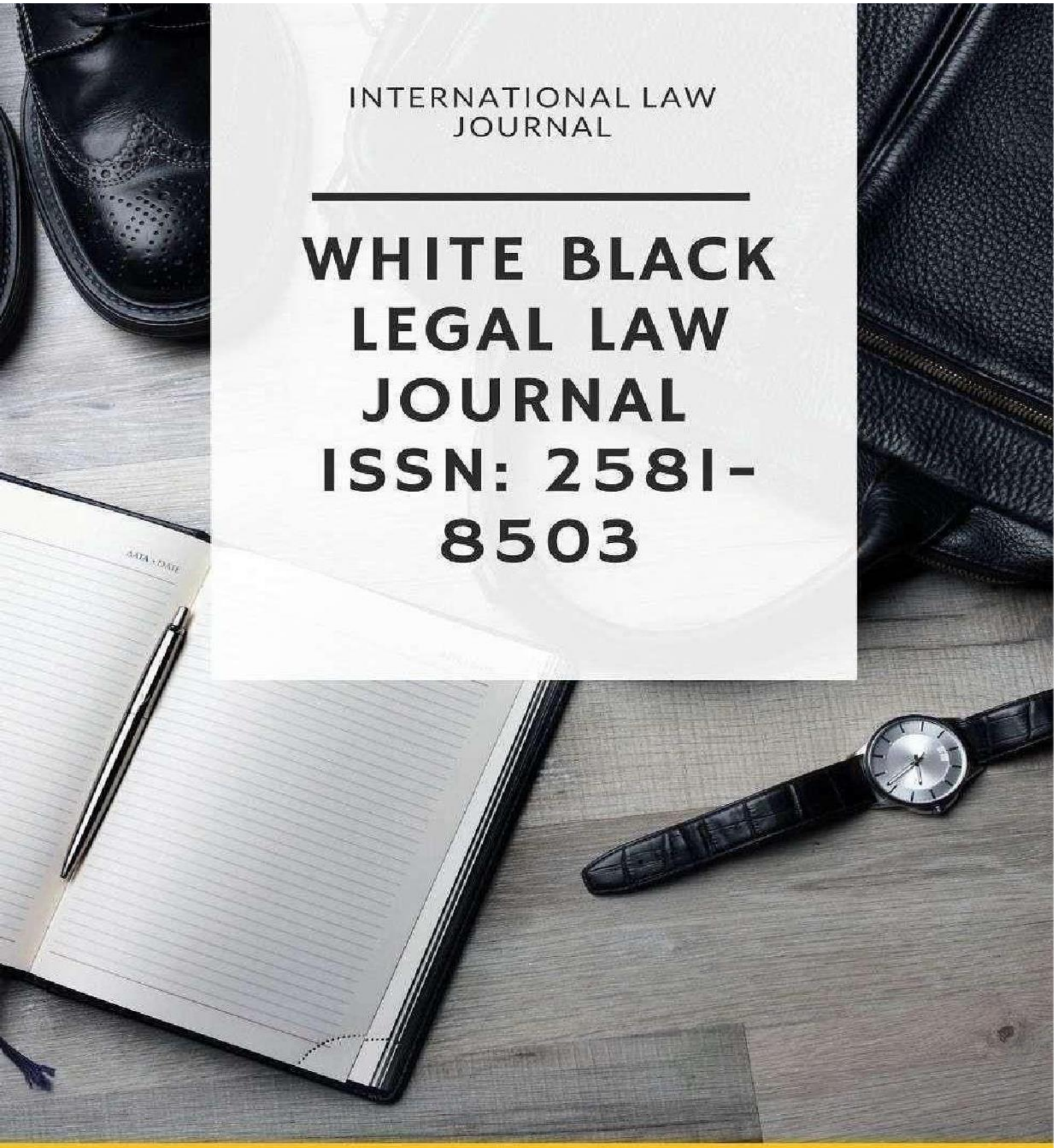


INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

WHITE BLACK LEGAL

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

www.whiteblacklegal.co.in
Volume 4 Issue 2 | Oct 2026 ISSN: 2581-8503

CHILD CUSTODY IN INDIA: BALANCING THE WELFARE OF THE CHILD WITH THE PATERNAL RIGHTS

AUTHORED BY - KAPPISH GARG
BALLB [Hons] Chandigarh University

CO-AUTHOR - MS RITU MALIK
Assistant Professor At Chandigarh University

Introduction

This topic which is about to start is one of the most sensitive topic that arises when the parents decides to live separately and when the marriage comes to an end. Unlikely the other disputes like succession disputes, family disputes, or any other disputes between the adults, this dispute of child custody matter directly affects the life of the child, the development of the child, and their emotional and their mental well being.

The concept of child custody in India has been developed through a combination of the statutory provisions and the judicial decisions also. In India, the custody of the child is mainly governed by the Guardians and Wards Act, 1980, and the Hindu Minority and Guardianship Act, 1956 too in the cases involving the Hindu families. Different personal laws according to the family's religion or their traditions also decides the custody of the child, these laws recognize the position of the both the parents and the laws then give them the rights and their responsibilities towards their children. Also, the law itself do not give the custody of the child to the parents either it is the mother of the child, or if it is the father of the child, it does not automatically mean that they have the right to get the custody for their child, all the situations should be seen and then decided.

The most important principle that is followed by the India courts relating to the custody cases is the welfare of the child. The Section 17 of the Guardians and Wards Act, 1980 requires the court to consider the welfare of the child which is minor while deciding the matters or situations relating to their guardianship. Likely, Section 13 of the Hindu Minority and Guardianship Act, 1956, speaks that the welfare of the child should be considered first, or it should be considered as paramount. This means that, if the child's welfare is against the parent then the custody of

the child should not be given to the parent just because they are legally their child. The welfare of the child should always be considered before any other law mentioned in the Indian laws.

