

## TREATMENT OF MINOR'S PROPERTY IN INDIA

Anumeha Karnatak<sup>1</sup> and Mihir Narvilkar<sup>2</sup>

### *Abstract*

*The legal concept of guardianship of property takes birth from the very fact that minors or infants are incapable of managing their own property-related matters. The purpose of this kind of guardianship is to ensure that the property of the minor is dealt with in a careful, non-prejudicial and beneficial manner till the time he attains majority. This paper discusses the conception of property of a minor and the various facets of guardianship. It attempts to analyse the elements of guardianship in the light of various laws, while also looking into issues of alienation and partition of the minor's property. The paper tries to make sense of the various provisions related to guardianship in personal laws and the secular legislation 'Guardians and Wards Act, 1890' [hereinafter "the GWA"] in an attempt to determine how they help safeguard the property of the minor. Personal laws governing Hindus, Muslims, Parsis and Christians of India have been examined. Delving into the different laws on guardianship and rights of the minor over his property offers us clarity in terms of scope and applicability, and offering this clarity is the objective of the paper.*

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<sup>1</sup> National Law School of India University (NLSIU), Bangalore

<sup>2</sup> Institute of Law, Nirma University, Ahmedabad

## INTRODUCTION

*“Children must be prevented from squandering away the property through inexperience, and if either or both of their parents die or if the parents disagree in matters concerning the children, provision must be made... for the management of their property”*

-83<sup>rd</sup> Report of the Law Commission of India

A guardian is anybody who has power as well as corresponding responsibility to act in a manner as to further the interests of the minor and his property. Many countries recognize that the legal guardianship of a minor rests with his parents. Other common types of guardians include testamentary guardians and guardians appointed by the court. Guardianship as a concept is governed as per the provisions of the personal law of the concerned minor. The Hindu Minority and Guardianship Act, 1956 [hereinafter “HMGA”] outlines the powers and responsibilities of the guardian while dealing with the property of the minor. The Muslim law of guardianship is customary in nature. The only secular piece of legislation on guardianship in India is the GWA. The provisions of the HMGA are “*in addition to, and not in derogation of*” the GWA.<sup>3</sup>

This paper is an attempt to provide a broad picture of the manner in which a minor’s property is treated across various personal laws, viz. Hindu law, Muslim law, Christian law and Parsi law. In the section covering Hindu law, the researchers have sought to understand and analyze the position of minor as a coparcener as well as a *karta*. The manner in which the property of the minor is alienated and partitioned has also been elaborately discussed using case laws wherever necessary. In the section covering Muslim law, the researchers have discussed the powers of the guardian to effect alienation and partition of the minor’s property. In the next section covering Christian law and Parsi law, the researchers have outlined some of the important provisions of the GWA applicable to the Christians and Parsis of India.

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<sup>3</sup>Section 2, Hindu Minority and Guardianship Act, 1956.

## TREATMENT OF PROPERTY OF MINORS ACROSS VARIOUS LAWS

### *Hindu Law*

Among Hindus, the term “family” is given a wider connotation. It includes all the patrilineal descendants from one common ancestor, wives of such descendants, their sons, and unmarried daughters.<sup>4</sup> Such a family is often referred to as a joint Hindu family or a Hindu Undivided Family (hereinafter “HUF”).<sup>5</sup> The property owned by such a family is the joint family property. On the other hand, the term “coparcenary” is given a narrower connotation in the sense that it consists of patrilineal descendants only up to next three degrees.<sup>6</sup> Every child born in an HUF acquires a share in the coparcenary property as soon as he takes birth.<sup>7</sup>

### MINOR AS COPARCENER

Hindu Law does not distinguish between the rights of a major coparcener and a minor coparcener with respect to the joint family property.<sup>8</sup> Some of the rights common to all coparceners include the right of joint ownership, right of joint possession, enjoyment and use of joint family property, right to alienate undivided share under special circumstances, right to question an unfair or unjust alienation effected by the *Karta*, right to claim partition *inter alia*.<sup>9</sup>

