

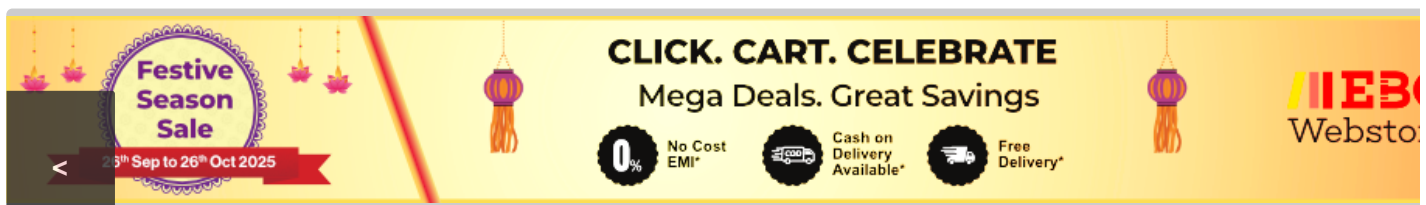
Maintenance Under the Guardians & Wards Act, 1890: An Interpretative Analysis

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Published on January 15, 2025 - By Bhumika Indulia



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Guardians and Wards Act, 1890¹ (Act) lays down the procedure for appointment/declaration of guardian for minor. The Act provides powers of the courts while dealing with petitions for appointment/declaration of guardians and while deciding issues of custody during the pendency of a guardianship petition. The Act also provides the powers and duties of the guardian appointed by the court. An important facet of custody/guardianship of the minor is rendering him proper care which would aid in the minor's holistic development. For this purpose, paying maintenance for the benefit of the minor carries much relevance. Even though Section 22 of the Act provides for allowances to be paid to the guardian "for his care and pains in the execution of his duties"², there is no express provision for maintenance to be paid for the expenses/care of the minor. The present article argues that even in the absence of such an express provision in the Act, the court has the power to award maintenance and/or provide for the expenses of the minor, and for this purpose the court can also direct one of the parents to bear the same.

Right of minor children to maintenance

The right of maintenance is usually associated with the spouse, particularly the wife. The right of maintenance to spouses is governed by personal laws³ as also secular laws⁴ (which apply irrespective of the religion of the spouses). Apart from the maintenance to spouse, law also provides that parents⁵ and minor children⁶ also have a right of maintenance. As in the case of maintenance to a spouse, both personal laws and secular laws may provide for maintenance to minor children. The liability of the father to pay maintenance for his minor child is now also well entrenched by various judgments of the Supreme Court.⁷ Under the Nagarik Suraksha Sanhita, 2023 (BNSS) (and the erstwhile Code of Criminal Procedure, 1973), the right of maintenance of minor is circumscribed by the minor's inability to maintain itself.⁸ That is to say, under the BNSS, the inability of the minor to maintain itself is a pre-condition for payment of maintenance, and the maintenance is a right only if it is proved that the minor is unable to maintain itself.⁹

The question of payment of maintenance to minor child is usually in issue in matrimonial proceedings between spouses. In addition to the above, the issue of maintenance of minor may also arise if the custody/guardianship of the minor has to be adjudicated. Since the right of a minor to maintenance is an independent right, it should not be

contingent upon one of the parents applying for maintenance of the minor as an ancillary relief in matrimonial proceedings.

Being an independent right, whether such a right is capable of redressal in proceedings for deciding the custody/guardianship of the minor? Additionally, whether maintenance can be provided for in a custody/guardianship petition only at the final stage (while finally deciding the issue of custody/guardianship), or can the court also provide for interim maintenance/maintenance pendente lite¹¹ pending the final adjudication of the petition? The subsequent sections of this article will endeavour to answer these questions.