The word "welfare" has a really broad meaning. It does not just mean by providing the shelter, food, or money expenses to the child, but the health, education, emotional support, well being, the safety of the child, relationship of the child with the parents, the conditions that they are living in, and the affect that they are going to have after they become old, all these things should be considered while giving the custody of the child to any of the parent or any of the guardian. Also, the child's will should also be considered along with their age. Therefore, every custody case should be decided according to its own facts and the circumstances.

Child custody is not just giving the child to any of the parent of guardian, but it also requires a balance between the parental rights and the child's welfare. Even though the parents have legal rights and responsibilities of the child but the other things should also be considered while giving the child's custody to the parents.

Indian courts generally prefer to give priority to the child's wishes, they go with the decision which supports the child's welfare. This research examines the legal framework and what is best for the child's custody in India, and also it identifies the challenged that are faced while protecting the interests of the children.

History of Child Custody

The child custody idea in India has been changed a lot over the time. In the past times, the families worked according to personal laws, their old customs, or traditions. The father or the grandfather used to be considered as the head of the family at that time, and they had more role regarding taking the decisions about their child's life. The interests of the children at that time was not considered as important as now.

During the British rule, the Guardians and Wards Act, 1890, was introduced at that time which gives the legal framework for the guardianship and custody matters. Through this act, the court gets the power to decide for the child's custody.

After the Independence of India, the Hindu Minority and Guardianship Act, 1956, was enacted for the Hindu families specially. It showed that the minors were then recognized and their welfare was considered paramount.

With the time, Indian courts now have been stared to give great and more importance to the child's wishes, their interest in the educational fields, safety and their emotional well being is taken care by the courts nowadays. The wishes and demands of the child is considered and

taken care according to their age and maturity.

History Questions

There are so many questions that have been rising since the day one of deciding for the child's custody, some of them are:

1. How was the child's custody dealt with, in India before the enactment of the custody laws?
2. What changes occurred after the Guardians and Wards Act, 1890 was introduced?
3. What changes occurred by the introduction of the Hindu Minority and Guardianship Act, 1956?
4. How the Indian courts have been changed while deciding the child's custody matter over these years?
5. How the modern families have changed over time and how they have been started to influence the development of child custody law in India?

Objective

1. The main objective of this research paper is:
2. To understand the concept of the child custody in India.
3. To study about the laws that are related to the child's custody in India.
4. To study about how the courts and the parental rights are balanced in laws nowadays for the welfare of the child.
5. To study about the interest of the child, what they wish for, what there interests are in.
6. To study about the major problems that still exists in the child custody laws.

WHITE BLACK LEGAL

Research

This research is mainly based on the doctrine method of research. Doctrinal research means to study the law that already exists in this era through legal sources like, statues, judgement of the court, legal books, research papers published related to these topics. It does not mainly means that it does not involve surveys or any kind of interviews: instead of it, this mainly focuses on understanding and analyzing the rules that are existing today.

In this paper, the doctrinal method is used to study the laws regarding the custody of child in India, especially the Guardians and Wards Act, 1890, and along with the Hindu Minority and Guardianship Act, 1956. important judgement of the Supreme Court and High Courts are also

studied or examined to understand that how courts keep the welfare of the children in mind while deciding the decisions for the custody disputes of the child.

The research further studies factors such as the age of the child, the education of the child, their safety, their emotional well being, their wishes that what they want, and also the main thing which is their relationship with their parents.

The research has mainly used the secondary legal sources, including the different statues, the case laws, legal journals, research articles, and the reliable online legal databases.

Hypothesis

The main hypothesis of this research is that the child's interest and welfare should always comes first to everyone, no matter if it is their parents, the court or any other guardian. The interest and welfare of the child should be paramount considered in the custody matter of the child, even it conflicts with the personal or legal claims of the parents.

This research shows that the India courts in today's time have gradually started to give consideration to the child's welfare. Instead of taking the decision based on the interests of the parents and their legal rights, courts now consider and look for the interest of the children and their factors like their age, education, safety, and emotional needs, living conditions and the relationship with both the parents.

The study further shows that it tells that the laws that are currently existing in today's time provides a basic framework, for protection of the children but they may not be able to cope with the custody disputes of todays modern world. Issues like parenting, them changing their location or shifting to somewhere else, and the child have the rights to show their opinions which may create more different challenged for the courts.

Therefore, this research will examines that whether the today's legal framework is effective or in favour of the children's welfare, their wishes and to make their child custody's laws more consistent and also legal, which may also shapes their overall development, it can be either mentally or physically.

Conclusion

In conclusion, the custody of the child is not just a question, but also decision of the parents that which parent should have the child after their separation. It is overall about the well being of the child and making sure their surrounding is happy, healthy and good for their growth. Indian laws have nowadays changed to focusing more on the welfare of the child rather than

the parent's legal right that they will be keeping the child with themselves just because they are the child's parent. The laws in today's world have been changed than the past laws including the welfare and safety of the child.

This research study shows that the court considers many different issues, characteristics, and factors while deciding the custody of the child, which may include the age, education, safety of the child, what their needs are emotionally and physically, also their relationship with their parents, like how was it before their separation with their mother or father.

Although, the laws that are existing in today's world provides and important legal framework, custody disputes may still be difficult because the situation of the child and their family is different in every family. The court has been taking the issues seriously of like shared parenting, them relocating to the different place relating to the child.

So, the main basic principle should continue to remain on the basis of the custody decision. At the same time, more child friendly procedures should be adopted which should be more clearer, so that the interests of the child is protected and given consideration along with maintaining their relationship with their both parents.

WHITE BLACK
LEGAL