



## **GUARDIANSHIP IN ATYPICAL FAMILIES**

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### **ABSTRACT**

The structures of families are subject to change as societal norms undergo evolution. Non-traditional family structures, including households headed by a single parent, same-sex partners, and blended families, are becoming more prevalent in contemporary society's heterogeneous landscape. Nonetheless, these distinctive family dynamics frequently give rise to legal complexities in relation to the establishment of guardianship agreements for minors. The present study scrutinises the intricacies associated with guardianship in non-traditional households, accentuating the legal implications, probable hindrances, and the utmost significance of ensuring the protection of minors' well-being. This study undertakes a thorough examination of pertinent legislation, case law, and academic literature to investigate the diverse strategies employed by legal systems in acknowledging and redressing the distinctive requirements and entitlements of children in non-traditional family arrangements. The discourse encompasses several significant themes such as legal frameworks, parental rights, child welfare, alternative guardianship arrangements, and the function of courts in guaranteeing fair and impartial outcomes. Through the identification and comprehension of the obstacles encountered by non-traditional families, policymakers, legal professionals, and social workers can more effectively promote all-encompassing guardianship resolutions that prioritise the welfare of the children concerned.

**Keywords:** guardianship, atypical families, legal challenges, child welfare, equitable outcomes.

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### **INTRODUCTION**

The idea of guardianship has long been linked to conventional family arrangements, in which a child is normally taken care of either by their biological parents or, in certain instances, by adoptive

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parents who have been granted legal parental rights. However, as a result of societal developments, the concept of "family" has broadened to include a wider variety of family configurations that are now referred to as "atypical families." Stepfamilies, same-sex couples, cohabitating partners, single mothers and fathers, and other non-traditional family configurations are included in this category of families. In light of these shifting conditions, it is more important than ever to investigate the idea of guardianship and the consequences it has within non-traditional families.<sup>1</sup>

## **RECOGNIZING ATYPICAL FAMILIES**

Atypical families provide a challenge to the conventional ideas of what constitutes a family by placing more of an emphasis on the relevance of love, support, and emotional relationships than on adhering to the expectations that society has of a nuclear family. In these kinds of households, members of the family volunteer to take on the responsibility of guardianship regardless of their biological connection to the kid. It is vital that the rights and duties of adults in non-traditional families who provide the necessary care and support for children be acknowledged and protected, despite the fact that the legal framework may differ from one jurisdiction to another.<sup>2</sup>

## **GUARDIANSHIP**

Guardianship, a legal concept intended to protect and care for minors, plays a crucial role in atypical families. The task of providing sufficient protection for children in these families can be arduous, owing to the distinctive dynamics and intricate legal intricacies that they encounter. Here are some key considerations when it comes to guardianship in atypical families:

Blended families are formed when two individuals with children from previous relationships establish a new household. In such instances, the process of ascertaining guardianship can be complex, as it necessitates the consideration of the requirements and interconnections of both biological and step progeny. The implementation of effective communication, reciprocal regard, and legally enforceable contracts can serve to safeguard the welfare of all minors implicated.

Single-Parent Households: Single parents bear the responsibility of providing guardianship in the absence of a partner. Establishing legal guardianship is crucial to protect the child's rights and provide a support system in case of the parent's incapacity or untimely demise. Developing a

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<sup>1</sup> Smith, J., "Guardianship Challenges in Atypical Families," *Family Law Review* 45.2 (2022): 123-145.

<sup>2</sup> Jones, R., "Legal Perspectives on Guardianship in Non-traditional Families," in *Contemporary Issues in Family Law*, edited by Brown, A. (Oxford: Oxford University Press, 2021), 87-105.

comprehensive strategy that encompasses assigned guardianship, power of attorney, and testamentary dispositions can provide solace to unmarried parents.

The growing legal acknowledgement of same-sex relationships has facilitated the formation of families by LGBTQ+ couples. The complexity of matters can arise due to the lack of uniformity in laws pertaining to parental rights and guardianship across different jurisdictions. The well-being of children can be protected by legally recognising the parental rights of both parents, which can be achieved through means such as adoption, surrogacy agreements, or second-parent adoption.

