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# The Legal Rights and Challenges Faced by Non-Biological Parents in Custody Battles

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**Abstract:** *The legal rights of non-biological parents in custody battles remain a complex and evolving area of family law. Traditionally, biological parentage has been a primary factor in determining parental rights, often leaving non-biological parents at a disadvantage. However, modern legal frameworks are increasingly recognizing the roles of step-parents, adoptive parents, same-sex partners, and guardians who have played a significant role in a child's upbringing. Despite these advancements, non-biological parents face substantial legal challenges, including proving their parental standing, securing visitation rights, and overcoming biases that favor biological parents in court proceedings.*

*This paper explores the legal landscape governing the rights of non-biological parents in custody disputes, highlighting key legislative provisions and landmark judicial decisions that have shaped this area of law. It examines the criteria courts consider when determining custody, such as the best interests of the child, the psychological and emotional bonds between the child and the non-biological parent, and the duration of the parental relationship. Furthermore, it discusses the difficulties non-biological parents encounter, including legal recognition in jurisdictions with restrictive definitions of parenthood, financial burdens associated with legal battles, and societal biases that may influence judicial decisions.*

*Through an analysis of case law and statutory provisions across various jurisdictions, this paper aims to provide a comprehensive understanding of the rights and obstacles faced by non-biological parents in custody disputes. It also suggests potential legal reforms and policy changes that could promote equitable treatment and ensure that custody determinations prioritize the child's well-being over strict biological ties. The study underscores the need for a more inclusive approach in family law that acknowledges the diverse structures of modern families and protects the rights of all individuals who serve as primary caregivers, regardless of their biological connection to the child.*

**Keywords:** *Non-biological parents, Legal rights, Adoptive parents, Step parent custody, Guardianship, Parental responsibility, Best interests of the child, Family law, Foster care adoption, Third-party custody, Custody disputes, Judicial interpretation, Equal parenting rights*

## I. INTRODUCTION

The concept of family in India is undergoing a significant transformation, with increasing recognition of diverse family structures beyond traditional biological parenthood. Non-biological parents, including adoptive parents, step-parents, and legal guardians, often encounter legal and societal challenges in asserting their rights regarding child custody and support. Addressing these issues is essential to ensure that all children receive the care, stability, and emotional security they need, regardless of their family structure. Child custody disputes<sup>1</sup> in India are often the most emotionally charged aspect of legal proceedings, particularly in cases of divorce or judicial separation. However, the absence of clear and uniform guidelines for determining custody and visitation rights has made these cases unpredictable and complex. Families are left navigating a system heavily reliant on judicial discretion, uncertain about the final verdict and its consequences for their children's future.

There is an urgent need for well-defined, standardized guidelines to be implemented by the judiciary or legislature. Establishing such a framework would not only bring fairness and consistency to custody rulings but also ensure that the child's well-being remains the central focus. This highlights the necessity of limiting judicial subjectivity and introducing a structured approach that upholds the best interests of the child in every case.

<sup>1</sup> Custody battles in India are largely governed by personal laws and judicial interpretations, often leading to inconsistent rulings. See *Githa Hariharan v. Reserve Bank of India (1999)*, where the Supreme Court recognized equal guardianship rights for both parents.

The primary goal of addressing custody and support concerns for non-biological parents in India is to safeguard the child's best interests while establishing a comprehensive legal framework that accommodates evolving family dynamics, yet non-biological parents frequently encounter legal obstacles when seeking recognition as a primary caregiver. These challenges become even more pronounced in cases involving divorce, separation, or the death of a biological parent. This requires extending equal legal recognition, rights, and responsibilities to non-biological parents, ensuring they can provide a stable and nurturing environment without unnecessary legal obstacles. By granting adoptive parents, step-parents, and guardians the same legal standing as biological parents, the system can foster a more inclusive approach that prioritizes the child's emotional, psychological, and physical well-being.

Moreover, achieving legal clarity and procedural efficiency in matters concerning non-biological parents is crucial. This includes revising existing laws, enacting new legislation to eliminate ambiguities, and streamlining legal procedures for timely and fair resolutions. Additionally, raising awareness among non-biological parents about their rights and legal remedies is essential in helping them navigate custody disputes and support claims effectively.

