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# CUSTODY DISPUTES IN THE CONTEMPORARY ERA: A COMPARATIVE ANALYSIS BETWEEN HINDUS AND MUSLIMS

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## Introduction

The idea of guardianship lies at the very center of demarcating the legal rights and obligations of parents and guardians with respect to children. It protects, nurtures, and effectively safeguards the welfare of children by establishing definitive legal provisions in the form of residential rights. Guardianship in India is predominantly based on religious personal law, and therefore there are gigantic differences in the extent to which various communities acknowledge and implement guardianship and custody rights. Hindu and Muslim law in specific illustrate contrasting tendencies in these kinds of things due to centuries-long theology dogma, customary culture, and socio-legal evolution.

In Hindu law, the major law that presides over guardianship is the Hindu Minority and Guardianship Act, 1956. The father is recognized under this Act as the natural guardian of a child, while the mother becomes so only in exceptional situations, i.e., in the absence of the father. This is consistent with traditional patriarchal society in which paternal ascendancy was ever given priority. But the changing legal culture, sparked by innovative judicial constructions, has increasingly been concerned with placing paramountcy on the best interests of the child in custody cases. Courts have been the prime mover in advancing the welfare principle, and thus curbed strict enforcement of gender-stereotypical guardianship norms.<sup>1</sup>

Contrary to this, Muslim guardianship laws are premised on religious authority in the form of Hadith and Quran. Islamic law differentiates between two concepts, namely guardianship (wilayat) and custody (hizanat). Fathers are usually the natural guardians of the child's financial

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<sup>1</sup> 'White Black Legal' <<https://www.whiteblacklegal.co.in/details/comparative-study-on-guardianship-of-minority-in-hindu-muslim-and-christian-law-by---vignesh-kumar-m>> accessed 1 February 2025

and legal affairs, while custodial rights are given to mothers, particularly to younger children.<sup>2</sup> This differentiation emanates from religious interpretations that aim to reconcile parental roles in conformity with Islamic doctrines. Indian courts, however, despite respect for religious teachings, have often interfered to advance the child's best interests, particularly where a rigid application of traditional principles might result in undesirable outcomes for the minor.<sup>3</sup>

### **The Changing Dynamics of Marriage and Custody Disputes**

In India, traditionally marriage is perceived as a spiritual institution, being culturally and socially sacred, representing a legally as well as morally valid union among individuals. Still, in present-day society, there are plenty of couples suffering from marital issues, resulting in rising conflicts. Among the most debatable things coming out of such conflicts is child custody.<sup>4</sup>

Children are often considered the foundation of the nation's future. While some children are nurtured with utmost care, receiving all necessities for their development, millions of others face abandonment each year. These deserted children frequently fall victim to sexual abuse, human trafficking, and abduction. It is rare for such vulnerable children to be rescued and placed in the care of NGOs or child welfare homes, where they could receive proper protection and support.<sup>5</sup>

### **Guardianship and Custody from a legal and social point of view**

The idea of guardianship is intrinsically tied to custody in children, the best interest of the child always being the most important factor when it comes to legal cases. Guardianship includes the duty to bring up a child, ensure their physical and emotional health, and make choices that will ensure their future safety. The guardianship normally results when a child does not have

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<sup>2</sup> chhabra saksham, 'Hindu Law and Muslim Personal Laws - Difference under the Indian Law' (*iPleaders*, 20 June 2018) <<https://blog.ipleaders.in/hindu-law/>> accessed 1 February 2025

<sup>3</sup> Srivastava M, 'Comparative Analysis of Guardianship Laws in India' (10 January 2012) <<https://papers.ssrn.com/abstract=2149887>> accessed 1 February 2025

<sup>4</sup> 'Historical Evolution | Reforms in Guardianship and Custody Laws in India | Law Commission of India Reports | Law Library | AdvocateKhoj' <<https://www.advocatekhoj.com/library/lawreports/reformsinguardianship/2.php?Title=Reforms%20in%20Guardianship%20and%20Custody%20Laws%20in%20India&STitle=Historical%20Evolution>> accessed 8 February 2025

<sup>5</sup> Krishnan N, 'Legal Framework Of Child Custody And Guardianship In India' (*Rest The Case*) <<https://restthecase.com/knowledge-bank/legal-framework-of-child-custody-and-guardianship-in-india>> accessed 8 February 2025

the capacity to take care of themselves or to manage their assets<sup>6</sup>. A guardian, therefore, is an individual entrusted with making crucial decisions regarding a child's education, health, and welfare. In essence, a guardian is someone who assumes legal responsibility for a minor or a person unable to manage their own affairs.<sup>7</sup>

