

Hindu Minority and Guardianship Act, 1956 (32 of 1956) Section 6 - Is of seminal importance - It reiterates Section 4(b) and again clarifies that guardianship covers both the person as well as the property of the minor; and then controversially states that the father and after him the mother shall be the natural guardian of a Hindu - Having said so, it immediately provides that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother - A proviso is in the nature of an exception to what has earlier been generally prescribed - The use of the word "ordinarily" cannot be overemphasised. It ordains a presumption, albeit a rebuttable one, in favour of the mother. Held, The learned Single Judge appears to have lost sight of the significance of the use of the word "ordinarily" inasmuch as he has observed in para 13 of the impugned order that the Mother has not established her suitability to be granted interim custody of Thalbir who at that point in time was an infant. The proviso places the onus on the father to prove that it is not in the welfare of the infant child to be placed in the custody of his/her mother. The wisdom of Parliament or the legislature should not be trifled away by a curial interpretation which virtually nullifies the spirit of the enactment.

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