

GRANDPARENTS AS CAREGIVERS: LEGAL RIGHTS AND RESPONSIBILITIES

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ABSTRACT

This research paper mainly explains the legal rights and responsibilities of grandparents in this modern world. The contents of the research paper are incurred by comparing legal frameworks of different countries and analyzing the evolution of the relationship between grandparents among other family members over time. It also includes how family law is interplayed with the legal rights of grandparents. This article also states the importance of grandparents in a person's life. I have also shared my personal life experiences with my grandparents and how much I enjoy their company in my life. Custody rights, visitation rights, adoption, and guardianship rights are analyzed and compared. Grandparents play a very important role in one's life and their responsibilities towards their family are inevitable. This paper also highlights the problems faced by them in this materialistic world. Overall, this research paper will explain to the readers about prohibited legal rights of grandparents and their irreplaceable roles in our lives.

Keywords: Grandparents Rights, Responsibilities, Visitation Rights, Custodian Rights, Legal System.

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INTRODUCTION

Young people need something stable to hang on to – a cultural connection, a sense of their past, a hope for their future. Most of all, they need what grandparents can give them. Grandparents play a crucial role in not only their grandchildren's lives but also in their parents' lives. Many times, grandparents act as a bridge that connects the past and the future. They induce customary practices, traditions, morality, and dharma into the lives of their grandchildren. They perform versatile roles concerning their grandchildren like a teacher who nourishes the continuing moral values, a friend who lends their ears to hear all their stories, a partner in crime who joins them in all their mischievous activities, and much more. Thus, this research paper mainly

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focuses on the importance of grandparents in a person's life and their correlated legal rights and responsibilities concerning the changing society.

GRANDPARENTS: LIFE MAKERS

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 lifemakers who pave the way for the generation and stand as the bearing pillars who support the whole family.

Grandparents, often revered as lifemakers, hold a unique and cherished role in the family tapestry. With their wealth of experience and a repository of wisdom, grandparents contribute immeasurably to the lives of their grandchildren. Beyond the endearing stories they share and the laughter that echoes in their presence, grandparents serve as living repositories of familial history, passing down traditions, values, and a sense of identity. Their unconditional love and nurturing presence create a foundation of stability and security for the younger generations. Grandparents are the architects of lasting memories, crafting a bridge between the past and the future. As anchors in the storm of life, they offer a sense of continuity and a refuge of warmth. In their gentle guidance and unconditional acceptance, grandparents embody the essence of life makers, leaving an indelible mark on the hearts and souls of those fortunate enough to be embraced by their love.

EVOLUTION OF GRANDPARENT BONDS

Grandparents and their bonds with their grandchildren evolved a lot over a period. There were many changes in the relationship between a grandparent and their grandchildren. Many findings and surveys suggest that there is a possibility for both continuity and change in grandchildren's bond with grandparents. Theoretical debates and empirical research in this area also suggest that it is important to examine the implications of each parent's intergenerational ties for the grandparent-grandchild relationship.

It looks like grandmothering was crucial to the development of pair bonds in humans," says Hawkes, senior author of a study published in the journal of the National Academy of Sciences. History of human evolution incurs that paternal men are the main players in increasing the number of people in the world by hunting and providing food for all others. However recent studies and reports have analyzed and stated that grandmothers also played a key role in

increasing human generations. She takes good care of her grandchildren and feeds them. This helps young females by reducing their family burdens by taking care of their children and it helps in an increase in procreation which consequently leads to generation growth. So, Grandparents have helped in the growth of humans too.

Their bonds with society and other family members keep changing over time. Grandchildren's closeness to grandparents was associated not only with their earlier patterns of closeness to grandparents and with parents but also with changes in parent's intergenerational ties over time. Longer life expectancy has increased the opportunity for grandparents to see their grandchildren reach adulthood.¹

IMPACT ON CHILDREN'S WELL-BEING

A symbiotic bond between grandparents and grandchildren proves advantageous for the overall health and flourishing of both parties. 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.

