifting here. Although the Guardians and Wards Act has not undergone major amendments since it was enacted, Indian courts have interpreted its provisions in a way that reflects modern values. Through a series of landmark judgments, the Supreme Court has consistently held that the welfare of the child is the most important consideration in every custody dispute. This principle has gradually become the foundation of child custody law in India, so much so that legal rights under personal laws are no longer treated as absolute if they conflict with the best interests of the child.

Even so, some questions remain. The Act was drafted more than 130 years ago, long before modern ideas of children's rights, gender equality, shared parenting, and psychological wellbeing became part of the conversation. It contains very few detailed guidelines for courts and does not address many issues that commonly arise in custody disputes today. Much of the law has therefore developed through judicial decisions rather than legislative reform, and while this has allowed courts to adapt the law to changing circumstances, it has also created some uncertainty, since different courts may read similar situations differently.

This paper examines whether the Guardians and Wards Act, 1890 continues to remain relevant in modern India. It begins by discussing the history and important provisions of the Act, including the meaning and duties of a guardian, before examining its relationship with different personal laws. It then studies the changing approach of Indian courts and looks at how the welfare principle has become the guiding factor in custody disputes. The paper also briefly compares the Indian legal framework with the custody laws followed in the United Kingdom and the United States, to understand how different countries protect the interests of children.

⁵Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 18 (2015).

⁶The Indian Divorce Act, 1869, No. 4 of 1869, section 41 (India).

⁷The Parsi Marriage and Divorce Act, 1936, No. 3 of 1936, section 49 (India).

Finally, the paper identifies the major shortcomings of the present law and suggests reforms that could make child custody laws more suitable for the needs of modern Indian society.

Historical Background of the Guardians and Wards Act, 1890

Before the Guardians and Wards Act, 1890⁸ was enacted, there was no single law in British India dealing with the appointment of guardians for minors. Different religious communities followed their own personal laws, and in many situations, courts had no uniform legal procedure to decide disputes relating to guardianship and custody. As a result, similar cases could be decided differently depending on the customs or religious practices followed by the parties, which often led to uncertainty and inconsistency in the way justice was given.

To address this problem, the British government enacted the Guardians and Wards Act, 1890. The Act was designed as a secular law regulating guardianship and custody for children of every religion within India, and it authorises the District Courts to appoint guardians of the person or property of a minor whenever this is required.⁹ The Act was not meant to replace the personal laws of different religious communities. Instead, it was designed to work as a complete code alongside them, laying down the rights and duties of guardians, the procedure for removing an unsuitable guardian, and the remedies available if a guardian is guilty of misconduct. Naturally, the Act also reflected the values of its time. Custody disputes were seen mainly as questions of legal authority rather than the emotional or psychological needs of a child, and courts gave far more weight to who had the legal right to act as guardian, especially in matters involving family property or inheritance, than to what the child actually wanted.

Even after India became independent, the Guardians and Wards Act continued to remain in force, since it still gave courts a useful and uniform legal framework to fall back on. Parliament went on to enact separate personal laws, such as the Hindu Minority and Guardianship Act, 1956,¹⁰ but the older Act continued to play an important role whenever courts had to appoint guardians or resolve custody disputes. This alone says something about how central the Act still is to guardianship law in India, even at more than 130 years old. Of course, Indian society today looks nothing like it did in 1890. Divorce, judicial separation, single parent families, remarriages, and marriages between people of different faiths are all far more common now,

⁸Statement of Objects and Reasons, The Guardians and Wards Act, 1890, No. 8 of 1890 (India).

⁹Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 12 to 13 (2015).

¹⁰The Hindu Minority and Guardianship Act, 1956, No. 32 of 1956, section 2 (India).

and our understanding of children's emotional and psychological needs has also come a long way. This raises an important question, whether a law drafted in the nineteenth century can still deal effectively with the realities of modern family life. That question sits at the centre of this paper.

Important Provisions of the Guardians and Wards Act, 1890

Before looking at individual provisions, it helps to understand a distinction the law itself relies on. Guardianship refers to the whole set of rights and powers that an adult has over the person and property of a minor, while custody is a narrower idea, referring only to the day to day upbringing and care of the minor.¹¹ A person can therefore be a minor's legal guardian without necessarily having day to day custody of that minor, and this difference matters a great deal in the personal law discussion later in this paper.

Section 4 of the Act explains what these key terms actually mean.¹² A minor is a person who has not yet reached the age at which the law treats a person as an adult. A guardian is a person who has been given legal responsibility for a minor, for the minor's property, or for both. A ward is simply the minor for whom a guardian has been appointed by the court. Put simply, a guardian is meant to stand in for a parent when a parent cannot, or should not, be the one making decisions for the child.

