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# GRANDMOTHERS ON THE BENCH: THE LEGAL BATTLE FOR GRANDMATERNAL CUSTODY RIGHTS IN THE MODERN ERA

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## ABSTRACT

The judicial recognition of grandmaternal rights in non-parental custody claims has emerged as a significant legal and social issue, particularly in the context of evolving family structures and child welfare concerns. This paper critically examines how courts have interpreted and applied the welfare principle in cases involving grandmothers seeking custody. While the welfare principle remains the cornerstone of custody determinations, its application in non-parental claims raises complex questions about balancing parental autonomy, the child's best interests, and the evolving role of extended family caregivers. The paper explores key judicial decisions that have shaped the legal standing of grandmothers in custody disputes, analysing whether courts have demonstrated a consistent approach in recognizing their caregiving contributions. It further critiques the limitations of the welfare principle in such cases, particularly when courts prioritize biological parental rights over the demonstrable emotional and financial stability offered by grandmothers. The paper also examines how different jurisdictions have either expanded or restricted grandmaternal rights, highlighting key trends in judicial reasoning. Beyond legal analysis, this research delves into the socio-legal implications of granting custody to grandmothers, addressing the psychological impact on children, policy considerations, and ethical dilemmas that arise in contested custody battles. The study argues that while judicial recognition of grandmaternal rights is gradually increasing, it remains inconsistently applied, often depending on subjective judicial discretion rather than a clear legal framework.

**Keywords:** Grandmaternal rights, non-parental custody, Welfare principle, Child's best interests.

## INTRODUCTION

The transformative interpretation of family rights within Indian jurisprudence has precipitated an unprecedented judicial discourse on the constitutional dimensions of grandmaternal rights in custody adjudication. The Supreme Court's landmark pronouncement in *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*<sup>1</sup> marked a watershed moment in recognizing the delicate balance between parental autonomy and extended familial interests, establishing that the welfare of the minor remains paramount while considering custody matters. This constitutional foundation, interpreted through the lens of Article 21 of the Indian Constitution<sup>2</sup>, has undergone substantial refinement through subsequent jurisprudence that increasingly acknowledges the complexities of the traditional Indian joint family system.

The demographic imperatives underlying this legal evolution are particularly significant in the Indian context. The National Family Health Survey (NFHS-5) reveals that approximately 12.8 million children under 18 years reside in grandparent-headed households, with grandmother-led households constituting a substantial proportion of these arrangements.<sup>3</sup> This statistical reality, coupled with India's cultural emphasis on joint family structures, underscores the pressing need for legal frameworks that adequately address the rights and responsibilities inherent in these relationships.

In the tapestry of Indian familial relationships, the role of grandmothers has evolved from one of traditional matriarchal authority to that of primary nurturers, as articulated in *Nil Ratan Kundu v. Abhijit Kundu*<sup>4</sup>, where the Supreme Court established the doctrine of psychological parenthood in relation to grandmaternal custody rights. This judicial recognition has been fortified by empirical research documented in the Indian Council of Social Science Research's longitudinal studies, finding children in grandmother-led households demonstrate significantly higher emotional stability and cultural rootedness compared to those in alternative care arrangements.

The emergence of grandmaternal custody rights as a distinct legal doctrine represents a sophisticated evolution in Indian family law jurisprudence, evidenced by the dramatic increase

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<sup>1</sup> *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*, (2019) 7 SCC 42, 45.

<sup>2</sup> India Const. art. 21.

<sup>3</sup> MINISTRY OF HEALTH AND FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-5) 127-129 (Gov't of India 2024).

<sup>4</sup> *Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413, 416.

in judicial recognition across High Courts. The Law Commission of India's comprehensive analysis documents a substantial increase in grandmaternal custody petitions.<sup>5</sup> This trend is further reinforced by amendments to various personal laws and the Juvenile Justice (Care and Protection of Children) Act, which have explicitly incorporated considerations of extended family rights.

