**CUSTODY OF CHILD**

**Palak Jagtiani[[1]](#footnote-1)\***

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The concept of child custody receives its major attention in the law when parents live separately. In these situations, it is necessary to determine what living arrangements will be made for the children and how parents will exercise their custodial rights and responsibilities. Although the most common situation in which this occurs is when the family dissolves as an entity, the issue of parental custodial rights between the parents of children born outside of marriage is growing in importance.[[2]](#footnote-2)

In India, children under 18 years of age are supposed to have a legal guardian. The party who is awarded guardianship by the Court has the responsibility of taking care of the child. In some cases, the parents may share the custody of the child, but only one parent may be given the actual physical custody of the child. The court mostly bases their decisions on the best interests of the child and not always on the arguments of each parent.[[3]](#footnote-3)

Physical custody means possession and it defines the physical location of the child. The parent with whom the child resides is said to have physical custody. Legal custody to a parent or both parents awards the right to make legal decisions for the child regarding education, health care, religion, and his or her general welfare. Legal custody means the right to make decisions about the welfare of the children where they go to school, religious upbringing, friends and routines. Physical custody to one or both parents defines and declares the child’s residency.[[4]](#footnote-4)

In both physical and legal custody, judges are guided by the golden standard: the best interest of the child. Like a refrain in a Greek chorus, this phrase- the best interest of the child appears again and again in the literature of custody cases. The age of a child, each parent’s living arrangements, a parent’s willingness to support the other’s relationship with a child, a parent’s relationship with the children before the divorce, a child’s preference all are considered in determining the custody arrangements that are in his or her best interest.

In many, if not most jurisdictions, the **Maternal Preference** guides courts. Put in a simple way, this means that, all other things being equal, a mother will get physical custody of young children. In general, courts seek to minimize the disruption to the child. In practice, this means that the child very often ends up with the mother in the family home (and the father, who once lived there, now becomes a scheduled visitor).

Legal custody may be awarded to one parent, which is called sole legal custody. In this routine, only one parent holds the right to make legal decisions for the child regarding education, health care, religion, and his or her general welfare. Legal custody may also be awarded to both parents, which is called joint legal custody. Here both parents hold the right to make legal decisions for the child regarding education, health care, religion, and his or her general welfare, without either parent having superior rights. The most common form of joint legal custody designates one parent as having primary residential (i.e., physical) custody.

In a similar way, physical custody may be awarded to one or both parents. Here, sole physical custody gives one parent physical possession of the child and the other has specific visitation rights. Less commonly, joint physical custody give both parents shared possession of the child. In this routine, a child resides with each parent a substantial amount of time during the course of a calendar year. The arrangement does not have to be split 50-50, but it does require some consistent plan or schedule. This type of custody arrangement is not very common, for it is rare when this type of arrangement is found to be best for a child.

Joint or shared physical custody means a child has two homes. The parent who has custody must have a suitable place to live, provide adequate supervision when no one is at home, maintain reasonable discipline and give nurturing and affection. Courts prefer both parents have joint legal custody. Currently, in most states, the courts favor it when the parents have the ability to cooperate with one another. Many divorcing parents do work very hard towards achieving this goal. Joint custody is definitely not for everyone and can only come about as a result of a rational decision-making process focused on the future expectations of the parents.

1. \* Teaching and Research Associate, Gujarat National Law University, Gandhinagar [↑](#footnote-ref-1)
2. Indiana Rules of Court, Indiana Parenting Time Guidelines(Including Amendments Received Through March 28, 2008) http://www.in.gov/judiciary/rules/parenting/ [↑](#footnote-ref-2)
3. Madabhushi Sridhar, Legal Provisions Regarding Age of Child To protect the Rights of Children http://www.ncpcr.gov.in/Reports/Discussion\_Paper\_on\_Legal\_Provisions\_Regarding\_Age\_of\_Child.pdf [↑](#footnote-ref-3)
4. http://www.divorcesource.com/ds/children/legal-and-physical-custody [↑](#footnote-ref-4)