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Grandchildren enjoy the company of their grandparents while their parents are busy with work. Many grandchildren treat grandparents as their best friends to share their stories and they enjoy playing and having fun with them. Grandparents also share their life experiences with their grandchildren during bedtime stories which creates an awareness and infuses young minds with knowledge about other people and the world. Many things about the past like puranas, culture, and moral values were passed on to grandchildren during these night sessions. Both of them share their happenings of that day and it increases the transparency of Children's towards their family.

The relationship between grandparents and grandchildren abolishes the loneliness of grandparents in the home. They enjoy the company of their grandchildren and pass all their resources and knowledge on to the young minds. Similarly, grandparents are the only people

¹ 'Home - The Leakey Foundation' (*The Leakey Foundation*) <<https://leakeyfoundation.org/>> accessed 15 July 2024.

who spend a lot of time with the child. The child is heard, respected, and considered for the discussion by the grandparents. So, Children with grandparents were blessed.²

LEGAL FRAMEWORKS

Laws governing the responsibilities and rights of grandparents are different across different jurisdictions. These frameworks in many countries address issues such as custody, visitation rights, and financial support. Some jurisdiction allows grandparents to petition for visitation rights or even custody in certain circumstances, especially when it is deemed to be in the best interest of the child. It is important to ensure that laws governing grandparents' rights differ from varying jurisdictions. To get information about their rights, one must consult the relevant laws in their jurisdiction for accurate information.

For the rights and responsibilities of grandparents' different provisions and statutes are provided through various constitutions. Articles 41 and 46 state the provisions for the elderly with directive principles guiding a positive obligation for the state in the formulation of laws. The Hindu Marriage and Adoption Act of 1956, specifically Section 20, mandates provisions for the maintenance of aged parents.

Furthermore, Section 125 of the Criminal Procedure Code allows elder parents to claim maintenance from their children. The Maintenance and Welfare of Parents and Senior Citizens Act of 2007 establishes legal grounds for children or heirs to be responsible for the maintenance of their parents or senior family members.³

INTERPLAY WITH FAMILY LAW

The interconnection between legal responsibilities and legal rights of grandparents and family law is complex. They may be affected by provisions of family law which affects their relationship with their grandchildren. The unique nature of cases that involve minors acknowledges the emotional complexities and repercussions inherent in family law disputes. Despite a widely accepted understanding in family courts throughout Pakistan regarding the significance of maintaining ties between non-custodial parents or grandparents and the child,

² 'National Centre for Biotechnology Information' (*National Centre for Biotechnology Information*) <www.ncbi.nlm.nih.gov/> accessed 15 July 2024.

³ (<https://www.tandfonline.com/>).

there exists a noticeable hesitancy to grant in-home visitation rights, especially when the applicant is a non-custodial paternal grandparent in the absence of the non-custodial father.

The inherent right of every minor child to access both paternal sides of parents and grandparents to foster bonding and affection. While precise legal definitions may be absent, allusions to statutes and court rulings underscore the acknowledgment of grandparents' visitation rights, underscoring the broader cultural context and the pivotal role of familial bonds in a child's upbringing. Legislative amendments and judicial decisions pave the way for broader cultural and societal dimensions. The courts when dealing with matters of custody and visitation should consider the advantages a child derives from a relationship with their grandparent who recognizes the tradition and cultural practices.⁴

CUSTODY AND VISITATION RIGHTS

Children develop stronger emotional connections with grandparents and these bonds can become challenging when their parents get divorced. Grandparents who share a deep and close relationship with a child have the right to go to court and get their visitation rights. In numerous states, courts base their decisions solely on what is deemed in the best interests of the child when considering such requests. Although the legal landscape is not fully settled, these permissive statutes have generally withstood challenges and typically require a reasonable justification to grant visitation rights to grandparents. Many states have altered and amended their laws to consider the wishes of both parents and children. 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. Mediation with the parents is a good approach for grandparents to handle this kind of scenario.

