

## **MINOR RESEARCH PROJECT**

**Title of the research project:**

“Competing Interest in Custody And Visitation Rights:  
Exploring The Best Interest Principle In Divorce  
Proceedings”

**Duration-**

20 months

**Grant given by:**

The Indian Council of Social Science Research  
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**Discipline of the research project:** Law

## **INTRODUCTION OF THE RESEARCH**

The most significant aspect of child custody in divorce proceedings in India is that irrespective of the personal laws or customs any parents who wants the custody of child and is unable to reach an agreement to have custody from the court. It is never any automatic transfer of the child's custody to a particular parent. Custody battles are acrimonious as divorce proceedings and often last much longer since it involves conflicting interest of the parents. Even when the custody matter is decided by the court and a reasonable access is given to both the parents taking into consideration the best interest of the child the problem continue to exist. In some cases the non- payment of the child support results in interference in the visitation rights and in other the non custodial parents is denied access to the child under one pretext or the other. At a time of the parents files an application in the court to suspend, revoke or alter the earlier custody decision. Very often changes of residence or the marriage status of the custodial parents adds to the problem.

The plethora of legislation relating to custody of minor children and judgments of the courts and indicative of the fact that the welfare of the child is of paramount interest and synonymous to the 'best interest' principle. All the key factor and circumstances are to be taken into consideration which will further the best interest of the child. The courts in India have been sensitive to some extent as far as needs of the child is concerned and at times departed from the set pattern but there remains too much of varsity in the decision making which though may be desirable may not help the litigator.

Therefore it becomes essential to analyze the decisions and explore how the courts in India have used their discretion and applies the 'best interest' in custody and visitation decision making process. Does the principle apply to only substantive law when applied or it has to be also applied in the judicial process. While analyzing this it is essential for us to look into the statutory

provisions under personal law and visit them. Whether in the changed social circumstances and the varying standards of living these laws need some modifications or are they in conformity with the changing situations. Can we draw some inferences from the statutory laws which further the best interest of the child? What measure should be taken by the court so that the child is well represented in the entire process? How mediation helps or assists the court in coming to a decision which is in the best interest of the child. Joint parentage which has become a practice in the other parts of the world can we think of a joint parentage in India. We need to develop post adjudicatory counseling services also which will enable the separated couples and the child to handle the situation in such a manner which results in the healthy development of the child.

The present research proposal aims to explore some of these issues and come up with concrete guidelines and statutory reforms to bring desired changes which will further the best interest of the child.