Object and reasons of the Guardians & Wards Act, 1890

Although safeguarding the interest of a minor child was not enumerated as one of the objectives of the Act in its object and reasons¹², it is now recognised that while adjudicating cases involving minor children, it is the welfare of the minor which is of paramount consideration for the court.¹³ In fact, “welfare of the minor” is the “sole and single yardstick” to be considered by the court.¹⁴ The provisions of the Act, being crafted particularly for the welfare of the minor, have to be given a liberal interpretation so as to further the objectives of the Act and not to limit or restrict it.¹⁵

“Welfare of the minor” has a very wide connotation, and it has several facets including financial, educational, physical, moral and religious.¹⁶ Article 27(4) of the Convention on the Rights of the Child, 1989 also specifically provides that States “shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child”.¹⁷ Thus, even though the Act does not expressly mention provision for maintenance for the minor child, it should include not only actual physical custody but also constructive custody of the guardian.¹⁸

Reading the power to award maintenance into the Guardians & Wards Act, 1890

Given the avowed objective of the Act, it cannot be gainsaid that “welfare of minor” involves giving due protection to the health, maintenance and education of the minor.¹⁹ Section 7 of the Act can be alluded to in this regard. Section 7 of the Act provides that “where the court is satisfied that it is for *the welfare of a minor* that an order should be made” for appointment of/declaring a person as a guardian, then, “the court may make an order *accordingly*”.²⁰ Given that the context and purpose of the Act is the welfare of the minor, and the court also has to safeguard the same, the court is empowered to pass an order “accordingly”. In the author’s opinion, the word “accordingly”²¹ cannot be given a restrictive interpretation to limit the power of the court to pass an order only contemplated either under sub-clause (a) or sub-clause (b) of Section 7(1) of the Act. The word “accordingly” should be given an expansive meaning to include all such orders which are for the “welfare of the minor” and “*in the interests of the minors*”.²²

The issue of award of maintenance under the Act can also be looked at from another angle. Firstly, Section 17(1) of the Act provides that the Court has to take into account the “welfare of the minor” and the law to which the minor is subject i.e. the personal law of the minor.²³ The Act contains the procedure²⁴ for appointment of guardian and powers of the court. The substantive rights of the spouses and the minor are governed by their respective personal laws. Therefore, if the personal law²⁵ of the minor entitles him/her to maintenance from the parents or any one of them, then, maintenance is a matter of right which can be agitated even under a guardianship petition filed under the Act.

For instance, Section 20 of the Hindu Adoptions and Maintenance Act, 1956 (HAM Act) provides that a Hindu is bound to maintain his/her children, and a corresponding right is provided specifically to “minor child” to claim maintenance from his/her father or mother.²⁶ The HAM Act does not lay down the procedure or mechanism for enforcement of the right under Section 20 of the said Act.²⁷ However, there is no prohibition on enforcement of the duty and its corresponding right enshrined under Section 20 of the HAM Act, in guardianship proceedings under the Act. If a suit under Section 9 of the Code of Civil Procedure, 1908 can be maintained to enforce right under Section 18 of the HAM Act²⁸, then certainly, it cannot be countenanced that a similar provision under Section 20 of the HAM Act cannot be enforced in guardianship proceedings under the Act. The provisions of the Act have to be harmonised with the personal laws. In that case, if, for instance, HAM Act provides for maintenance to the minor as a matter of right, a harmonious construction of the two legislations together, would invariably lead to a result that the Court can award maintenance in a guardianship petition before it. There is no reason why the same analogy should not apply to all personal laws which provide for maintenance of the minor.

Secondly, while exercising jurisdiction under the Act, the court exercises its *parens patriae* jurisdiction since it involves minor children.²⁹ Therefore, while exercising *parens patriae* jurisdiction, not only is the court empowered to pass orders for welfare of the minor, which includes awarding interim maintenance, rather, it is duty-bound to do so when the facts and circumstances so warrant.³⁰ There is not only a duty cast on the court and all parties before it, including the guardian, to safeguard and act in the best interest of the minor, but there is also a corresponding “right” of the guardian “to properly *look after the ward’s health, maintenance and education*”.³¹