To seek full custody of a grandchild, grandparents have the right to file a petition in the court. But courts prefer children to reside with their parents. This situation occurs when the parents of the child are deceased, unfit for custody, or if the child was residing with grandparents for one year or more. In all these cases of child custody, the court strives to determine the arrangement which is best in the interest of the child by considering many factors such as the child's blood relatives, relationship with their grandparents, grandparent's age, health

⁴ 'Homepage - Advocate Tanwar' (*Advocate Tanwar - Best Full-Service Law Firm in Gurugram/NCR*) <<https://advocatetanwar.com/>> accessed 15 July 2024.

conditions, financial capability for supporting the child, etc. Grandparent visitation statutes have been implemented in every state which provide the right to secure a court order allowing grandparents to visit and engage with their grandchildren. These orders include the date, time, and conditions governing when and at what time the visit is to take place. But the court will grant visitation rights in the best interest of the child and it does not interfere or destroy the child-parent relationship.⁵

GUARDIANSHIP AND ADOPTION

Adoption is often viewed more as a sacramental than a secular act, embodying a profound commitment. In situations where parents are unable to adequately provide for their children, grandparents frequently step in as guardians for their underage grandchildren. Guardianship, like legal custody, establishes a legal relationship between grandparents and grandchildren through a court order. While grandparents take on the day-to-day caregiving responsibilities, parents retain certain rights. Unlike legal custody, guardianship is typically addressed in probate court.

In some states, guardianships are more enduring than legal custody, lasting until the child reaches 18. Guardians also have some other additional authorities like making medical decisions for the grandchild, adding health care insurance to them, and appointing some other persons as guardians when they are unable to take care of the child. Some states even allow the restoration of biological parent's rights in specific circumstances. Adoption helps in offering stability for the grandchild, especially when the biological parents are not fully ready to commit to parenthood. It need not be adversarial and can be considered, for example, when a parent who gave birth is very young and unprepared for the responsibilities of raising a child.⁶

ELDERLY PARENTS

Insufficient care facilities in rural areas contribute to many different challenges faced by elderly people, who often struggle with multiple disabilities, and health issues are prevalent as deafness, blindness, disabilities, mental health stability, aging, etc. Also, the absence of adequate housing facilities and the migration of younger generations to urban cities can

⁵ 'The Family Law Company by Hartnell Chanot | LinkedIn' (*LinkedIn: Log In or Sign Up*) <www.linkedin.com/company/the-family-law-company/?originalSubdomain=uk> accessed 15 July 2024.

⁶ 'Justia' (*Justia*) <www.justia.com/> accessed 15 July 2024.

increase poverty and distress among older people. Financially they become weak and out of expenses for their medical treatments and depend on children for their necessities after their retirement.

Many Social problems also prevail as industrialization and globalization eradicate traditional values and norms which weakens intergenerational ties that were integral to traditional family structure. Powerlessness, loneliness, uselessness, and isolation of the elderly foster their feelings. The generational gap also exacerbates these societal issues which underscore the problems associated with aging in a society which is undergoing rapid transformation.⁷

SOCIOLOGICAL AND PSYCHOLOGICAL IMPACT

Grandparents take their role in raising their grandchildren who face elevated levels of caregiver depression. Despite these challenges, fulfilling and meaningful experience, that benefits the psychological well-being of both grandchildren and grandparents. Some grandparents, being more relaxed than parents, may assess a child's academic abilities objectively. While there are difficulties associated with grandparents assuming full-time caregiving responsibility, alternative family structures can serve as the optimal setting for raising children when the nuclear family breaks down.

Grandparents who are encouraged to participate in Parent-Teacher Conferences and Parent Nights, who also volunteer in classrooms and local libraries enhance their involvement in their grandchildren's academics. Positive intergenerational relations enhance the significance of grandparents in the lives of their grandchildren during adulthood. Their involvement is instrumental in shaping the sense of commitment from grandchildren, and they also provide a desire to repay the support received in childhood.