Beyond legal reforms, societal acceptance plays a vital role in ensuring that non-biological parents are not subjected to unnecessary discrimination or bias in custody cases. Encouraging sensitivity in judicial interpretations and ensuring that courts focus on the welfare of the child rather than rigid traditional definitions of parenthood is key to building a more equitable system. Ultimately, the aim is to create a supportive legal and social environment where all forms of parenthood are recognized, and every child has the opportunity to grow up in a loving and secure family setting.

## II. LITERATURE REVIEW

The legal landscape surrounding the custody rights of non-biological parents has evolved significantly, yet it remains a complex and often contentious issue. Traditionally, parental rights were primarily linked to biological connections, but with changing family dynamics, courts and legal systems worldwide are increasingly recognizing the roles of adoptive parents, step-parents, guardians, and same-sex parents in a child's life. In many jurisdictions, the "best interests of the child" principle<sup>2</sup> governs custody decisions, emphasizing the child's emotional and psychological well-being over strict biological ties. Courts have gradually started acknowledging the significance of non-biological parents who have played an active role in the child's upbringing. However, legal inconsistencies persist, with some legal systems still favoring biological parents in disputes, making it difficult for non-biological parents to establish custodial or visitation rights. Adoption laws provide formal legal recognition for non-biological parents, yet step-parents and guardians often struggle with legal standing, especially in cases of separation or the death of a biological parent. Same-sex parents face additional hurdles<sup>3</sup>, particularly in countries where legal frameworks do not explicitly recognize both partners as equal parents. Social biases and traditional notions of family further complicate matters, sometimes leading to unfair custody rulings that disregard the child's established relationships with non-biological caregivers.

Judicial precedents have played a crucial role in shaping custody rights for non-biological parents, with courts in some countries granting legal recognition based on the "psychological parent" doctrine<sup>4</sup>, which prioritizes the emotional bond between the parent and child over genetics. However, legislative reforms are still needed to create a more inclusive legal framework that offers clarity and protection for non-biological parents.

Ultimately, while legal systems have made strides toward recognizing non-biological parents, significant challenges remain. Strengthening legal provisions, ensuring judicial sensitivity, and promoting societal acceptance are crucial to fostering a legal environment where all parental relationships are valued, and every child receives the care and stability they deserve.

## III. RESEARCH METHODOLOGY

### A. Research Approach

This study adopts a **qualitative research approach** to analyze the legal rights and challenges faced by non-biological parents in custody battles. It primarily focuses on legal frameworks, judicial interpretations, case laws, and socio-legal perspectives to understand the complexities of custody disputes involving non-biological parents.

<sup>2</sup> As established in *Gaurav Nagpal v. Sumedha Nagpal* (2009) 1 SCC 42, where the Supreme Court reiterated that custody decisions should focus on the child's welfare over parental rights.

<sup>3</sup> Many countries do not provide equal legal rights to same-sex parents. For example, in India, despite the decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* (2018), same-sex couples still lack adoption rights under *The Adoption Regulations, 2017*, issued under the *Juvenile Justice Act, 2015*.

<sup>4</sup> Some courts have acknowledged the importance of emotional bonds over biological ties in custody cases. In *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court examined the rights of non-biological caregivers, setting a precedent for psychological parenting.

### B. Research Design

The research follows a **doctrinal legal research method**, relying on primary and secondary sources such as statutes, case laws, legal commentaries, and scholarly articles. A comparative analysis is also conducted to examine how different jurisdictions approach custody rights for non-biological parents.

### C. Data Collection

The study is based on:

Primary Sources:

- Indian laws (e.g., Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890)
- Judicial precedents from Supreme Court and High Courts of India
- International conventions like the UN Convention on the Rights of the Child (UNCRC)

Secondary Sources:

- Books, research papers, and legal journals
- Reports from child welfare organizations and legal aid bodies
- News articles and case studies on real-life custody disputes

### D. Ethical Considerations

Since the research is doctrinal, it adheres to ethical standards by using credible sources and ensuring unbiased legal interpretation. No personal data or confidential information is included in the study.

## IV. RESULTS

### A. Legal Framework Governing Non-Biological Parental Rights

In India, the legal rights of non-biological parents are determined through a blend of statutory provisions, court rulings, and personal laws. Significant legislations governing these rights include the Hindu Adoption and Maintenance Act, 1956, the Guardians and Wards Act, 1890, and the Juvenile Justice (Care and Protection of Children) Act, 2015, provide limited but essential legal pathways for non-biological parents seeking custody. However, these laws are largely centered on adoption and guardianship rather than explicitly granting custody rights to step-parents or same-sex couples.