In matters of partition, the suit for the same can be instituted by the next friend or the guardian on behalf of the minor. However, it must be ensured that the partition is beneficial for and is in the interests of the minor.<sup>10</sup> Since a minor is an individual lacking prudence and maturity, the court is regarded as *parens patriae* of the minor. The guardian or next friend can file a suit demanding partition in certain situations. One such situation could be when the *kartais* found misusing the joint family property resulting in any detriment to the minor’s

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<sup>4</sup>Ernst John Trevelyan, HINDU FAMILY LAW: AS ADMINISTERED IN BRITISH INDIA, 224 (1908).

<sup>5</sup>*Id.*

<sup>6</sup>Dr. Paras Diwan, FAMILY LAW, 383 (9<sup>th</sup>edn. 2009).

<sup>7</sup>B.M. Gandhi, FAMILY LAW , 9 (Vol. II, 2013).

<sup>8</sup>Diwan, *supra* Note 4, at 437.

<sup>9</sup>Diwan, *supra* Note 4, at 400.

<sup>10</sup>G.C.V. Subbarao, FAMILY LAW IN INDIA, 124 (10<sup>th</sup>edn. 2011).

interest in the same. Other could be when the minor is being improperly treated or discriminated against.<sup>11</sup> It could also be when the *karta* is unable to maintain the minor.<sup>12</sup>

While determining whether the partition is for the benefit of the minor, the court will take into consideration the complete situation that existed in the family. The court will also assess if some persons are capable of effectively dealing with the minor's property after the partition takes effect. Consequences of the partition with respect to the interests of the minor are also taken into account.<sup>13</sup>

The crucial question to be answered is whether the partition results in benefit of the minor.<sup>14</sup> It should be able to further the minor's interests or safeguard his share from danger; otherwise, the court has the discretion not to direct partition.<sup>15</sup> The court is the exclusive authority to determine whether partition would result in any benefit to the minor. In *P.H. Ramaswamy v. R. Kuppa*,<sup>16</sup> the Madras High Court was of the opinion that this is an unwarranted restriction on the minor's rights. It is discriminatory in the sense that a major coparcener can separate from other coparceners or the father can give effect to a partition all by himself whereas a minor can do so only through a next friend. However, it is submitted that there can be no better authority than a court to finally assess and come to the conclusion whether a partition is in the interests of the minor and whether the next friend or the guardian is acting in a *bona fide* manner. Such a crucial decision ought to be taken only by a court and not by any private agency or guardian of the minor.

If the father refuses to maintain his minor son, indulges in immoral conduct and invests the joint family money into speculative dealings then the courts shall conclude that the partition is in the interests of the minor.<sup>17</sup> The severance of status is effected from the date of filing of the suit for partition.<sup>18</sup> It is also a well-settled rule of Hindu law that the major coparceners can successfully give effect to a partition even if a minor coparcener is present. However, if

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<sup>11</sup>Diwan, *supra* Note 4, at 437.

<sup>12</sup>Poonam Pradhan Saxena, *FAMILY LAW LECTURES*, 282 (2<sup>nd</sup> edn. 2007).

<sup>13</sup>*Id.*

<sup>14</sup>China Venkata v. Venkataraman, AIR 1957 AP 93; Jugal Kishore Baldeo Sahai v. CIT, (1967) 1 SCR 416.

<sup>15</sup>Ranga Thatchari v. Srinivasa, (1927) ILR 50 Mad 866; Kishan Lal v. Lachmi Chand, AIR 1937 All 456.

<sup>16</sup>P.H. Ramaswamy v. R. Kuppa, AIR 1957 Mad 81.

<sup>17</sup>Nagappa Chettiar v. Subramanian, (1946) ILR Mad 103.