Grandparents who actively participate in their grandchildren's care are often subjected to pressures that may be detrimental to their general health and well-being. Improving psychological well-being and mental health also has a good effect. Grandparents spend their time joyfully with their grandchildren. This reduces their stress and lonely lives. They enjoy the company of their grandchildren.⁸

⁷ "Child Research Net" (*Child Research Net*) <<https://www.childresearch.net/>> accessed July 15, 2024

⁸ "Child Research Net" (*Child Research Net*) <<https://www.childresearch.net/>> accessed July 15, 2024

CHILD SUPPORT AND FINANCIAL RESPONSIBILITIES

Parents balance many responsibilities and duties towards their children, which includes providing a supportive and nurturing environment. If parents decide to seek divorce, both parents need to retain their obligation to provide support to their children. In some situations, children's financial support may fall on grandparents.

It's important to clarify that, according to the law, grandparents do not inherently bear an obligation for child support. This obligation arises only when a grandparent acts in loco parentis to their grandchildren, indicating that they have assumed custody of the children. The law helps prevent parents from transferring their obligations to grandparents. In such situations, the court analyses the financial capacity of both parents and grandparents. Court proceedings in divorce cases extend beyond dissolving marriages, they focus on protecting the rights and well-being of the children involved in the case. Child support and custody were the common issues addressed.⁹

CULTURAL AND ETHNIC VARIATIONS

The role of grandparents is increasingly diverse within families, yet there is limited research on the impact of racial and ethnic disparities among grandparents' families. Additionally, only a few programs address culturally appropriate professional practice models for working with grandparenting families. Grandparents teach their grandchildren with distinct cultural values. In Indian culture and tradition, grandparents were given honour and respect. They were the backbone of the family and served as a source of wisdom, emotional support, and guidance. By ways of storytelling, caregiving, and each of the cultural norms that commence early in a child's life, positive behaviors and societal skills development.¹⁰

Grandparents are blessings from God to all of us. Due to societal changes, there is growth in disconnect with them. It is important to appreciate the role of grandparents in teaching cultural heritage, and family bonds and for protecting the welfare of younger generations.¹¹

⁹ "Sterling Lawyers, LLC" (*Sterling Lawyers, LLC*) <<http://sterlinglawyers.com>> accessed July 15, 2024

¹⁰ "Top San Diego Hospitals and Doctors" (*Sharp HealthCare*) <<https://www.sharp.com/>> accessed July 15, 2024

¹¹ ———, *Grandparents in Cultural Context* (Routledge 2017)

IMPACT OF ESTATE PLANNING

Grandparents are valuable resources of our nation. They offer boundless wisdom and indulge their grandchildren. But, many grandparents with good financial support face many challenges in their later years. Estate planning is an important tool that all, regardless of their family structure should utilize to protect their future. Especially, they need to consider special factors when establishing their estate plans. Preparing for the future is the key aspect of estate planning. The major issue is their children contesting the will, objecting to their shares of the estate to grandchildren, either partially or completely.

The primary objective of estate planning is to make sure that the family is protected which allows them to maintain the same standard of living to which they are accustomed, particularly after the passing of the earner. Also, estate planning is important if an individual becomes incapacitated due to a lifetime disease or any other unforeseen circumstances. In such scenarios, strategic and thoughtful estate planning is important to address the challenges and ensure the welfare of the family in various cases¹²

PROTECTION OF GRANDPARENT'S RIGHTS

The rights given to grandparents will be different across various states. However, they can pursue court orders regarding visitation or custody if they share a significant bond with their grandchildren, and it is deemed to be in the welfare of the children. Certain situations, such as the parents being deceased, divorced, or the children being in state custody, may provide grandparents with grounds to seek court-ordered visitation or custody. However, it's crucial to note that grandparents' rights may be restricted by the parent's rights to raise their children as they deem fit.

Seeking a court order for visitation or custody rights can be time-consuming for those grandparents who are unfamiliar with the legal system. The help of services provided by a family lawyer who specializes in grandparents' rights can assist them in understanding the process and provide guidance.

