

Visitation Rights to Deprived Grandparents -- An Exclusive Jurisdiction

Mr. S Thulasi Ram (STR)

Advocate and Arbitrator, HIGH COURT Cyber Laws NALSAR

INTRODUCTION

In the Neoteric era, a varying change has been constantly seen between family roles and their build-up which has directly affected Family law. The unbiased rule that goes familiar in recent times is the "best interests of the child" which is striking back on the old phrase a mother is the sole caretaker of her child; the presumptions have taken a swift turn and broadened the perspective of the people bringing extraordinary changes in the Family Law. With the advancement of societal changes, it is in turn necessary for the law to pace up its borders as in suitable interests to the common man.

The society has emerged from Seven Ages of Marriage to getting divorce real quick; explaining the statement here that the review in family law is essential as it is in response to the changing societal conditions keeping in mind the direct and indirect effects of such change that could bring about the distance between the family members and increase the chances of problems in legal enforcement. However, the judicial system must pay attention to the upbringing of new laws that encourage the people to build family relationships deeper and enticing the legal safeguards.

Grandparents Mantle In The Child's Upbringing

When we look out from the child's perspective, it is clear that the grandparents act as a guardian shield whenever the kids' parents are not around, the alternative support system. It seems beneficial for the parents as well to find such support for their children within the family. Not only do grandparents take care of the child but also help them build moral and societal values. Grandparents play a vital role in child-rearing.

The limited research of how grandparents can influence a child's atmosphere has two parts
First, the child has a companion other than the parents within the family (helps in personal and cognitive stimulation); second indirectly a helping hand to the parents of the child (financial and social assistance).

Financial support or money-related benefits have always been a perk of having grandparents living in the same household, whether as a gift to the children for education(future use) or as inherited property.¹

The direct contact of grandparents and grandchildren is quite pure. All they intake is love and all they provide is care and soothe the child. The grandparents act as playfellows to the little ones and often that builds stronger bonds, the relationship of a grandparent to a grandkid becomes quite competent, helpful, and joyful.

From the parent's standpoint, the grandparents posing as the emotional wall in hours of crisis, providing support by solving problems related to child nurturing and easing the fear and stress of adulthood. The elderly always become a source of knowledge and experience and could pave ways for information and advice to handle and equip crises well. This indeed is a crucial aspect of the connection between parents and their parents.

Grandparents can also act as a financial support system which could help ease the family of monetary burdens and provide a better lifestyle to their children.

The benefits of having grandparents also extend to support in cases of internal matters between parents such as divorce, custody of a child or parents separated. It is rather found that the grandparents act more in concern towards the children in situations of emotional needs. Backing the children with stronger vibes and specific bonds that they are not left alone eases the pain of such separation of parents.

Putting together all of it, the grandparents constantly pave ways to strengthen the family bond and affirm that they are indeed necessary for a child's mental and physical growth. About 28% of grandparents have been found to take care of their grandchildren almost every day and about 67% are caring for more than one grandchildren².

¹Education World, <https://www.educationworld.in/involve-grandparents-to-make-happy-children/> (last visited 25th July 2021)



Best Interest Of The Child

The Judicial system stands in a tight spot when it comes to providing rights to either one parent or grandparents, also keeping in mind the psychological state of the child. The children are often tied up and stretched between the two, the mental pressure and emotional hindrance can cause the child to distress considering his/her age to choose between parents and grandparents. The judges are often faced with the dilemma of letting parental control win over the elderly love despite the benefits the grandparents could bring in by simple visitation.

The best interest depends on how long, how connected the child is from the grandparents, and how much mentally the child could suffer if the grandparents are separated from the kid. It is important to analyze how deeply the grandparents-grandkids relationship is rooted.

Current Status Of Visitation Rights To Grandparents Under Indian Law

The legalization of grandparents getting visitation rights to meet their grandchildren is still far away in India; though necessary actions have been taken by the Court from time to time.

The Court has been actively working on granting visitation rights to grandparents if it is in the best interest of the child considering the reason behind such meetings.

Although there are no specific written laws regarding visitation rights to the grandparents, in some cases the topic has been discussed and given the ruling on the subject.

Roxann Sharma vs Arun Sharma on 17th February 2015³

About Black's Law Dictionary, a parent who does not have the liberty to visit his child, is granted an exclusive period of visitation rights. Thus the visitation right herein could also be interpreted not only for a non-custodial parent but also provides access to grandparents or any other special person. In the general context visitation is meant for granting permission to the ones who do not live in the family and need access to meet the children or grandchildren.