It is also pertinent to note that Section 10 of the Family Courts Act, 1984³² provides that the Family Court is empowered to lay down its own procedure notwithstanding anything contained in the Code of Civil Procedure, 1908³³ and Code of Criminal Procedure, 1973³⁴ (now *Nagarik Suraksha Sanhita*, 2023³⁵). Section 20 of the Family Courts Act, 1984³⁶ also contains a non obstante clause which gives the Family Courts Act, 1984³⁷ an overriding effect over anything inconsistent therewith contained in any other law. A conjoint reading of the provisions of the Act with the provisions of Sections 10(3) and 20 of the Family Courts Act, 1984, makes it clear that the Family Court has wide powers to pass all such orders as are for the benefit and welfare of the minor. This power includes the power to award maintenance for the minor, and, for this purpose, the Family Court can direct one parent (who does not have custody of the minor) to pay maintenance for the minor to the other parent (who has custody of the minor).

Thus, under the Act, the court can direct the spouse (who does not have custody of the minor child) to bear expenses of the minor child to take care of the child’s ordinary comfort and contentment, his intellectual, moral and physical development, his health, education, general maintenance, etc.³⁸ The Court cannot restrict itself to only deciding the issue of guardianship/custody under the Act. Rather, the court has to ensure that the expenses of the minor are adequately provided for, and for this purpose, the court is empowered to direct one parent to bear the same and to pay it to the other parent (who is being appointed as guardian).

The Delhi High Court has also recognised power to award maintenance under the Guardians and Wards Act, 1890. In its judgment dated 14-1-2015 in *Kusum Sharma v. Mahinder Kumar Sharma*³⁹ (*Kusum Sharma I*), the court provided a format for filing of affidavit of income, assets and liabilities in maintenance proceedings filed under several statutes. By its subsequent judgment dated 29-5-2017 in *Kusumsharma v. Mahinder Kumar Sharma*⁴⁰ (*Kusumsharma II*), the Delhi High Court extended the directions in the order dated 14-1-2015 for filing of the affidavit for grant of maintenance even to the proceedings under the Guardians and Wards Act, 1890. Thus, the Delhi High Court proceeded on the basis that the Family Court has power under the Guardians and Wards Act, 1890 to grant maintenance. The abovementioned judgments of the Delhi High Court (extending the directions for filing affidavit of income, assets and liabilities for grant of maintenance under the Guardians and Wards Act, 1890) were neither challenged nor set aside. In fact, the abovementioned judgments in *Kusum Sharma I*⁴¹ and *Kusumsharma II*⁴² were considered and noted by the Supreme Court in *Rajnish v. Neha*⁴³ (the locus classicus on filing of affidavits of assets, income and liabilities by parties in matrimonial proceedings) and the Supreme Court did not disagree with the judgments in *Kusum Sharma I*⁴⁴ and *Kusumsharma II*⁴⁵. Therefore, it has been recognised that Family Courts have power to grant maintenance under the Act.

Power to award interim maintenance — A logical corollary

Once it is recognised that the Court has the power to provide for maintenance and beneficial expenses of the minor, it would not be far-fetched to contend that a similar order can also be passed at an interim stage. However, as mentioned above, there is no express provision in the Act for maintenance to the minor either during the pendency of the guardianship proceedings or thereafter. In order to answer the question as to whether a provision for interim maintenance is implicit in the Act, it is imperative to take note of Section 12 of the Act⁴⁶.

Section 12 does not expressly provide for a right to seek maintenance. Rather, it deals with the power of the Court to make “interlocutory order for protection of minor and interim protection of person and property”.⁴⁷ The power under Section 12 of the Act has to be exercised for making arrangements for temporary custody of the minor and to protect the “*person of the minor*” or property of the minor.⁴⁸

From a reading of Section 12 of the Act, it is clear that:

- (i) Section 12 deals with power of the court to make “interlocutory orders”.
- (ii) Under Section 12 of the Act, the Court is empowered to make “such order” as the Court “thinks proper” for:
 - (a) temporary custody of the minor; and

(b) “protection of the person or property of the minor”.