<sup>18</sup>Kakumanu v. Kakumanu, AIR 1958 SC 1042.

the same takes place unfairly to the prejudice of the minor's interests then it can be reopened at the minor's instance when he attains majority.<sup>19</sup>

In *Chinna Venkata Reddi v. Lakshamma*,<sup>20</sup> the mother in her capacity as the guardian of her son filed a suit for partition claiming that the other coparceners were suppressing certain properties and forming collusive deeds of partition. During the pendency of the suit, the minor died. The Supreme Court came to the conclusion that the partition was in the interests of the minor. The mother was awarded a decree for the share which would have been allocated to the minor had he been alive. In this case, the mother was acting as the legal representative of the minor in the event of his death.

### MINOR AS KARTA

Generally, the senior most male member of the family occupies the position of the *karta*. However, as regards a junior member, he can be a *karta* if all other coparceners give their consent to the same.<sup>21</sup> It is also a settled rule now that in the absence of the father or an adult male coparcener, a minor can also act as the *karta*.<sup>22</sup> In *Budhi Jena v. Dhobai Naik*,<sup>23</sup> the Court observed that under Hindu law, there is no text or rule that bars a minor from being the *karta* of the family. In cases wherein the father is unavailable for a considerable length of time, the minor son can shoulder his responsibilities as the *karta*. If he is *sui juris*, he can also act through his natural guardian, his mother.

The position of a minor as the *karta* was also clarified in *Mulla's Hindu Law*:

*“Capacity of a minor to act as guardian: There is no rule of Hindu Law that the managing member of an undivided family should be an adult. He may be a minor in which case he is competent to act as guardian not only of his own wife and children but also the wife and children of another minor member of the family.”*

Furthermore, section 21 of the GWA provides that a minor is disentitled from acting as the guardian of any minor. However, it also lays down the exceptions with regard to the minor's own wife or children, or where he is the *karta* of an HUF, the wife or child or any other member of that HUF.<sup>24</sup> Therefore, it acknowledges the capacity of a minor to occupy

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<sup>19</sup>Diwan, *supra* Note 4, at 437.

<sup>20</sup>*Chinna Venkata Reddi v. Lakshamma*, 1964 (1) SCJ 45.

<sup>21</sup>*Narendra Kumar J. Modi v. CIT* (1976) 105 ITR 109 (SC).

<sup>22</sup>*Budhi Jena v. Dhobai Naik*, AIR 1958 Orissa 7.

<sup>23</sup>*Budhi Jena v. Dhobai Naik*, AIR 1958 Orissa 7.

<sup>24</sup>Section 21, Guardians and Wards Act, 1890.

managerial position in an HUF.<sup>25</sup> Section 21 has been regarded as good law notwithstanding section 10 of the HMGA which bars the minor from acting as the guardian of any minor's property.<sup>26</sup>

## **GUARDIANSHIP AND ALIENATION OF MINOR'S PROPERTY**

*“Guardianship is a concept integrally linked with the legal concept of minority.”*<sup>27</sup> As regards a minor's separate property, the natural guardian is vested with the power over such property. However, a natural guardian holds no power over the undivided interest of the minor in the HUF property.<sup>28</sup> The rationale for the same is that such an interest is not considered to be minor's individual interest.<sup>29</sup> Only the High Court is bestowed with the inherent jurisdiction to nominate a guardian to deal with such property of the minor.<sup>30</sup> It has also been held that in situations wherein all coparceners are minors, the court has the jurisdiction to nominate a guardian of the collective property of the minors.<sup>31</sup>

The coparcenary property of the minors is dealt with under the law as applicable to the HUF property. Accordingly, the *karta* or manager of the family can impliedly dispose of the HUF property (including that of the minor) in cases of legal necessity or for the general benefit of the estate.<sup>32</sup> Even if the *karta* is the natural guardian of the minor, no prior permission of the court is required.<sup>33</sup> Such disposal of property does not require the permission of the court.<sup>34</sup> In this situation, section 8 of the HMGA will not be attracted.<sup>35</sup>

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<sup>25</sup>Sarda Prasad v. Umeshwar Prasad, (1963) Pat 274.