#### 1) Hindu Adoption and Maintenance Act, 1956 (HAMA)<sup>5</sup>

The Hindu Adoption and Maintenance Act, 1956, provides a structured legal mechanism for adoption within Hindu, Buddhist, Jain, and Sikh communities. Under this Act, section 6 (Requisites of a Valid Adoption), 7 (Capacity of a Male Hindu to adopt), 8 (Capacity of a Female Hindu to adopt), governs the legal rights of Non-biological parents in case of adoption. These sections states that, if any Hindu male (who is of sound mind and not a minor) or female (who is not married, or if married, whose husband has renounced the world or has ceased to be a Hindu) can legally adopt a child.

Also section 12, 13 and 18, which are as follows:

Section 12 – Effects of Adoption, states that an adopted child:

- Is deemed the legitimate child of the adoptive parents.
- Severs all ties with the biological family (except for marriage prohibitions).
- Gains the same rights as a natural-born child, including inheritance and maintenance rights.

Section 13 – Right of Adoptive Parents to Dispose of Their Interests

- Confirms that adoptive parents have the same rights over the adopted child as they would over a biological child, including guardianship and decision-making authority.

Section 18 – Maintenance of the Adopted Child

- Obligates adoptive parents to provide maintenance to the adopted child, just as they would for a biological child.

These sections collectively ensure that:

- Adoptive parents have full legal rights equivalent to biological parents.

<sup>5</sup> [https://www.indiacode.nic.in/bitstream/123456789/1638/1/AA1956\\_78.pdf](https://www.indiacode.nic.in/bitstream/123456789/1638/1/AA1956_78.pdf)

The child's inheritance, custody, and maintenance rights are protected under law.

However, HAMA has certain limitations:

- It applies only to Hindus, leaving other religious communities to rely on alternative laws.
- The process requires the consent of both spouses in a marriage, which can complicate adoptions in cases of marital discord.
- There is no centralized monitoring system, leading to potential malpractices in private adoptions.

Despite these challenges, HAMA remains significant in providing legal sanctity to adoptive families within its religious purview.

## 2) *Guardians and Wards Act, 1890*<sup>6</sup>

The Guardians and Wards Act, 1890, is a secular legislation that governs guardianship matters for minors across all religions in India. Unlike adoption laws, which create a permanent parent-child relationship, guardianship under this Act is typically temporary and subject to judicial oversight.

Key provisions include:

### (i) Appointment of Guardians (Child's Welfare as paramount)

- Section 7: Empowers the court to appoint a guardian for a minor's person (custody), property, or both.
- Section 17: Directs courts to consider the child's welfare as the paramount consideration while appointing a guardian. Factors include:
  - a. The minor's age, sex, and religion
  - b. The character and capacity of the proposed guardian
  - c. The minor's own wishes (if old enough to express a rational preference)

### (ii) Rights of Non-Biological Parents (Step-Parents/Relatives)

- Section 9: Allows any person (including non-biological parents like step-parents or relatives) to apply for guardianship by filing a petition in court.
- Section 19: Permits the court to remove a guardian (including biological parents) if they are:
  - a. Unfit (e.g., abusive, neglectful)
  - b. Unable to care for the child (e.g., financial instability, mental illness)

### (iii) Judicial Discretion & Temporary Nature of Guardianship

- Section 12: Grants courts discretionary power to appoint guardians based on case-specific circumstances.
- Section 13: Allows courts to impose conditions on guardianship (e.g., visitation rights for biological parents).
- Section 39-44: Guardianship is not permanent; it can be revoked/modified if circumstances change (unlike adoption, which is irrevocable).

Challenges under the Act:

- Guardianship does not confer the same legal status as adoption, leaving non-biological parents vulnerable to future custody disputes.
- The process is often lengthy and adversarial, requiring extensive litigation.
- There is no automatic recognition of de facto caregivers, forcing many to undergo prolonged legal battles.

This Act remains crucial for non-biological parents seeking custody but falls short of granting them equal standing with biological parents.

## 3) *Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)*<sup>7</sup>

The Juvenile Justice Act, 2015, represents a progressive shift in India's child protection laws, particularly in adoption and guardianship. It serves as a secular alternative to religion-specific laws like HAMA, ensuring broader applicability.