In India, it is prominent to note that the custom and traditions, specifically in Hindu undivided families (Karta being the Supreme Head), have absolute power and rights making it in-evident for the parents of the child to separate the kids from the grandparents even if they had a bad influence on the kids. The specifications of not taking it to the court and solving internal affairs internally is a thumb rule for many Indians even in the present times.

The Constitution of India in Article 21 includes the right to freedom and personal liberty, providing authority for the parents to deal with their kids' upbringing in their particular way.

Whereas it also provides the grandparents with the right of maintaining free relations with their grandkids. It's up to the Court to decide after noticing sufficient causes from both ends.

Discussion Over Permission For Visitation Rights To Grandparents

Generally considering, a grandparent who is willing to seek full custody of the grandchild is allowed to file a petition with the Court. Although, the courts prefer that the child stays with its parents still in certain circumstances the grandparents are awarded the custody of the child.

- The parents of the children have passed away
- The parents are not in reasonable condition to care for the children.
- The parents are willing to give custody of the kids to the grandparents
- The child has been living constantly with the grandparents for more than a year or so.

I.S.Sirohi vs Commr.Of Police &Ors on 27th August 2008⁴

The Supreme Court of India said that the grandparents are entitled to Visitation Rights. The Court further explained that they are completely aware of the fact about this not being a custody proceeding but in the facts and circumstances of the case, they believe that the children should not be separated from the love and affection of their grandparents.

However, in custody cases, the child's welfare is of utmost concern and requires deep psychological analysis of whether the relationship of the kids and their grandparents seems appropriate to award custody. Particularly taking brief of the financial and health stability of the grandparents. Saxena and Sanders' (2009) define that the part grandparents play in

²Education World, <https://www.educationworld.in/involve-grandparents-to-make-happy-children/> (last visited 25th July 2021)

³Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318

⁴I.S.Sirohi vs Commr.Of Police & Ors (2007) SLP(Crl.)No.5919

the life of their grandchildren is dependent on both personal and social communications⁵. Plus the poor health of the grandparents is a sufficient cause to deny custody rights. States (about 40%) have validated the visitation statutes in a constrained manner. The constraint includes:

Divorce and separation of child's parents
Death of either or both the parents

Traditional Theory of denial to grandparents for independent rights being it custody or visitation:

First and foremost, the reason being argued that the parental authority to raise their child as it fits them to their interests gets in question considering the overall impact that the grandparents could bring by hindering the rights of the parents. Many courts stated, being involved in deeper relations of the family is considered a downfall for the child keeping in mind the constant tic-tac between the grandparents and the parents of the child harming the growth and development of the kids.

Dr.V.Sridevi vs Dr.C.S.Mani on 29th April 2019⁶

If the child is not interested in going or seeing his father, then he has no legal right to force the child to come and stay with him. The child cannot be forced to go against his wish and will. Childs' well-being is the main concern while deciding the custody, as well as, visitation rights of the child.

Third and the last affirm reason possibly is that the parental authority is supreme in nature and the state is obliged not to intervene in the family affairs and let the parents decide who is a positive influence in the life of their children. The High Court in a certain judgment also agreed on the fact that the children are parents' responsibilities and thus have the right to decide for the betterment of their child.

Sobhana Nair K.N. vs Shaji S.G.Nair on 13th August 2015⁷

The well-being of the children is the parents' authority to decide the good and bad relations within the family. Therefore, the right of the petitioner to have visitation right over the minor children is set aside considering the parent's arguments of the child being minor.

However, the Court has also kept in mind the grandparent's part wherein granting visitation rights seems less intimidating and wouldn't be a hindrance to the growth of the child.

Modern Theories establishing custody or visitation rights to grandparents:

Circumstances where the mother and father both have passed away or are unfit to take care of the child, the grandparents can be considered equal in raising the kids by getting custody for the same. In the case of *Biji v. Vijil*, the court cited on 3rd March 2016 that the grandparents have the right to interim custody of their grandchildren- only if the natural father or mother have passed away.⁸

In circumstances where the child cannot live aloof from the grandparents for a long while or has been raised by the grandparents themselves. The court can enforce custody rights if the parents are unable to specify reasonable terms or at least the visitation rights of the grandparents come into the picture to provide upliftment and care to the child.

P. Madhavan Nair And Others vs K. Ravindran Unni on 10th April 1992⁹

The Court was approached by the grandparents of the aforesaid minor child to become the rightful caretakers of the grandchild, who is living with them since birth. So in due course, the child seems to get disrupted on separation from grandparents. Considering the situation, the Court decided to give guardianship to the grandparents.

