5

Guardianship and Custom

The aim of the present chapter is to look into the practice of guardianship that persisted in the colonial Punjab. From the custom viewpoint, the guardian meant a person who was entrusted with the care of the person of a minor who had lost his father. He or she could be given the responsibility of his being or his property or both.\(^1\) The duty of the guardian was very significant as it involved various aspects and functions which were otherwise looked after by the parent of the child. There were various aspects associated with this custom. These included the right of appointment of guardian, who could be made the guardian, the rights of woman as a guardian, variations among boys and girls regarding the age of minors, right of the guardian to alienate land, whether he could sell it, and how far the minors were liable to pay the debt of their father. The chapter has been divided into five sections. The first section deals with the appointment of the guardian. It will look into the age until when the person was considered as minor and whether that age was uniform across the province. Who made the appointment of the guardian and who acted as guardian if no appointment was made and who could be appointed as the guardian, whether he should be from the family or outside. Various forms of guardianship will also be studied, one dealing only with the person and other with the property of the minor and the third dealing with the both. The second section deals with the guardianship of females in particular and also that of the illegitimate children. It also describes the rights of women as guardian of minor. The third section deals with the rights of guardians in the property of the minors and the issue of alienation of property for any requirement of the minor. The fourth section studies the attitude of state towards the custom of guardianship and how the state dealt with the disputes on the issue. The last section would be a conclusion summarizing the information on the issue of guardianship as per customary law and changes in the 20\(^{th}\) Century.

A guardian was known by different names, some of them were *karmukhtivar, mukhtyarkar, sarbarah* or *sargiroh.*\(^2\) Correspondingly, the minor was also called by different names as *balak, nadan* or *masum.*

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1. The Guardians and Wards Act. 1890.
The general understanding was that the children were not capable of managing their affairs till they were of 18-20 years of age.\textsuperscript{3} The other determining factor was the mental development and maturity level of youth and the importance of matters.\textsuperscript{4} Sometimes it was believed that individuals could understand the matters well at a young age and could look after his or her interest at a very young age in the matters of adoption, marriage etc. It was found that sometimes minority remained only till 12 years for boys and 10 years for the girls.\textsuperscript{5} Though the age of woman when she attained majority had been spelt out in many districts, yet one fact that was widespread was that females were always under the protection of males, irrespective of their age. Hence the need to appoint guardian for minors for a period till the attainment of majority. There were mainly two kinds of guardianship- one was guardian of the property of the minor and the other was that of the person of the minor. The former managed his property and the latter looked after his personal welfare. Sometimes there was a difference between the guardianship of both person and property and at other times they were combined into one i.e. the same person was appointed as guardian of both the person and property of the minor.\textsuperscript{6} One another aspect of guardianship was the right of betrothing the minor if it was a girl. The betrothal of the boy was considered a liability as no claim could be made in respect of it.\textsuperscript{7} Guardianship continued till the ward assumed majority or the guardian was proved dishonest.\textsuperscript{8} If such guardian was proved unfit for the charge the Civil Court could appoint another guardian.\textsuperscript{9}

I

No precise limit was laid down by custom regarding the age for which Guardian was appointed. In past there were specifications regarding age of minors in many districts. The age limit has been given in several cases but the age of minority was different for boys and girls. Generally almost all the tribes stated that the minority ceased on the completion of 18 years in the case of males and on completion of 16 years in the case

\textsuperscript{1} C.L. Muzaffargarh 1925, 28.
\textsuperscript{2} C.L. Shahpur 1896, 40.
\textsuperscript{3} Hindus of Mianwali district; Hindus C.L. Muzaffargarh 1925, 28.
\textsuperscript{4} The Biloches of the Dera & Rajanpur Tahsils, C.L. Dera Ghazi Khan 1898; tribes in Kullu and Hissar.
\textsuperscript{5} C.L.Ludhiana 1911, 45.
\textsuperscript{6} C.L. Mianwali 1908.
\textsuperscript{7} C.L. Mianwali 1908, 19 ; C.L. Muzaffargarh 1925.
of females.\textsuperscript{10} While most of the districts considered minors till the age of 18, there were some variations too, the age was 16 years in Sirsa, 15 years in Dera Ghazi Khan and among Sayyad tribe of Mianwali district. The Bilochar of Jhajjar in Rohtak district on the other hand observed minority till the age of 21 years. For girls the age of minority was lower than that of the boys. It was 16 years in most of the districts but in other districts the age was 14-15 years as in Hissar, Delhi, Sirsa and in Nakodar tahsil of Jullundur district.\textsuperscript{11} The Muslims of Muzaffargarh district followed Muslim law and said that minority continued till age of 12 years, the Sainis of Gurdaspur tahsil said that the minority ended at the age of 10 years.\textsuperscript{12} Among Sayads of district Mianwali and in Shahpur district there was no fixed limit for the termination of minority. The definition of minor thus varied over the region.

In certain districts such as Sirsa the minority ended when the boy and girl reached puberty. The defined age for puberty was also different for different tribes, for Baniyas it was 16 years for boys and 14 years for girls, while Jats said it to be 16 years and 18 years respectively for girls and boys and the lowest age of minority was that of 12 years.\textsuperscript{13} However, a boy was generally anticipated to have reached puberty at the age of 15 and girl at the age of 12-13 in Dera Ghazi Khan District and among the Dogars of Hissar district.

In some areas it was believed that the father had the absolute power to appoint a guardian of his minor children as specified in Mandi district. He could appoint any one he wanted to, whom he considered a well wisher and one he considered that he could be guardian of his minor child or children after his death.\textsuperscript{14} In spite of the wide acceptance of the custom it was observed that it was not a regular practice. As the father appointed guardian very rarely in Sirsa district. Even no such instance was found where the father had made appointment in the district of Shahpur. And Hindus of Jhelum reported that such power was used only once.\textsuperscript{15} Jats of Hissar also said that

\begin{footnotesize}
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\item \textsuperscript{10} C.L. Gurdaspur 1893 & 1913, C.L. Jullundur 1918, C.L. Gujranwala 1914, C.L. Mianwali, C.L. Jhang 1908, C.L. Amritsar 1947, C.L. Rohtak 1911, C.L. Delhi 1911, C.L. Sialkot 1917.
\item \textsuperscript{11} Hissar, Delhi, Sirsa and in Nakodar tahsil. C.L. Jullundur 1918.
\item \textsuperscript{12} C.L. Gurdaspur 1913.
\item \textsuperscript{13} C.L. Sirs 1882. C.L. Sirsa 1882, C.L. Delhi 1911, C.L. Gurdaspur 1913, C.L. Hissar 1913, C.L. Mianwali, C.L. Shahpur 1896, C.L. Muzaffargarh 1925, C.L. Panipat 1883, C.L. Multan, C.L. Sialkot 1917, C.L. Kangra 1914 and C.L. Montgomery 1925.
\item \textsuperscript{14} C.L. Jhelum 1901.
\end{itemize}
\end{footnotesize}
the father did not have any such right.\textsuperscript{16} The Arains of the Raya tahsil stated that the father had no such power.\textsuperscript{17}

A father had the authority to make such appointment by testimony or otherwise. Effect was not generally given to an oral appointment because it was difficult to prove. In an illustration it was found that a Muslim Jat had appointed his brother as the guardian of his minor son by written testament and it was carried out. In another district it was observed that such appointments should be in written and if oral it had to be made before panchayat.\textsuperscript{18} In certain places such as Hissar district such dispositions were generally made orally on the death bed and hardly ever in writing.\textsuperscript{19} Similarly no written testament was necessary and guardian was appointed in a very informal manner among Jats and Rajput Muslims and Rain tribe of Sirsa district.\textsuperscript{20}

