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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CRITICAL ANALYSIS ON PARENTAL RIGHTS AND RESPONSIBILITIES**

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## **ABSTRACT:**

In the domain of family law, the intricate web of parental rights and responsibilities holds paramount significance. This research delves into the multifaceted landscape governing the legal obligations and privileges of parents within the family unit. From the historical evolution of these rights to contemporary challenges posed by shifting family dynamics, this study probes the heart of the matter. It explores the equilibrium between parental autonomy and the paramount consideration of a child's best interests, the impact of gender, and the sway of cultural and international perspectives. This research aims to illuminate the complexities and nuances surrounding parental rights and responsibilities, offering insights into a foundational aspect of family law.

Parental rights and responsibilities in family law present a range of pressing issues and challenges. Disputes over child custody, visitation, and decision-making authority are common, often intensified by contentious divorces. The evolving definition of parenthood, including issues surrounding surrogacy and same-sex couples, raises questions about legal recognition. Concerns over parental alienation, child abuse, and neglect have profound consequences for child welfare. Enforcing court orders and addressing the psychological impact of legal battles on parents and children are ongoing problems that merit examination within this legal framework.

The main objective of the research is to discuss on legal basis and statutes governing parental rights and responsibilities, examine disputes, arrangements, and factors influencing child custody decisions, explain the guiding principle of a child's best interests in family law, determine the role of gender in shaping parental rights, identity The Cultural and international perspectives. Further to discuss on Ongoing legal challenges and reforms in family law and their psychological effects on parents and children.

**KEYWORDS:**

Legal obligations and privileges, child custody, visitation and decision-making authority.

**1. Introduction:**

According to Indian family law parental rights and responsibilities encompass a wide range of legal considerations and obligations governing the relationship between parents and their children. These types of rights include duty to provide financial support, make decisions regarding the child's upbringing, and maintain a meaningful connection with the child. Family law also addresses custody arrangements, visitation rights, and the best interests of the child as paramount in legal decisions. Understanding these rights and responsibilities is crucial for parents navigating the complexities of family law. There are some basic topics that need to be essentially discussed under parental rights and responsibilities.

- Custody and Visitation
- Financial support
- Decision making authority
- Parental responsibility
- Modification of orders
- Termination of parental rights
- Guardianship
- Best interests of the child
- Custody and Visitation

Child custody includes the physical and legal responsibilities of parenting. Whenever one parent has whole physical custody the other parent will receive set visitation rights according to orders by the court. When both the parents agree on child custody and visitation schedules ordered by court or according to their own wishes, they can develop their own custody agreement and follow it accordingly. However, when the parents or guardians cannot come to an agreement on terms due to certain circumstances, they may need to go to court and settle it out.



Actually it occurs after a divorce or due to some legal circumstances when the parents get divorced one parent receives primary physical custody based on the child's age and proximity to schools or activities. Courts atmost prefer the parenting time to be as close to 50-50 custody as possible.Custody issues arise when one parent lives too far from the other parent for a 50-50 custody arrangement to be practical. And Issues also arise when parents have opposing schedules that prevent regular pickup and drop-off times. In particularly bitter or hostile divorces, parents may create child custody disputes by demanding the child spend certain days with them. Or they may demand the child attend a school outside both parents' reasonable travel areas.

In the family law Section 26[4] of the Hindu Marriage Act, 1955 (hereinafter referred to as ‘HMA of 1955’). The applicant, that is the petitioner, shall make an application for custodial rights of the child under the Section 26 of HMA Act, 1955 before the Family Court within its jurisdiction.Custody of a child refers to the right given to a parent by the court to look after the child (if the child is less than 18 years of age).

Thus the custody of a child remains one of the most sensitive issues caused due to the divorce or seperation between their parents. There had always been a marked controversy between the various religious laws and the uniform legislation enacted by the State. However, the controversy regarding the various viewpoints of law should not compromise the future of the child.While resolving various pieces of legislation, it should be remembered that the welfare of the child along with assured social security is the prime motive behind the custody of a child. Hence, any hindrance caused by law in this front should be addressed to and then rectified.

## **2. Financial support:**

A parent has an obligatory duty towards his or her child to provide financial support. Accordingly, the financial support includes their basic needs. Providing financial support is the key aspect of parental rights and responsibilities. Providing support to a child is a legal obligation that either one or both of the parents must need to contribute to the financially stable life of their child. The key point is to ensure that every child gets his or her basic needs such as housing, food, education and health care from parents or guardians or from the law. The specific amount that needs to be spent on the child is determined based on factors like their parent’s income, the child's need and their standard of

living which the child would have experienced in his or her past when their parents are together.