Ethically, it is a must for the child to be brought up under the shade of their elders, to learn and grow from the seed of the same family to the fruit of the same family.

An important thing to note here is that not only grandparents but as well as any other person who has developed special relations with the child and is considered beneficial for the child's augmentation could get visitation rights if the court permits.

⁵Saxena and Sanders (2009) G. F. 68

⁶Dr. V.Sridevi vs Dr.C.S.Mani (2015) CMA No.2249

⁷Sobhana Nair K.N. vs Shaji S.G.Nair (2015) OP (FC).No. 497

⁸Biji v. Vijil P (2012) (FC). No. 1009

⁹P. Madhavan Nair And Others vs K. Ravindran Unni AIR (1993) Kant 203, (2) KarLJ 517.

The relation between the grandparents and grandchildren is solely dependent on one distinguished cause i.e., the relationship between the child's parents and the grandparents. If only a positive, stronger bond is between that family branch only then the family tree has a chance of growing altogether and providing better access for the grandparents to nurture their grandkids. The problematic affairs of the grandparents and the parents could bring up negative exposure in the child's life which is not regarded in the best interest of the child.

Payal Sudeep Laad Alias Payal vs Sudeep Govind Laad And Anr on 2nd November 2018¹⁰

The Bombay High Court declared that any visitation proving to be harmful in respect to the well-being of the child such a person could be barred from visiting the child again.

“WHAT YOU SEE IS WHAT YOU LEARN”- especially for children, they imitate what they see, they learn through their elders, parents and closest ones, so it is very intrinsic for the parents to keep in mind the kind of environment that the children are surrounded in. The sweeter the family relations, the better emotional and mental development could be seen.

According to the Kerala High Court, in another judgment, it was stated that the visitation rights do not include overnight custody.¹¹

The term Visit means just to visit the child and not the child visiting the grandparents. According to many foreign laws, the relationship between grandparents and grandchildren could be of formal custody, foster care, guardianship, or adoption.

Comparative Analysis Between Different Laws

“Indian family system works quite the opposite from foreign family (considering the US) - where the grandparents have almost no rights regarding the custody as well as visitation rights for their grandchildren whereas Indian families are strict in terms of the grandparents being the nurturers of the kids since long ago.”

Although time and again, society evolved, structures changed, and from nuclear families to separate independent families, Indians followed the western standard of living which covered the youth to develop and bring themselves in an environment free of parental restrictions and control.

Parents have the utmost right over their children by the virtue of Indian law, making it quite difficult for the grandparents to even enforce visitation rights. To ease the grandparents who are dearly in an urge to see the sweet faces of their grandkids have been given the right to file a petition for visitation rights only if the reasonable cause has been established and is set to bring a positive bright light to the child's cave.

U.S. LAW

In 1998, the 105th Congress enacted Public Law 105-374, where the grandparents are granted permission to visit their grandchildren anywhere in the US as long as they abide by the Law.¹² The Supreme Court of the United States dealt with grandparents rights in early 2000 where such arbitrator visitation laws have been brought down by the SC, observing and notifying the fact that the right to freedom and liberty entails the visitation of grandparents as well as giving parents the authority to look for the best interest of their kids without outside interference. *Troxel v. Granville*.¹³

CALIFORNIA LAW

Whereas in California's Law, the grandparents are allowed to file a petition for reasonable visitation i.e. in the best interest of the child. Under the Californian Family Law, CUSTODY OF CHILDREN [3000 - 3465] where Section 3103-3105 mentions the grandparents being awarded reasonable visitation rights under certain circumstances such as the parents being deceased or unfit¹⁴.

UNITED KINGDOM LAW

No, you don't have a direct right to your grandchildren. However, the family court does recognize how important the role of a grandparent can be in the lives of children. As long as you have a relationship with them and there's no history of abuse, violence, or neglect, the court will permit you.

¹⁰ Paayal Sudeep Laad Alias Payal vs Sudeep Govind Laad And Anr (2007) CriLJ 2604, (2) KLJ. 209

¹¹ Re:Biji vs. Vijil P (2012) (FC) No.1009

¹² <https://www.govinfo.gov/link/plaw/105/public/374?link-type=pdf> (last visited 26 July 2021)

¹³ Troxel v. Granville, (2000) 530 U.S. 57

¹⁴ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3100.&lawCode=FAM (last visited 26 July 2021)

As in England and Wales, grandparents do not have a direct right to see their grandchild, as they do not have immediate parental responsibilities and rights (PRR). However, under Section 11 of the Children and Families Act 2014, they can apply for a court order seeking contact with the child.¹⁵

Exclusive Jurisdiction To Grandparents

Assumption of a scenario where both the parents are strong, healthy and competent enough to take care of the children financially and emotionally. Will the grandparents be entitled to file petition as per existing Family Laws, in the then circumstances if their own children, herein parents of children decided to deny their own parents (grandparents to minor children) visitation rights to their children?