- (iii) The power of the Court under Section 12 of the Act is not restricted and confined only to pass an interim order in respect of the custody of the minor. If that were the case, then, the words *“and protection of the person or property of the minor as it thinks proper”* appearing after the words *“and may make such order for the temporary custody”* in Section 12 of the Act would be rendered meaningless and nugatory. It is a settled principle of statutory interpretation that provisions of a statute should be interpreted in a manner so as to give maximum effect to the words actually used by the legislature, and not to render any part of the provision as meaningless or redundant.⁴⁹ If the power of the court under Section 12 was intended to be restricted for custody alone then the statute would not have added the words *“and protection of the person or property of the minor as it thinks proper”*. The section itself makes it clear that under Section 12 of the Act, the Court can pass any interim order as the Court thinks proper for custody of the minor *“and protection of the person of the minor”*.
- (iv) Therefore, the Court has power to pass any order for the protection of the person of the minor in addition to passing the order for custody. The same means something in addition to custody otherwise “and” would not be mentioned in the section after the word “custody”. Whenever a statute uses “and”, the same has to be read conjunctively and not disjunctively, unless the context requires otherwise.⁵⁰
- (v) Section 12 provides wide powers to the court to make any orders it thinks proper for the “protection” of the minor, which includes the power to pass an order for maintenance, expenses, school, fees, rent, food, etc. for the minor as they are a necessary and important facet of the protection of person of the minor. The words “as it thinks proper” provide wide discretion to the court, and this discretion cannot be curtailed, more so when an interpretation which limits the discretion of the court would be against the object and reasons of the Act.

While a purposive interpretation would entail reading the power to grant interim maintenance into Section 12 of the Act, given the fact that guardianship/custody battles are hotly contested by the spouses, Family Courts may not be proactive in readily inferring such a power to grant interim maintenance in the absence of an express power in the statute.

In this regard, it is apposite to take note of judgments of the Bombay High Court and Karnataka High Court which have specifically recognised and read into Section 12 of the Act, the power to award an amount towards “maintenance” of the minor. In *Sreenivasagopalan Ananthakrishna v. Meenakshi Tripurari*⁵¹, the Bombay High Court held that since Section 12(1) of the Act empowers the Court to make an “interlocutory order”, the same would include awarding of an interim maintenance amount to protect the person and/or property of the minor. Similarly, in *Y.M. Ramesh Kumar v. Varalakshmi*⁵², the Karnataka High Court held that the words *“temporary custody and protection includes interim maintenance and well-being of the minor”*.

Furthermore, even de hors the Act, courts have held that the power to award interim maintenance is inherent in the courts, and even in the absence of a specific power to award interim maintenance, the courts are empowered to grant interim maintenance.⁵³ This is for the reason that civil courts have inherent powers to pass interim orders to protect the subject-matter of the proceedings and to prevent the object of the proceedings from getting frustrated.⁵⁴ If, at an interim stage in guardianship proceedings, the court does not provide for maintenance of the minor child and the parent/person (who has custody of the minor) does not have adequate means to take care of the reasonable expenses of the minor, then, the object of the guardianship proceedings itself is likely to be frustrated.⁵⁵ Furthermore, the subject-matter of the proceedings i.e. the minor, is likely to be adversely affected in that scenario. Therefore, courts are empowered to pass all such orders to protect the object and also the subject-matter of the guardianship proceedings, which would include awarding interim maintenance for the minor.

Conclusion

Guardians and Wards Act, 1890 is, and should be interpreted as, a beneficent legislation, the sole objective of which is the welfare of the minor. Being a beneficent legislation, the Act has to be interpreted for the benefit of its intended beneficiaries.⁵⁶ If the Act is given a purposive interpretation, it cannot be fathomed that the Act does not allow the Family Court, which is seized of proceedings pending under the Act, to pass orders awarding maintenance for the minor child. The Act has to be given a liberal interpretation⁵⁷, and not a literal, narrow or pedantic one. It cannot stand in the way of the court playing its role as *parens patriae*, and it “should not be allowed to deprive the ward of the necessary assistance from the court in effectively discharging his duties and obligations towards his ward so as to promote the latter’s welfare”.⁵⁸ The phrase “welfare of minor” cannot be restricted to only mean appointment of a guardian for, or deciding the custody of the minor.