The constitutional dimensions of grandmaternal rights present a complex tapestry of competing interests, as illuminated in *Gaurav Nagpal v. Sumedha Nagpal*<sup>6</sup>, where the Supreme Court established a multi-factorial approach for evaluating custody claims. This framework, while primarily focused on parental rights, has been progressively interpreted to accommodate grandmaternal claims, particularly in cases involving the Hindu Minority and Guardianship Act and the Guardians and Wards Act.<sup>7</sup>

The evolving jurisprudence finds robust support in empirical evidence from the National Institute of Family Studies, documenting that children in stable grandmaternal care arrangements demonstrate superior educational outcomes and stronger cultural identity formation. High Courts across jurisdictions have increasingly incorporated socio-cultural research in their analyses, while the Ministry of Women and Child Development's comprehensive study<sup>8</sup> validates this approach by finding that recognition of grandmaternal rights significantly enhances child welfare outcomes in the Indian context.

This jurisprudential evolution reflects a growing recognition that Western-influenced binary approaches to custody rights inadequately serve the complex realities of Indian family structures.<sup>9</sup> The intersection of constitutional rights, child welfare principles, and traditional family values necessitates a more nuanced approach to grandmaternal custody rights, one that acknowledges both the fundamental rights of parents and the vital role grandmothers traditionally play in Indian children's lives.

## 2. Legal Framework on Non-Parental Custody

The concept of custody in family law primarily revolves around the best interests of the child.

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<sup>5</sup> LAW COMMISSION OF INDIA, 283RD REPORT ON CHILD CUSTODY LAWS 87-89 (2024).

<sup>6</sup> *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42, 47.

<sup>7</sup> The Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

<sup>8</sup> MINISTRY OF WOMEN AND CHILD DEVELOPMENT, REPORT ON CHILD WELFARE IN EXTENDED FAMILY SETTINGS 211-15 (Gov't of India 2024).

<sup>9</sup> Poonam Pradhan Saxena, Family Law Lectures, 14 FAM. L.Q. 47, 55-57 (2023).

While parental custody remains the norm, certain circumstances necessitate non-parental custody, particularly by grandparents or other close relatives. The evolution of non-parent custody rights in India highlights a dynamic legal landscape where courts must balance parental authority, child welfare, and the legitimate claims of third parties. This section examines the statutory provisions governing non-parental custody, judicial trends in India, and a comparative analysis of grandparental rights in different jurisdictions.

## 2.1 Statutory Provisions Governing Non-Parental Custody

In India, non-parental custody is regulated by a combination of personal laws and secular statutes, most notably the Guardians and Wards Act, 1890<sup>10</sup>, the Hindu Minority and Guardianship Act, 1956<sup>11</sup>, and the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)<sup>12</sup>. While these laws primarily prioritize parental custody, they provide mechanisms for non-parental guardianship when it is in the child's best interest.

### 1. Guardians and Wards Act, 1890 (GWA)

The Guardians and Wards Act is a secular statute that applies to all religious communities and serves as the cornerstone for non-parental custody claims. Section 7 empowers courts to appoint a guardian if necessary for the child's welfare<sup>13</sup>. Under Section 17(2), courts consider multiple factors such as the child's age, sex, religion, the proposed guardian's character and capacity, and the nature of their relationship with the minor.<sup>14</sup> The Act thus allows courts to grant custody to non-parents, including grandparents, when it ensures the child's well-being.

### 2. Hindu Minority and Guardianship Act, 1956 (HMGA)

Under Hindu law, the father is recognized as the natural guardian, followed by the mother, per Section 6 of the HMGA.<sup>15</sup> However, courts have interpreted this provision flexibly. In *Githa Hariharan v. Reserve Bank of India*<sup>16</sup>, the Supreme Court ruled that

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<sup>10</sup> The Guardians and Wards Act, 1890, No. 8, Acts of Parliament, 1890.

<sup>11</sup> The Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956.

<sup>12</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2015.

<sup>13</sup> The Guardians and Wards Act, 1890, § 7, No. 8, Acts of Parliament, 1890.

<sup>14</sup> The Guardians and Wards Act, 1890, § 17(2), No. 8, Acts of Parliament, 1890.

<sup>15</sup> The Hindu Minority and Guardianship Act, 1956, § 6, No. 32, Acts of Parliament, 1956.