### **Evolution of Guardianship Under Hindu Law**

Ancient Hindu law, as understood from the Dharmashastras, did not discuss at length the institution of guardianship. Its focus was on the protection of a minor's property and not on the welfare of the child. This lack of elaborate legal provisions was partly because of the prevalence of joint families, which provided for the upbringing of children after the death of their natural father. In those instances, the task of raising the child fell to the Karta (the head of the family). When the child was outside of the joint family set-up, the welfare of the child was monitored by the child's Guru within an ashram. Meanwhile, the king as the custodian in chief took charge of the property of minors.<sup>8</sup>

The contemporary notion of guardianship emerged in the British colonial period, when courts instituted legal provisions that regulated guardianship. It was settled that, according to Hindu law, the father was the natural guardian of a child, and after his death, the mother became the guardian.<sup>9</sup> The Guardians and Wards Act, 1890, vested the power to appoint guardians in district courts, giving a formal touch to the legal process. The Hindu Minority and Guardianship Act, 1956, codified the then prevalent Hindu laws on guardianship and instilled a methodical approach to parental rights and duties.

### **Guardianship of Minor Children: A journey from Patriarchy to Child Welfare**

Historically, guardianship was viewed as an extension of patriarchal power. At present, legal

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<sup>6</sup> 'Child Custody and Guardianship Laws in India: A Overview' (8 October 2024) <<https://ksandk.com/private-clients/child-custody-guardianship-laws-india/>> accessed 10 February 2025

<sup>7</sup> IOSR Journals, 'Child Custody Laws in India: A Comparative Analysis of Personal Laws and Judicial Trends' (2015) 20(7) IOSR JHSS 39-58 <https://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue7/Version-6/G020763958.pdf> accessed 10 February 2025

<sup>8</sup> 'Reforms in Guardianship and Custody Laws in India | Law Commission of India Reports | Law Library | AdvocateKhoj'

<<https://www.advocatekhoj.com/library/lawreports/reformsinguardianship/index.php?Title=Reforms%20in%20Guardianship%20and%20Custody%20Laws%20in%20India>> accessed 10 February 2025

<sup>9</sup> Ravneet Kaur, 'Legal Aspect of Guardianship under Hindu Jurisprudence: An Analysis' (2021) 20(1) Ilkogretim Online - Elementary Education Online 1953 <https://www.bibliomed.org/mnsfulltext/218/218-1617701784.pdf?1741333234> accessed 11 February 2025.

interpretations focus on the role of guardianship as a measure to ensure a child's care and protection. The Hindu Minority and Guardianship Act, 1956 defines a minor as any person under the age of 18 according to Section 4(b). Minors are viewed as being physically and mentally immature and in need of guidance, care, and protection.<sup>10</sup> A guardian, legally, is a person who takes care of the well-being and property of the minor and makes decisions on their education and health.

Since child welfare is of utmost concern, contemporary legislation identifies guardianship mainly as a means of securing the best interests of the child. Guardianship may be classified into various forms:

**1. Natural Guardianship** – The father is the first guardian in the primary guardianship rights, followed by the mother. When the child is illegitimate, the mother enjoys the first guardianship rights with the father being the second guardian.<sup>11</sup>

1. **Testamentary Guardianship** – A father can appoint a guardian in a will, and on his death, the appointed guardian takes over. Traditionally, this provision enabled fathers to override the mother's right of guardianship. Amendments in the law now enable mothers to have equal powers to appoint testamentary guardians.

2. **Court-Appointed Guardianship** – In the event of death or incapacity of the two parents, the district court under the Guardians and Wards Act, 1890, can also appoint a guardian in the best interest of the child. Chartered high courts also possess inherent powers to appoint guardians where required.<sup>12</sup>

These provisions in law reflect the transformation of the guardianship system—away from the patriarchal philosophy of control towards a welfare-oriented, child-friendly approach

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<sup>10</sup> 'Historical Evolution | Reforms in Guardianship and Custody Laws in India | Law Commission of India Reports | Law Library Advocate Khoj' <<https://www.advocatekhoj.com/library/lawreports/reformsinguardianship/2.php?Title=Reforms%20in%20Guardianship%20and%20Custody%20Laws%20in%20India&STitle=Historical%20Evolution>> accessed 8 February 2025

<sup>11</sup> Rai D, 'Hindu Minority and Guardianship Act, 1956' (*iPleaders*, 27 June 2024) <<https://blog.ipleaders.in/overview-of-the-hindu-minority-and-guardianship-act-1956/>> accessed 11 February 2025

<sup>12</sup> Indulia B, 'Maintenance Under the Guardians & Wards Act, 1890: An Interpretative Analysis' (*SCC Times*, 15 January 2025) <<https://www.sconline.com/blog/post/2025/01/15/maintenance-under-the-guardians-wards-act-1890-an-interpretative-analysis/>> accessed 10 February 2025

emphasizing protection.

