

---

## THE LEGAL RIGHTS OF GRANDPARENTS IN CHILD CUSTODY AND VISITATION CASES.

---

Stuti Sawarn, B.A.LL.B.(Hons.), S.S. Khanna Girls' Degree College (A Constituent  
College of University of Allahabad)

### ABSTRACT

The legal rights of grandparents in child custody and visitation cases in India are closely tied to the child's best interests. These rights are shaped by cultural traditions and changing judicial interpretations. This research paper looks at the legal framework governing grandparents' roles, mainly under the Guardians and Wards Act, 1890, the Hindu Minority and Guardianship Act, 1956, and the Juvenile Justice (Care and Protection of Children) Act, 2015. Even though there are no clear laws giving grandparents automatic custody or visitation rights, Indian courts increasingly recognize their importance in providing emotional and psychological stability for children. This recognition is especially relevant in cases of parental unfitness, death, or divorce. Landmark cases like *Gaurav Nagpal v. Sumedha Nagpal* show judicial flexibility in prioritizing grandparents as caregivers when needed. However, the lack of clear visitation laws and reliance on judicial discretion often leave grandparents vulnerable to unpredictable rulings and parental opposition. This paper draws from psychological studies and looks at other legal perspectives, including the U.S. case *Troxel v. Granville*. It examines the conflict between parental autonomy and the important role grandparents play in child welfare. The paper suggests legislative reforms, better kinship care policies, and mediation to strengthen grandparents' legal rights. This would help maintain their significant role in Indian families while also protecting children's overall development.

**Keywords:** Child's custody, grandparents' visitation rights, paternal autonomy, child's best interest.

**Introduction -**

Imagine a child is living with both of his parents as well as his grandparents. And, his parents are often occupied with their jobs or traveling for work, leaving the child to spend most of his time alone with his grandparents. One day, the child's mother and father split up, due to which, he became distanced from his grandparents. The grandparents, who spent years nurturing their grandchildren, only to find themselves barred from contact or allowed to visit them occasionally after a bitter divorce. The grandparents have always been a safe space for their grandchildren. When you think back to your childhood, who protected you from your parents' reprimands? It was always the grandparents. The important part that grandparents play in raising children has been deeply embedded in the Indian family tradition for a long time. However, the rise of contemporary nuclear families and the growing rates of divorce have affected these relationships. This often leaves grandparents in a vulnerable situation, struggling to interact with their grandchildren. This situation highlights the increasing legal and emotional intricacies associated with grandparents' rights in custody and visitation matters.

This research paper examines the legal entitlements of grandparents in cases involving child custody and visitation. In legal disputes over child custody, it is often the grandparents who are left to be considered. This paper has aimed to concentrate on the challenges encountered by grandparents in child custody, the legal systems in place, the judicial perspective on this matter, and practical recommendations for ensuring grandparents' rights are upheld in custody disputes.

**Literature Review -**

The literature on grandparents' legal rights in child custody and visitation cases is multifaceted, drawing from legal, comparative, and psychological viewpoints to shed light on the changing role of grandparents within family law. This analysis categorizes the current research thematically, starting with legal principles, then moving to the impact on child welfare, and comparative studies, while highlighting significant gaps that indicate a need for additional research with a focus on the Indian context, where the extended family system is culturally significant.

**1. Troxel v. Granville, 530 U.S. 57 (2000)**

From a legal standpoint, the primary conflict exists between the interests of grandparents and

the constitutional rights of parents. When disputes arise regarding visitation and custody between the rights of grandparents and those of parents, the judicial system often faces a dilemma due to the emotional aspects involved for both parties. When the US Supreme Court granted certiorari review of *Troxel v. Granville*<sup>1</sup>, a case involving a couple from Washington who were petitioning to receive more visitation time with their grandchildren, the decision was eagerly awaited. In the *Troxel* case, the Supreme Court decided that the application of the Washington visitation statute was an unconstitutional infringement on the custodial parent's rights. However, the Court did not find grandparent visitation statutes per se unconstitutional and refused to define the exact scope of parental rights under the Due Process Clause.<sup>2</sup> This ruling by the US Supreme Court became a significant milestone in the ongoing custody and visitation discussions since it reinforced parental autonomy and encouraged courts to assess statutes on an individual case basis.

## 2. Visitation Rights Of Parents In India: Laws And Practices - Palak Sharma

The global viewpoint, which restricts the rights of grandparents to respect parental independence, highlights a significant divergence from the Indian viewpoint, shaped by cultural values that prioritize extended family and allow greater judicial flexibility under personal laws. Indian legal principles prioritize the child's welfare through legislation such as the Guardians and Wards Act of 1890 and the Hindu Minority and Guardianship Act of 1956, rather than automatically bestowing rights on grandparents. Unlike certain jurisdictions with clear statutes, Indian courts have the authority to grant visitation or custody to grandparents only in rare situations like parental unfitness, death, or divorce, without any assumption of entitlement. While many Western nations have established legal rights for grandparents concerning custody and visitation, India lacks such explicit legislation; the focus remains on the best interests of the child. The historical background of rulings from Indian courts over time presents numerous case laws affirming the vital role of grandparents in child care, especially when the welfare and interests of children are at stake. In the case of *Biji & Another v. Vijil & others*<sup>3</sup>, Kerala High Court ruled that the visitation rights of grandparents are well recognized towards their grandchildren, and it would also include overnight custody for a small time. The Supreme Court had even held that grandparents should be preferred while granting