The general view was that a guardian must be appointed from among paternal or maternal family members.\textsuperscript{21} The appointed guardian ought to be one of the near relations. The guardian was expected to be from amongst persons descending from the common ancestor.\textsuperscript{22} This norm was not always followed. At many places and among tribes the father had the right to appoint anyone as a guardian without any consideration for the close relations. In some districts and tribes father was at liberty to select anybody with whom he was satisfied even if he was a non relation and there was no restriction on the appointment of guardian.\textsuperscript{23} A non relation could be appointed among the tribes of Janjuas and Mughals in Jhelum district for instance. Even though all other tribes of the district also said the same but did not appoint a non relation. Only one instance is cited by Hindus where Dr. Duni Chand Mehta of Dalwal appointed his maternal uncle to be guardian of his own and brother’s children.\textsuperscript{24}

When the father had not made the appointment of the guardian, then the guardianship of person and property was transferred to the nearest relation who could

\textsuperscript{16} C.L. Hissar 1913.
\textsuperscript{17} C.L. Sialkot 1917, 11.
\textsuperscript{18} C.L. Multan 1929.
\textsuperscript{19} C.L. Hissar 1913, 16.
\textsuperscript{20} C.L. Sirsa 1882, 109.
\textsuperscript{21} Hindu and Muslim Rajputs, Brahmins, Chahngs, Lobanas, Sainis and Gujars of Tahsil Pathankot, C.L. Gurdaspur 1913; C.L. Sirsa 1882, 9; C.L. Hissar 1913; C.L. Jhang; C.L 1908; C.L. Muzaffargarh 1925; Khatris and Jat Sikh of Dipalpur tahsil, C.L. Montgomery 1925.
\textsuperscript{22} All Muslims tribes and Kambojs of Dipalpur tahsil, C.L. Montgomery 1925.
\textsuperscript{23} Delhi; Hindus of Kot, Adu, C.L. Muzaffargarh 1925.
\textsuperscript{24} C.L. Jhelum 1901, 20.
inherit the property of the minor as per the custom. 25 Usually eldest adult brother of the minor was appointed as the guardian both in regard to his person and property. 26 At some places brother was only given the guardianship of property whereas that of person was carried on by mother or some other relation, i.e. mother was the guardian of the person and brother that of the property of the minor. At times there were some conditions imposed on the brother being the guardian as he should not be wicked or he should be of good character. 27 It did not matter whether he lived jointly or separately with the minor. 28

The guardianship of the property devolved on the elder brother and in his absence on the nearest fit agnate. 29 Sometimes even the adult step brother could also be the guardian. Failing him the right moved on to the nearest male collateral and failing him on the mother.

If the father had not appointed anyone as guardian of his minor children they remained under the care of mother who arranged for their food, clothing and other domestic matters. 30 Generally mother was regarded as the natural guardian of her minor son. 31 The two instances cited showed that the mother became the guardian automatically. In an instance in tahsil Wazirabad of Gujranwala, a man died without appointing a guardian of his minor son and consequently his widow became the guardian. In another case in the same tahsil among Muslim Jats, the mother became the guardian of both person and property of her minor son and she even arranged for his marriage. 32

The Hindus of Sangarh and Jampur made the mother guardian of both person and property and male relatives took her place only on her death. 33 Other tribes of same district did not discriminate against women. 34 Except for Rajanpur tahsil in Dera Ghazi Khan the guardian of the person was mother or some female relative as

25 C.L. Panipat 1883, C.L.Gujranwala 1914.  
26 C.L. Mianwali, C.L.Hissar 1913; C.L. Muzaffargarh 1925; C.L. Sialkot 1917; C.L. Montgomery 1925; C.L. Moga 1890.  
27 C.L. Hoshiarpur 1914; C.L. Montgomery 1925.  
28 C.L. Hoshiarpur 1914.  
29 C.L. Gujranwala 1914, 13; C.L. Hoshiarpur 1914.  
30 C.L.Gujranwala 1914, 13.  
31 C.L. Kullu, C.L. Kangra 1914; C.L. Jullundur 1918; C.L. Hoshiarpur 1914.  
32 C.L.Gujranwala 1914, 13.  
33 C.L. Dera Ghazi Khan 1898, 10.  
34 C.L. Jullundur 1918, 25.
mother’s mother or mother’s sister. Hindus of Dera tahsil made mother of some other female relative guardian of the person and one of the male relative that of land. 35

If no appointment had been made by the father, the guardianship of person and property devolved on the mother. And if there was no mother then it was on the eldest brother of full age. Usually in the absence of mother and brother the right devolved on nearest male collaterals. 36 However sometimes the tribes felt that the collaterals could be superseded if there was any suspicion of their being inimical to the interests of the minor children. 37 In Kullu in her absence the guardianship devolved upon grandmother, brother, uncle and maternal uncle etc in that order. However in the same district an elder brother was given preference. Among Hindus of the same districts the guardianship of the person and the property devolved upon grandfather, adult eldest brother, uncle, mother, mother’s father, mother’s brother, sister’s husband, uncle’s son and then on the male collaterals.

The mother was entitled to the guardianship of the person of the minor on the death of the father amongst Hindus except the case where she was unchaste in some gots of Jats. 38 Among Hindus of this tahsil the guardian of person and property was the person who had power to make the contract of betrothal.

Generally all the Muslims of Shahpur observed that the guardianship of the minor children was entrusted to the mother and failing her on adult eldest brother, father’s mother, her sister, his sister, mother’s mother, her sister, brother or other female relative. The Tiwanas of the same district said that the guardianship of the minor devolved on the adult eldest brother whether by same mother or not, failing him on the father’s brother or nearest agnate relative. The guardianship of both person and property of the minor children was transferred to the real eldest brother and failing him on the mother, paternal grandmother, maternal grandmother, mother’s sister or brother and other maternal relations. 39

She could also become guardian by default. If there was no elder brother then the mother could become the guardian provided she was of good character. 40 When

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35 C.L. Dera Ghazi Khan 1898, 10.
36 C.L. Delhi 1911.
37 C.L. Gurdaspur 1913, 16.
38 C.L. Ludhiana 1911, 44.
39 Awans, Gondals, Rahjas, Khokhars, C.L. Shahpur 1896.
40 C.L. Montgomery 1925.
the minor lived separately from his brother then the mother was the guardian of the
person and property of the minor.\textsuperscript{41} If the brother was not good, and then also the
mother could take the management of the property in her own hands.\textsuperscript{42} She could also
take over the management of the property if her deceased husband lived separately
from his brothers. In some areas mother was given precedence to the brother except
for betrothing her daughter.\textsuperscript{43} In Mianwali among Muslims mother was given third
preference to be guardian of her minor children after her own major son and male
collaterals while in Hisar and Muzaffargarh districts she was preferred to male
collateral.