The institution of guardianship has changed considerably across centuries, influenced by legal tradition, socio-cultural changes, and shifting judicial attitudes. Traditionally, common law held the father to be the sole absolute guardian of his children, bestowing upon him absolute power over their education, religion, property, and upbringing. The mother was subordinated in a similar fashion, as part of the general legal and social structures that refused independent legal personality to women.<sup>13</sup> Throughout the years, legislations and judgments have shaped this patriarchal framework, substituting paternal jurisdiction with the primacy of child interest. This chapter explores the history of the evolution of guardianship legislation, considering the salient legal advancements in England and India, in addition to tracing out international human rights law principles and recent tendencies of joint custody.<sup>14</sup>

### **Traditional Common Law Approach to Guardianship**

In the classic common law paradigm, the father was seen as being the only guardian of his offspring, with unfettered power over their person and property. His powers pervaded every domain of the life of the child, from their education to finance and even to moral development. The courts did not lightly set aside paternal discretion, as also was the case with the overall patriarchal institutional order of society. Mothers were legally dependent upon their husbands, with no distinct rights over children.

This strict paternal guardianship model was firmly rooted in the legal systems of most English common law-influenced nations. It was not until statutory reforms emerged that the legal position of mothers started to shift, though slowly.<sup>15</sup>

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<sup>13</sup> Shalu Nigam, 'Guardianship Law in India: Examining The Principle of the Best Interest of Minors and the Rights of Single Mothers as Sole Guardians' (2023) SSRN Electronic Journal [https://www.researchgate.net/publication/369106541\\_Guardianship\\_Law\\_in\\_India\\_Examining\\_The\\_Principle\\_of\\_the\\_Best\\_Interest\\_of\\_Minors\\_and\\_the\\_Rights\\_of\\_Single\\_Mothers\\_as\\_Sole\\_Guardians](https://www.researchgate.net/publication/369106541_Guardianship_Law_in_India_Examining_The_Principle_of_the_Best_Interest_of_Minors_and_the_Rights_of_Single_Mothers_as_Sole_Guardians) accessed 10 February 2025

<sup>14</sup> Punj A and Samarnath N, 'Guardianship of Hindu Minor: A Critique of the Law' (2021) 63 Journal of the Indian Law Institute 172 <<https://www.jstor.org/stable/27248385>> accessed 11 February 2025

<sup>15</sup> **Law Commission of India, Report No. 257: Reforms in Guardianship and Custody Laws in India** (May 2015) [https://highcourtchd.gov.in/sub\\_pages/left\\_menu/publish/year\\_books/Report%20No.257%20Custody%20Laws.pdf](https://highcourtchd.gov.in/sub_pages/left_menu/publish/year_books/Report%20No.257%20Custody%20Laws.pdf) accessed 12 February 2025.

## Early Legislative Reforms in England

The development towards accepting the rights of mothers in guardian cases is traceable to a chain of English legislative developments from the Custody of Infants Act, 1839. The Act gave the courts a discretion to give custody of infant children to mothers for the very first time confronting the absolute discretion of the fathers. But the father's rights were also still predominant, and the mother's rights in custody continued to be drastically curtailed.<sup>16</sup>

Follow-up legislative reforms continued to erode paternal dominance. The Custody of Infants Act, 1873, further protected maternal custody rights by enabling mothers to be awarded custody up to the time when the child reached the age of sixteen. The Guardianship of Infants Act, 1886, came as a major step forward by clearly establishing the equal rights of mothers in matters pertaining to custody and guardianship. It enabled mothers to be made testamentary guardians and entitled them to rights over access and custody of children.<sup>17</sup>

The Guardianship of Infants Act, 1925, furthered the principle of equality by requiring that courts consider the welfare of the child to be the paramount consideration in disputes relating to custody. This principle was further supported by the Guardianship of Minors Act, 1973, which, in effect, put both parents on equal footing and enabled mothers to exercise parental authority independently of fathers.