The duties of a guardian are just as important as the meaning of the term. Once appointed, a guardian is expected to protect the child, provide for the child's health and education, manage any property belonging to the child honestly, and always act in a way that serves the child's best interests rather than the guardian's own convenience. The Act lays down the rights and obligations of guardians in detail, along with the procedure for their removal and replacement and the remedies available if a guardian is found guilty of misconduct.¹³ This shows that guardianship under the Act was never meant to be an unquestioned right. It is a responsibility that the court continues to watch over, and a guardian who neglects the child or manages the child's property dishonestly can be removed and replaced by someone more suitable.

¹¹Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 12 (2015).

¹²The Guardians and Wards Act, 1890, No. 8 of 1890, section 4, sub section 2 (India).

¹³Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 13 (2015).

Section 7 gives the court the power to appoint a guardian for the person or property of a minor whenever it is satisfied that this is necessary for the welfare of the minor.¹⁴ Section 17, which is the most important provision in the Act for this paper, lists the factors a court must weigh before appointing a guardian.¹⁵ Instead of looking only at who has the strongest legal claim, Section 17 asks courts to consider the age and sex of the child, the child's own wishes if the child is old enough to express one, the character and ability of the proposed guardian, that person's relationship with the child, and any wishes expressed by a deceased parent. Above all, the court must treat the welfare of the child as the most important consideration.

The idea of welfare, however, is not limited to the child's physical needs or financial security. Over time, courts have understood it more broadly to include the child's emotional well-being, education, stability, and overall development. At the same time, the Law Commission of India has pointed out that there is disparity in how much importance different laws give to this principle, and there is also uncertainty about what exactly welfare means in a given case¹⁶. This has allowed courts to look beyond the personal rights of parents and consider the circumstances of each child individually. As a result, custody decisions have increasingly focused on the child's actual needs and circumstances rather than simply deciding which parent has the stronger legal claim.

Even so, many legal scholars point out that the Act itself offers very little detailed guidance for present day disputes. It says nothing about shared parenting, joint custody, or the growing role of mediation in family matters, and the Law Commission of India has made a detailed set of recommendations on exactly these points.¹⁷ As a result, courts have had to develop most of the working principles of custody law through case law rather than through the statute itself.

Child Custody Under Personal Laws

India follows a system of personal laws in matters relating to family and marriage, so child custody and guardianship are not governed by one law alone.¹⁸ The Guardians and Wards Act,

¹⁴The Guardians and Wards Act, 1890, No. 8 of 1890, section 7 (India).

¹⁵The Guardians and Wards Act, 1890, No. 8 of 1890, section 17 (India).

¹⁶ Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 1 to 2 (2015).

¹⁷Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 51 to 66 (2015).

¹⁸Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 12 (2015).

1890 provides the general legal framework for appointing guardians, but it works together with different personal laws that apply to different religious communities. This means that while the basic procedure remains the same, the rights and responsibilities of parents can vary depending on their religion.

This obviously reflects the cultural and religious diversity of India, but it also creates situations where similar custody disputes may be decided differently simply because the parties belong to different religions. Over the years, courts have tried to narrow these differences by giving greater weight to the welfare of the child, but personal laws still play an important part in custody disputes, which is why they are worth looking at in some detail.

Hindu Law

Child custody and guardianship among Hindus are mainly governed by the Hindu Minority and Guardianship Act, 1956,¹⁹ read alongside the Guardians and Wards Act, 1890. The 1956 Act was enacted after independence to bring greater clarity to Hindu guardianship law, and it applies not only to Hindus but also to Buddhists, Jains, and Sikhs. While this Act lays down the rules on natural guardians, the Guardians and Wards Act continue to apply whenever a court is required to actually appoint a guardian or resolve a custody dispute.

Under Section 6 of the 1956 Act, the father is generally recognised as the natural guardian of a legitimate minor child, with the mother stepping into that role only after him. There is one exception. The Act says custody of a child below five years should ordinarily stay with the mother, since very young children are usually thought to need more maternal care.²⁰ Section 13 of the same Act, however, keeps this in check by making the welfare of the child the most important consideration while appointing a guardian.²¹ In practice, this means that even a parent with a technical legal right to guardianship can be denied custody if giving it to them would not serve the child's best interests, and courts now regularly weigh factors like the child's education, emotional wellbeing, health, and safety before deciding.