<sup>26</sup>Budhi Jena v. Dhobai Naik, AIR 1958 Orissa 7. To support this assertion, focus was laid on section 2 of the Hindu Minority and Guardianship Act, 1956 which provides that *“the provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided in derogation of, the Guardians and Wards Act, 1890.”*

<sup>27</sup>83<sup>rd</sup> Report of the Law Commission of India on THE GUARDIANS AND WARDS ACT, 1890 AND CERTAIN PROVISIONS OF THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956, 3.2 (April 1980).

<sup>28</sup>Section 6, Hindu Minority and Guardianship Act, 1956; Sandhya Rajan Antapurkar v. State of Maharashtra, (2000) 2 HLR 277 (Bom); Narayan Laxman Gilankar v. U.K. Kaushik, (1994) 1 HLR 492 (Bom).

<sup>29</sup>Gharibullah v. Kholak Singh, (1903) 30 IA 165; Shamkuar v. Mohananda, (1892) 19 Cal 301.

<sup>30</sup>In re Mahadeo Krishna Rupji, ILR 1937 Bom 432; In re Dattaraya, (1932) 56 Bom 519.

<sup>31</sup>Seeta Bai v. Narasimha Shet, ILR (1945) Mad 568; Surya Narayan v. Venkayya, AIR 1951 Mad 792.

<sup>32</sup>Ramesh Chandra Nagpal, MODERN HINDU LAW, 610 (2<sup>nd</sup> edn. 2008).

<sup>33</sup>*Id.*, at 611.

<sup>34</sup>Nathuni Mishra v. Mahesh Mishra, AIR 1963 Pat 146; Arun Kumar v. Chandrawati Agrawal, AIR 1978 All 221.

<sup>35</sup>Sri Narayan Bal v. Sridhar Sutar, (1996) 8 SCC 54; V.V.V. Ramaraju v. Korada Malleswar Rao, (1999) 2 ALR 257 (AP).

In *In re Krishnakant Maganlal*,<sup>36</sup> the court was of the opinion that if the power of any father *karta* to cause alienation of the HUF property is made subject to the prior permission of the court as under section 8(2) of the HMGA then it will result in anomaly. In such a situation, any ordinary *karta* such as brother or uncle will be authorised to alienate the HUF property without any permission of the court but the father *karta* would be unable to do so. This would be in contravention of the general principles of Hindu law which grants more powers to father *karta* in comparison with other *kartas*.

Furthermore, no testamentary guardian can be nominated by the father in case of a minor's undivided interest in the HUF. The reason is that the father does not himself enjoy any power over the same by virtue of being a natural guardian.<sup>37</sup> With regard to acquisition of property, the court has held that the same can be done without the permission of the court when it results in some benefit to the minor.<sup>38</sup> This rule is applicable in case of both movable property and immovable property.<sup>39</sup>

In *Subramanyam v. Subba Rao*,<sup>40</sup> the court held that any contract for purchase or sale of any immovable property entered into by a guardian on behalf of the minor is capable of binding the minor for enforcement. However, in a later decision it was concluded that if by the time of such a decree, the situation has changed so much as to be prejudicial to the interests of the minor, the court is likely to reject specific performance.<sup>41</sup>

In case of trading families, alienation effected to commence a new business by the manager of the family is generally not binding on the minors except in situations wherein the alienation is made for the estate's benefit or owing to certain legal necessity.<sup>42</sup> It is for the court to finally determine whether such alienation was made for the estate's benefit or for legal necessity and if any prudent manager would have taken such a decision in the interest of the HUF property.<sup>43</sup>

It is also a well-settled principle that a minor cannot be prevented from being a transferee of any property. If any sale deed has been executed in his favour and the entire consideration

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<sup>36</sup>In re KrishnakantMaganlal, AIR 1961 Guj 68.