In India, colonial rule enacted the Guardians and Wards Act, 1890, which expressed largely the usual law principles of paternal dominance. The Act ordained that courts of justice should consider the welfare of the minor but also reinforced domination of the rights of the father in guardianship and custody matters<sup>18</sup>. Sections 7 and 17 of the Act acknowledged the significance of child welfare, but this was in effect overruled by Sections 19 and 25, which ensured the paramountcy of the father in matters of guardianship.

With the independence of India, there were legal reforms that brought the focus from paternal

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<sup>16</sup> Grimes L, 'Denied Paternity: Parental Rights and the Guardianship of Infants in Ireland, 1937–1964' (2022) 47 Journal of Family History 193 <<https://journals.sagepub.com/doi/10.1177/03631990211020347>> accessed 20 February 2025

<sup>17</sup> thelegalquorum, 'The Issue of Child Guardianship in India: Reference to Personal Laws' (*The Legal Quorum*, 5 September 2024) <<https://thellegalquorum.com/the-issue-of-child-guardianship-in-india-reference-to-personal-laws/>> accessed 13 February 2025

<sup>18</sup> Child Custody and Guardianship Laws in India: A Overview' (8 October 2024) <<https://ksandk.com/private-clients/child-custody-guardianship-laws-india/>> accessed 13 February 2025

rights to child welfare. The most important reform in this context was the passage of the Hindu Minority and Guardianship Act, 1956. The said law clearly gave the provision that the welfare of the minor should be the overriding consideration of protection disputes, thereby nullifying the father's authority.<sup>19</sup>

### **Best Interest of the Child in International Human Rights Law**

The doctrine of child welfare has also received firm endorsement in global human rights law. The United Nations Convention on the Rights of the Child (CRC) which was adopted in 1989 states that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, legislative bodies, administrative authorities, the best interests of the child shall be a primary consideration."<sup>20</sup>

The CRC also emphasizes the shared responsibility of parents to raise a child. Article 18 of the Convention obliges State Parties to ensure both parents have shared responsibilities in raising and growing the child. In addition, Article 9 of the Convention obliges a child not to be separated from his/her parents unless it is in the child's best interests, e.g., due to neglect or abuse.

The Committee on the Rights of the Child, in General Comment No. 14, has defined the best interest principle, citing many factors for determining a child's best interests. These are the child's views, identity (gender, cultural background, personal beliefs), family environment, safety, and education and access to health care. The best interest principle is meant to be flexible and versatile in order for courts to make rulings based on the unique facts of each case.

### **Criticism of the Best Interest Standard**

While universally embraced, the best interest of the child standard has been criticized on two important grounds. It is inherently ambiguous, and it is difficult for involved parents who are fighting custody battles to predict court decisions. That ambiguity can lead to prolonged legal

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<sup>19</sup> 'Evolution of Family Law in India: Key Developments, Challenges, and the Path Toward Gender Justice and Equality | Legal Service India - Law Articles - Legal Resources'

<<http://www.legalserviceindia.com/legal/article-18916-evolution-of-family-law-in-india-key-developments-challenges-and-the-path-toward-gender-justice-and-equality.html>> accessed 13 February 2025

<sup>20</sup> **National Human Rights Commission, India**, *United Nations Convention on the Rights of the Child (UNCRC) 2020* (NHRC, 2020) [https://nhrc.nic.in/sites/default/files/UNCRC\\_2020.pdf](https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf) accessed 13 February 2025

battles and uncertainty for both parents and children. A few law scholars have argued that more rules and clear specification of elements to be taken into account in determining child custody might provide greater certainty and consistency.<sup>21</sup>

Second, the best interest criterion has been faulted for concentrating solely on the child's best interests and not parents' rights and interests. Parents' well-being has been described as being also paramount to give the child a stable and nourishing environment. Parents' interests have been attempted to be incorporated into custody determination by some courts, but the issue remains unresolved.

### **Joint Custody: The New Trend**

In the last few decades, there has been an increasing movement towards endorsing joint custody as the default preference in most courts, and this is only increasing with the years. Research has found that children perform better when the two parents are still a live part of their lives even after divorce. Many Western nations, such as the United States of America, Canada, and Australia, have also adopted legislative presumptions of joint custody.<sup>22</sup>

Yet joint custody arrangements are not without controversy. In domestic violence cases, for example, a presumption of joint custody can put the victimized parent—usually the mother—in danger of further abuse. Joint custody, many legal professionals say, should not be ordered in cases of domestic violence.