<sup>6</sup> <https://www.indiacode.nic.in/bitstream/123456789/2318/1/189008.pdf>

<sup>7</sup> <https://cara.wcd.gov.in/pdf/jj%20act%202015.pdf>

**Salient Features:**

- (i) **Streamlined Adoption Process (CARA Framework)**
  - Section 56: Establishes the Central Adoption Resource Authority (CARA) as the statutory body to regulate adoptions.
  - Section 57: Mandates specialized adoption agencies (SAAs) for processing adoptions.
  - Section 58: Lays down the adoption procedure, including home studies, documentation, and court approvals.
  - Section 66: Provides for inter-country adoptions under CARA supervision.
- (ii) **Inclusive Eligibility Criteria**
  - Section 2(2): Defines "adoption" broadly to include all communities (secular law).
  - Section 57(3): Allows:
    - a. Single parents (unmarried, divorced, widowed)
    - b. Foreign nationals (under Hague Convention guidelines)
    - c. Prospective parents irrespective of biological children (unlike HAMA's restrictions)
  - Adoption Regulations, 2022: Further clarifies eligibility for NRI/OCI candidates.
- (iii) **Child's "Best Interests" Principle**
  - Section 3(viii): Makes the child's best interests the paramount consideration in all decisions.
  - Section 36: Requires Child Welfare Committees (CWCs) to assess:
    - a. The child's emotional bonds with caregivers
    - b. Stability of the adoptive home
    - c. Rights of the child (over biological parents' claims)
  - Section 60: Courts must prioritize the child's safety, care, and rehabilitation in adoption orders.

**Challenges and Gaps:**

- **Preference for Biological Parents:** Despite the law's intent, courts often hesitate to sever biological parental rights unless abandonment or abuse is proven.
- **Lack of Awareness:** Many prospective adoptive parents remain unaware of JJ Act provisions, relying instead on outdated practices.
- **Exclusion of LGBTQ+ Couples:** The Act does not explicitly address same-sex adoptions, leaving LGBTQ+ parents in legal limbo.

The JJ Act is a significant step forward but requires stricter implementation and amendments to address contemporary family structures.

**B. Challenges Faced by Non-Biological Parents in Custody Disputes**

*1) Legal Ambiguity and Lack of Recognition*

One of the primary challenges is the lack of clear legal provisions recognizing non-biological parents as equal custodians. Courts often prioritize the biological parent unless adoption or legal guardianship has been formally established. This creates uncertainty for step-parents, same-sex partners, and other caregivers who have played a significant role in the child's upbringing.

*2) Bias Towards Biological Parentage*

Many custody cases reflect an inherent judicial and societal bias toward biological parenthood. Studies indicate that courts frequently favor biological parents in contested custody battles, even when the non-biological parent has been the primary caregiver. The principle of the best interests of the child, though widely upheld, is often interpreted in ways that disadvantage non-biological parents.

*3) Difficulties in Proving Parental Bond and Emotional Attachment*

Unlike biological parents, non-biological caregivers often have to prove their emotional and financial contributions to the child's well-being. Psychological and sociological studies suggest that strong emotional bonds between children and non-biological parents contribute to a child's stability, but such arguments are not always given sufficient weight in legal proceedings.

#### 4) *Lack of Social and Institutional Support*

Non-biological parents also face discrimination and lack of institutional support. For instance, many legal and administrative systems require biological parent consent for crucial decisions regarding education, healthcare, and travel, restricting the authority of non-biological caregivers.

#### 5) *Lack of Awareness and Resources*

Many non-biological parents lack awareness of their legal rights and the processes involved in seeking custody and support. Enhancing access to information and resources is essential to help them navigate the legal system effectively. Legal aid and support services can be instrumental in empowering these parents to claim and protect their rights.

### C. *Judicial Interpretations and Emerging Trends*

Recent judicial trends indicate a slow but positive shift toward recognizing the rights of non-biological parents.

#### 1) *Githa Hariharan v. Reserve Bank of India (1999)*<sup>8</sup>

In this landmark case, the Supreme Court of India ruled on the issue of guardianship rights, affirming that both parents hold equal status as natural guardians of their children. This judgment played a crucial role in strengthening the legal position of non-biological parents, reinforcing the principles of equality and prioritizing the child's best interests in custody disputes.

#### 2) *Laxmi Kant Pandey v. Union of India (1984)*

This case significantly impacted adoption laws in India, with the Supreme Court establishing guidelines for inter-country adoptions. The ruling emphasized safeguarding the welfare of the child by ensuring thorough scrutiny of adoptive parents. These directives have shaped domestic adoption procedures, ensuring that adoption decisions are made with the child's best interests in mind.