<sup>37</sup>Section 6(a), Hindu Minority and Guardianship Act, 1956; Pattayi v. Subharaya, 1980 HLR 500 (Mad).

<sup>38</sup>Than Singh v. Barelal, AIR 1974 MP 24.

<sup>39</sup>Nagpal, *supra* Note 30, at 610.

<sup>40</sup>Subramanyam v. Subba Rao, AIR 1948 PC 95.

<sup>41</sup>VedakattuSuryaprakasam v. Ake Gangaraju, ILR 1955 AP 311.

<sup>42</sup>Gandhi, *supra* Note 5, at 17.

<sup>43</sup>AngneyLal Narayan Das v. AngneyLalMunniLal, AIR 1951 All 400.

has been paid, he can sue for possession of such property.<sup>44</sup>As regards alienation of minor's immovable property, the same can be done only in cases of necessity or for the benefit of the minor. Courts generally tend to give a wider meaning to the terms "necessity" and "benefit".<sup>45</sup> When alienation is effected without the prior permission of the court, the same is voidable at the instance of the minor.<sup>46</sup>

Moreover, no guardian can bind the minor by the virtue of any personal covenant or contract.<sup>47</sup> Although he can, by his covenant, impose financial liability on minor's property, no liability can be attached beyond that. The minor cannot be made personally liable. When the guardian takes debts to supply necessities, the minor's estate can be used to discharge such debts.<sup>48</sup> Under section 33, the guardian can also seek advice, opinion or directions from the court in respect of any specific matter pertaining to the handling of the minor's estate.<sup>49</sup>

The guardian's legal position is fiduciary in nature. He can be made personally liable for breach of trust. He has no right to take adverse possession of the minor's property notwithstanding the length of time he has been in its possession. He is expected to act prudently while dealing with minor's properties.<sup>50</sup>

### ***Muslim Law***

In both Sunni and Shiite laws, father is regarded as the legal guardian of a minor's property. His position is same as that of a natural guardian. Among Sunnis, the guardianship of the minor gets bestowed upon the executor (*wasi*) after the death of the father. Among Shias, the guardianship passes on to grandfather after the death of the father even in the presence of an executor.<sup>51</sup> Among Sunnis, the father is also authorised to appoint the testamentary guardian of the minor. If the father and the executor are not available, even the grandfather has such an authority. Among Shias, the father can appoint someone as the testamentary guardian only if the grandfather is dead.<sup>52</sup>

### **ALIENATION OF PROPERTY**

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<sup>44</sup>Ulfat Rai v. Gauri Shankar, (1911) 33 All 657; MunniKunwar v. Madon Gopal, (1916) 38 All 62.

<sup>45</sup>Diwan, *supra* Note 4, at 292.

<sup>46</sup>Iruppakutty v. Cherukutty, AIR 1972 Ker 71.

<sup>47</sup>Section 8(1), Hindu Minority and Guardianship Act, 1956.

<sup>48</sup>Diwan, *supra* Note 4, at 292.

<sup>49</sup>Section 33, Hindu Minority and Guardianship Act, 1956; Diwan, *supra* Note 3, at 293.

<sup>50</sup>Diwan, *supra* Note 4, at 293.

<sup>51</sup>Diwan, *supra* Note 4, at 298.

<sup>52</sup>Diwan, *supra* Note 4, at 298.