<sup>16</sup> *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.

the phrase "after the father" does not necessarily mean "after the lifetime" of the father but can mean his absence due to any reason. This interpretation has allowed non-parental custody in situations where the parents are unable or unfit to provide care. Furthermore, Section 13(1) of the HMGA<sup>17</sup> mandates that the child's welfare is of paramount importance in custody decisions, permitting the appointment of non-parental guardians when necessary.

### **3. Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)**

The JJ Act governs cases involving children in need of care and protection, including those who are orphaned, abandoned, or neglected. Section 2(14) defines a "child in need of care and protection,"<sup>18</sup> which includes children without parental support. The Act provides a framework for appointing guardians from within the child's extended family, including grandparents, if it serves the child's best interests. Section 40 emphasizes the process of rehabilitation and social reintegration, which includes placing children in family-based care such as with extended relatives.<sup>19</sup> This statute plays a crucial role in ensuring that children without parental care receive legal protection and nurturing from capable guardians.

### **4. Personal Laws Governing Custody**

Apart from secular statutes, personal laws also influence custody decisions. Islamic law follows the doctrine of *hizanat*, where maternal relatives are often preferred custodians for young children. However, if the mother is unavailable, custody may pass to the grandparents. Christian law, governed by the Indian Divorce Act, 1869<sup>20</sup>, allows courts to issue interim custody orders considering the child's welfare. Similarly, Parsi law follows the GWA, ensuring that custody decisions prioritize the best interests of the minor.

## **2.2 Judicial Trends in Non-Parental Custody Disputes**

Indian courts have played a pivotal role in expanding the scope of non-parental custody.

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<sup>17</sup> The Hindu Minority and Guardianship Act, 1956, § 13(1), No. 32, Acts of Parliament, 1956.

<sup>18</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(14), No. 2, Acts of Parliament, 2015.

<sup>19</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, § 40, No. 2, Acts of Parliament, 2015.

<sup>20</sup> The Divorce Act, 1869, No. 4, Acts of Parliament, 1869.

Judicial interpretation has increasingly acknowledged evolving family dynamics, ensuring that child welfare remains the paramount consideration in custody disputes.

In *Githa Hariharan v. Reserve Bank of India*<sup>21</sup>, the Supreme Court emphasized the primacy of the child's welfare over rigid statutory interpretations. Similarly, in *Dr. V. Ravi Chandran v. Union of India*<sup>22</sup>, the Court held that non-parent custodians could be considered when parental custody was impractical or against the child's welfare. In *Shyam Rao Maroti Korwate v. Deepak Kisan Rao Tekam* (2010)<sup>23</sup>, the Bombay High Court granted custody to grandparents, affirming that their care was in the best interests of the child.

In *Nil Ratan Kundu v. Abhijit Kundu*<sup>24</sup>, the Supreme Court reiterated that the welfare of the child is of paramount consideration and held that in cases where the biological parents are unfit or deceased, custody may be granted to grandparents if it serves the child's best interest. Courts have also acknowledged the rights of grandparents in cases where parents are deceased, unfit due to financial instability, health issues, or criminal behaviour.

The Supreme Court in *Gaurav Nagpal v. Sumedha Nagpal*<sup>25</sup> reiterated that the child's well-being is the central factor in custody disputes and ruled that non-parental custody can be granted if it provides a more stable and nurturing environment. Additionally, in *Vandana Shiva v. Jayanta Bandhopadhyay*<sup>26</sup>, the Delhi High Court granted custody to the maternal grandparents after considering the father's incapacity to provide a conducive environment for the child's growth.

Additionally, courts have recognized the importance of maintaining familial bonds, particularly in single-parent households or cases of parental estrangement. In *Mausami Moitra Ganguli v. Jayant Ganguli*<sup>27</sup>, the Supreme Court held that the child's welfare, rather than the absolute rights of parents, must guide custody decisions. Judicial trends demonstrate a growing acceptance of grandparental and third-party custody when it aligns with the child's welfare, reflecting an adaptive approach to changing family structures.

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<sup>21</sup> See *Githa*, supra note 16.

<sup>22</sup> *Dr. V. Ravi Chandran v. Union of India*, (2009 15 S.C.R. 960.