---

<sup>1</sup> *Troxel v. Granville*, 2000 530 U.S. 57

<sup>2</sup> 'TROXEL v. GRANVILLE and its Effect On the Future of Grandparent Visitation Statutes'(223) JL <<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1151&context=jleg>> accessed on 16<sup>th</sup> August 2025

<sup>3</sup> *Biji & Another v. Vijil & others*, Appeal No; 234/2016

custody of the child after the demise of both parents.<sup>4</sup> Therefore, getting the grandparents together with the children would also be essential to their upbringing, especially before any single parent's unilateral actions overwhelmingly influences the highly impressionable minds of young children.<sup>5</sup>

### 3. Grandparents As Caregivers: Legal Rights And Responsibilities - Madhumitha

From a psychological perspective, the involvement of grandparents in a child's life acts as a support system for fractured families. A person without the knowledge of their history is like a tree without roots. Similarly, a person without the comfort of grandparents will not have a consummate life. Grandparents are the life-makers who pave the way for the generation and stand as the bearing pillars who support the whole family.<sup>6</sup> In contemporary nuclear families, parents tend to be occupied with their professional responsibilities, often leaving children unattended. In such instances, grandparents can serve as the child's closest companion. Studies from the early 2010s, such as Rachel Dunifon's researches, demonstrate that grandparent involvement correlates with improved emotional outcomes for children in custody disputes, reducing stress and fostering resilience. More recent works extend this to socioeconomic contexts, noting that grandparents often serve as primary caregivers in low-income Indian households, but encounter obstacles in asserting their custody rights due to limited resources.<sup>7</sup> Grandparents offer a valuable mix of acceptance, patience, affection, stability, wisdom, enjoyment, and support to their grandchildren. Consequently, these contributions have a favorable impact on the well-being of the younger generation. Studies indicate that engaging with grandparents enhances the mental, emotional, and physical well-being of both children and adult grandchildren. Grandparents contribute by offering a sense of security, providing childcare, promoting mental well-being, enhancing physical health, and sharing lifelong interests.<sup>8</sup>

---

<sup>4</sup> Palak Sharma, 'Visitation Rights Of Parents In India: Laws And Practices'(2025) VI(1) JRCNLUO 107 <<https://nluo.ac.in/storage/2025/05/7.-Visitation-Rights-of-Parents-in-India-Laws-and-Practices.pdf>> accessed on 16<sup>th</sup> August 2025

<sup>5</sup> Syed Irshad Ahmed Zaid v. Shazia Anjum, FA(MAT) No. 123 of 2023.

<sup>6</sup> Mdhumitha, 'Grandparents As Caregivers: Legal Rights And Responsibilities' 3(4) JLRJS 1221 <<https://jlrs.com/wp-content/uploads/2024/08/115.-Madhumitha.pdf>> accessed on 16<sup>th</sup> August 2025

<sup>7</sup> Palak Sharma, 'Visitation Rights Of Parents In India: Laws And Practices'(2025) VI(1) JRCNLUO 111 <<https://nluo.ac.in/storage/2025/05/7.-Visitation-Rights-of-Parents-in-India-Laws-and-Practices.pdf>> accessed on 16<sup>th</sup> August 2025

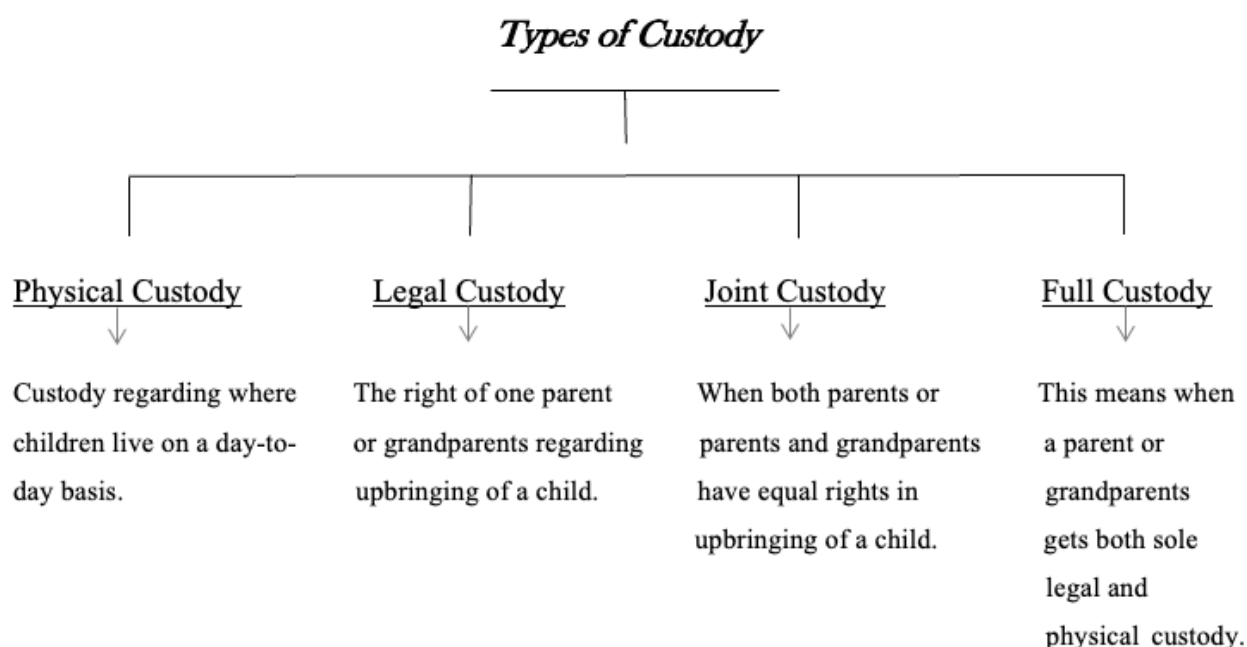
<sup>8</sup> Mdhumitha, 'Grandparents As Caregivers: Legal Rights And Responsibilities' 3(4) JLRJS 1222 <<https://jlrs.com/wp-content/uploads/2024/08/115.-Madhumitha.pdf>> accessed on 16<sup>th</sup> August 2025

