



Guardians and Wards Act - Girl child - Aged 10-11 years - Welfare of the child - Legal rights of parties have no consideration - What is the wish and desire of the child is different from What would be in the best interest of the child - No straight jacket formula to adjudicate the question of interim custody. [PLRonline 473683]

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GUARDIANS AND WARDS ACT, 1890, S. 25 - CUSTODY OF CHILD

1. Welfare of the Child as Paramount Consideration

- The welfare of the child overrides the statutory rights of the parents, focusing on what best serves the child's [interest](#) and welfare.
- 'Welfare' encompasses not just financial stability but also moral and ethical welfare, with considerations varying based on individual case facts.
- Legal rights or financial status of parents are secondary to the child's overall welfare.

2. Wish/Desire vs. Best Interest of the Child

- Distinguishing between the child's wishes and what is in their best interest, the latter is a matter for judicial determination.
- Allegations in custody battles may paint one parent as unworthy; however, custody is decided on the child's best interest unless one parent is proven unfit.

3. Complexities in Custody Disputes

- Child custody issues are complex and cannot be resolved with a uniform formula; it's a fact-dependent exercise focused on the child's welfare.
- Interim custody decisions must consider how the child's interests are best protected with either parent.

4. Custody of Girl Child Aged 10-11 Years - Considering the specific case of a girl child in her formative years and the mother's qualifications as a doctor, the mother was deemed a suitable mentor and friend.

- Maintaining the existing living arrangement with the mother considered beneficial, with the father granted visitation rights.

5. Parental Morality and Welfare of the Child

- A parent's societal morality or personal failings in certain relationships doesn't necessarily impinge on their ability to be a good parent.
- The societal notion of morality shouldn't overshadow the parent-child relationship's contextual and individual dynamics.

(i) Guardians and Wards Act, 1890 (8 of 1890), Section 25 - Custody of Child - Welfare of the child - Paramount consideration, is the welfare of the [minor](#) child and not the statutory rights of the parents - Sole and pre-dominant criterion of what would be best to serve the interest and welfare of the child - 'Welfare of the child' depends upon several factors - It has to be measured not only in terms of money and physical comfort, but also in view of the age of the child and the manner, in which, 'needs' can be fulfilled, more particularly, moral and ethical aspects of the shaping of the minor's personality - Depends upon the facts and circumstances of each particular case - The legal right or the financial affluence is not decisive, but the welfare of the minor is decisive for the claim of the custody. [Para 7, 8]

(ii) Guardians and Wards Act, 1890 (8 of 1890), Section 25 - Custody of Child - Welfare of the child - Question 'what is the wish/desire of the child' is different and distinct from the question 'what would be in the best interest of the child' - Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to 'what would be in the best interest of the child' is a matter to be decided by the Court, based on all the relevant circumstances - When the couples are at loggerheads and want to part ways, they may level extreme allegations against each other, so as to depict the other unworthy, to have the custody of the child - In the circumstances, unless and until, there is proven bad [conduct](#) of one of the parent, which makes him/her unworthy to claim the custody of the child concerned, the question can and shall be decided, solely looking into the question as to, 'what would be the best interest of the child concerned'. [Para 9]

(iii) Guardians and Wards Act, 1890 (8 of 1890), Section 25 - Custody of Child - Welfare of the child - A



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custody dispute involves human issues, which are always complex and complicated - There can never be a straight jacket formula, even to adjudicate the question of interim custody - However, it is fact dependent exercise to be conducted by the Courts in the backdrop of the welfare of the child, while observing how the child's interest can be protected while custody being given to either parent. [Para 10]

(iv) Guardians and Wards Act, 1890 (8 of 1890), Section 25 - Girl child - Aged 10-11 years - Is passing through the formative stage of life - Mother is qualified doctor - At this stage, the mother can be the best friend, guide and mentor for the growing daughter - She is already residing with the mother and therefore, no further change in the arrangement, already existing, shall be beneficial to the child - Father allowed to meet the child twice a month.

(v) Guardians and Wards Act, 1890 (8 of 1890), Section 25 - A man or a woman may be bad for someone in a contextual relationship, the same does not necessarily mean that the person is bad for his/her child - A mother or father, may be morally bad in the societal sense, but that parent may be good for the child - The so called morality is created by society, based on their own ethos and norms and should not necessarily reflect in a contextual relationship between the parent and child

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