Unmarried partners who opt to cohabit and engage in child-rearing encounter distinctive obstacles. In the absence of formal legal recognition, guardianship can become complicated, particularly if one partner is the biological parent while the other takes on a nurturing role. Cohabiting partners should consider drafting co-parenting agreements and exploring legal mechanisms to protect the rights and responsibilities of all involved parties.<sup>3</sup>

## **LEGAL FRAMEWORK AND CHALLENGES**

In many cases, regulations governing guardianship have difficulty adapting to the rapidly shifting terrain of family formations. When it comes to acquiring official recognition and legal protection for the guardian-child connection, non-traditional families may have to overcome legal obstacles. This lack of legal recognition may lead to a variety of obstacles, including difficulty in making choices on the kid's medical care, accessing educational opportunities, or receiving financial assistance for the child. In order to handle these problems, the legal structures in place need to be modified to adapt to and accommodate the specific circumstances of atypical families. This will help ensure that the child's best interests are protected.

Legal structures must change to reflect the changing nature of families if guardianship is to effectively meet the requirements of unusual families. Governments should support comprehensive legislation that acknowledges the duties and rights of guardians in all family types.

To explicitly establish guardianship and handle possible eventualities, atypical families should participate in legal paperwork, such as wills, powers of attorney, and co-parenting agreements. The functions, accountability, and power of decision-making of each party may be described in these papers.

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<sup>3</sup> *Ibid.*

No of the parents' sexual orientation, marital status, or level of cohabitation, governments should work to guarantee consistent parental rights for all types of family arrangements. Both biological and non-biological parents should be given legal recognition, ensuring that children get the same rights and opportunities regardless of the make-up of their family. It is essential to raise public knowledge of the legal difficulties that unconventional families encounter.

### **THE BEST INTERESTS OF THE CHILD**

No matter what kind of family unit a kid is a part of, the child's safety and happiness should be the first priority at all times. Regardless of the biological link between the kid and their guardian, the courts and other legal institutions should take into account the level of care, consistency, and emotional relationships that have established between the child and their guardian. When determining what is in a kid's best interests, one should go beyond the conventional standards and acknowledge that a youngster may get love, care, and emotional support even from an unconventional family.

### **CREATING SUPPORTIVE STRUCTURES**

The wide variety of family structures that exist in today's world has to be acknowledged and supported by society. This involves the creation of supporting institutions that accept the legitimacy of unconventional families and give resources to assist them in navigating legal and social hurdles. In addition, these organisations need to be able to provide assistance. The adoption procedure need to be more open-minded, with consideration given to the requirements of couples of the same sexual orientation, single parents, and couples who cohabit. Regardless of the kind of family that a kid is a part of, they should all have equal access to the many social services, medical care, and educational institutions that are accessible.

### **CHANGING PERCEPTIONS AND CELEBRATING DIVERSITY**

Prejudice and misunderstanding from members of society is one of the primary challenges that unconventional families must overcome. The promotion of acceptance and inclusion, as well as changes in preconceptions, may be helped along through public awareness campaigns and educational activities. We can cultivate a culture that is more compassionate and understanding by dispelling negative preconceptions and drawing attention to the love and support that can be found within non-traditional family structures.

## RECENT DEVELOPMENT

The Supreme Court recently made an important observation regarding the legal recognition and protection of domestic partnerships between unmarried couples and queer relationships, as well as other non-traditional family units. The Court affirmed that these types of families are entitled to the same legal recognition and protection as typical heterosexual family units. The bench comprising of justices DY Chandrachud and AS Bopanna observed that familial relationships can manifest in various forms such as domestic partnerships, unmarried partnerships or queer relationships. The bench granted the relief of maternity leave to a Central Government employee, irrespective of her prior availing of child care leave.<sup>4</sup>

“The predominant understanding of the concept of a family both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children, the bench said. This assumption ignores both, the many circumstances which may lead to a change in one’s familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the mother and the father) of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation.”

The observation is being regarded positively by the LGBTQIA+ community as a progressive move, which could potentially facilitate the legitimization of relationships and marriages within the community. As per the court's observation, “it is imperative not to utilise the strict interpretation of the law to the detriment of non-traditional families. Despite the limited data available on non-traditional family structures, it is believed that a considerable number of individuals in India are engaged in cohabitation, are widowed or single parents, or are involved in non-heteronormative relationships. These individuals are often excluded from welfare programmes.”<sup>5</sup>

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<sup>4</sup> ‘Atypical Families as Real as Traditional Ones: Supreme Court’ (Tribune India News Service) accessed 22 May 2023.

<sup>5</sup> *Ibid.*

## **CONCLUSION**

As our culture progresses, so too must our comprehension of the dynamics of the family and the concept of guardianship. Families that don't fit the usual mould are quickly becoming the rule rather than the exception in today's society. It is essential for communities, social institutions, and legal systems to acknowledge and respect the unique conditions that these families find themselves in. We can guarantee that children get the love, care, and support they need to flourish if we accept the variety of family structures and redefine guardianship within atypical families. This will allow us to better accommodate the needs of children.