In Panipat though only among Rajput Jats was the mother appointed the
guardian. For example, Mathri became guardian of her sons vide mutation no 13
dated 30 Dec 1888. Similarly Dharmo, a Jatni became guardian of her son Shiv Ram
vide mutation no. 10 of June 3, 1899. However the mother as a guardian had some
limitations. She could not make out of door arrangements such as matters regarding
land or betrothal or marriage of her children. These matters were entrusted to the
agnates.\textsuperscript{44} For instance Bodla and Chishti women were always in veil (Pardanashin),
so the mother never appeared in the public, and was under the guardianship of the
nearest agnate of her husband. However in certain tribes such as Rains and Sikh Jats,
the mother herself arranged for the cultivation of children’s land and sometimes even
appeared in the court.\textsuperscript{45}

Sometimes relatives such as the brothers of the father who lived jointly with
minor and the mother became his guardians.\textsuperscript{46} The grand father, brother, paternal
uncle or his son were appointed as the guardian in this order. The guardian appointed
was mother, brother, relations through father in order of proximity and relation
through mother in order of proximity for both the guardianship of person as well as
property. \textsuperscript{47} Mainly only male relations were appointed as guardian of property. The
 guardian was generally appointed from among the collaterals or the maternal uncles.

\textsuperscript{41} Jats, Sayyads, Pathans, Sheikhs of Jullundur tahsil and all tribes of Nakodar tahsil, C.L. Jullundur,
1918.
\textsuperscript{42} C.L. Jullundur 1918, 24.
\textsuperscript{43} C.L. Moga, Zira, Ferozepore 1890, 10 : C.L. Hoshiarpur 1914.
\textsuperscript{44} C.L. Sirsa 1882 , 109.
\textsuperscript{45} C.L. Sirsa 1882 , 110.
\textsuperscript{46} Muslim Jats of Hissar, C.L. Hissar 1913. 17.
\textsuperscript{47} C.L. Amritsar 1947, 36.
However mother and maternal relations were preferred among Khatris of Chakwal, Gakhars, Janjuas and Gujars in the district of Jhelum. The delegation of guardianship to different persons was not uniform in the district and not even in the same place. As in the case of Gurdaspur district Jats gave the preferential rights to adult brother while Labanas and Sayads gave the right to mother. Generally the property was managed by the person who was living with the minor, though other relations could step in to prevent mismanagement and get one of them appointed as the guardian by a Court.

II

A clear discrimination against female guardianship is evident from the report on customary law. Many times she was entitled to the guardianship of person only. If she was a guardian she was not to be caretaker of minor’s property which was entrusted to some male member. At times her guardianship was conditional too, she had to be “well behaved” or prove that her conduct was good. Otherwise it passed on to the minor’s grandfather, real eldest brother, the mother of the father or mother’s mother or other maternal relatives in that order. Sometimes she was not given independent charge at all. If the mother became guardian of the minor then she could discharge her duties only with the assistance of male relatives by the father’s side.

If she remarried, her guardianship was given to one of the male relations. The guardian carried the responsibility of raising the minor and also enjoyed certain rights. Prejudice against women guardians and their right of betrothing their own children in some areas. Usually the right of guardianship always carried with it the right of decision on marriage. The mother however could never betroth a daughter unless the consent was given by the nearest relations of the father. Similarly, both Hindu and Muslim tribes agreed that she must have the sanction of her husband’s relations while betrothing her daughter. In Jullundur, the responsibility of the betrothal of a minor

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48 C.L. Delhi 1911.
49 C.L. Jhelum 1901. 29.
50 C.L. Gurdaspur 1913. 16.
51 Jampur Tahsil tribes, C.L. Dear Ghazi Khan 1898.
52 Sayyads, Pathans, Sheikhs, Mahtons and some other Hindus, C.L. Jullundur 1918.
53 Sangarh Biloches and Hindus, C.L. Shahpur 1896.
54 C.L. Gurdaspur 1913, 9.
55 C.L. Muzaffargarh 1925.
daughter rested with her grown up brother but with mother’s consent. Failing both the responsibility lay with other relatives of the girl.

The right of guardianship also included the right to give her in legal marriage. The guardian could only dispose of the minor girl in marriage with the consent of near relations. In Jullundur if the guardian was from mother’s side then the nearest collateral from father’s side could give her in marriage. The significant observation here was that agnates would exclude the mother’s relations from the guardianship, since the interference of the latter with the family land was “naturally” looked on with jealousy.

The relations of the father agreed amongst themselves in the matter and the only dispute that could arise was that of mother’s right to betroth the girl. Muslims also followed Hindus in this regard. In a solitary instance among Muslims Jats a betrothal contract made by the mother against the wishes of agnates was supported by the court but the decision was not accepted by the tribe. However in certain districts the mother could arrange for the marriage of her minor child.

The mothers consent to her daughter’s marriage was essential in some districts, if she was not the guardian. Pathans and Rajputs of the district did not give mother the preferential right and only took her advice. In Hoshiarpur the right of betrothal of daughter lay with the elder brother, then her mother and failing him on nearest male relation who was considered responsible. Guardianship of illegitimate children, ones who were not born of legal wedlock has also been addressed in the reports on Customary Law. In most of the districts mother and her relations were given the custody of such children. The mother and her relations had the preferential claim on the guardianship of her illegitimate children. After the death of the mother her relatives became the guardians of the children. The near collaterals became

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60 C.L. Amritsar 1947. 38.
61 C.L. Gurdaspur 1913. 9.
62 C.L. Jullundur 1918. 25.
63 C.L. Kaithal. 8.
64 C.L. Ludhiana 1911. 45.
65 C.L. Hissar 1913. 17.
66 Hindus, C.L. Mianwali 1908; C.L. Muzaffargarh 1925.
67 C.L. Hoshiarpur 1914, 63; C.L. Gurdaspur 1893 & 1913, 19; C.L. Hissar 1913; C.L. Montgomery 1925; C.L. Mianwali 1908; C.L. Kullu; C.L.Kangra 1914; C.L. Panipat 1883;Jullundur 1918;C.L. Multan 1924; C.L. Amritsar 1947. 36; C.L.Kaithal; C.L. Sirsa 1882; C.L.Muzaffargarh 1925.
68 C.L. Hoshiarpur 1914
69 C.L. Muzaffargarh 1925; C.L. Jullundur 1918.
guards with the consent of minor’s mother in the tribes of Indri. In the absence of
agnates the maternal uncle or some other relation of the mother were appointed with
her consent. Rors from Kaithal district alleged that the maternal uncle could not be the
guardian, though some tribes such as the Janjuas, Chohans, Jats and Gujar said that
failing the mother the chaukidar and lambardar would be responsible for the child’s
maintenance.\textsuperscript{66}

In Panipat, the illegitimate children passed on to father and his kindred after
the mother. Many tribes in Jhelum and Sirsa did not accept that there were ever any
illegitimate children. Those who did accept said that if there were any, the father
would have the right to be guardian of the child if he wished as in the case of Kassars
of Jhelum. In tahsil Shakargarh the right of guardianship of illegitimate children
devolved upon the father, mother and relatives in that order. The Jats of Mianwali
claimed that such children were under the guardianship of husband and his collaterals
if he kept his wife. Similarly the Jats in Muzaffargarh district had the right to claim
the guardianship of wife’s illegitimate children.\textsuperscript{67} Even a case was quoted where the
wife ran away and returned after seven years with an illegitimate son who was
claimed her mother’s husband and also inherited his property.\textsuperscript{68}

This question was omitted in the tahsils of Moga, Zira, Ferozepore. In
addition to illegitimate children, another minor that needed a guardian was that of the
young married female infants. There was some dispute regarding their custody. While
some tribes said that her husband was her guardian, others opined that her father was
her guardian. In case of the married female infant whose father and husband were
alive, the husband was entitled to her custody whatever her age was according to
Dogars of Moga, Zira, Ferozepore, Jhelum, Kullu. The rest of the tribes of Moga and
that of Sialkot said that the parents were her guardians till she attained puberty. On
attaining puberty the boy’s family would ask for muklawa so that cohabitation could
take place. As in Moga, Zira, In Jhang and Multan 1924 the father remained in charge
of his infant daughter till the marriage was consummated.\textsuperscript{69} After that ceremony she
was under the custody of her husband.