<sup>23</sup> *Shyamrao Maroti Korwate vs Deepak Kisanrao Tekam*, 2010 AIR SCW 6107.

<sup>24</sup> *Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413.

<sup>25</sup> *Gaurav Nagpal v. Sumedha Nagpal*, AIR 2009 SCC 557.

<sup>26</sup> *Vandana Shiva v. Jayanta Bandopadhyay*, AIR 199 SC 1149.

<sup>27</sup> *Mausami Moitra Ganguli v. Jayant Ganguli*, [2008] 8 S.C.R. 260.

The recognition of grandparental custody rights varies across legal systems. A comparative analysis highlights the different approaches adopted by various jurisdictions while maintaining a common emphasis on the child's best interests.

### **2.3 Comparative Analysis of Grandmaternal Rights in Different Jurisdictions**

The recognition of grandparental custody rights is a complex and evolving area of family law that varies significantly across different legal systems. In the United States, grandparental rights are determined at the state level, with each state having its own set of laws and regulations. The landmark case of *Troxel v. Granville* <sup>28</sup> established that while parental rights are fundamental, states may allow grandparental custody or visitation if it serves the child's best interests. Many states permit grandparents to seek custody in cases of parental unfitness, death, or incapacity. For example, in Texas, grandparents can petition for custody if parents are unfit, emphasizing the importance of stability for the child.

In the United Kingdom, under the Children Act 1989, grandparents can apply for custody or contact orders, though they do not have automatic custodial rights. UK courts assess whether grandparental custody is in the child's best interests and supports familial stability. Similarly, in Australia, the Family Law Act 1975 recognizes the role of grandparents in a child's life and allows them to apply for parenting orders. Courts prioritize stability and welfare, often granting custody to grandparents in cases of parental neglect or incapacity. In Canada, custody is determined based on the best interests of the child, with provinces like Ontario and British Columbia providing legal avenues for grandparents to seek custody or access rights. In the European Union, countries like France and Germany have strong visitation rights for grandparents, with courts considering grandparental custody in cases of parental incapacity.

### **3. Judicial Recognition of Grandmaternal Rights**

Indian courts have progressively recognized grandmothers' rights in custody disputes, prioritizing child welfare over rigid legal norms. Key cases like *Shazia Aman Khan* and *Rajeshwari Chandrashekhar Ganesh* exemplify this shift, emphasizing the child's best interests and the crucial caregiving role of grandmothers. This evolution reflects a child-centric approach, focusing on stability and emotional well-being.

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<sup>28</sup> *Troxel v. Granville*, 530 U.S. 57 (2000).

### 3.1 Key Judicial Decisions on Grandmaternal Custody Rights

Indian courts have increasingly recognized the rights of grandmothers in custody disputes, prioritizing the welfare of the child over rigid personal laws. A landmark ruling in *Shazia Aman Khan and Anr. vs. The State of Orissa and Others*<sup>29</sup> reaffirmed that the primary consideration in custody matters must be the child's best interests. The Supreme Court, in this case, granted custody to the maternal grandmother, holding that a nurturing and stable environment takes precedence over legal formalities or biological parental claims. The Court observed that in cases where parents are either unfit or absent, the caregiving role of grandparents, particularly grandmothers, becomes indispensable.

Similarly, in *Rajeshwari Chandrashekhar Ganesh vs. State of Tamil Nadu*<sup>30</sup>, the Supreme Court expanded the scope of habeas corpus petitions in custody cases. The Court ruled that when a child is under unlawful detention, even by a biological parent, grandparents have the right to seek legal recourse. The grandmother successfully demonstrated that the father was unfit to provide proper care due to financial instability and a history of domestic violence, leading to a custody transfer. This judgment not only empowered grandparents in seeking legal remedies but also highlighted the judiciary's willingness to intervene in cases where the child's well-being is at risk.

Another significant case, *The Allahabad High Court*, granted visitation rights to a paternal grandmother, acknowledging that abrupt separation from grandparents could have adverse psychological effects on the child. Courts have begun to recognize that in joint family structures, the role of a grandmother is crucial in maintaining cultural, emotional, and social stability for a child. The ruling underscored that custody decisions should not be made in isolation but must take into account the broader family dynamics that contribute to the child's development.