The main ground to justify the power of alienation is the necessity or need of the minor. Both the father and the executor are authorised to sell off the minor's property in situations of necessity. Maintenance of the minor is emphasized. If the properties in possession of the minor are insufficient to meet his general needs, property can be sold off in a reasonable manner.<sup>53</sup> Powers over immovable property are restricted in nature, and it can be disposed of only in certain special situations. Powers as regards movable property are of an unlimited nature. The reason is that "*the sale of movable property is a species of conservation*" since such property is liable to decay and "*the price is much more easily preserved than the article itself.*"<sup>54</sup> There is no justification required for selling movable property.<sup>55</sup> A guardian appointed by the court is required to deal with the movable property of the minor with as much caution as a man of normal prudence would deal with it had it been his own property.<sup>56</sup>

As regards immovable property, it cannot be sold except in situations wherein it is possible "*to obtain double its value, or where it is necessary for the maintenance of the minor, or where there are debts and legacies to be paid, and there are no other means, or where the expenses on property exceed the income, or where the property is falling into decay*".<sup>57</sup> A court-appointed guardian can neither sell nor mortgage the minor's property without prior permission of the court. If the disposal is in contravention of the provisions of the Guardians and Wards Act, 1890, the same becomes voidable.

In *Imambandi v. Mutsaddi*,<sup>58</sup> the Privy Council clarified that a mother has no authority to alienate the property of the minor. Muslim law does not give the status of a natural guardian to the mother. As regards *de facto* guardian, the Council further clarified that even though a *de facto* guardian may assume important responsibilities with respect to the minor's property, he has no power to sell it. As far as buying of property is concerned, it is well-settled that a guardian has no power to enter into an agreement for purchasing some immovable property on the minor's behalf. Under Indian law, it is considered void.<sup>59</sup>

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<sup>53</sup>B.R. Verma, COMMENTARIES ON MOHAMMEDAN LAW IN INDIA, PAKISTAN AND BANGLADESH, 413 (7<sup>th</sup>edn. 1997).

<sup>54</sup>Dr. Paras Diwan, LAW OF ADOPTION, MINORITY, GUARDIANSHIP AND CUSTODY, 590 (Vol. II 1989).

<sup>55</sup>*Id.*

<sup>56</sup>Section 27, Guardians and Wards Act, 1890.

<sup>57</sup>Asaf A.A. Fyzee, OUTLINES OF MUHAMMADAN LAW, 203 (4<sup>th</sup>edn. 2003).

<sup>58</sup>*Imambandi v. Mutsaddi*, (1918) 20 BOMLR 1022.

<sup>59</sup>*Mir Sawarjan v. Fakhruddin*, (1912) 39 LA 1.

As regards the power to grant lease, the Madras High Court in *Zeebunissa Begum v. Mrs. H.B. Danagher*<sup>60</sup> was of the opinion that a natural guardian can grant lease of the property of the minor if the same leads to some benefit to the minor. If the alienation by a *de jure* guardian takes place in an improper manner, the same is voidable at the option of the minor on the attainment of majority.<sup>61</sup>

#### **POWER TO EFFECTA PARTITION**

An executor cannot effect a partition among the minors since it is unlawful. If among the heirs, some are majors and other minors then the *wasih* has the right to segregate the share of majors from the share of minors in which case he shall retain the share of minors.<sup>62</sup> As per the *Fatwai Alamgiri*,<sup>63</sup> a partition effected by a guardian appointed by the judge to deal with all matters of minor is valid.

#### **Christian Law and Parsi Law:**

The GWA, 1890 is a secular piece of legislation that was outlined for Muslims, Christians and Parsis in particular. Christians and Parsis have no personal law specifically providing for guardianship. There is a presumption that the father is the natural guardian of the minor's property. In his absence, the mother assumes this responsibility. Section 60 of the Indian Succession Act, 1925, which is applicable to Christians and Parsis deals with the nomination of testamentary guardian by the father.<sup>64</sup>

The general law dealing with minority and guardianship is the GWA. It provides that the court must give foremost consideration to the welfare of the child while appointing a guardian under the Act. The existing relationship between a guardian and a minor is fiduciary in nature.<sup>65</sup> A guardian appointed can be held accountable for the profits and returns he receives. He is empowered to receive and recover the gains from the minor's property and act

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<sup>60</sup>*Zeebunissa Begum v. Mrs. H.B. Danagher*, ILR (1936) 49 Mad 942.