## Meaning of Custody and Visitation Rights -

### Custody

In the context of family law, custody refers to the legal right and responsibility to care for and make decisions about a child’s upbringing. It typically arises in cases involving divorce, separation, or other circumstances where a child’s living arrangements and care need to be determined. It gives the custodian right to make decision about the child. The decision includes right to decide about health, education, basic necessities, and general welfare of the child. But custodial rights only apply to children below the age of 18 years, children above this age has discretion to decide with whom they will live. The provision for custody is

given under various statutes such as the Guardians and Wards Act of 1890. However, conflicts may arise when these provisions intersect with personal laws. In such instances, the courts resolve the matter by prioritizing the child’s needs and welfare above the parents’ interests.<sup>9</sup> Several types of custody is given under Section 26 of the Hindu Marriage Act, 1955, Section 38 of the Special Marriage Act, 1954, the Hindu Minority and Guardianship Act 1956, and other personal laws to both parents or grandparents.



<sup>9</sup> Palak Sharma, ‘Visitation Rights Of Parents In India: Laws And Practices’ (2025) VI(1) JRCNLUO 110 <<https://nluo.ac.in/storage/2025/05/7.-Visitation-Rights-of-Parents-in-India-Laws-and-Practices.pdf>> accessed on 16<sup>th</sup> August 2025

## Visitation Rights

This right is given to the non-custodial parents or grandparents, so they can meet their children and maintain a healthy relationship. Because of this, children also have the opportunity to get a full family love despite living separately. It is generally the duty of the parent who is living with the child, that the other parent or grandparents can visit the child without any obstacles. In some circumstances, for granting visitation rights to see minor grandchildren, the power rests with the parent's decision. States also allow parents to restrict grandparents' interactions with their children.<sup>10</sup> The court many a times also set forth the terms of visitation rights in visitation schedules. It is seen that the courts generally prescribe outlines for visitation schedules. According to *Black's Law Dictionary*, "visitation is when a non-custodial parent's period of access to child." It means an order that helps to establish visiting times for a non-custodial parent or grandparents. While awarding this right, the principle of welfare of child and his best interest is given paramount importance. The court has time and again explained visitation rights with the help of judicial pronouncements. In the case of *Rajeswari Chandrasekhar Ganesh v. State of Tamil Nadu*<sup>11</sup> the court explained the Doctrine of Parental Alienation Syndrome, these are the efforts that are made by one parent to agree with their view point and start insulting the other parent with whom the child is not living, this syndrome makes the child hate or insult the other parent, hence the court also looks at the impact of such factors on the children's health and well-being.<sup>12</sup>

## Historical Evolution of grandparents' rights in Indian Family Law -

Particularly in the Indian context, the historical evolution of grandparents' custody and visitation rights, reflects a gradual shift from informal and culturally driven roles within extended families to a more formalized, yet limited, legal framework.

### 1. Pre-Independence Era (Pre-1947): Customary Roles, Minimal Legal Recognition

In pre-independence India, family structures were predominantly joint, with grandparents often playing central roles in child-rearing due to cultural norms valuing multi-generational

---

<sup>10</sup> Mdhumitha, 'Grandparents As Caregivers: Legal Rights And Responsibilities' 3(4) JLRJS 1224 <<https://jlrjs.com/wp-content/uploads/2024/08/115.-Madhumitha.pdf>> accessed on 17<sup>th</sup> August 2025

<sup>11</sup> Rajeswari Chandrasekhar Ganesh v. State of Tamil Nadu, 2022 SCC OnLine SC 885

<sup>12</sup> Palak Sharma, 'Visitation Rights Of Parents In India: Laws And Practices'(2025) VI(1) JRCNLUO 110 <<https://nluo.ac.in/storage/2025/05/7.-Visitation-Rights-of-Parents-in-India-Laws-and-Practices.pdf>> accessed on 17<sup>th</sup> August 2025

households. Custody and visitation were not formally legislated; instead, customary practices under religious personal laws (e.g., Hindu, Muslim, or Parsi traditions) governed family matters. Grandparents frequently assumed care-giving responsibilities without legal disputes, particularly in cases of parental death or absence. The **Guardians and Wards Act, 1890**, enacted under British colonial rule, provided a framework for appointing guardians but prioritized parents or close relatives, with grandparents considered only in exceptional circumstances (e.g., orphanhood). Courts relied on the principle of the child's welfare, but grandparents had no statutory rights to seek custody—defined as decision-making authority and physical care—or visitation.