In situations where grandparents approach court for visitation or custody, the rules may differ by state regarding when and how this can occur. In circumstances where parents are deemed

¹² "Business News Today: Read Latest Business News, Live India Share Market News, Finance & Economy News" (*mint*) <<https://www.livemint.com/>> accessed July 15, 2024

separated, unfit, divorced, or have lost custody, grandparents may be able to request the court to grant visitation and custody rights. To get these rights, they need to demonstrate a close, meaningful bond with their grandchildren and prove that the child has the best interest in continuing the relationship.¹³

POLICY RECOMMENDATIONS

Despite the advantages that come with grandparent care, numerous state adoption statutes lack a mandate for giving preference or notice to grandparents in custody proceedings. This asymmetry in the legal framework frequently places grandparents at a disadvantage when in competition with foster parents or state officials seeking to place the child into foster care. In the African American community, there is a cultural norm where grandparents may take on the primary childcare role for their grandchildren if the need arises. However, a weak history of pension benefits means that many African American grandparents may have financial difficulties in retirement. Being a grandparent not only causes mental and physical strain but also heightens the desire to return to the workforce to make money.

The current welfare reform ideas, which include a five-year lifetime benefit cap, have lawmakers concerned about the potential financial impact on grandparents' capacity to support their grandchildren. These policies must be adaptable to assist middle-aged or older individuals who are shouldering the financial responsibility of raising their grandchildren. Moreover, under the Social Security Act, custodial grandparenting payments ought to be exempt from income limitations that lower Social Security benefits.¹⁴

MEASURES TO BE TAKEN

- The monthly sign should be increased to a minimum of Rs.2000 per month.
- For economically disadvantaged elders, housing and policy attention facilities must be provided.

¹³ "Forbes" (*Forbes*) <<https://www.forbes.com/>> accessed July 15, 2024

¹⁴ "Access Research Journals, Articles, Books and More" (*SpringerLink*) <<https://link.springer.com/>> accessed July 15, 2024

- For senior citizens, consideration should be given to offering more tax benefits or eliminating taxes on deposit interest. The infrastructure of healthcare centers in rural areas should be improved.
- Dedicated budget allocation should be made for senior citizens both at national and local levels.
- Entertainment facilities like libraries and clubs can be provided at the panchayat level for their well-being.

GRANDPARENTS AS CAREGIVERS

Going beyond the legal rights, they often play an important role in the intricate dynamics of a family:

- Emotional Support: They are the emotional pillars who with their presence for their grandchildren provide unconditional love and wisdom.
- Childcare Champions: They care for their grandchildren, particularly when parents are busy with their work commitments or other issues. It helps the parents to strike a balance between work and family life.
- Custodians of Tradition and Values: They hold the key to cultural heritage, family traditions, and values.

Numerous stressors, such as the physical demands of raising children, have been identified via research on the phenomenon as having the potential to aggravate pre-existing health and functional difficulties. Despite these challenges, grandparents raising their grandchildren often report that the experience enriches and elevates their lives by offering companionship and a sense of purpose for their family and community. Moreover, the care they offer is critical to maintaining the integrity of larger communities and family relationships.¹⁵

CONCLUSION

Grandparents are the oldest members of the family and take on all family duties with grace while giving careful attention to detail. Their presence has been a huge benefit, shaping our parents' lives and imparting invaluable life lessons to us through their perceptive storytelling.

¹⁵ "CORE – Aggregating the World's Open Access Research Papers" <<https://core.ac.uk/>> accessed July 15, 2024

Grandparents become the best friends of children and offer a safe space where secrets may be shared, making them a treasured gift. The trend for nuclear families in this day and age can make grandparents less important than they formerly were. Respecting them as priceless resources and teaching them basic values like responsibility and decency are essential. Beyond their kindness, grandparents help shape us into responsible citizens of the future. They are the quiet decision-makers who greatly influence the state of affairs since their involvement provides direction and composure.



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