



B B MITRA, THE GUARDIAN & WARDS ACT (2007). By Ajit K Sengupta Eastern Law House, Kolkatta. Pp. 70+578, Price Rs. 775/-.

DELICATE AGE, and a natural vulnerability of children necessitate their proper care and upbringing and a uniqueness of the relationship enables the authorities to display trust in the parents to fulfil this task. However, matrimonial breakups and the unfortunate calamity of losing either or both parents adversely affect the innocent children. In case of matrimonial breakups, when they need the love and affection of both the parents, children of tender ages become witness to the tug of war between the parents, who in order to get even with one another, try to retain the custody of the child by poisoning their ears against the other parent. Custody petitions, therefore, are the most challenging as on one hand, the welfare of the child is the primary concern of the court, on the other hand, the welfare in itself demands that it receives the love and affection of both the parents. Thus, to deprive the child of the company and care of one and yet find a solution, that works out for its best is indeed a daunting task confronting the courts in custody battles. This area of family law, therefore, assumes mammoth importance, in deciding the claims of the parties and their suitability to either retain or obtain the custody of the children or their appointment as their guardian. Usually books with custody and guardianship issue as the primary focus are rare to find and, therefore, these areas of family law though extremely important are given a summarized treatment in a book that usually deals with matrimonial laws as their basic theme. As there is a scarcity of literature dealing with this issue as the main theme, a book written exclusively for this subject would be of immense use to people having genuine queries relating to custody and guardianship issues.

The book is primarily a section wise commentary on the Guardian and Wards Act, 1890. It is divided into four chapters and six appendices, the latter containing the rules of Allahabad, Bombay, Calcutta, Madras, Nagpur, Patna, Punjab and Mysore High Courts, text of four statutory enactments, viz, the Hindu Minority and Guardianship Act, 1956, the Indian Majority Act, 1875, the Family Courts Act, 1984, and the West Bengal Children Act, 1959 and specimen forms for petitions and application for guardianship, willingness to act as guardian, permission for removal of ward, for alienating the property of the minor and the like. While tracing the gradual development of the legal concept of guardianship, the author notes that under Indian law, the legal obligation of the father to look after his children has been statutorily and practically recognized. Under the classical law, father as the



patriarch had complete dominance over both the person as well as the property of his children, though the term guardian could not be applied to him, he alone was responsible for the welfare of the child. Tracing the concept of guardianship under Roman, English, Australia and the US, and under the international framework generally and under Muslim law specifically, he tries to show the influence each country had over the others, both relating to development of law and later the modifications of the statutory rules.

Chapter I, undertakes an explanation of the primary provision of the Act, and the age of minority under different enactments. Chapter II discusses who a minor can be and that under which law he would be subject to in cases of appointment of guardian. As the paramount consideration in all cases is the welfare of the child, the district judge as the protector and guardian of infant functions on behalf of the state. This chapter lays down the procedure for guardianship proceedings stressing the need for the guardianship proceedings to be *bona fide*, who can file an application for appointment as a guardian, where it can be filed, what are the considerations to be kept in mind while dealing with such petitions, how an order has to be passed, who the court should appoint as a guardian, and a collector as the guardian of the person and the property or both. The relationship between the guardian and his ward, the rights, liabilities and duties of the guardian are discussed in chapter III. The guardian after getting the custody of the ward is responsible for the ward's material, moral, intellectual and spiritual welfare and as such his health and education and such other matters as the law to which the ward is subject requires. If a ward is removed from the custody of the guardian, he is empowered to apply for an order of restoration of the custody and to have the person of the minor so justified. Similarly, when a guardian is a person other than the collector, the law imposes on him the obligation of taking prior leave of the court for removing the minor ward beyond the limits of the jurisdiction of the court. It is interesting that while the father is under a liability to maintain the child personally irrespective of the fact whether the minor may or may not have any property, the liability of the guardian is to maintain the minor, out of minor's property. The guardian also has the responsibility to bring up, educate the minor in the religion of his father and in case of a minor girl an additional responsibility, of getting her married. He shares a fiduciary relationship with the ward and is under a liability to manage his ward's property, as a man of reasonable prudence would do. His powers of alienating the property of minor can be exercised only with the permission of the court and not otherwise. The legislature *qua* the courts is always vigilant in protecting the best interests of the minor and guarding its welfare. The law also recognizes removal of guardian if certain specific grounds exist that include,



apart from death, abuse of trust, continued failure and incapacity to perform duties, neglect to take proper care of the ward, contumacious disregard of any provision of the Act or order of the court, unfitness to continue as guardian for conviction of any offence, adverse interest, ceasing to reside within jurisdictional limits of the court, bankruptcy or insolvency. Upon the existence of any of such reasons, the court *suo motu* or on the application from any interested person may consider removal of the guardian. Chapter IV deals with the supplemental provisions for enforcement of orders of the court regulating the conduct or proceedings of the guardian, whereunder the court can issue an injunction *suo motu*. The author notes,¹ that under English common law and Muslim law besides a moral obligation, there is no legal obligation on the father to educate his children, and the same has been imposed on him *via* section 24 of the Guardian and Wards Act. He also says:²

Besides moral obligation, English common law imposes no legal obligation on an English father to suitably educate his children. English guardians however are under obligations to give suitable education to their wards in accordance with their social position and expectations.... There is no legal obligation of the parent under the Mohammedan law to give education to children.

The author thus clarifies, that a natural guardian like father does not have a statutory list of duties he is supposed to discharge, while a guardian's duties are clearly demarcated. Thus if a natural father does not send the child to school or fails to give the child proper education, he is not judicially accountable, but a guardian other than parent becomes accountable on his failure to educate the ward. Perhaps at the time of the completion of the manuscript the author was not aware of the Prohibition of Child Marriages Act, 2006. It is pertinent to note that the reference to the Child Marriages Restraint Amendment Act, 1978, clearly shows that the author is neither aware of the Prohibition of Child Marriages Act nor the consequences of the child marriages, whether they are same under the Act. Presently, a child marriage is clearly voidable at the option of the child party to this marriage and can be avoided till such child attains majority. The unique part of it is, that while the marriage would become void, the issue of this marriage if any, would be perfectly legitimate.

The book has a good collection of information relating to the international scenario. However, it appears more as a compendium as there is little contribution from the side of the author. The price of the book is

1. B.B. Mitra, *The Guardian & Wards Act* 207 (2007).

2. *Ibid.*



slightly on the higher side as the substantive content of this book runs into 460 pages. This book would be useful for law students, researchers and those engaged in legal profession.

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