In India, the LCI released a Consultation Paper in 2014 on Adopting a Shared Parenting System. The paper considered shared parenting regimes in other nations and investigated whether joint custody laws could be introduced in India. Upon wide-ranging consultations with legal professionals, scholars, and child care agencies, the Commission suggested that India ought to shift towards a more equitable system of custody such that both parents are substantially involved in the life of the child.<sup>23</sup>

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<sup>21</sup> 'CHILD CUSTODY: BEST INTEREST VS. PARENTAL RIGHTS » Lawful Legal' (26 December 2024) <<https://lawfullegal.in/child-custody-best-interest-vs-parental-rights/>> accessed 13 February 2025

<sup>22</sup> '3 Modern Trends in Child Custody Agreements - Lawyer Monthly' (<https://www.lawyer-monthly.com/>) <<https://www.lawyer-monthly.com/2024/03/3-modern-trends-in-child-custody-agreements/>> accessed 13 February 2025

<sup>23</sup> Mandhani A, 'Law Commission of India Invites Comments on Adopting "Shared Parenting" in India' (13 November 2014) <<https://www.livelaw.in/law-commission-india-invites-comments-adopting-shared-parenting-india/>> accessed 13 February 2025



The evolution of guardianship laws reflects broader shifts in legal and social norms, from a patriarchal model of paternal supremacy to a child-centric approach emphasizing welfare and best interests. In England and India, legislative reforms have gradually dismantled the absolute authority of fathers, recognizing the equal rights of mothers and prioritizing child welfare. International human rights law particularly the CRC has reinforced these principles, advocating for a balanced and flexible approach to custody determinations.<sup>24</sup> The increasing trend towards joint custody emphasizes the importance of legal regulations that meet the evolving family structure while protecting the best interests of the child. Yet, the controversy surrounding custody laws is dynamic with discussions persisting on the best legal standards for promoting the welfare of children and the rights of parents.

### **Legal Framework regulating custody and guardianship**

The words guardianship and custody, though used interchangeably in most cases, have different legal implications. While guardianship relates to the law governing a child's person and property until he or she comes of age, custody means the child's physical custody and welfare, looking after his or her overall upbringing.<sup>25</sup>

Guardianship is typically until the minor attains majority, but custody is a pressing matter as far as personal care and emotional support are concerned. A guardian possesses the authority to manage the minor's property, unlike a custodian, who lacks the same powers. Such legal powers are accompanied by attendant responsibilities. In cases where both parents are available, guardianship and custody disputes are hardly ever encountered. But when parents divorce, the law must step in to determine guardianship and custody rights. This raises fundamental legal questions: who is a guardian, who should have custody, and what are the legal rights of women on guardianship and custody<sup>26</sup>

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<sup>24</sup> Shalu Nigam, 'Guardianship Law in India: Examining the Principle of "Best Interests" of Minors and the Rights of Single Mothers as Sole Guardians' (2024) 31(3) Indian Journal of Gender Studies 308 [https://www.researchgate.net/publication/382829765\\_Guardianship\\_Law\\_in\\_India\\_Examining\\_the\\_Principle\\_of\\_Best\\_Interests\\_of\\_Minors\\_and\\_the\\_Rights\\_of\\_Single\\_Mothers\\_as\\_Sole\\_Guardians](https://www.researchgate.net/publication/382829765_Guardianship_Law_in_India_Examining_the_Principle_of_Best_Interests_of_Minors_and_the_Rights_of_Single_Mothers_as_Sole_Guardians) accessed 13 February 2025.

<sup>25</sup> Krishnan N, 'Legal Framework Of Child Custody And Guardianship In India' (*Rest The Case*) <<https://restthecase.com/knowledge-bank/legal-framework-of-child-custody-and-guardianship-in-india>> accessed 13 February 2025

<sup>26</sup> Child Custody and Guardianship Laws in India: A Overview' (8 October 2024) <<https://ksandk.com/private-clients/child-custody-guardianship-laws-india/>> accessed 13 February 2025

## Women's Rights to Custody and Guardianship under Muslim Law

The mother, in accordance with Muslim law, has custody of a child in the majority of circumstances, while guardianship, especially of a legitimate child, is generally given to the father. The custodial mother is called a Hazina. Her right of custody over a daughter comes to an end under Hanafi law when the daughter reaches age at puberty. In the event of a male child, custody would be transferred to the mother until the boy reaches the age of seven years, and then the custody would be transferred to the father as his own right.<sup>27</sup> But Shia law differs on this aspect under which the mother has custody of a girl up to the age of seven and a boy up to two years of age, after which the custody reverts to the father. Where the mother has passed away or is legally incapacitated, Hanafi law prescribes that the custody right passes over to the maternal grandmother or maternal great-grandmother, then the paternal grandmother or great-grandmother, then to the sister of the sister or daughter of the sister, and finally to the maternal and paternal aunts. In Shia law, by contrast, custody falls to the father, and on his default, to the paternal grandfather.