\textsuperscript{66} C.I. Jhelum 1901, 33.
\textsuperscript{67} C.I. Muzaffargarh 1925 , 28.
\textsuperscript{68} The ceremony was called sirmel in Multan and was known as behda among Muslims in Jhelum.

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The ground realities were somewhat different. In practice she remained in her parent’s charge until puberty with the consent of husband. The father of a married female infant was entitled to her custody in preference to her husband until she attained puberty.\(^70\) The tribes such as Sayads, Janjuas of Pind Dadan Khan, Mairs, Kassars, Jats said that the husband was not entitled to her custody and she remained with her parents until her maturity.\(^71\) In Montgomery district husband had the prior right to the father but if the husband was minor then the right shifted to his father. If the husband died then the father in law had the custody of his daughter in law whether muklawa had taken place or not.\(^72\) In Jullundur district the custom was same as in Montgomery but her father remained her guardian till she lived in her father’s house. In case of her husband’s death in minority her father or her father’s relatives were the guardians.\(^73\) In Kangra the husband was the guardian but if she lived with her parent’s then father was the guardian. It was so observed among Khatri, Mahajans, Ghirths and Jats of Nurpur tahsil that father was the guardian.

All tribes said that she was supposed to be under the guardianship of her parents till she lived in their house and was to be under the custody of husband and his parents when she came to their house.\(^74\) If the husband died after consummation she came under the control of his male relations. Among Hindus the guardian of the husband of married female infant was also her guardian, if the husband was an adult he might demand her custody at any time after the marriage. In fact the father of married female infant had no preferential right to keep her till puberty. In case she had no parents or guardian of her husband she generally lived with her parents and in practice the husband, even if adult, did not claim her custody until she was a major.\(^75\)

The girl remained in the custody of her husband whether she was a minor or not and on his death to that of his near relations.\(^76\) Among the Hindus of Muzaffargarh, the father of married female infant did not have any preferential right to keep her. The guardian of the husband of a married female infant was also her guardian and she lived with either the guardian or parents of her husband and if they

\(^{70}\) C.L. Mianwali; C.L. Muzaffagarh 1925.
\(^{71}\) C.L. Jhelum 1901. 31.
\(^{72}\) C.L. Montgomery 1925. 17.
\(^{73}\) C.L. Jullundur 1918.
\(^{74}\) C.L. Muzaffargarh 1925. 16.
\(^{75}\) C.L. Mianwali. 20.
\(^{76}\) C.L. Jhang 1908.
were not alive, then with her parents. If the husband was adult he could ask for her custody anytime but never if she was a minor.

In Gurdaspur district the tribes of Pathankot tahsil and Khatri and Brahmans of Batala tahsil said that the father lost all claim to the custody of minor girl after the muklawa. Hindu and Muslim Jats said that the father lost his claim soon after the performance of marriage. The same answer was given by the tribes of Shakargarh tahsil except Hindu and Muslim Jats who said that the father retained his right to the custody of the girl during her minority. Similar was the case with Gurdaspur tahsil. In Hoshiarpur generally parents were the guardians of minor girl. Muhammad Gujars said that it was only till 12 years of age whereas some tribes as Rajputs, Gujars, Awans, Dogars, Khatri and Brahmans said that husband became guardian immediately after marriage and on his death his near relations became the guardian. Among Arains if the husband died while she was still living with her parents, she continued to live chastely there only with her parents and in tahsil Hamirpur among Rajputs father in law became the guardian when the girl lost her husband. In an occurrence among Arains the father was appointed the guardian in preference to the agnates of deceased husband.

All Muslims and Hindus of Shahpur district said that the husband was not entitled to demand the custody of his wife until she reached puberty. In Panipat too the minor girl was supposed to live with her parents or kindred. Sayeds of Jalpahe and Sayedpur said that the custody of girl devolved upon the parents of her husband. In tahsil Dehra of Kangra district husband was the guardian of his wife. On the whole, it appears that there was a difference in custom on account of religion. While Muslims said that father was the custodian of minor married girl, Hindus said that the guardian of the husband was her guardian too.

77 C.L. Muzaffargarh 1925, 26.  
78 C.L. Gurdaspur 1913, 18.  
79 C.L. Kangra 1914, 45.  
80 District Judge 11-6-04, 65; C.L. Hoshiarpur 1914.

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The majority of the tribes across the province said that the guardian could never alienate the land of his ward without the consent of the heirs. Sangarh Tahsil Dera Ghazi Khan, Kaithal, Rawalpindi and agnates of Kaithal. Some tribes admitted that the guardian could alienate land under special circumstances. The alienation could be done only under pressure of necessity and for the benefit of minor. These circumstances were different for different areas. However some similarities could be found. One of the main reasons which led to the alienation of land was payment of the debts of the persons from whom he might have inherited the property or ward off the interest of inherited debt of the minor. The land could also be alienated if income from the land was not sufficient for the maintenance of the ward. A guardian could alienate land for the education of the minor. The alienation could also be done for the management of property, to improve the value of the property or for the payment of revenue to the Government. Khatis of tahsil Wazirabad, Rawalpindi 1887, Dera Tahsil also added the cause that of money required for the wards marriage expense or that of his sister for the performance of obsequies of minor’s parents. Funeral expenses Ludhiana Attock Khatis of tahsil Wazirabad, Rawalpindi 1887. For necessary purposes as to procure food or Rawalpindi 1887 to buy a plough. The land could also be alienated for some legal purpose if it was of advantage to the minor. In Ludhiana the right to alienate moveable property was admitted only if the near agnates refused to supply the funds on being asked.

Some tribes in certain districts only allowed mortgage of land and that only for necessary purposes. It was a common practice in Attock and four instances supported

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81 C.L. Attock 1911.
82 C.L. Dera Ghazi Khan 1898, 11; C.L. Hoshiarpur 1914; C.L. Gurdaspur 1913; C.L. Ludhiana 1885; C.L. Attock 1911; Khatis of tahsil Wazirabad, C.L. Sialkot 1917.
83 C.L. Gurdaspur 1913; C.L. Ludhiana 1885.
84 Gurdaspur Tahsil Shakargarh, C.L. Gurdaspur 1913; 10; C.L. Sialkot 1917; C.L. Dera Ghazi Khan 1898, 11; C.L. Hoshiarpur 1914.
85 Gurdaspur Tahsil Shakargarh, C.L. Gurdaspur 1913, 10; C.L. Attock 1911.
86 Tahsil Batala and Gurdaspur, C.L. Gurdaspur 1913, 10.
87 Gurdaspur Tahsil Shakargarh, C.L. Gurdaspur 1913, 10; C.L. Ludhiana 1885; C.L. Attock 1911; Rajputs of Indri, C.L. Moga, Zira, Ferozepore 1890, 11.
88 Gurdaspur Rawalpindi 1887 Tahsil Pathankot, 10; Ludhiana Attock Rajputs of Indri.
89 Tahsil Pathankot, 10.
90 C.L. Moga, Zira, Ferozepore 1890, 11.
91 C.L. Amritsar 1947; C.L. Gurdaspur 1913; C.L. Attock 1911.
92 C.L. Ludhiana 1911, 54.
A guardian could also lease the property of his ward for the period of minority. These could be a payment of his father’s just debts, or payment of necessary expenses connected with property or maintenance or the marriage of the ward.\(^9\)

Biloches approved limit of power of alienation to that of mortgaging.\(^95\) Similarly all tribes of Jullundur district said that the guardian could mortgage immovable property of the minor for the payment of the deceased father’s debts and other necessary expenses.