<sup>61</sup>Ameer Ali, I, 686 *cited in* Dr. Paras Diwan, LAW OF ADOPTION, MINORITY, GUARDIANSHIP AND CUSTODY, 590 (Vol. II 1989).

<sup>62</sup>Diwan, *supra* Note 52, at 596.

<sup>63</sup>*Fatwai Alamgiri*, Vol. VI, 222 *cited in* Dr. Paras Diwan, LAW OF ADOPTION, MINORITY, GUARDIANSHIP AND CUSTODY, 590 (Vol. II 1989).

<sup>64</sup>Section 60, Indian Succession Act, 1925.

<sup>65</sup>Section 20, Guardians and Wards Act, 1890.

as a prudent man in all such dealings.<sup>66</sup> But in order to alienate the property, he needs prior permission of the court.<sup>67</sup>

While dealing with the minor's property, the foremost consideration should be the best interest and welfare of the minor. Whatever a person does in his capacity as the guardian of the minor's property can bind the minor only when it can be shown that the same was done to promote the interest of the minor.<sup>68</sup> As regards purchase of immovable property, the same is not barred if the guardian is found acting prudently and carefully.<sup>69</sup> Among Christians belonging to the erstwhile Travancore region of Kerala, guardianship is regulated as per the provisions of the Travancore Christian Guardianship Act, 1941.<sup>70</sup>

### CONCLUSION

As regards guardianship of property, there is no uniform law in India. Personal laws of people belonging to different religions are applicable. Among Hindus, the provisions of the HMGA are applicable. In case of an HUF, a minor coparcener acquires a share in the joint family property as soon as he takes birth. He has a right to effect partition through his next friend when the same is needed to protect his interests. He can also act as the *karta* of the family if all other coparceners consent to the same or when the father or the senior-most member is not available. There is no Hindu text or rule that prohibits a minor from assuming the role of the *karta*. Alienation of property is allowed as long as it results in some benefit to the minor and is done in a *bona fide* manner by the guardian.

In Muslim law, mother cannot be designated as a guardian of the minor's property. Any alienation of property can be justified only on grounds of need and necessity. Muslim law also distinguishes between alienation of movable property and alienation of immovable property. Alienation of immovable property is possible only in certain exceptional situations. Moreover, no guardian can enter into a contract for purchase of some immovable property on behalf of the minor. If it is found that the disposal of the property by the legal guardian took place in an improper manner, the same can be set aside at the option of the minor on attaining majority.

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<sup>66</sup> *BB Mitra's Guardians and Wards Act*, 163 (M.N. Das ed., 14<sup>th</sup> edn. 1995).

<sup>67</sup> Section 29, *Guardians and Wards Act*, 1890.

<sup>68</sup> *Aliyumma v. Kunhammed*, 34 Mad 527 (532).

<sup>69</sup> *Supra* Note 64, 240.

<sup>70</sup> Dr. Sebastian Champappilly, *CHRISTIAN LAW ON MARRIAGE, ADOPTION & GUARDIANSHIP AND CANON LAW ON MARRIAGE*, 77 (2003).

The GWA is applicable in case of Christian and Parsi minors since their personal laws do not specifically deal with the issue of guardianship. Under the Indian Succession Act, 1925, it is possible for a father to appoint a testamentary guardian for his minor child. As per the provisions of the GWA, welfare of the child is given foremost importance. Every guardian appointed under the GWA needs prior permission of the court before alienating the property of the minor. Purchase of property is not prohibited if it can be shown that the guardian acted as a man of prudence and was careful in his dealings.

Although every law of guardianship differs from the other with respect to certain rules and procedure, there is a common thread that runs through all. Each seeks to promote the minor's interests by ensuring that the property is dealt with in a careful manner without any prejudice to the minor. Credentials of the guardian are often looked into by the court. In most situations it is possible to set aside the alienation of property if on attainment of majority the minor is able to show that the same was done by the guardian in a *mala fide* manner to secure some personal gains.