The answer to the scenario is the Court would rely on precedents and secure the reasons for denial of grandparents visitation by the parents, if due reasonable cause has been found the grandparents are denied the visitation pass but where the grandparents are found to be innocent and free from any malice, the Court may grant exclusive visitation rights to the grandparents irrespective of the decision of the parents to separate their child from his/her grandparents. In this scenario the grandparents have exclusive rights to file petition against their daughter, son or daughter-in-law or son-in-law, in respect to the court's decision the visitation rights granted would only comprise of meetings with the grandchild on regular intervals as the Court may direct.

Inheritance Rights

According to the Hindu Succession Act, 1956, the grandchildren are entitled to have share in the ancestral property but not in the self-acquired estate i.e., the grandparents have the right to dispense off the property to the parents but not to the grandchildren as they are not coparceners but legal heirs in the property. Herein, if the grandparents desire to do so, they could deny the property rights in self-acquired property.

If the parents are entitled to inherit their parents' property then in a similar manner the grandparents are also entitled to at least have visitation rights for their grandchildren or a regulation for reverting back the property in case the above scenario takes place and no reasonable cause is found for denial.

Hypothesis Or Future Directions

What needs to be done for future stabilization in the family law as well as what would be worthy to the society?

One thing that surely needs to be done at a maximized pace is that lawmakers need to formulate advent laws for visitation rights to provide aid to the elderly grandparents who are in seek to maintain close relations with their grandchildren.

The formulation of such a law is quite necessary to prevent hardships faced by the grandparents and the children out of the sheer restraints put upon them by the parents.

The sooner there is a regulation to handle such incidents, the sooner justice would approach and the grandparents would legally would have hope to get to see their grandchildren again.

In the landmark judgment of *Bishop v. Piller* (1994), the judges articulated that the grandchildren have the right to know their grandparents and build a relationship of love and affection.¹⁶ Therefore if it is in the best interest of the child that the grandparents should not be denied visitation rights.

The judges would also be under less stress and would be able to determine the best interest of the child only if such legislation exists. The family would suffer less as well; they would have an edge of receiving what would seem right in the eyes of the law and could readily accept it. Without legislation to follow, the court's authority stays restricted to a certain extent where the decisions of the judges can often go too vain, and trouble may extend when the parties refuse to follow such orders.

The visitation rights not only provide the grandparents to meet their grandchildren but also burdens them with the responsibility of caressing and nourishing them during the visit. If it is found that the grandparents fail to provide the welfare of the children, the visitation rights can be deemed to be quashed.

Another aspect of happening can be for the social scientists for the betterment of social predictions and statistics of the grandparents-grandchildren relationship so that the judges and policymakers could analyze the data and imitate the deeper relationships and need of having such a connection or relationship, i.e. it is utmost essential to know the psychological aspect of the relationship before passing any judgment to cause minimal harm to the child.

¹⁵ https://www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga_20140006_en.pdf (last visited 28 July 2021)

¹⁶ *Bishop v. Piller*, 536 Pa. 41



Granting of visitation rights is not only limited to grandparents but also to any other significant person that seems to affect the psychological state and growth of the child, if any such special person brings out the good in the child, the court would seek to allow it. The only reasonable reason to restrict someone is the harm of not having the best interest of the child.

CONCLUSION

Although society may see it as, “ The grandparents should be awarded the visitation rights whatsoever they’re still the grandparents of the children but the court is a blind institution, it only believes in facts and reasoning and suits the judgment to what is right in the eyes of law. If the Court decides that the parents/grandparents are not capable of upbringing the responsibilities then the Court may reverse its order”.

The lack of a clear definition of mandate allowed justices to assume and send an overarching message that protecting parental rights serves the best interests of the child because it is their constitutional right to raise their children.

At last but not the least “ the maternal and paternal both the grandparents should have the right of visitation, to their grandparents” even if none of the conditions not fulfilling in by the Hindu Law, Guardianship and Wards Act etc. because If the grandchildren are entitled to inherit their grandparents’ property then in a similar manner the grandparents are also entitled to at least have visitation rights for their grandchildren.