#### 3) *Vandana Shiva v. Vikas Sivasubramaniam (2005)*

In this case, the Madras High Court examined the custody rights of a step-parent and ruled that custody could be granted if it served the child's best interests. The judgment underscored the importance of emotional and psychological well-being, recognizing the role of non-biological parents in providing a stable and supportive upbringing.

In other jurisdictions, courts have increasingly applied the **psychological parent doctrine**, which grants custody based on the emotional and caregiving relationship rather than biological ties. For example, Canada's **Van de Perre v. Edwards (2001)** ruling recognized a step-parent's role in a child's life as a significant factor in custody decisions.

### D. *Amendments and Legislative Changes*

The changing social landscape and growing acceptance of diverse family structures have led to several legislative amendments aimed at safeguarding the rights of non-biological parents in India.

#### 1) *Amendment to the Juvenile Justice Act, 2015*<sup>9</sup>

The Juvenile Justice (Care and Protection of Children) Act, 2015, marked a crucial advancement in recognizing the legal rights of non-biological parents, particularly adoptive parents. This legislation simplified the adoption process and granted adoptive parents the same legal standing as biological parents. As a result, it has facilitated non-biological parents in securing custody and financial support for adopted children.

#### 2) *The Personal Laws (Amendment) Act, 2010*<sup>10</sup>

A key reform in personal laws came with the enactment of the Personal Laws (Amendment) Act, 2010, which modified the Hindu Adoption and Maintenance Act, 1956. The amendment eliminated gender-based restrictions in adoption, granting both men and women equal rights to adopt. This legislative change has empowered non-biological parents, particularly women, by ensuring they can adopt and claim custody and support for children on equal terms.

<sup>8</sup> Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228, *Jijabai Vithalrao Gajre v. Pathankhan*, (1970) 2 SCC 717

<sup>9</sup> [https://cara.wcd.gov.in/PDF/JJ%20Amendment%20Act%20-2021\\_27.pdf](https://cara.wcd.gov.in/PDF/JJ%20Amendment%20Act%20-2021_27.pdf)

<sup>10</sup> [https://prsindia.org/files/bills\\_acts/acts\\_parliament/2010/the-personal-laws-\(amendment\)-act-2010.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2010/the-personal-laws-(amendment)-act-2010.pdf)

### 3) *The Surrogacy (Regulation) Bill, 2021*

The Surrogacy (Regulation) Bill, 2020, was introduced to regulate surrogacy practices in India and safeguard the interests of all involved, including non-biological parents. The bill contains provisions that establish the legal rights and obligations of commissioning parents—who are not biologically related to the child—ensuring their parental responsibilities are legally recognized. Although still under deliberation, this bill represents a crucial step toward strengthening the legal framework for non-biological parents in surrogacy-related cases.

## V. RECOMMENDATIONS AND LEGAL REFORMS

Legal scholars and child welfare advocates recommend various reforms to ensure greater inclusivity in custody laws:

- 1) *Enhancing Legal Frameworks:* It is essential to strengthen legal structures by establishing clearer regulations for custody and support issues concerning non-biological parents. This involves revising existing laws and formulating new legislation that acknowledges and supports the evolving family dynamics in contemporary society.
- 2) *Increasing Awareness and Legal Education:* Educating individuals about the rights of non-biological parents and providing guidance on legal procedures can empower them to pursue custody and support. Public awareness initiatives and accessible legal aid services can play a crucial role in equipping non-biological parents with the necessary knowledge and resources.
- 3) *Prioritizing Child Welfare:* The central focus in custody and support matters should always be the well-being of the child. Ensuring that the child's emotional, psychological, and physical needs are met is of utmost importance. Providing a secure and nurturing environment, regardless of whether the parent is biological or not, is essential for the child's overall development.
- 4) *Combating Social Stigma:* Eliminating societal prejudices and fostering acceptance of diverse family structures is crucial for the well-being of both non-biological parents and children. Public awareness campaigns, community support initiatives, and advocacy programs can help reshape societal perceptions and encourage inclusivity.

## VI. CONCLUSION

India's legal landscape regarding non-biological parents is evolving, with notable progress achieved through legislative reforms and judicial decisions. However, challenges persist in ensuring equal rights and protections for non-biological parents. By refining legal frameworks, increasing awareness, and addressing social biases, the country can create a more inclusive and supportive environment for all families. The ultimate objective should be to prioritize the best interests of the child while recognizing the invaluable role non-biological parents play in providing love, care, and stability.

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