With regard to guardianship, **Muslim law** recognizes three distinct types:

1. **Guardian of the person (Walayat-e-Nafs)**
2. **Guardian of property (Walayat-e-Mal)**
3. **Guardian of marriage (Walayat-e-Nikah)<sup>28</sup>**

The mother is usually not entitled to be a guardian in any of these roles. Rather, the father, then his male relatives, take guardianship roles. This difference in the rights of fathers and mothers points to an important gender difference in Muslim law of guardianship. However, the father, as the legal guardian of property, may in his discretion name the mother as a testamentary guardian by a will. In such situations, she can take charge of the property of the minor.

Apart from these conventional legal provisions, the courts have often appointed or ordained the mother as a guardian of her child's property under the Guardians and Wards Act, 1890

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<sup>27</sup> Aishwarya Agrawal, 'Guardianship under Muslim Law' (2024) <https://lawbhoomi.com/guardianship-under-muslim-law/> accessed 20 February 2025

<sup>28</sup> Author Unknown, *Women's Right to Guardianship and Custody* (e-PG Pathshala, INFLIBNET) [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/women\\_studies/gender\\_studies/07.\\_women\\_and\\_law/18.\\_womens\\_right\\_to\\_guardianship\\_and\\_custody/et/8052\\_et\\_et\\_18.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/women_studies/gender_studies/07._women_and_law/18._womens_right_to_guardianship_and_custody/et/8052_et_et_18.pdf) 15 February 2025.

(GWA), whenever the welfare of the child required it. In such cases, minority continues till the age of 21 for the child.

## **Conclusion**

The Indian law of guardianship and custody continues to be in controversy at the crossroads, replete with a pervasive movement away from traditional legal models towards child-centered and less-discriminatory designs. A critical examination of Hindu and Muslim personal laws reveals that both codes, while articulated within different theological and cultural contexts, have been predominantly patriarchal in orientation for decades. Guardianship has, in most instances, been assigned to the father and left the mother in the role of a natural custodian in exceptional or temporary cases. This model has had extensive implications for women's legal status, potentially making them powerless in decisions made concerning their own children.

Contemporary legal development and judicial construction are, however, progressively undermining this stereotype. Indian courts, particularly in its milestone judgements, have begun prioritizing the child's interest above provisions of personal law. The courts have been finding it more favorable to grant mother custody, to sanction joint custody, and to even question continuing working personal legislations where these are against the constitutional guarantee of equality and justice. Statutory enactments like the Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956, while still having patriarchal undertones, have themselves been interpreted and clarified in light of evolving social realities and the touchstone of best interest of the child.

Human rights covenants at an international level, particularly the United Nations Convention on the Rights of the Child (UNCRC), have also played a significant role in reorienting the normative sphere. India's accession to these treaties reflects its formal commitment to safeguard the rights of the child, among which are their right to be heard in judicial proceedings concerning their custody, to grow up in a healthy and secure environment, and to maintain personal relations with both parents. While enforcement and consistency of practice remain issues to be resolved, these guidelines constitute a beacon of progressive reform.

Additionally, the increasing judicial endorsement of joint custody and shared parenting is a fresh deviation from the past sole-custody model. The new trend, so far not yet codified fully in Indian law, is an articulation of mature understanding of the modern familial forms and the

child's psychological needs. It is supportive not merely of the child's psychological health, but also acknowledges the evolving role of each parent beyond the patriarchal models of breadwinner and caretaker.

Overall, while the path to a more equally just regime of custody and guardianship in India remains to be achieved, the trend is positive. Legislative reform, judicial activism, and enhanced public awareness are all moving in the direction of a constitutional, principles-based, best-practice-and-international best-practice-guided, and practice-guided regime of law that is increasingly being put into conformity with constitutional norms, international norms, and family realities. The last objective, nonetheless, will necessarily be to bring Indian custody and guardianship legislation truly child-oriented, gender-neutral, and capable of capturing the diversities and dynamics of Indian society. This will perhaps not merely be an exercise of legislative revision but a shift in broad cultural attitude toward parenting as an collective, group, cooperative, and dynamic endeavour.