There are some Jurisdiction, guidelines that can calculate the amount including the factors like the parent's income, the number of children and even some times medical expenses and educational needs. There are some enforcement mechanisms which will ensure the payment for child's supports to be made regularly and consistently. If there is a failure to pay the child's support it can result in legal consequences like wage garnishment, suspension of driver's license, or even imprisonments in some unavoidable circumstances.

### **3. Decision making responsibilities:**

The term decision making authority explains the definition that refers to actions that make significant decisions which will concern a child's wellbeing. Actually, the both parents of the child will have a lawful right to make decisions. Either after they got divorced or they are living together the decisions must be made concerning the child future, wellbeing. Both the parents must agree to the decisions that are made. Either, they can plan between themselves or enter into an agreement which included the decision-making responsibilities.

If one of the parents decline to the decision or agreement, they may apply for a court order. The court will give orders concerning the child best interests. There are two ways, one is the parent can agree among themselves or the court can order them regarding the decisions and responsibilities. Basically, decision making responsibilities can be shared among the parent or one parent may have the entire decision-making authority. There are some significant decisions that are considered as the basic decision. It is wide context but some can be pointed out: Decisions regarding health, culture, religion, language, education, spirituality is some of those.

### **Parental Responsibilities:**

The parents have the legal guardianship rights and responsibilities towards their children. It is the duty of them to provide shelter, food, clothes, education and even medical care to the child until they attain the age of majority. A basic need means a safe, abuse-free environment where the child will feel safe and comfortable. If the child is a baby a parent needs to protect it from physical harm by

giving prevention with care. They should also ensure a healthy neighborhood environment for the child to grow healthy. They need to provide food which are essential for their health like vegetables, fruits, greens and includes a healthy pure water and should also keep alcohol and other ingestible products away from the children.

Another basic need for a child is clothing a parent have to make sure the children have a proper and decent garment to represent themselves well. A parent must teach their child the importance of hygiene in their life. They should make them have a bath daily, brush their teeth, clean themselves, and to change their clothes regularly, teach washroom habits, teach to wash clothes, dispose waste in the bin and to keep things clean. They must provide their support in every possible way by educational support, financial support, emotional support and medical support.

There is also another important responsibility, that is to teach moral values. “You will reap what you sow”, so it is very important to inculcate the young minds for them to get kindness, patience, honesty and so on. They should teach them discipline. They should spend time together with their children like separating some time every day for chitchatting with them and like spending the weekend with them like some exiting plans.

#### **4. Modification of Orders:**

In family court most of all the final judgements and orders can be modified. If the parties fail to agree then they can apply to the court for a modification on orders. All the modifications must be in concern of the minor child's best interests. They may be applied on some circumstances like

- Substantial change in circumstances which may affect the child.
- Ex: change in income, employment status, health, living arrangements.
- Financial changes substantially happening.
- Ex: Job loss, substantial increase in income.
- Relocation of custodial parent.
- Ex: One parent wishes to move and another parent can't adopt.
- Child's changing needs according to growth.
- Ex: Educational requirements, extracurricular activities or health care needs which change

according to age factor.

- Custody and visitation changes if not performed.
- Ex: If the child's best interests is not fulfilled in existing agreements.
- Agreement of both parents.
- Ex: Both parents mutually agreeing to apply for modification.

## **5. Termination of parental rights:**

Termination means that the right is taken away. And termination of parental rights means that person's right as a parent is taken away. And the parent and child will not have any legal obligation anymore. This is also called as the "civil death penalty". There are certain circumstances in which a parent's right can be terminated.

- Abandonment: This is that the parent did not perform any of his duties and fails to provide any financial support to the child at least for 6 months without a good reason.
- Neglect: The parent has not properly cared for the child's needs, including providing food, shelter, medical care, education, or any other special care needed for the child.
- The Parent is Unfit: An unfit parent is one who can't or won't provide the child with proper care, guidance, and support.
- There is a Serious Risk of Physical, Emotional, or Mental Injury if the Child is Returned to the Parent. The child would be in danger with the parent.
- Token Efforts: The parent has made minimal effort to support the child, communicate with the child, or otherwise care for the child.
- Failure of Parental Adjustment: If CPS removed a child from the home, the parent only has so much time to correct the reasons that caused the child to be removed. If the parents do not correct those problems within a "reasonable time," the state can petition to terminate their rights.
- Sexual Assault: If the child was conceived as a result of a sexual assault and the parent was convicted for sexual assault, their rights can be terminated.