Guardian had full power to alienate only the movable property of the ward could alienate only movable property for the necessary purpose.\(^96\) This strict measure was on the ground that the guardian might not assess such debts with proper care.\(^97\) Amongst Arora, Jat Sikhs, Kambojs, Mahtams, Rajput, Wattus, Rajput Muslims of tahsil Pakpattan said that the guardian could only mortgage the movable property of his ward for the latter’s benefits, e.g., marriage, payment of debt, maintenance or education or for any other purpose for the wards benefit. The guardian could alienate movable property if it was for the welfare of the minor and such alienation were binding.

It seems that the alienation of immovable property was not allowed, nor was its mortgage acceptable even for satisfying the debts of wards deceased father. In Gujranwala the guardian could not alienate the property, whether movable or immovable, of his ward in any manner.\(^98\)

The Khatris of tahsil Wazirabad however could alienate property, both movable and immovable if the payment was for his father’s just debts or the government land revenue or for the funeral expenses of his parents. In Mianwali district a guardian might mortgage or even sell movable or immovable property for the payment of land revenue, maintenance of the ward, payment of debts of ward or ward’s father, marriage of ward or for an object directly advantageous to the ward. If the proof of absence of necessity for transfer or of disadvantage to the ward was found the transfer became void Khatris of tahsil Pakpattan, Sayyads, or mortgage his

\(^{93}\) C.L. Attock 1911, 47; C.L. Moga, Zira, Ferozepore 1890, 11; C.L. Gujranwala 1914; C.L. Amritsar 1947; C.L. Sialkot 1917.
\(^{94}\) C.L. Gujranwala 1914.
\(^{95}\) C.L. Dera Ghazi Khan 1898.
\(^{96}\) C.L. Amritsar, 1947.
\(^{97}\) C.L. Amritsar 1947, 36.
\(^{98}\) C.L. Kullu, C.L. Amritsar 1947, C.L. Panipat 1883; C.L. Kangra 1914.
immovable property only for the purpose of paying land revenue. A guardian could also affect lease of wards property only until the ward was major. 99

The property of the ward could also be leased by the guardian for any period to extending beyond the date on which he attained his majority. 100 The guardian could also lease the lands of the minor for some years. 101 The property could be leased also but only till he became major. 102

Jats other than that of Sangarh, did not consider any limits and also recognized no limitation if alienation was justified, could not sell or alienate by gift any immovable property of the minor. In Rawalpindi 1887 also the guardian could alienate a minor’s property i.e sell or mortgage it for certain vital expenses as marriage of his own or his sister or funeral expenses or payment of revenue, food or for plough cattle. Regarding the alienation of property by the guardians, the tribes in Montgomery agreed that the guardian could never sell or gift the property of the ward.

Hindus of the district said that all the alienations had to be for the benefit of the minor. The guardian was empowered by almost all the tribes in Jhelum district to mortgage any kind of property for necessary household expenses, the payment of revenue or other necessary purpose. The guardian could lease the minor’s property for his benefit until he was adult. Janjuas, kahuts, Jalaps and Sheikhs of Jhelum could not alienate immovable property except by lease during the ward’s minority but the movable property could be alienated for the benefit of the ward. 103

A guardian could not gift the property of his ward, he had full powers of alienation by sale or mortgage as regards movable property provided he acted in the interests of the minor. Regarding immovable property the power of alienation by mortgage was admitted by all tribes accept the Chhangs and Labanas of Pathankot tahsil. The general reasons for which the minor’s property was allowed to be alienated were (1) the payment of the Government demand; (2) the payment of the debts of the minor’s deceased father; (3) the minor’s marriage and up bringing; (4) the education of the minor; (5) the performance of the obsequies of the minor’s parents. A guardian

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99 C.L. Muzaffargarh 1925; C.L. Hissar 1913; C.L. Multan 1924; C.L. Pathankot.
100 C.L. Mianwali 1908, 20; C.L. Muzaffargarh 1925; C.L. Amritsar 1947, 36.
101 C.L. Jullundur 1918.
102 C.L. Montgomery 1925.
103 C.L. Jhelum 1901, 30.
can lease the property of the minor for the period of his minority. However, Arains of tahsil Sharakpur could not alienate any property even if it was for the most necessary purposes and the consent of the collaterals.

In Ambala district all said that the guardian could never alienate without the consent of wards heirs but he could mortgage with their consent in case of necessity for the payment of revenue, marriage expense of the minor, minor’s sister and maintenance and in some cases even for the payment of father’s debts. Rajputs in Ambala district had quoted few cases where the guardian had alienated without the consent of collateral but these were taken as exception and not as precedents. In Ludhiana district all tribes agreed that the guardian could alienate for lawful necessity and in good faith. The good faith and necessity of alienation of the guardian was not trusted as the guardian was usually the mother and she was expected to call on father’s relations to provide for the funds before proceeding to alienate. If they refused then the guardian had power of absolutely alienating immovable property to the necessary extent. The lawful necessity was defined as marriage and funeral expenses, father’s debts, and payment of government demand and suitable maintenance of the minor. A female guardian could alienate the property of the minor for valid necessity in Mianwali district. There was very less necessity felt for permanent alienation as money could be raised on mortgage.

The custom regarding alienation of minor’s property was very clear and universal. Mortgage was the preferred route and the expenses mainly paid were the benefit of the minor as for example the payment of the father’s debts or funeral expenses or for expenditure on his own or his sister’s marriage. The payment of revenue or for the upkeep of the land was other things for which the mortgage of the land was required. We find various instances where alienation of land was done to pay for the father’s debts. On similar grounds in Jhang the guardian had the right to lease the immovable property or mortgage property of minor until the latter became a major and it was for the benefit of the ward as to pay land revenue, to clear off hereditary debts of the minor or defraying maintenance charges.

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104 C.L. Gurdaspur 1913, 17.
105 C.L.Gujranwala 1914, 13.
106 C.L. Ambala 1887 & 1918, 14; C.L. Kaithal 1892.
107 C.L. Ambala 1887, 15.
108 C.L. Ludhiana 1911.
109 C.L. Attock 1911.
Wherever the alienation was disputed by the agnates, the onus of proving necessity was on the guardian and it must be supported by strong evidence.\textsuperscript{110} He could also sell a small amount of minor’s land only if it was for the benefit of the latter. As for example a large area was thereby redeemed from mortgage. The Gakkhars of the district generally did not give the power to sell any property of the minor.\textsuperscript{111} Sometimes he could not sell immovable property even for necessity.\textsuperscript{112} The power of alienation by sale was denied by all the tribes of Gurdaspur tahsil, Pathankot tahsil except Muslim Rajputs, all tribes of Batala tahsil except Brahmans and Khatris, all tribes of Shakargarh tahsil except Hindu and Muslim Rajputs, Hindu and Muslim Jats, Pathans and Gujars.\textsuperscript{113} The tribes of Ambala district also said that the guardian could never sell land under any circumstances.\textsuperscript{114} Yet some mutations came up where the guardian had sold the land of the minor.\textsuperscript{115} The tribes in Moga, Zira and Ferozepore could never sell the property.\textsuperscript{116} They also cited an instance which included sale. Sale was also permitted in Dera Tahsil Muslims but could give only one doubtful instance.\textsuperscript{117}