## 2. Post-Independence to 1980s: Codification and Parental Primacy

After India's independence in 1947, the codification of personal laws, such as the **Hindu Minority and Guardianship Act, 1956**, formalized guardianship rules for Hindus, emphasizing parental authority while allowing courts to appoint guardians, including grandparents, when parents were deceased, unfit, or absent. The **Guardians and Wards Act, 1890**, remained the primary statute for non-Hindu communities and interfaith cases. Grandparents could be granted custody in extreme cases—such as parental neglect or abandonment—but had no automatic rights to visitation. Judicial discretion focused on the “best interests of the child,” a principle rooted in English common law but adapted to Indian contexts. For example, in cases where both parents passed away, courts often favored grandparents over distant relatives, reflecting cultural norms. However, visitation rights were rarely addressed, and grandparents faced significant legal barriers if parents opposed contact.

## 3. 1990s to Early 2000s: Emerging Judicial Recognition

By the 1990s, rising divorce rates and social changes, such as urbanization and nuclear family structures, began challenging traditional joint family systems, prompting more legal disputes involving grandparents. Indian courts started recognizing grandparents' roles in specific scenarios, particularly in custody cases involving parental unfitness (e.g., substance abuse, incarceration). The Supreme Court has repeatedly affirmed the importance of principle of child's best interest in various landmark cases. In the case of *Nil Ratan Kundu v. Abhijit Kundu*(2008)<sup>13</sup>, the Supreme Court recognised, “custody is a human problem and it must solved

---

<sup>13</sup> Nil Ratan Kundu v. Abhijit Kundu, 2008 4 SCC 337

with human touch. It highlighted the need to provide proper care to a child's comfort, happiness, health, education, and mental growth while ensuring that they are left in stable, loving and morally healthy surroundings."<sup>14</sup> In *Gaurav Nagpal v. Sumedha Nagpal* (2009)<sup>15</sup>, it underscored that grandparents could be appointed guardians if it served the child's welfare, especially in cases of parental abandonment or death. Visitation rights, however, remained discretionary and were granted sparingly, often limited to brief, supervised contact (e.g., monthly visits) when parents objected. Unlike Western jurisdictions, such as the U.S., where *Troxel v. Granville* (2000)<sup>16</sup> set a precedent by restricting grandparents' visitation to protect parental rights, India lacks specific statutes, and rely only on judicial interpretations. Legal scholars criticize this temporary approach, because it leaves grandparents vulnerable to parental opposition and inconsistent rulings across states.

#### 4. Post-2010: Modern Challenges and Incremental Shifts

Since 2010, socioeconomic factors like parental migration and the rising divorce rates, have increased grandparents' roles as primary caregivers, particularly in rural and low-income households. Courts have responded by granting custody to grandparents in cases of parental unfitness, as seen in a 2025 Supreme Court ruling where grandparents were awarded custody after both parents abandoned the child due to migration. Visitation rights have also seen modest expansion, with courts occasionally allowing virtual visitation (e.g., video calls) to maintain grandparent-grandchild bonds, reflecting technological advancements. However, Indian law still lacks specific statutes for grandparents' rights, unlike the UK's Children Act 1989, which provides clearer pathways for grandparent access.

Thus, over a period of time, the right of custody is given to the grandparents expressly but the right of visitation still depends on the discretion of the court. There is no statutory protection of grandparents

visitation rights. The judicial precedents and the principle of "best interest of a child" are the only source for the visitation rights of the grandparents.

---

<sup>14</sup> Samparna Tripathy & Amit Samal, 'The Best Interest of the Child in Custody Disputes' (2025) VI(1) JRCNLUO 126 <<https://nluo.ac.in/storage/2025/04/8.-The-Best-Interest-of-the-Child-in-Custody-Disputes.pdf>> accessed on 17<sup>th</sup> August 2025

<sup>15</sup> *Gaurav Nagpal v. Sumedha Nagpal*, AIR 2009 SUPREME COURT 557

<sup>16</sup> *Troxel v. Granville*, 2000 530 U.S. 57

## Legal basis for Child Custody and Visitation -

Under Indian Law, generally the grandparents are not given primary right of custody. It is reserved for biological parents until they are unfit for the upbringing of the child. The **Hindu Minority and Guardianship Act, 1956 (HMGA)** clearly outlines that the custody of a minor generally lies with the father and, in his absence, with the mother. They are considered as the natural guardians of a child. Grandparents are not automatically granted custodial rights unless the parents are deemed unfit or incapable. Grandparents' right to custody has been implicitly enumerated in various statutes but right to visit has yet not been given to them, either expressly or implicitly. However, over a period, the judiciary has also evolved the concept of "best interest of the child" which is currently guiding the path for grandparents' rights to custody as well as visitation.