So, although Hindu law has gradually become more focused on the child through judicial interpretation, some of its provisions still attract criticism. As far back as 1989, the Law

¹⁹The Hindu Minority and Guardianship Act, 1956, No. 32 of 1956, section 3 (India).

²⁰The Hindu Minority and Guardianship Act, 1956, No. 32 of 1956, section 6, clause a (India).

²¹The Hindu Minority and Guardianship Act, 1956, No. 32 of 1956, section 13 (India).

Commission of India described the preference given to the father under this section as an objectionable idea with no rational basis, noting that it reflected an old fashioned distrust of women rather than any real difference in ability between parents.²² Many legal scholars still believe this provision should be updated so that the written law matches present day social reality, while still protecting the welfare of the child.

Muslim Law

Guardianship and custody under Muslim law are governed by traditional principles of Islamic law rather than a single written statute. Courts apply these principles under which the father is generally recognised as the natural guardian, while custody of a young child generally rests with the mother. Under traditional rules, a mother usually has custody of a son until he reaches the age of seven and of a daughter until she reaches puberty.²³ Muslim law is also notable for drawing a clear distinction between guardianship and custody and recognising the mother's right to custody, known as **Hizanat**, during the early years of a child's life.²⁴

A mother cannot ordinarily be denied this right of custody, unless she is disqualified because of misconduct or her custody is found to work against the welfare of the child.²⁵ Indian courts do not apply these traditional age rules mechanically. If following them would actually harm a child's welfare, courts can and do decide otherwise, relying instead on Section 17 of the Guardians and Wards Act, 1890 and the welfare principle it contains²⁶.

In cases involving Muslim children, Indian courts have sometimes upheld the mother's right to custody because it was supported by Muslim law itself, and on other occasions have given the mother custody purely out of concern for the welfare of the child, regardless of what the traditional age rules said.²⁷ Muslim law continues to preserve many of its underlying religious principles, but in practice, courts make sure a child's safety, education, emotional wellbeing,

²²Law Commission of India, Report No. 133, Removal of Discrimination Against Women in Matters Relating to Guardianship and Custody of Minor Children and Elaboration of the Welfare Principle, paragraph 4.1 (1989).

²³Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 18 (2015).

²⁴Paras Diwan, Law of Adoption, Minority, Guardianship and Custody, Universal Law Publishing Co., New Delhi, page xvi (2012).

²⁵Paras Diwan, Law of Adoption, Minority, Guardianship and Custody, Universal Law Publishing Co., New Delhi, page xvii (2012).

²⁶The Guardians and Wards Act, 1890, No. 8 of 1890, section 17 (India).

²⁷Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 19 to 25 (2015).

and overall development remain the top priority while deciding custody disputes.

Christian and Parsi Law

For Christians and Parsis, there is no separate law dealing specifically with guardianship. Instead, matters relating to guardianship and child custody for these communities are mainly governed by the Guardians and Wards Act, 1890.²⁸ During matrimonial disputes such as divorce or judicial separation, courts may also rely on the Indian Divorce Act, 1869,²⁹ and the Parsi Marriage and Divorce Act, 1936.³⁰ These laws allow courts to pass suitable orders regarding the custody, maintenance, and education of children as part of the same matrimonial proceedings.

Because there is no separate guardianship law layered on top for these communities, courts actually enjoy greater flexibility while deciding custody disputes. Instead of giving automatic preference to either parent, judges examine the facts of each case and weigh factors such as the child's age, relationship with each parent, educational needs, and overall welfare before making a decision.³¹ This has meant that, over time, the welfare principle has become the guiding factor here too, with parental rights taking a clear second place to the interests of the child.

Even so, having separate personal laws for different communities does create a degree of inconsistency, since the Law Commission of India has itself noted that different laws governing custody and guardianship give different levels of importance to the welfare principle.³² This is one of the main reasons many legal experts continue to argue that child custody law in India should be modernised and made more consistent, while still respecting the religious diversity of the country.

Judicial Approach Towards Child Custody

Although the Guardians and Wards Act, 1890 has remained largely unchanged since it was enacted, the way courts interpret it has changed a great deal. Earlier, courts often focused on which parent had the legal right to custody under the applicable personal law, and fathers were

²⁸The Guardians and Wards Act, 1890, No. 8 of 1890 (India).

²⁹The Indian Divorce Act, 1869, No. 4 of 1869, section 41 (India).

³⁰The Parsi Marriage and Divorce Act, 1936, No. 3 of 1936, section 49 (India).

³¹Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 18 to 19 (2015).