In Ludhiana district the instances of sale by guardians was rare and were almost always contested. The power of sale was only admitted when permanent alienation was the only way of raising sufficient money or when sale of portion of estate to redeem the rest was in the interest of the minor. Statutory guardians could alienate only with the consent of court. Though in Jullundur also the tribes were against selling of property but still allowed sale of movable property if really necessary.\textsuperscript{118} They have added that only those contracts by the guardian were binding that were made in good faith and beneficial to the minor and really necessary.\textsuperscript{119} Jat Muslim of tahsil Dipalpur said that the guardian could sell the wards movable property. The guardian could not alienate the property of his ward by sale.\textsuperscript{120} Even though sale of land was the last resort but still we find six such instances where the

\textsuperscript{110} C.L. Kaithal 1892.
\textsuperscript{111} C.L. Jhelum 1901, 30.
\textsuperscript{112} C.L. Amritsar 1947.
\textsuperscript{113} C.L. Gurdaspur 1913.
\textsuperscript{114} C.L. Ambala 1887 & 1918; C.L. Hissar 1913; C.L. Kangra 1914.
\textsuperscript{115} Hindu Rajputs, Deswali Jats, Degars, C.L.Hissar 1913.
\textsuperscript{116} C.L. Moga, Zira, Ferozepore 1890, 11.
\textsuperscript{117} C.L. Dera Ghazi Khan 1898, 11.
\textsuperscript{118} C.L. Jullundur 1918, 26.
\textsuperscript{119} IBID, 26.
\textsuperscript{120} Jats, Hindus and Muslims Rajputs, Gujar, Arains, Sainis, Kalals, Kaiths, Lobanas, Mallahs of Tahsil Shakarpur \textsuperscript{110}; C.L. Gurdaspur 1913.
land was sold by the guardian. The guardian could not sell the property but only mortgage it. Only in this district the movable property could be sold in order to satisfy the debts of the deceased father.

There are various such instances in Ludhiana district. In tahsil Ludhiana mother of minor sold small plots for building purposes and paid off debts of the minor’s father. In two cases mothers of Jat Sikh sold land for their marriages. A minor’s land was sold by his brothers for the payment of their father’s debts. In a case among Muslim Jats mother of the minor sold his land. The minor brought a suit on growing up. On compromise the land was taken as mortgage instead of sold. In Jhang and all Hindu tribes and Muslims of Shujabad and Lodhran tahsil of Multan said that the guardian could sell moveable property under special circumstances and even a portion of immoveable property if he felt that minor would incur loss. It should be in good faith. Similarly the guardian could sell the movable property for payment of debts of his ward’s father in Muzaffargarh. Some tribes of Hoshiarpur district also allowed sale of immoveable property if necessary to liquidate just debts as among the Rajputs, Gujars, Pathans, Sayids and Sheikhs. In Mianwali district also guardian might even sell movable or immovable property for the payment of land revenue, maintenance of the ward, payment of debts of ward or ward’s father, marriage of ward or for an object directly advantageous to the ward. However if the proof of any absence of necessity for that transfer or of disadvantage to the ward was found, the transfer became void. Only those contracts were valid which were for the benefit of the ward. Regarding the moveable property usually all the contracts were valid, whether they were for the benefit of minor or not, as obvious from the records of Hissar district.

A minor whose father was dead and had inherited the latter’s estate was liable for the payment of his father’s debts, only to the extent of the property he received from him. Even in Mianwali district a minor who had inherited his father’s estate was liable for his debts too. If such debts were not payable till the adulthood of the minor the property inherited could not be alienated in the interval by the guardian

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121 C.L. Sialkot 1917, 12.
122 C.L. Ludhiana 1911, 14.
123 C.L. Hissar 1913.
124 C.L. Moga, Zira, Ferozepore 1890; C.L. Sirsa 1882; C.L. Montgomery 1925; C.L. Jhelum 1901; C.L. Hissar 1913; C.L. Jullundur 1918; C.L. Gujranwala 1914; C.L. Ludhiana 1911; C.L. Kangra 1914; C.L. Kullu.

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without making proper arrangement for the payment of debts. Muslims of the district said that in the case of extreme necessity exception could be made, but no such instance was found in records. In Kangra it was for both self acquired and ancestral property but in Hoshiarpur he was responsible for debts of his father to the extent of self acquired property of father that the minor inherited but he was not liable for the ancestral property.

The Gakkhars, Khokhars, Jalaps, some Awans of Pind Dadan Khan were of the opinion that the minor was responsible to pay his father debts whether they were more or less than the ancestral property. In Jullundur district if such debts were not payable till the minor was an adult, then the estate could be mortgaged in the interval by the guardian of the minor. In Gujranwala the guardian could mortgage the property to pay such debts. Among the Wazirabad tribes and Arains of tahsil Sharakpur such debts could not neither be demanded nor paid till his majority and his ancestral property could not be alienated in the meanwhile.

The position of widow as guardian of her own children also varied. A widow was guardian of the husband’s agnates who had complete control over all affairs. She was *pardanashin* or under veil. Bodlas and Chishtis in Sirsa district. In this district the word used for her was bewa by which they meant unchaste and other term was *randi* which was a very derogatory term. By and large, the widow ceased her right of guardianship of her minor child if she remarried, and such right did not revive even if she became widow again. Sometimes she was allowed to retain her rights of guardianship provided she married a member of her husband’s family. Hindu Jats of Nakodar tahsil said that if *kareua* was made with her husband’s brother the widow remained the guardian of her deceased husband’s son. It was felt that the feelings were almost entirely ‘directed against the power of the widow’ as it would give absolute control to some of the agnates.

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125 C.L. Mianwali 1908, 21.
126 C.L. Jhelum 1901.
127 C.L. Shahpur 1896; C.L. Sialkot 1917; C.L. Gurdaaspur 1913 & 1918; C.L. Amritsar 1947, 38; C.L. Delhi 1911; 26; C.L. Gujranwala 1914; 15; Phillaur, Jullundur and Nakodar tahsils in Jullundur district, Almost all tribes in C.L. Jhelum 1901, C.L. Hissar 1913, C.L. Multan 1924; C.L. Montgomery 1925; C.L. Kullu, Kangra. Hindus of Muzaffargarh, C.L. Muzaffargarh 1925.
128 Biloche except those of Dera Ghazi Khan Tahsil, Jats. Sayad, C.L. Dera Ghazi Khan 1911; C.L. Shahpur 1896; C.L. Ludhiana 1911; C.L. Gujranwala 1914; C.L. Mianwali 1908; C.L. Jhang 1908; Labanas, C.L. Muzaffargarh. 1925.
129 C.L. Jullundur 1918, 27.
130 C.L. Ludhiana 1885, 54.
In Hoshiarpur district, among the Mahtons however she lost the right and the Sainis took away her right if she married a stranger. In tribes of tahsil Wazirabad and the Arains in tahsil Sharakpur of Gujranwala district even if she married in the family of her first husband her right of guardianship ceased.\textsuperscript{131} In the Nawanshahar tahsil, Arains, Awans, Gujars, Dogars and miscellaneous Muslims of Jullundur district a widow did not lose her rights as guardian by marrying again in case the minor child lived with her and these rights would continue on her becoming widow again. In Jhang district the widow could retain her right of guardianship even after remarriage provided there was no male relative of her husband up to three or four generations and nor sufficient immovable property from her husband. The main idea was that ‘she could not waste the property’. She could retain the guardianship of child only if there was no male collateral of her husband who could become a guardian.\textsuperscript{132} Hindus of Leiah and Muzaffargarh said that the child could not be allowed to be with the widow on her remarriage.