## Grandparents' Right to Custody under Indian Laws

Grandparents may claim custody under the following circumstances:<sup>17</sup>

- A) Loss of both parents (death or abandonment)
- B) Parent(s) declared unfit due to addiction, abuse, or mental illness
- C) Neglect or abuse of the child by the custodial parent
- D) Better financial, moral, and emotional support offered by grandparents

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

Applicable to Hindus, Buddhists, Jains, and Sikhs, this Act supplements the Guardian and Wards Act with specific provisions under Hindu personal law. It identifies the father as the natural guardian of a minor child, followed by the mother.<sup>18</sup>

Section 13 (The welfare of the minor is a paramount consideration): In the appointment of

---

<sup>17</sup> Advocate Preeti JD, 'Grandparents' Rights in Custody Battles: Can They Claim Custody or Visitation?' (Preetijd.com) <<https://preetijd.com/grandparents-rights-in-custody-battles-can-they-claim-custody-or-visitation/>> accessed on 18<sup>th</sup> August 2025

<sup>18</sup> Dr. Santosh Kumar, 'Child Custody Battles: Balancing Parental Rights and Child Welfare' (2025) 2(6) The Infinite 3 <<https://theinfinite.co.in/wp-content/uploads/2025/06/Child-Custody-Battles.pdf>> accessed on 18<sup>th</sup> August 2025

declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration. And no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

Thus, in case if the natural parents of the child are incapable or found unfit for custody, the grandparents can apply for the custody of the child, and the court may grant such petition on the ground of best interest of the child. In the case of *Mohini v. Virendra*<sup>19</sup>, the Supreme Court held that though the natural guardians are enumerated in Section 6 of the HMGA, the right is not absolute and the court has to give paramount consideration to the welfare of the minor. In *L Chandran v. Venkatalakshmi*<sup>20</sup>, custody was given to maternal grandparents, with the court categorically enunciating that “children cannot be treated as chattel,” interpreting Article 21 of the Constitution of India to place on record the overriding importance of the welfare of the child.<sup>21</sup>

## 2. Guardianship and Wards Act (GWA), 1890 -

This is a secular law applicable to all religions, and prioritizes the child’s best interests, allowing courts to appoint any suitable person, including grandparents, as guardians if the parents are unfit, absent, or deceased. The Act does not explicitly grant grandparents automatic custody or visitation rights, it provides a framework under which they can petition for custody or guardianship, with the overriding principle being the welfare of the minor.

Section 7 (Power to Appoint Guardians): This section empowers courts to appoint a guardian for a minor’s person or property if it is in the child’s welfare. Grandparents can petition to be appointed as guardians, which may include custody, when parents are unable or unfit to care for the child.

Section 17 (Matters to be Considered): Courts must consider the minor’s welfare, including factors like the child’s age, sex, religion, the proposed guardian’s character, capacity, the

---

<sup>19</sup> Mohini v. Virendra, AIR 1977 SC1359:1977(3) SCC 513

<sup>20</sup> L Chandran v. Venkatalakshmi 1980 AIR 1981 AP 1

<sup>21</sup> Samparna Tripathy & Amit Samal, ‘The Best Interest of the Child in Custody Disputes’ (2025) VI(1) JRCNLUO 125&126 <<https://nluo.ac.in/storage/2025/04/8.-The-Best-Interest-of-the-Child-in-Custody-Disputes.pdf>> accessed on 18<sup>th</sup> August 2025

existing relationship between the child and the grandparents, stability and lifestyle of grandparents, and the child's preferences (if old enough). Grandparents' close familial bond and care-giving history are often weighed favorably, especially in disrupted family situations.

Section 39 (Removal of Guardian): The court on application of any person interested, or on its own motion, may remove the guardians for any following causes - for abuse of trust, for continued failure or incapacity to perform the duties of his trust, for ill-treatment, or neglect to take proper care, of his ward or etc.

Section 41 (Cesation of authority of Guardians): The powers of the guardians ceases in the case of his death, removal or discharge or other grounds given in the section.

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

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is a comprehensive Indian legislation aimed at addressing the care, protection, and rehabilitation of children in need of care and protection (CNCP) and children in conflict with the law (CCL). While the Act primarily focuses on children, it also provides a framework under which grandparents can seek custody or guardianship of their grandchildren, particularly in cases where the child is deemed to require care and protection due to parental unfitness, abandonment, or neglect.

*Section 2(14)* – (Definition of CNCP): A child is considered in need of care and protection if they are found without a home, living with unfit guardians, or subjected to neglect, abuse, or exploitation. Grandparents can petition for custody if they can prove the child falls under this category due to parental incapacity or absence.

*Section 27* – (Child Welfare Committee (CWC)): The CWC, established in each district, has the authority to dispose of cases for the care, protection, and rehabilitation of CNCP. Grandparents can approach the CWC to seek custody, requesting to be recognized as “fit persons” under the Act.

*Section 40* – (Restoration and Alternative Care): The Act prioritizes restoring a child to their family, including extended family like grandparents, if it serves the child's best interests. If restoration to parents is not possible, the CWC may place the child with a fit person, which can include grandparents, for long-term care or guardianship.