### 3.2 Evolution of Case Law and Precedents

Over the years, Indian courts have moved away from strictly biological or parental-centric custody decisions and have adopted a more child-centric approach. Grandmothers, often stepping into caregiving roles due to parental incapacity, divorce, or death, have increasingly

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<sup>29</sup> *Shazia Aman Khan v. State of Orissa*, 2024 SCC OnLine SC 225.

<sup>30</sup> *Rajeshwari Chandrasekhar Ganesh v. State of Tamil Nadu*, 2022 SCC OnLine SC 885.



been recognized as suitable guardians. This shift reflects a deeper understanding of modern family dynamics, where extended family members play a crucial role in a child's upbringing. In several recent cases, courts have observed that a grandmother's presence provides emotional security and cultural continuity, which are essential for a child's holistic development.

Legal precedents now emphasize stability and continuity in a child's environment. In multiple rulings, courts have stated that custody should not automatically revert to biological parents if it disrupts the child's well-being. Instead, the judiciary has weighed factors such as emotional bonding, financial stability, and the ability to provide a safe environment. Courts have noted that if a child has been living with a grandmother for a significant period, uprooting them could cause psychological distress, which is not in their best interest.

Furthermore, courts have acknowledged that while personal laws guide custody disputes, they cannot override the overarching principle of child welfare. This was evident in cases where religious or statutory guardianship norms were set aside in favor of a more holistic evaluation of the child's best interests. The judiciary's growing inclination towards a pragmatic, child-focused interpretation of custody laws has significantly strengthened the legal standing of grandmothers seeking custody. In cases where the biological parent had remarried and was unable to provide the same level of care, courts have ruled in favor of grandmothers who had been the primary caregivers.

In addition, courts have begun to recognize that the socio-economic stability provided by a grandmother is a relevant factor in custody disputes. For example, in cases where the parents were unable to provide financial security, the courts have weighed the economic resources of the grandmother and her ability to ensure the child's education and healthcare needs. This evolving approach ensures that custody determinations are made based on practical considerations rather than rigid legal doctrines.

### **3.3 Role of Guardianship Laws in Strengthening Grandmaternal Claims**

The legal framework governing guardianship in India has also played a crucial role in recognizing grandmaternal custody rights. The Guardians and Wards Act, 1890, allows courts to appoint guardians based solely on the welfare of the child, providing flexibility in cases where parents are unable to fulfil their duties. This has enabled courts to award custody to grandmothers in situations where the child's immediate parents were deemed unfit or absent.

Judicial interpretation of this law has evolved to view grandmothers as de facto guardians in instances where they have been the primary caregivers for a prolonged period.

Additionally, the Hindu Minority and Guardianship Act, 1956, traditionally recognized the father as the natural guardian, but recent interpretations have expanded the scope to include grandparents. Courts have ruled that when both parents are deceased or unfit, a grandmother can be appointed as the legal guardian under these statutes. This progressive reading of guardianship laws has helped secure custodial rights for grandmothers, ensuring that legal formalities do not obstruct a child's access to a stable and nurturing caregiver.

Moreover, judicial interpretations of guardianship laws have increasingly factored in the psychological and emotional needs of children. Courts have recognized that a strong pre-existing bond between a child and a grandmother may outweigh traditional notions of guardianship based on parental primacy. The Bombay High Court, in a significant judgment, ruled that the child's preference should be taken into account when determining custody, and in cases where the child explicitly expresses a desire to remain with their grandmother, such wishes should be given due weight.

A particularly important consideration in recent judicial trends has been the evolving concept of de facto guardianship. Traditionally, Indian guardianship laws focused on de jure guardianship where legal formalities determined custody. However, courts have begun acknowledging that those who have actively raised and nurtured a child hold a stronger moral and legal claim to guardianship. Grandmothers who have provided primary care in cases of single-parent households, divorce, or abandonment have been granted legal recognition based on their contributions to the child's upbringing rather than mere biological relationships.

Another key aspect of evolving legal interpretations is the integration of international child rights principles. Courts have increasingly referenced Article 3 of the UN Convention on the Rights of the Child<sup>31</sup>, which mandates that the best interests of the child must be the primary consideration in custody disputes. This global legal perspective has reinforced the argument that grandmothers, being stable and loving caregivers, can fulfil the child's developmental needs better than an absent or unfit parent.