Generally a widow did not lose her right of guardianship if she married again in Hoshiarpur and Jullundur districts. Pathans, Sheikhs and Sayads also allowed her to retain the right of guardianship on her remarriage if the near agnates did not care for the minor.\textsuperscript{133} In a judgment the Court appointed mother as the guardian in spite of the fact that she had married again.\textsuperscript{134} Significantly, in Jullundur she continued being guardian even if she was widowed again.\textsuperscript{135} Jats, Rors, Kambohs of Pipli and Jagadhari and Rains and Gujars of Pipli were inclined to respect the widow’s right of guardianship if she remarried into her first husband’s family. And there was no question that the right was lost absolutely if she married a stranger.\textsuperscript{136}

Among Hindus of Mianwali district the remarriage of widows was not recognized so remarriage necessitated her severing all connection with her husband’s family.\textsuperscript{137} As karewa was not lawful so the remarriage of widow deprived her of right of guardianship of her minor children. On the same note Hindus of Muzaffargarh did not acknowledge Karewa, so her remarriage deprived her of her right of

\textsuperscript{131} C.L. Gujranwala 1914, 15.
\textsuperscript{132} C.L. Mianwali 1908, 21.
\textsuperscript{133} C.L. Hoshiarpur 1914, 66.
\textsuperscript{134} District Judge’s judgement dated 31/1/1913.
\textsuperscript{135} C.L. Jullundur 1918, 27.
\textsuperscript{136} C.L. Ambala 1887 & 1918, 15.
\textsuperscript{137} C.L. Mianwali 1908, 21.
guardianship of her minor child. The Rajputs, Saiyads, Brahmins of Ambala district said that the widows could never remarry. As Hindus did not recognize remarriage and if a widow left her late husband’s house to live with another man it amounted to the abandonment of her child and also ended her guardianship.

The general practice was that guardianship of minor’s person was not lost in the case of remarriage of the mother and very young children generally went to their mother’s new home in practice. Similarly in Kangra and Ludhiana district also the mother was preferred as guardian when child was small and in arms of the mother. In other areas she was allowed to be the guardian of her infant child in a few cases and that only if she married near relative of her deceased husband only till he was weaned. Most of the tribes in Ambala said that remarriage under all circumstances involved forfeiture of right of guardianship. Regarding the property of the minor, control was taken over by the father’s kindred if the mother married outside the village.

The widow even when permitted to retain guardianship of minor children had to consult her husband’s agnates on all the matters whether it was her remarriage, betrothal of her children or alienation of immovable property in Sirsa district. Hindu tribes, Wattus, Muslim Rajputs and Jats, Rains followed this practice. Rains were little more lenient with her as far as her actions did not harm the interests of the agnates. However, they could not exercise any control over her if she gave up all her claim on husband’s family and estate. A widow could act independently subject to the restriction imposed by custom on her power of alienation. Jat, Bhatti, Chohan, Kamins of Jhelum said that a widow continued to be the guardian of her minor children on remarriage but only if she was of good character. Among Janjuas and Gakkhars first said that she would not be deprived of guardianship if she was of good moral character but the fact was that she retained the guardianship of the child if her

138 C.L. Muzaffargarh 1925, 27.
139 C.L. Dera Ghazi Khan 1898, 11.
140 C.L. Moga, Zira, Ferozepore 1890; C.L. Gurdaspur 1913, 11; C.L. Muzaffargarh 1925.
141 C.L. Ludhiana 1911, 45.
142 C.L. Muzaffargarh 1925, 17.
143 C.L. Moga, Zira, Ferozepore 1890, 11.
144 C.L. Gurdaspur 1913, 19.
second husband was a near agnate of the first as a matter of convenience. She had no right to retain it.\textsuperscript{145}

Apparently, there was no well established custom on this issue in Ludhiana. All tribes said that if the minor was a child in arms of the mother she continued to be the guardian; otherwise she retained her rights of guardianship only if her second husband belonged to her first husband’s family. Similarly in Kangra also the mother was preferred as guardian when child was small and in arms of the mother.\textsuperscript{146} Still this practice was the conflicting one. Out of 10 instances cited in the customary law manual, in 3 cases the woman continued to be the guardian even when she had not married in her husband’s family, in 4 cases she ceased to be the guardian and in 3 cases she had married her husband’s brother and was the guardian of her minor child.\textsuperscript{147}

It was felt that the woman was a stranger to the family and belonged to a different got and village, so it was assumed that she would be under the influence of her own relations and guardianship would mean the guardianship of her brothers or other relations. Thus she was bound to be under her husband’s agnates.\textsuperscript{148} If it was found that the widow was leading an immoral life and living with someone else, she ceased to be her guardian of the children\textsuperscript{149} Then the right of guardianship was transferred to grandfather and grandmother, brother, uncle and maternal uncle. (Kullu) In that case it devolved upon nearest male relations of the child’s father or maternal uncle or grandmother.\textsuperscript{150}

Variations continued in the district of Ambala. Most of the tribes in Ambala said that remarriage under all circumstances involved forfeiture of right of guardianship. Jats, Rors, Kambohs of Pipli and Jagadhari and Rains and Gujars of Pipli were inclined to respect the widow’s right of guardianship if she remarried into her first husband’s family. There was no question that the right was lost absolutely if she married a stranger.\textsuperscript{151} The only change visible in 1918 was that the widows remarried commonly among Rajputs by karewa, though earlier the universal fact all

\textsuperscript{145} C.L. Jhelum 1901, 31.
\textsuperscript{146} C.L. Kangra, 1914, 45.
\textsuperscript{147} C.L. Ludhiana 1911, 14.
\textsuperscript{148} C.L. Ludhiana 1911, 53.
\textsuperscript{149} Khokhars of Shahpur and In Kullu district.
\textsuperscript{150} C.L. Shahpur 1896, 47.
\textsuperscript{151} C.L. Ambala 1887 & 1918, 15.
over the districts was that a female, whether minor or adult, was always under the guardianship of males. Her father was her guardian when she was unmarried, and of the mother if the father was dead. Her husband became her guardian after marriage.

She was independent of all guardianship after being widowed and she managed for herself. However even the widowhood was not without any control. The girl was under the guardianship of her parents until muklawa or making over of the girl. And in her husband’s house the guardian was husband or his parents if he was a minor himself. In Gujranwala if there were no parents then the real brother and in his absence the nearest agnate of her father became her guardian. After muklawa the husband could demand the custody of his wife. Similarly in Jhelum district and Muzaffargarh 1925 also an unmarried female was under the guardianship of her parents or collaterals and under the husband when married and any near relation was the guardian if she was widowed.