Since this is the settled position of law, the power to award maintenance, both interim and final, has to be read into the Act. For awarding expenses of the minor or a fixed monthly sum of maintenance for the minor at the time of declaring or appointing a guardian, Family Court can draw sustenance from Section 7 of the Act. Once the Family Court is satisfied that an order should be made for the welfare of the minor, the court is empowered to make an order “accordingly”, which includes passing directions for payment of maintenance, in addition to any order the court may pass under sub-clause (a) or sub-clause (b) of sub-section (1) of Section 7 of the Act.

For grant of interim maintenance or maintenance pendente lite, the provisions of Section 12(1) of the Act can be alluded to, which are comprehensive enough to include passing of “interlocutory order” for the “protection” of the minor. “Protection” of the minor includes providing for the minor’s expenses, maintenance, education, health, etc. The power of Family Court under Section 12 of the Act is not confined to custody alone.

The provisions of the Act cannot be narrowed down or restricted to limit and read down the powers of the court to award maintenance, especially when such an interpretation would be contrary to the interest and welfare of the minor. The provisions of the Act permit enough play in the joints to allow an expansive and liberal interpretation, and the Family Court should interpret the provisions of the Act accordingly to further the welfare of the minor.

***Advocate.**

1. Guardians and Wards Act, 1890.
2. Guardians and Wards Act, 1890, S. 22.
3. Divorce Act, 1869; Hindu Marriage Act, 1955; Hindu Adoptions and Maintenance Act, 1956; Parsi Marriage and Divorce Act, 1936; Muslim Women (Protection of Rights on Divorce) Act, 1986.
4. Nagarik Suraksha Sanhita, 2023, Ss. 144-147 (erstwhile, Code of Criminal Procedure, 1973, Ss. 125-127); Protection of Women from Domestic Violence Act, 2005.
5. Maintenance and Welfare of Parents and Senior Citizens Act, 2007; Nagarik Suraksha Sanhita, 2023, Ss. 144-147 (erstwhile, Code of Criminal Procedure, 1973, Ss. 125-127).
6. Nagarik Suraksha Sanhita, 2023, Ss. 144-147 (erstwhile, Code of Criminal Procedure, 1973, Ss. 125-127); Hindu Adoptions and Maintenance Act, 1956; Divorce Act, 1869.
7. *Neha Tyagi v. Deepak Tyagi*, (2022) 3 SCC 86; *Anju Garg v. Deepak Kumar Garg*, 2022 SCC Online SC 1314; *Aditi v. Jitesh Sharma*, 2023 SCC OnLine SC 1451.
8. Nagarik Suraksha Sanhita, 2023, Ss. 144-147 (erstwhile, Code of Criminal Procedure, 1973, Ss. 125-127).
9. Nagarik Suraksha Sanhita, 2023, Ss. 144-147 (erstwhile, Code of Criminal Procedure, 1973, Ss. 125-127).
10. For instance, under proceedings for divorce or judicial separation, or under the Protection of Women from Domestic Violence Act, 2005, the wife may seek maintenance not only for herself but also for the minor child who is in her care or custody.
11. Maintenance during the pendency of the litigation.
12. Guardians and Wards Act, 1890, Statement of Objects and Reasons.
13. Law Commission of India, The Guardians and Wards Act, 1890 and Certain Provisions of the Hindu Minority and Guardianship Act, 1956, Report No. 83 (April 1980).
14. *Athar Hussain v. Syed Siraj Ahmed*, (2010) 2 SCC 654.
15. *Khurshid Gauhar v. Siddiquinnisa*, 1986 SCC OnLine All 50.
16. *Tara Chand Mavar v. Basanti Devi*, 1988 SCC OnLine Raj 450.
17. Convention on the Rights of the Child, 1989, Art. 27.
18. *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840. In this case, the Supreme Court was interpreting the Act, which also does not refer to the word maintenance. However, the Supreme Court has interpreted the section to hold that Family Court under the Act, has the power to pass any order for benefit of the minor, which includes an order for the maintenance of the minor.