³²Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 1 to 2 (2015).

usually given preference since most personal laws treated them as natural guardians. As society changed, however, courts began to realise that legal rights alone could not decide a child's future. Every child has different emotional, educational, and social needs, and these have to be considered before custody is decided.

This shift gave rise to what is now called the welfare principle, which has become the real foundation of child custody law in India. The Supreme Court of India and almost all of the High Courts have held that concern for the welfare of the child outweighs even the statutory provisions that would otherwise apply.³³ Under this principle, courts give primary importance to the overall welfare and best interests of the child rather than the legal rights of either parent, weighing factors such as the child's age, education, emotional attachment with each parent, health, and the environment in which the child will be raised. The purpose, put simply, is to make sure the child grows up in an environment that is safe, stable, and supportive.

One of the earliest and most important judgments supporting this principle was ***Rosy Jacob v. Jacob A. Chakramakkal***³⁴ decided in 1973. In this case, the Supreme Court held that custody disputes should not be treated as a contest between parents, and that the real purpose of deciding custody is to protect the welfare of the child. The Court explained that welfare does not mean only food, clothing, or financial support. It also includes the child's emotional wellbeing, education, happiness, and overall development. This judgment became one of the foundations of modern child custody law in India.

Another significant decision was ***Githa Hariharan v. Reserve Bank of India***³⁵ decided in 1999. The question before the Court was whether a mother could act as the natural guardian of her child during the father's lifetime, since Section 6 of the Hindu Minority and Guardianship Act, 1956 used the word after to describe when the mother could take on this role. The Supreme Court interpreted the word after to mean in the absence of, so that a mother would not be denied guardianship merely because the father is alive, stressing that both parents have an important role in raising a child and that the welfare of the child should always take priority over a rigid reading of the statute.

³³Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 19 (2015).

³⁴*Rosy Jacob v. Jacob A. Chakramakkal*, AIR 1973 SC 2090 (India).

³⁵*Githa Hariharan v. Reserve Bank of India*, (1999) 2 S.C.C. 228, paragraph 25 (India).

A more recent example of this approach can be seen in *Vivek Singh v. Romani Singh*³⁶ decided in 2017, where the Supreme Court observed that long custody disputes often take a serious emotional toll on children. The Court encouraged parents to cooperate wherever possible and reminded lower courts that stability, love, and emotional security matter just as much as financial support while deciding custody matters.

Taken together, these judgments show how Indian courts have transformed the practical working of the Guardians and Wards Act, 1890 without Parliament ever having to amend the law itself. Custody disputes today are no longer treated as a question of which parent has the stronger legal right. Instead, courts carefully examine what arrangement will best support the child's physical, emotional, educational, and psychological wellbeing, and this approach, which puts the child first, remains one of the biggest strengths of Indian family law.

Child Custody Laws in Other Countries

India's approach here is not unique. Many other countries have gone through a fairly similar shift, moving away from a focus on parents' rights and towards the needs of the child, even where the actual laws and procedures used look quite different on paper.

In the United Kingdom, child custody matters are decided with the welfare of the child as the paramount consideration, a rule set out clearly in the Children Act 1989.³⁷ The same Act also lists a set of factors, often called the welfare checklist, that courts must weigh in reaching this decision, including the wishes of the child, the child's physical and emotional needs, the likely effect of any change in circumstances, and any risk of harm to the child.³⁸ Instead of asking which parent has the greater right to custody, the law directs judges to focus on what arrangement will give the child a safe environment, emotional support, and a secure future.

The United States followed a very different rule for a long time. Courts there once applied what was called the tender years doctrine, which presumed that young children were better off in their mother's care. By the later part of the twentieth century, this presumption was dropped by courts and legislatures across the country in favour of a gender neutral best interests of the child standard.³⁹ Family law in the United States is largely a matter for individual states rather than

³⁶Vivek Singh v. Romani Singh, (2017) 3 S.C.C. 231 (India).

³⁷Children Act 1989, c. 41, section 1, sub section 1 (England).

³⁸Children Act 1989, c. 41, section 1, sub section 3 (England).

³⁹Julie E. Artis, Judging the Best Interests of the Child, Judges Accounts of the Tender Years Doctrine, 38 Law

the federal government, and several states, such as Idaho and Minnesota, have gone further by writing a presumption in favour of joint custody directly into their statutes, reflecting a general policy of keeping both parents involved in a child's life wherever that serves the child's welfare.⁴⁰

Although the legal systems of India, the United Kingdom, and the United States are all quite different, they all recognise one important idea, that the welfare of the child matters more than the legal rights of either parent. The real difference is that the UK and the US have actually written this thinking into their custody statutes over time, while in India, most of this development has come from judges rather than Parliament, and the Guardians and Wards Act itself has remained largely unchanged. This gap is exactly why modernising the Act matters.