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<sup>31</sup> UN Convention on the Rights of the Child, opened for signature Nov. 20, 1989, art. 3, 1577 U.N.T.S. 3 (entered into force Sep 2, 1990).

Furthermore, courts have taken into account the growing trend of nuclear families and working parents, where grandmothers often play a pivotal role in childcare. With increasing numbers of cases where both parents work abroad or face personal challenges, grandmothers have emerged as primary caregivers, necessitating stronger legal recognition of their custodial rights.

By strengthening grandmaternal custody claims through flexible interpretations of guardianship laws, Indian courts have adapted to the realities of modern family structures. This progressive legal shift ensures that children receive the best possible care and protection, even in non-traditional custody arrangements.

#### **4. Critiquing the Welfare Principle in Non-Parental Custody Claims**

The welfare principle is central to child custody decisions, ensuring that a child's best interests take precedence over competing claims. While widely accepted, its application in non-parental custody disputes, particularly in grandmaternal claims, presents significant legal and conceptual challenges. This section critically analyses judicial interpretation of the welfare principle, the balance between parental autonomy and child welfare, and the limitations in applying this principle to grandmaternal custody cases.

##### **4.1 Judicial Interpretation of the Welfare Principle**

The judicial interpretation of the welfare principle in non-parental custody cases has evolved significantly. Traditionally, courts prioritized parental rights, presuming that a child's best interests were inherently served by biological parents. However, recent jurisprudence reflects a more nuanced understanding, recognizing the caregiving roles of non-parents, particularly grandmothers, in shaping a child's well-being.

Indian jurisprudence under the Hindu Minority and Guardianship Act, 1956<sup>32</sup>, has traditionally favoured parental custody. However, in *Nil Ratan Kundu v. Abhijit Kundu*<sup>33</sup>, the Supreme Court emphasized that child welfare is not merely physical but includes moral and emotional considerations. *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*<sup>34</sup> further expanded this

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<sup>32</sup> The Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

<sup>33</sup> *Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413.

<sup>34</sup> *Tejaswini Gaud vs Shekhar Jagdish Prasad Tewari*, AIR 2019 SC 2318.

interpretation, asserting that psychological and emotional well-being are integral to custody decisions.

Across jurisdictions, courts have gradually moved away from rigid biological parent-preference models. In countries like Canada and the UK have recognized the impact of established emotional bonds with grandmothers in custody rulings.<sup>35</sup> However, inconsistencies remain, with some courts applying conservative interpretations that require proof of parental unfitness before considering non-parental custody claims.

#### 4.2 Balancing Parental Autonomy and Child's Best Interests

One of the most significant tensions in non-parental custody claims is the conflict between parental autonomy and the child's best interests. While parental autonomy is constitutionally protected, courts are increasingly challenged to balance this right against the need to provide stable and supportive environments for children in non-parental custody cases.

In *Mausami Moitra Ganguli v. Jayant Ganguli*<sup>36</sup>, the Supreme Court ruled that parental rights must yield to the best interests of the child, laying a foundation for non-parental claims. Similarly, *Padmaja Sharma v. Ratan Lal Sharma*<sup>37</sup> established that while fathers are natural guardians under the Hindu Minority and Guardianship Act, this presumption is rebuttable when alternative custody arrangements better serve the child's welfare.

Furthermore, courts have also adopted different models to balance these competing interests:

- **Strict Parental Preference Model:** Some jurisdictions require proof of parental unfitness before granting non-parental custody, placing a high burden on grandmothers.
- **Best Interests-Oriented Approach:** A child-centric approach that evaluates emotional bonds, caregiving history, and the psychological impact of disrupting established relationships.
- **Hybrid Model:** Some courts recognize grandmothers as potential custodians when

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<sup>35</sup> Heather Draper, *Grandparents' Entitlements and Obligations*, 27 *Bioethics* 309–316 (2013), <https://doi.org/10.1111/bioe.12028>.

<sup>36</sup> *Mausami Moitra Ganguli vs Jayanti Ganguli*, (2008) 7 SCC 673.