19. *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42.
20. Guardians and Wards Act, 1890, S. 7.
21. *Cambridge dictionary* defines “accordingly” as “in a way that is suitable or right for the situation”.
22. *Murari Lal v. Saraswati*, 1924 SCC OnLine Lah 313.
23. Guardians and Wards Act, 1890, S. 17(1).
24. *Jairam Gurnani v. Shanta Gurnani*, 1978 SCC OnLine Del 150.
25. *Narinder Kaur v. Parshotam Singh*, 1987 SCC OnLine Del 440; *Chander Prabha v. Prem Nath Kapur*, 1969 SCC OnLine Del 37.
26. Hindu Adoptions and Maintenance Act, 1956, S. 20.
27. However, courts have entertained suits filed under Code of Civil Procedure, 1908, S. 9 to enforce right under Hindu Adoptions and Maintenance Act, 1956, S. 18.
28. *P. Srinivasa Rao v. P. Indira*, 2001 SCC OnLine AP 1034.
29. *Smriti Madan Kansagra v. Perry Kansagra*, (2021) 12 SCC 289.
30. *Ruchi Majoo v. Sanjeev Majoo*, (2011) 6 SCC 479.
31. *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840.
32. Family Courts Act, 1984, S. 10.
33. Code of Civil Procedure, 1908.
34. Code of Criminal Procedure, 1973.
35. Nagarik Suraksha Sanhita, 2023.
36. Family Courts Act, 1984, S. 20.
37. Family Courts Act, 1984.
38. *Ram Murti Chopra v. Nagesh Tyagi*, 2008 SCC OnLine Del 1095.
39. 2015 SCC OnLine Del 6793.
40. 2017 SCC OnLine Del 11796.
41. 2015 SCC OnLine Del 6793.
42. 2017 SCC OnLine Del 11796.
43. (2021) 2 SCC 324.
44. 2015 SCC OnLine Del 6793.
45. 2017 SCC OnLine Del 11796.
46. Guardians and Wards Act, 1890, S. 12.
47. Guardians and Wards Act, 1890, S. 12.
48. Guardians and Wards Act, 1890, S. 12.
49. *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, (1953) 2 SCC 111.
50. *Hyderabad Asbestos Cement Products v. Union of India*, (2000) 1 SCC 426.
51. 2015 SCC OnLine Bom 6139.
52. 2009 SCC OnLine Kar 164.
53. *P. Srinivasa Rao case*, 2001 SCC OnLine AP 1034; *Mohd. Anis-Ul-Haq v. Asma Anjum*, 2010 SCC OnLine Bom 1181.
54. *P. Srinivasa Rao case*, 2001 SCC OnLine AP 1034.
55. *P. Srinivasa Rao case*, 2001 SCC OnLine AP 1034.
56. *Alembic Chemical Works Co. Ltd. v. Workmen*, 1960 SCC OnLine SC 29.
57. *Rosy Jacob case*, (1973) 1 SCC 840.
58. *Rosy Jacob case*, (1973) 1 SCC 840.

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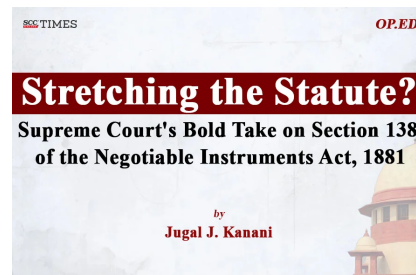
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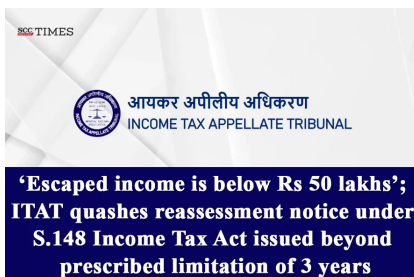
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