In Hoshiarpur the woman was always under the guardianship except when she was widow or of age. When unmarried she was under the guardianship of parents and on marriage till puberty she was in the custody of parents and after that she was given to her husband. Only a few examples can be cited where the woman was not under the control of men. Some Janjuas, Gujars, Jats and some others in Jhelum district stated that an adult woman was practically independent. Even Mairs, Kassars and other Chakwal Muslims tribes of the same district said that an adult married woman was not considered to be under guardianship. The Settlement Officer of Jhelum noted that in all tribes a widow managed her own affairs independently of any guardian especially if she had no near relation. Hindus of Jhelum replied that the guardians of a widow were her sons or some of her husband’s relations. An adult unmarried female could do without one if she had no lawful guardian. A married female was under the guardianship of her father till she attained puberty and of her husband

152 C.L. Sirsa 1882, 85; C.L. Moga, Zira and Ferozepore 1890; C.L. Delhi 1911; C.L. Jullundur 1918; C.L. Multan 1924; C.L. Montgomery 1925; C.L. Muzaffargarh 1925.
153 C.L. Ludhiana 1911, 47; C.L. Gurdaspur 1913; C.L. Hissar 1913; C.L. Gujranwala 1914, 15; C.L. Mianwali 1908.
154 C.L. Gujranwala 1914, 15.
155 C.L. Hoshiarpur 1914, 69.
156 C.L. Jhelum 1901, 33.
thereafter and an adult widow was supposed to be her own master but was usually under the guardianship of her husband’s male collaterals.157

V

The state dealt with various aspects of guardianship, not always in accordance with the custom. The government enacted The Guardians and Wards Act, 1890. The meaning of the term guardian and minor were clearly spelt in the Act. The guardian according to the Guardians and Wards Act, 1890 meant a person having the care of the person of a minor or of his property or both. The disputed cases were decided by the courts acting under the Guardian and Wards Act and not according to any custom.158 Though the Courts were seldom guided by the custom in appointment of guardian but discretion was exercised as per circumstances and for the benefit of the minor.159 Under the Guardians And Wards Act, 1890 a minor meant a person who under the provisions of the Indian Majority Act, 1875 was to be deemed not to have attained his majority which was on the completion of 18 years. The age thus, specified did not always correspond with the age followed in different districts of Punjab.

The different decisions of the court concerning various disputes related to guardianship were resolved by the courts. The decision was not always according to the prevalent custom. As stated in the customary law manual of Ludhiana, it was stated

That the appointment of the guardian was a statutory authority vested in the District judge. He had to use his own discretion as per Guardian and Wards Act but not subject to custom.160

Under the Guardianship and Minority Act, court did not always follow custom in the appointment of guardian but saw the benefit of the minor.161 In an instance the Chief Court held that according to Hindu law both paternal and maternal relations had the right of guardianship of minors whereas people preferred only paternal relations.

157 C.L. Mianwali 1908, 22.
158 C.L.Kangra 1914, 42.
159 IBID, 43.
160 C.L. Ludhiana 1911, 45 .
161 C.L. Hoshiarpur 1914
In an order the Court held that the interest of the minor should be the first priority and the minor boy was made over to his maternal grandmother. The Courts did not seem to recognize the custom by which agnates claimed to be appointed guardians in the absence of the mother. They were appointed in case of minors Niamat and Hidayat and 5 other cases among Muslims. In one case maternal uncle was appointed. There was plethora of cases where the unusual guardians were assigned the job. These were paternal aunt, husband of paternal aunt residing in another village, father’s sister husband, uncle of boy’s wife, unrelated zaildar, bua. Section 27 of the Guardians and Wards Act laid down the general powers and obligations of the guardian. It ruled that the guardian should deal with the minor’s property in the same manner as a sensible man would deal with his own property. Section 29 laid down the limitation in respect of guardian’s power of alienation of property.

Regarding alienation of land, in two instances in Rawalpindi district the guardians mortgaged the land to settle the funeral expenses of the minor’s parents and it was considered proper, in another instance of the same district land was mortgaged by the guardian to buy plough bullocks, pay land revenue and for the payment of father’s debts. The court required some strong evidence as necessity of the expenses, refusal by father’s relations to supply the fund and of the bonafides of the guardian which would be evidenced by the actual receipt of money for the benefit of minor. Even the Alpials of Rawalpindi were very particular that the minor’s property could be alienated only under absolute necessity and clearly for minor’s benefit. The alienation had to be for lawful necessity and in good faith. The other important regulation was that if the guardian had been appointed by the court, he was bound by the court and could not alienate without the latter’s sanction.

The established and universally admitted custom was that land could be sold only under dire necessity, otherwise only mortgage was allowed yet eight such cases

\[162\] Civil Appeal No. 709 of 1892.
\[163\] C.L. Kangra 1914, 43.
\[165\] C.L. Rawalpindi. 64.
\[166\] C.L. Ludhiana 1911.
\[167\] C.L. Rawalpindi 1887, 21.
\[168\] C.L. Hoshiarpur 1914.
\[169\] IBID.
where the land was sold by the guardian came to light in records. In an instance mentioned in Mauza Sidpur in Kaithal district the elder brother sold land belonging to his younger brother, he was sued by agnates and they obtained a decree canceling the sale. Out of nine instances cited in Rawalpindi district only one was a case of sale while eight were of mortgage. The reasons were funeral expenses of mother and buying of plough bullocks.

The state also decided cases of debt on the minor. The minor was liable for his father’s debts as in Gurdaspur district. In one instance in Gujranwala district a Muslim Jat died leaving a minor son and property but his minor son was sued for his father’s debt by the creditor. This case was dismissed on the ground that the debts would be paid when the boy attained his majority. In similar manner in another case a Sayyad of tahsil Wazirabad died leaving his minor son and property. The creditor sued the minor for his father’s debts. Even the Chief Court of Punjab decided that the debt should be paid on his majority. In Ambala district the Settlement Officer had remarked that the question of the responsibility of father’s debts was that of law and not of custom. The minor was liable for father’s debts but sentiment was against the alienation of ancestral property which was also recognized by the Chief Court Full Bench Ruling No. 4 of 1913.

In a path breaking decision the Chief Court upheld that the widow or the mother of the minor could be the appointed his guardian against the will made by former’s husband. Regarding the position of woman as a guardian, the court had taken a sympathetic stand towards women. In a case cited in the Riwaj-i-Am, widow of Cheema Jat lost guardianship of her minor son when she remarried. In various instances quoted in Riwaj-i-Am of Ludhiana 1911, mother continued to be the guardian in 5 cases even when she had married outside the family. Yet the court upheld such decisions. A woman named Atri of Samrala tahsil remarried elsewhere and the guardianship was disputed. She continued to be the guardian of the minor and

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170 C.L. Attock 1911, 47.
171 C.L.Gujranwala 1914, 16.
172 C.L. Ambala 1921, 14.
173 No. 55 of 1914, dated 12 January 1916; Ram Chand Khatri vs Ghasiti Kangra district.
174 C.L.Gujranwala 1914.
the Court ordered the collaterals to pay Rs 16 per mensem to pay Atri for the maintenance of the minor.\textsuperscript{75}

Hence the guardianship amounted to the control of the minor and also his property. It was a huge responsibility and had to be transferred very intelligently and thoughtfully. The appointment of the guardian, if not made by the father, was sometimes disputed. Generally he was from the paternal side and very rarely from the side of the mother. The mother who is the natural caretaker of the child was not always made the guardian. And if she remarried then the right was mostly taken away from her, particularly if she married outside the family. Women always remained under the guardianship of the males and had to subscribe to their hegemony. The state dealt with different aspects of guardianship as per the Guardianship and Minority Act. There was a contradiction between the custom and law.

Hence the custom of guardianship existed in the province of Punjab. The guardian was appointed by the father of the child if he could feel that his end was near. The guardian was not always appointed. The appointment was made orally or through a written testament. The mode of appointment varied. If the appointment had been made, then the guardian took charge. Mainly only male relations were appointed as guardian of property. And if such guardian was proved unfit for the charge the Civil Court could appoint another guardian.\textsuperscript{176}

\textsuperscript{75} C.L. Ludhiana 1911.
\textsuperscript{176} C.L. Mianwali 1908, 19 : C.L. Muzaffargarh 1925.