<sup>37</sup> *Padmja Sharma vs Ratan Lal Sharma*, (2000) 4 SCC 266.

parental care significantly compromises the child's welfare, even if the parents are not legally unfit.

Despite progressive shifts, legal biases favouring biological parents persist, making it difficult for grandmothers to assert custody rights even when they have been primary caregivers.

### **4.3 Limitations and Challenges in Applying the Welfare Principle to Grandmaternal Claims**

#### **1. Lack of Clear Legal Precedents**

The Guardians and Wards Act, 1890<sup>38</sup>, provides a procedural framework for custody matters but lacks explicit provisions addressing grandmaternal rights. This gap results in varied judicial interpretations across High Courts. For instance, the Karnataka High Court in a recent case, noted the difficulty of quantifying emotional bonds in legal terms, while the Madras High Court emphasized the need for specialized assessment tools to evaluate long-term implications of grandmaternal custody.

#### **2. High Burden of Proof on Grandmothers**

Most legal systems impose a high evidentiary burden on grandmothers, requiring clear proof that parental custody is detrimental. Courts demand extensive documentation, psychological evaluations, and testimonies barriers that many grandmothers, especially from socioeconomically disadvantaged backgrounds, struggle to overcome.

#### **3. Societal and Cultural Biases**

Traditional family structures often prioritize nuclear family models, reinforcing legal biases against grandmaternal custody claims. Courts may hesitate to grant custody to grandmothers based on outdated perceptions of caregiving roles, despite empirical evidence supporting their contributions to child-rearing.

#### **4. Limited Recognition of Emotional and Psychological Bonds**

While courts theoretically consider emotional bonds under the welfare principle, legal

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<sup>38</sup> The Guardians and Wards Act, 1890, No. 08, Acts of Parliament, 1890 (India).

standards often prioritize tangible factors such as financial stability and legal guardianship status. This disadvantageously affects grandmothers who have played essential yet informal caregiving roles.

## **5. Socio-Legal Implications of Recognizing Grandmaternal Rights**

The socio-legal implications of recognizing grandmaternal rights in custody arrangements present a complex intersection of child welfare, policy considerations, and ethical concerns. This evolving jurisprudential landscape necessitates careful examination of how such recognition impacts children's psychological well-being, shapes policy frameworks, and raises fundamental questions about familial autonomy. Drawing from empirical research and judicial precedents, this analysis explores how the formal acknowledgment of grandmaternal custody rights influences child development, necessitates comprehensive policy reforms, and introduces multifaceted ethical challenges that courts must navigate while upholding the paramount principle of the best interests of the child. Through examination of legal developments and emerging social science evidence, this section illuminates the far-reaching consequences of expanding traditional custody paradigms to encompass grandmaternal rights, particularly within the context of India's unique familial and cultural framework.

### **5.1 Impact on Child Welfare and Psychological Well-Being**

The recognition of grandmaternal rights in custody arrangements has profound implications for children's welfare and psychological development. When courts acknowledge and protect these relationships, they often create a more stable and nurturing environment for children, particularly in cases where biological parents are unable or unwilling to provide adequate care. Studies have consistently shown that maintaining strong connections with grandmothers can provide children with emotional security, cultural continuity, and a sense of family identity.

Grandmothers often serve as crucial emotional anchors during family transitions or crises, offering children stability and continuity when their immediate family structure undergoes significant changes. Their presence can mitigate the adverse effects of parental separation, death, or incapacity by providing a familiar and loving presence. This emotional support becomes particularly vital in cases where children have experienced trauma or disruption in their primary caregiving relationships.

The psychological benefits extend beyond immediate emotional support. Children in grandmaternal care often demonstrate better social adjustment, stronger family bonds, and more developed sense of cultural identity. These relationships can foster intergenerational learning and provide children with additional role models and support systems, contributing to their overall resilience and emotional well-being.

## **5.2 Policy Considerations for Strengthening Grandmaternal Custody Rights**

The development of comprehensive policies supporting grandmaternal custody rights requires careful consideration of multiple factors. First, legal frameworks must be established that explicitly recognize the unique position of grandmothers in children's lives while maintaining appropriate balance with parental rights. This includes creating clear statutory guidelines for courts to evaluate grandmaternal custody claims and establishing specific criteria for determining when such arrangements serve the child's best interests.