## **6. Guardianship:**

Guardianship is a legal arrangement where a court designates an individual or entity as the legal guardian of a minor child. This often occurs when the child's biological parents are unable to provide proper care due to reasons such as incapacity, death, or serious neglect. There are different types of guardianships, including guardianship of the person who involves decisions about the child's daily care, education, health, and overall well-being and guardianship of the estate pertains to managing the child's financial matters, assets, and inheritance.

The court typically appoints a guardian based on the best interests of the child. This may be a relative, close family friend, or sometimes a state-appointed guardian if no suitable family member is available. Guardianship is distinct from the termination of parental rights. In guardianship, parents may retain some rights, while in termination, parental rights are permanently severed. Guardianship is often considered a temporary solution, allowing parents the opportunity to address issues that led to the guardianship.

Courts usually oversee guardianships to ensure the child's well-being. This includes periodic reviews, during which the court assesses whether the existing guardianship arrangement is still in the best interests of the child. In some cases, parents may voluntarily consent to the appointment of a guardian, especially if they acknowledge their inability to provide adequate care. However, even with parental consent, court approval is typically required.

Understanding guardianship is crucial for parents facing challenges in providing care for their children and for individuals or entities considering assuming guardianship responsibilities. It ensures that decisions are made in the best interests of the child while respecting the rights of parents whenever possible.

## **7. Best interests of the child:**

The "best interests of the child" is a fundamental principle in family law that guides decisions related to parental rights and responsibilities. It emphasizes the well-being and welfare of the child as the primary consideration in legal determinations. The best interests of the child is a legal standard that

courts use to make decisions regarding custody, visitation, support, and other matters affecting the child. The focus is on ensuring that the decisions made will promote the child's overall happiness, security, mental and emotional development, and physical well-being.

Courts consider a variety of factors when determining the best interests of the child. These factors may include:

- In cases involving Health and Safety: Ensuring the child is in a safe and stable environment.
- Emotional and Physical Needs: Meeting the child's emotional, educational, and physical needs.
- Continuity and Stability: Maintaining consistency in the child's living arrangements and relationships.
- Parental Capacity: Assessing each parent's ability to provide love, guidance, and support.
- Sibling Relationships: Considering the importance of maintaining relationships with siblings.
- Cultural and Religious Considerations: Taking into account the child's cultural and religious background.
- Co-Parenting Ability: Evaluating the parents' willingness and ability to cooperate in parenting.

custody and visitation, the best interests standard helps determine which parent is better suited to provide a stable and nurturing environment for the child. The goal is to promote a meaningful relationship with both parents unless it is not in the child's best interests.

When establishing child support, the best interests of the child also play a role. The financial support should be sufficient to meet the child's needs and maintain a standard of living similar to what the child would have experienced if the parents were together.

If circumstances change, such as a parent's ability to provide care or financial support, modification requests are evaluated based on whether the proposed change is in the best interests of the child.

Many jurisdictions operate under the legal presumption that it is in the best interests of the child to have frequent and continuing contact with both parents, unless evidence suggests otherwise.

The best interests standard is a flexible and child-centered approach, allowing courts to adapt decisions to the unique circumstances of each case. It ensures that the child's needs and welfare remain the top priority in family law proceedings.

## **8. Conclusion:**

In conclusion, parental rights and responsibilities under Indian family law involve a complex array of considerations, with a focus on the well-being of the child. Topics such as custody and visitation, financial support, decision-making authority, parental responsibilities, modification of orders, termination of parental rights, guardianship, and the best interests of the child are integral to navigating family law complexities.

Custody and visitation arrangements aim to provide stability, considering factors like proximity and parental cooperation. Financial support is a legal obligation ensuring the child's basic needs are met, often determined by income and guidelines. Decision-making authority involves shared responsibilities or sole authority for crucial aspects of a child's life. Parental responsibilities encompass providing a nurturing environment and instilling moral values.

Modification of orders allows adjustments based on changing circumstances, always prioritizing the child's best interests. Termination of parental rights occurs in specific cases like neglect or abandonment. Guardianship serves as a temporary solution when parents are unable to provide care. Ultimately, the best interests of the child guide legal decisions, considering health, safety, emotional needs, and maintaining relationships. This child-centered approach ensures that family law proceedings in India prioritize the welfare of the child above all else.