



# Custody Of Minor

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## CUSTODY OF MINOR

The right of the natural guardian to have the custody of minor U/S 6 is subject to S.13 of the Hindu Minority & Guardianship Act. According to S.13 of the Act the welfare of the minor is of paramount consideration. Condition as mentioned in S.6 of the Act, is under normal circumstances but controlling consideration governing the custody of the children is the

welfare of the children and not the right of the parents.

In regard to the custody of minor, the court is bound to take into account the welfare of the minor. Where there is a guardian of minor, who seeks to have the custody of the minor, has a burden on him to show that the welfare of the minor demands that the custody shall be with him in preference to the other guardian of minor. The word "welfare" has the widest amplitude. It is to be understood in its widest sense so as to cover the material & physical well-being, education, health, happiness & moral welfare of the child.

What constitutes the welfare of the minor has to be determined by the court after a careful consideration of the case, as the Act does not lay down any tests or guidelines to determine what is for the welfare of the minor.

The Hindu Minority & Guardianship Act relates to Hindus and a codification of old Hindu Law but this is not a complete code relating to the Hindu Law on minor & guardianship. So far, as matters not covered by this Act are concerned they are regulated by the Guardians & Wards Act, which is common codification for all, in India in this regard. Moreover S.2 of the Hindu Minority & Guardianship Act itself clarifies that the provisions of this Act shall be in addition to, and not, save as herein after expressly provided, in derogation of the Guardians & Wards Act. The provisions of both the Acts are therefore complementary.

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on 06 March 2008



Published in Family Law  
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