**PROCEDURE FOR CUSTODY OF CHILD**

**Procedure for custody under Guardianship and Wards Act**

* A custody petition should be signed and verified the same way a plaint is signed and verified according to CPC under section 10 and 11.

The petition should contain :

1. Name and address of the person making the application and the relation of the person to the minor.
2. Name, sex, religion, date of birth and ordinary residence of the minor,
3. Where the minor is a female, whether she is married and if so, the name and age of her husband,
4. The nature, situation and approximate value of the property, if any, of the minor,
5. The name and residence of the person having the custody or possession of the person or property of the minor,
6. What near relations the minor has and where they reside,
7. Whether a guardian of the person or property or both, of the minor has been appointed by any person entitled to claiming to be entitled by the law to which the minor is subject to make such an appointment
8. Whether an application has at any time been made to the Court or to any of the Court with respect to the guardianship of the person or property or both, of the minor and if so, when, to what Court and with what result,
9. Whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both.
10. Where the application is to appoint a guardian, the qualifications of the proposed guardian.
11. Where the application is to declare a person to be a guardian, the grounds on which that person claims,
12. The cause which have led to the making of the application, and
13. Such other particulars, if any, as may be prescribed or as the nature of the application.
* If the court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof and cause notice of the application and of the date fixed for the hearing.
* The notice will be served on the parents of the minor, if any, named in the petition or letter as having the custody or possession of the person or property of the minor the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and any other person to whim, in the opinion of the Court special notice of the applicant should be given, and to be posted on some conspicuous part of the court-house and of the residence of the minor.
* During the hearing evidence from both sides would be adduced and the judge would hear both the parties contesting for the custody of the child.
* After all the evidence is taken and the parties are heard, the judge would pass a decree and order for the custody of the minor

In Gaytri Bajaj Vs Jiten Bhalla[[1]](#footnote-0) it was Held that issue of custody of minor child is to be decided from the angle of welfare of child and not the better rights of parents as welfare of child is ultimate consideration.

**Procedure for Custody of Child under the constitution**

In some extra – ordinary situations a writ petition under Article 32 of the Constitution of India can be filed in the Supreme Court or a write petition under Article 226 of the Constitution of India can be filed. Such exceptional situation would include but not limited to one parent unlawfully take the child from the custody of other parent or unlawful retention of the custody of the child by the other parent or custody granted by a foreign court but the father or the mother as the case may be has taken the child out of the jurisdiction of that foreign court or the country. Such petition is filed in nature of Writ of Habeas corpus for Child Custody. It is filed for the expeditious determination of the issue. It is not a full-fledged child custody petition having but has limited jurisdiction. However, Supreme Court or High Courts are vested with extra ordinary powers/jurisdiction to determine the issue. Timing of filing such petition is utter importance.

In Tejaswini Gaud & Ors V/s Shekhar Jagdish Prasad Tewari & Ors[[2]](#footnote-1), the Supreme Court held that Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.

1. AIR 2013 SC (Civil) 77 [↑](#footnote-ref-0)
2. Criminal Appeal No. 838 of 2019 [↑](#footnote-ref-1)