*Section 44 – (Foster Care and Kinship Care):* The Act promotes kinship care, where relatives like grandparents can be appointed as foster caregivers, granting them custody-like responsibilities. This is particularly relevant in cases of abandonment or parental unfitness.

#### **4. Rights under other Personal Laws -**

In India, personal laws govern family matters, including custody and guardianship, based on an individual's religion, such as Hindu, Muslim, Christian, or Parsi laws. These laws, alongside secular statutes like the Guardians and Wards Act, 1890 (GWA) and the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), provide the framework for grandparents seeking custody of their grandchildren.

Under Muslim law, guardianship (*hizanat* for physical custody and *wilayat* for legal guardianship) prioritizes the mother for young children (boys under 7, girls until puberty), then the father. Grandparents are not natural guardians but can be appointed as guardians under the GWA if parents are unfit or absent. In some interpretations (e.g., Hanafi school), maternal grandparents may have a stronger claim to custody than paternal ones, especially for young children, if the mother is unavailable. Courts apply the welfare principle, allowing grandparents to seek custody if they can provide a stable environment, as per judicial discretion under the GWA.<sup>22</sup> Unlike statutory laws, Muslim personal law on custody is not codified but derived from religious texts and interpreted through judicial precedent.<sup>23</sup>

Under **Christian Laws**, governed by the **Indian Divorce Act, 1869**, and the GWA, custody disputes in Christian families prioritize parental rights. Grandparents can seek custody under the GWA if parents are unfit or deceased, with courts focusing on the child's welfare.<sup>24</sup>

Under Parsi Laws, the **Parsi Marriage and Divorce Act, 1936**, addresses custody in divorce cases but defers to the GWA for guardianship. Grandparents can petition for custody in

---

<sup>22</sup> Palak Sharma, 'Visitation Rights Of Parents In India: Laws And Practices' (2025) VI(1) JRCNLUO 114 <<https://nluo.ac.in/storage/2025/05/7.-Visitation-Rights-of-Parents-in-India-Laws-and-Practices.pdf>> accessed on 19<sup>th</sup> August 2025

<sup>23</sup> Dr. Santosh Kumar, 'Child Custody Battles: Balancing Parental Rights and Child Welfare' (2025) 2(6) The Infinite 4 <<https://theinfinite.co.in/wp-content/uploads/2025/06/Child-Custody-Battles.pdf>> accessed on 20<sup>th</sup> August 2025

<sup>24</sup> Advocate Dharmendra Chawla, 'Grandparents' Rights in Child Custody' (Adv Dharmendra Chawla) <<https://www.advdharmendraassociates.in/post/legal-rights-of-grandparents-in-child-custody-disputes>> accessed on 20<sup>th</sup> August 2025

exceptional circumstances, similar to Hindu and Muslim laws.<sup>25</sup>

## 5. Special Marriage Act, 1954

The Special Marriage Act enables individuals of different faiths or those seeking civil marriage to marry without religious formalities. Under this Act, custody issues are adjudicated by the court at the time of divorce or separation. Courts consider the welfare of the child as central, but the Act does not contain elaborate custody provisions, leading to reliance on the Guardian and Wards Act for detailed guidance.<sup>26</sup>

### Case Laws -

#### **Perry Kansagra v. Smriti Madan Kansagra (2019)**<sup>27</sup>

This case emphasized that the paramount consideration in custody disputes is the welfare and best interests of the child. It underscored that factors like the child's wishes, the emotional bond with caregivers, and the capacity of the guardians are crucial in determining custody.

#### **Kirtikumar Maheshankar Joshi v. Pradipkymar Karunashankar Joshi (2022)**<sup>28</sup>

The court awarded the custody to the maternal uncle and grandmother respectively, deeming them fitter guardians.

#### **Gita Hariharan v. Reserve Bank of India (1999)**<sup>29</sup>

Though primarily about parental guardianship, this case laid the groundwork for challenging the traditional notion of guardianship being limited to biological parents. It helped expand the interpretation of 'guardian', indirectly opening the door for relatives like grandparents to be considered in certain cases.<sup>30</sup>

---

<sup>25</sup> *Id.*

<sup>26</sup> Dr. Santosh Kumar, 'Child Custody Battles: Balancing Parental Rights and Child Welfare' (2025) 2(6) The Infinite 4 <<https://theinfinite.co.in/wp-content/uploads/2025/06/Child-Custody-Battles.pdf>> accessed on 20<sup>th</sup> August 2025

<sup>27</sup> Perry Kansagra v. Smriti Madan Kansagra (2019) 20 SCC 753

<sup>28</sup> Kirtikumar Maheshankar Joshi v. Pradipkymar Karunashankar Joshi (2022) 1 SCC 300

<sup>29</sup> Gita Hariharan v. Reserve Bank of India (1999) 2 SCC 228

<sup>30</sup> Advocate Preeti JD, 'Grandparents' Rights in Custody Battles: Can They Claim Custody or Visitation?' (Preetijd.com) <<https://preetijd.com/grandparents-rights-in-custody-battles-can-they-claim-custody-or-visitiation/>> accessed on 20<sup>th</sup> August 2025