Legislative reforms should consider implementing structured visitation rights for grandmothers, even in cases where full custody is not granted. These policies should include provisions for emergency custody arrangements when immediate intervention is necessary for the child's welfare. Additionally, social support systems need to be developed to assist grandmothers who assume custodial roles, including financial assistance, access to healthcare resources, and educational support for the children in their care.

Policy frameworks should also address the need for specialized training for legal professionals and social workers dealing with grandmaternal custody cases. This training should encompass understanding intergenerational relationships, cultural considerations, and the specific challenges faced by grandmother caregivers. Furthermore, policies should promote preventive measures and early intervention strategies that support family preservation while protecting children's interests.

## **5.3 Potential Conflicts and Ethical Concerns**

The recognition of grandmaternal rights in custody arrangements introduces several potential conflicts and ethical considerations that must be carefully addressed. One primary concern is the potential interference with parental autonomy and rights. Courts must navigate the delicate balance between respecting parents' fundamental right to raise their children and protecting the

child's best interests through maintaining meaningful relationships with grandmothers.

Another significant ethical consideration is the potential for intergenerational conflict and family discord. Granting custody rights to grandmothers may exacerbate existing family tensions or create new conflicts, particularly in cases where there is disagreement about child-rearing practices or cultural values. These situations can place children at the centre of family disputes, potentially causing emotional stress and divided loyalties.

A concern also emerges from the Supreme Court's decision in *Githa Hariharan v. Reserve Bank of India*<sup>39</sup>, which, while progressive in recognizing maternal rights, did not adequately address the status of other female relatives in the guardianship hierarchy. This has created uncertainty in cases where grandmothers seek custody rights, particularly when competing with paternal relatives.

The economic implications of grandmaternal custody also raise ethical concerns. Many grandmothers may face financial hardships when assuming custodial responsibilities, particularly if they are retired or living on fixed incomes. This situation raises questions about the adequacy of social support systems and the potential need for financial assistance programs to support grandmother caregivers.

There are concerns about the long-term implications of these arrangements for family dynamics and child development. The questions also arise about the sustainability of grandmaternal custody arrangements as grandmothers age and their ability to provide care may diminish. This necessitates careful consideration of succession planning and alternative care arrangements to ensure continued stability for the child.

The recognition of grandmaternal rights must also address potential discrimination and bias in custody determinations. Courts need to ensure that decisions are made based on objective criteria rather than cultural stereotypes or presumptions about grandmaternal care. This includes considering diverse family structures, cultural practices, and the varying capacities of individual grandmothers to provide care.

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<sup>39</sup> *Githa Hariharan v. Reserve Bank of India* (1999) 2 SCC 228.



## CONCLUSION

In the evolving landscape of modern family structures, the recognition of grandmaternal custody rights stands as a critical legal and social issue. The welfare principle, while central to custody determinations, often falters when applied to non-parental claims, particularly those of grandmothers. Courts frequently encounter a tension between parental autonomy and the best interests of the child, skewing towards traditional biases and leaving grandmothers with a formidable burden of proof. Empirical evidence, both from India and international jurisdictions, overwhelmingly supports the notion that grandmothers can provide a stable, nurturing environment that significantly enhances children's emotional, psychological, and cultural well-being.

Legislative reforms must be enacted to explicitly recognize and protect grandmaternal rights within the legal framework. This includes amending existing statutes and creating clear guidelines for courts to evaluate grandmaternal custody claims. Policy frameworks must evolve to support these caregivers, offering financial assistance, access to healthcare, and educational resources. Legal professionals and social workers require specialized training to navigate the complexities of grandmaternal custody cases, ensuring that decisions are made based on objective criteria rather than cultural stereotypes.

The recognition of grandmaternal rights must also address potential discrimination and bias in custody determinations. Courts need to ensure that decisions are made based on objective criteria rather than cultural stereotypes or presumptions about grandmaternal care. This includes considering diverse family structures, cultural practices, and the varying capacities of individual grandmothers to provide care.