Need for Reform

The Guardians and Wards Act, 1890 has played an important role in protecting children's interests for more than a century, and it remains one of the main laws governing guardianship and custody in India even today. But it was enacted during the British colonial period, when fathers were generally regarded as the head of the family and its primary decision makers, and several of its underlying assumptions have not really moved on since. Even the Law Commission of India has observed that this kind of preference for the father has no rational basis and does not fit with the constitutional guarantee of equal treatment for men and women.⁴¹

Another issue is the continuing presence of different personal laws governing child custody. The Guardians and Wards Act applies as the general law, but different religious communities still follow their own separate rules on guardianship and custody, and the Law Commission has itself pointed out that these different laws do not treat the welfare principle with the same degree of importance.⁴² A more consistent legal framework would make the law easier to understand and apply, while still guaranteeing equal treatment for every child, regardless of their family's religion.

and Society Review 769, page 769 (2004).

⁴⁰Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 26 to 30 (2015).

⁴¹Law Commission of India, Report No. 133, Removal of Discrimination Against Women in Matters Relating to Guardianship and Custody of Minor Children and Elaboration of the Welfare Principle, paragraph 4.1 (1989).

⁴²Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 1 to 2 (2015).

The Act also gives very little guidance on situations that have become common in modern society, such as disputes involving divorced parents, single parent families, remarriages, marriages between people of different faiths, and parents living in different cities or even different countries. Because the Act stays silent on most of this, judges end up relying heavily on precedent rather than clear statutory guidance, which is not ideal for consistency. On top of this, custody disputes in India often continue for months or even years, and that delay alone can cause children real stress and instability, which is part of why the Law Commission of India has recommended a much greater role for mediation in resolving custody disputes.⁴³ Many legal experts also believe Indian law should more clearly recognise shared parenting, since a child usually benefits from maintaining a healthy relationship with both parents even after separation, so long as there is no abuse or neglect involved.

The Law Commission of India has recognised much of this. In its 257th Report on Reforms in Guardianship and Custody Laws in India, the Commission recommended a series of amendments to strengthen the welfare principle, give both parents equal legal status, provide clearer guidelines for deciding what serves a child's welfare, and allow courts the option of awarding joint custody in suitable cases.⁴⁴ Although these recommendations were made several years ago, most of them have still not been carried into law. None of this means the Guardians and Wards Act has become irrelevant, since it clearly has not, but updating it would make the written law match what courts are already doing in practice, and that alone would help judges, lawyers, and families alike.

Conclusion

The Guardians and Wards Act, 1890 has remained the foundation of guardianship and child custody law in India for more than 130 years. Although it was enacted during the colonial period, it continues to play an important role in resolving disputes relating to the care and protection of children, working alongside different personal laws and giving courts the authority to appoint guardians whenever necessary. At its heart, the Act still rests on a simple idea, that a guardian is someone trusted with real duties towards a child, and not simply someone holding a right over that child.

⁴³Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 35 to 40 (2015).

⁴⁴Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India, page 51 to 66 (2015).

Indian society, however, has changed a great deal since the Act was passed. Family structures are more varied, greater importance is now given to gender equality, and there is a much better understanding of children's emotional and psychological needs. Courts have responded to this mainly through interpretation. The welfare of the child is now the most important factor in almost every custody dispute, and judges routinely weigh a child's emotional wellbeing, education, and stability alongside a parent's financial ability. This approach, which puts the child first, has gradually transformed how the Act works in practice, even though its actual wording has remained largely unchanged.

A closer look at the different personal laws shows that Hindus, Muslims, Christians, and Parsis continue to follow somewhat different rules on guardianship and custody. Despite these differences, Indian courts have consistently placed the welfare of the child above the legal rights of parents, regardless of which personal law applies. Countries such as the United Kingdom and the United States have reached a similar conclusion in their own legal systems, which suggests that protecting the best interests of the child has become something close to a globally accepted principle, rather than a purely Indian one.

So, is the Guardians and Wards Act, 1890 still relevant? The answer is yes, but it needs reform to meet the needs of present day society. The law should be updated to reflect changing family structures, recognise the equal role of both parents, give clearer guidance to courts, and formally include the principles that have already been developed through judicial decisions. Such reforms would not replace the existing law but would strengthen it and make it better suited to India today. In the end, the true importance of the Guardians and Wards Act does not lie in its age but in its ability to protect children, and as society continues to change, the law protecting them should change along with it.