**Swaminathan Kunchu Acharya v State of Gujarat & Ors (2022)**<sup>31</sup>

The Gujarat High Court had granted custody to the maternal aunt, citing her younger age (46), employment with the central government, and residence in a joint family as conducive to the child's upbringing. The grandparents, aged 71 and 63, were deemed less suitable due to their reliance on a pension. A bench comprising **Justices M.R. Shah and Aniruddha Bose** set aside the Gujarat High Court's order on June 9, 2022, granting custody to the paternal grandparents. The Court reasoned that "in our society, the paternal grandparents would always take better care of their grandson," emphasizing their emotional attachment and the cultural significance of grandparents in Indian families. The Court explicitly stated that grandparents are preferable to other relatives or strangers, noting, "In the event of the death of the parents of the child, the grandparents should get priority in the matter of custody."<sup>32</sup>

**Grandparents' Rights of Visitation in India -**

Although Indian statutory laws do not explicitly provide visitation rights to grandparents, but courts have recognized their importance in a child's life. The child's feelings and growth are often closely tied to their grandparents. Grandparents play a major role in their life and help them learn about their culture. The judiciary, keeping the welfare of the child as paramount, has begun granting visitation rights to grandparents, especially when one parent with custody does not let the grandparents see the child. Therefore, to favour continued interaction with grandchild, grandparents are granted visitation rights, unless there is evidence that such a relationship is against the welfare of the child. Grandparents can file petition for visitation under Guardians and Wards Act, 1890, Juvenile Justice Act, 2015, and personal laws like Hindu Minority and Guardianship Act, 1956. The courts by applying the principle of "best interest of the child", grant grandparents right to visit their grandchildren as per directions. In the case of *Biji & Another v. Vijil & others*<sup>33</sup>, Kerala High Court ruled that the visitation rights of grandparents are well recognized towards their grandchildren, and it would also include overnight custody for a small time. The Supreme Court had even held that grandparents should be preferred while granting custody of the child after the demise of both parents.<sup>34</sup>

---

<sup>31</sup> Swaminathan Kunchu Acharya v State of Gujarat & Ors (2022) Criminal Appeal 898 of 2022 SC

<sup>32</sup> Dhananjay Mahapatra, 'Custody Battle: Supreme Court to decide on Guardianship of Covid Orphan' Times of India (India, 7 June 2022)

<sup>33</sup> *Biji & Another v. Vijil & others*, Appeal No; 234/2016

<sup>34</sup> Palak Sharma, 'Visitation Rights Of Parents In India: Laws And Practices'(2025) VI(1) JRCNLUO 107

## Suggestions

To strengthen the legal position of grandparents in child custody and visitation cases and to better support the child's welfare, the following recommendations are made:

A) Enact Specific Legislation: There is a need to amend the existing laws like the Guardians and Wards Act, 1890, or create a new law that clearly gives grandparents the right to visitation. This should be similar to frameworks in the UK or U.S. It must include scheduled visits, virtual access, and overnight stays, all subject to judicial oversight to prevent custodial parents from denying access without cause. Rights regarding custody of grandchildren also need attention of specific legislation, as there is no automatic right of custody given to grandparents. Like, Section 6 of Hindu Minority and Guardianship Act, declares both father and mother as natural guardian, there should be some specific legislation which will grant automatic right of custody to grandparents in the absence or neglect of parents subject to the best interest of the child.

B) Promote Mediation and Alternative Dispute Resolution: Family courts should introduce methods like mediation sessions that include grandparents, parents, and child psychologists collectively before any litigation. This approach draws from the Doctrine of Parental Alienation Syndrome, as seen in *Rajeswari Chandrasekhar Ganesh v. State of Tamil Nadu*. It could lessen emotional stress and encourage positive arrangements. Such session would highlight the wish of the child that with whom s/he want to live. Mediation will help the parents having custody of the child to be at par with grandparents, which will give the grandparents access to meet their grandchildren without any restriction. And this mutual understanding between parents and grandparents will also lessen the burden of proceedings upon courts.

C) Public Awareness and Support Programs: Start government-led campaigns and collaborate with NGOs to inform families about the roles and rights of grandparents. This could include workshops on co-parenting after divorce. Establishing helplines or legal aid for grandparents would help them navigate petitions under personal laws, making support accessible for rural and disadvantaged communities.

## Conclusion

In conclusion, the legal rights of grandparents in child custody and visitation cases in India

---

<<https://nluo.ac.in/storage/2025/05/7.-Visitation-Rights-of-Parents-in-India-Laws-and-Practices.pdf>> accessed on 21<sup>st</sup> August 2025

reflect a careful balance between cultural traditions that value extended family bonds and a legal system that focuses on parental rights and the child's best interests. This paper has explored how the historical shift from pre-independence customs to post-2010 court interpretations has gradually acknowledged the role of grandparents, especially in cases of parental death, unfitness, neglect, or abandonment. Laws like the Guardians and Wards Act, 1890, the Hindu Minority and Guardianship Act, 1956, and the Juvenile Justice (Care and Protection of Children) Act, 2015, allow grandparents to seek custody or guardianship, but they do not guarantee automatic rights. Court cases such as *Gaurav Nagpal v. Sumedha Nagpal*, and *Mohini v. Virendra*, highlight the courts' willingness to grant custody or visitation when it serves the child's best interests, considering factors like emotional ties, stability, and cultural importance.

However, the lack of clear laws on visitation rights makes grandparents vulnerable to parental opposition and inconsistent court decisions, unlike more structured systems in Western countries like the U.S. after *Troxel v. Granville*. Insights from psychology and sociology confirm that grandparents serve as emotional support in broken families, helping to support resilience and well-being in children during a time of rising divorce rates and the shift towards nuclear families. While Indian law has made progress in protecting children's interests, it needs to develop further to clearly affirm grandparents' rights. This will help ensure that the important inter-generational bonds in Indian society remain intact despite legal gaps. By prioritizing the child's best interests, the judiciary helps address this issue, but active reforms are needed to align tradition with modern family dynamics.

## **Bibliography**

### **Cases Referred**

1. Biji & Another v. Vijil & others, Appeal No; 234/2016 Kerala High Court
2. Gaurav Nagpal v. Sumedha Nagpal, AIR 2009 Supreme Court 557
3. Gita Hariharan v. Reserve Bank of India AIR 1999 2 SCC 228
4. Kirtikumar Maheshankar Joshi v. Pradipkymar Karunashankar Joshi (2022) 1 SCC 300
5. L Chandran v. Venkatalakshmi 1980 AIR 1981 AP 1
6. Mohini v. Virendra, AIR 1977 SC1359:1977(3) SCC 513
7. Nil Ratan Kundu v. Abhijit Kundu, 2008 4 SCC 337
8. Perry Kansagra v. Smriti Madan Kansagra (2019) 20 SCC 753
9. Rajeswari Chandrasekhar Ganesh v. State of Tamil Nadu, 2022 SCC OnLine SC 885
10. Swaminathan Kunchu Acharya v State of Gujarat & Ors Criminal Appeal No; 898/2022 Supreme Court
11. Syed Irshad Ahmed Zaid v. Shazia Anjum, FA(MAT) No. 123 of 2023.
12. Troxel v. Granville, 530 U.S. 57 (2000)

### **Statutes Referred**

13. Guardians and Wards Act 1890 (India), s 7.
14. Guardians and Wards Act 1890 (India), s 17.
15. Guardians and Wards Act 1890 (India), s. 39
16. Guardians and wards Act 1890 (India), s.41
17. Hindu Minority and Guardianship Act 1956 (India), s 13.
18. Hindu Marriage Act 1955 (India), s 26.
19. Indian Divorce Act 1869 (India)

20. Juvenile Justice (Care and Protection of Children) Act 2015 (India), s 2(14).
21. Juvenile Justice (Care and Protection of Children) Act 2015 (India), s 27.
22. Juvenile Justice (Care and Protection of Children) Act 2015 (India), s 40.
23. Juvenile Justice (Care and Protection of Children) Act 2015 (India), s 44.
24. Special Marriage Act 1954 (India), s 38.
25. Parsi Marriage and Divorce Act 1936 (India).

### **Secondary Sources -**

26. Advocate Dharmendra Chawla, 'Grandparents' Rights in Child Custody' (Adv Dharmendra Chawla) <<https://www.advdharmendraassociates.in/post/legal-rights-of-grandparents-in-child-custody-disputes>>
27. Advocate Preeti JD, 'Grandparents' Rights in Custody Battles: Can They Claim Custody or Visitation?' (Preetijd.com)<<https://preetijd.com/grandparents-rights-in-custody-battles-can-they-claim-custody-or-visitation/>>
28. Dhananjay Mahapatra, 'Custody Battle: Supreme Court to decide on Guardianship of Covid Orphan' Times of India (India, 7 June 2022)
29. Dr. Santosh Kumar, 'Child Custody Battles: Balancing Parental Rights and Child Welfare' (2025) 2(6) The Infinite An International Peer Reviewed/Refereed Journal of Multidisciplinary Research <<https://theinfinite.co.in/wp-content/uploads/2025/06/Child-Custody-Battles.pdf>>
30. Mdhumitha, 'Grandparents As Caregivers: Legal Rights And Responsibilities' 3(4) Journal of Legal Research and Juridical Sciences<<https://jlrjs.com/wp-content/uploads/2024/08/115.-Madhumitha.pdf>>
31. Palak Sharma, 'Visitation Rights Of Parents In India: Laws And Practices'(2025) VI(1) Journal on the Rights of the Child of NLUO <<https://nluo.ac.in/storage/2025/05/7.-Visitation-Rights-of-Parents-in-India-Laws-and-Practices.pdf>>
32. 'TROXEL v. GRANVILLE and its Effect On the Future of Grandparent Visitation Statutes'(223) Journal of Legislation <<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1151&context=jleg>>
33. Samparna Tripathy & Amit Samal, 'The Best Interest of the Child in Custody Disputes' (2025) VI(1) Journal on the Rights of the Child of NLUO <<https://nluo.ac.in/storage/2025/04/8.-The-Best-Interest-of-the-Child-in-Custody-Disputes.pdf>>