

RECONCEPTUALIZING THE WELFARE OF THE MINOR GRANDPARENTS IN CUSTODY JURISPRUDENCE WITHIN PAKISTAN'S JOINT FAMILY SYSTEM

Naseem Akhtar Naz

LL.M. Candidate (International Commercial Law), School of Law and Policy, University of Management and Technology (UMT), Lahore, Pakistan; Civil Judge, Guardian Court, Lahore, Pakistan

Email: naseemhussain13@yahoo.com

Sahibzada Hafiz Maqsood Ahmad Advocate High Court

*M.PHIL.ISLAMIC STUDIES FIQH AND SHARIA LAW,
UNIVERSITY OF OKARA (UOO)PAKISTAN*

Email: hafizmaqsoodahmad485@gmail.com

Abstract

The child's welfare is a matter of conscience and can never be determined solely by legislation. Judges in Pakistan's guardian courts hear the same tale every day. Both the mother and the father oppose asserting their exclusive right to the child's love. One fears the other's influence; both distrust the other side grandparents. The hearing becomes a duel, not a dialogue. But in the midst of all this chatter, the child's actual well-being frequently suffers in silence.

This essay aims to break that silence. Guardians and Wards Act of 1890's definition of "welfare of the minor" is revisited, and the question of whether our courts have sufficiently examined the family circle is raised. Their role cannot be dismissed as a sentimental in a society like Pakistan's, where the joint family is still very much alive and grandparents frequently provide for, educate, and support the younger generation. They are an integral part of custody and are not intruders. Despite its age, their love is still relevant today.

First, let's talk about philosophy. Plato once envisioned a republic in which justice would be untarnished by blood, love might be universal, and children would know no parents and parents no children (Plato, trans. 2007). Aristotle disagreed. According to him, for love to be genuine, it must be unique. He reasoned that the child needed faces it could identify. The contemporary family court is situated between these two visions. Although the judge must prevent possessive love, they cannot put an end to love per se. Grandparents are frequently the key to this balance. When marriages end and new ones start, they provide continuity. They serve as a reminder to child that love is stronger than adult arguments.

The paper makes the case that the court cannot rely only on parental affidavits or accusations, citing case law from Pakistan, India, the United Kingdom, and Canada. It must politely but firmly enquire about grandparents' capacity, willingness and presence (Gaurav Nagpal v. Children Act 1989; Sumedha Nagpal, 2009; Children's Law Reform Act, 2020). Seeing a grandparent with the child can reveal more than a hundred pages of entreaties. My own court's experiences have demonstrated that a brief meeting of this kind can reveal the child's heart's resting place and the potential for peace to return.

The "Welfare Principle" needs to take root in our own soil, according to the study's findings. The court that disregards grandparents in Pakistan's joint family system is actually ignoring reality. The elderly people who silently stand in the back of the courtroom and still have the ability to keep the family together must not be ignored by the law.

I. Introduction

A recurring drama occurs daily in Pakistan's guardian courts. Two parents each doubting the other, stand apart, claiming the minor's affection. The child, reduced to an exhibit in the file, sits

between them, silent and confused. Rarely does the argument end with the parents. Uncertain if they are outcasts or witnesses, grandparents loiter in the hallway. Their voices rarely make it to the record, but occasionally their names can be heard in pleadings.

Many benches are troubled by a seemingly straightforward question: Should grandparents be permitted to meet the child? “They will poison the child’s mind,” would a custodial parental response. “They are part of the child’s life,” the other insists. Temperaments become short and affidavits thicken. The welfare of the minor, the cornerstone of Section 17 of the Guardians and Wards Act (1890), disappears somewhere in the midst of the hostile voices (Rahman, 2018; Naqvi, 2021).

Although, it hasn’t been defined, the statute states that the welfare of the child comes first. The judge is left to interpret the human narrative concealed within the legal documents. All too frequently, only the parents who have been injured tell the story. Half the truth is revealed by their evidence, which is tainted by pride of fear. The silent stability of grandparents- unspoken and unrecorded- becomes the welfare book’s missing chapter.

The goal of this article is to reclaim that chapter. It contends that the extended family is a normal aspect of our joint family society and that Pakistani courts need to broaden their perspective to take this into account (UNICEF, 2025). Since the law acknowledges parents as natural guardians, the goal is not to transfer guardianship from parents to grandparents. Instead, it is to recognize that grandparents actually contribute to the development of the child’s moral and emotional foundation. When the parental ship becomes unsteady due to emotion, their involvement adds ballast.

This is supported by experience. The child is at the intersection of two households in innumerable hearings when a mother starts a new family or father remarries. Loyalty divides and identity becomes hazy. But the grandparents don’t change. They maintain continuity by remembering ancestry, enforcing routine, and discreetly repairing the rifts that the parents are unable to (Ahmad, 2019; Qureshi, 2022). Ignoring them in a welfare investigation reads life through an overly limited lens.

Philosophy also provides direction. In order for love to be unbiased, Plato envisioned a republic in which children had no parents (Plato, trans. 2007). In response, Aristotle said that universality without attachment is a blank canvas; love needs roots (Aristotle, trans. 1998). Between these two ideas-seeking justice without stifling love-lies the contemporary family court. Involving grandparents eases the conflict by extending the love without erasing its heritage (Sandel, 1998; Nussbaum, 2006).

The same course is supported by comparative law. The Indian Supreme court reiterated in *Gaurav Nagpal v. Sumedha Nagpal* (2009) that custody is a welfare issue rather than a dispute over rights. In order to ensure that welfare, courts may look into grandparental contact under the Children Act (1989) in the United Kingdom and the Children’s Law Reform Act (2020) in Canada (Barlow & Eekelaar, 2018; Kelly, 2021). The idea is widely accepted: the child should benefit from the evidence not the argument.

In order to acknowledge that the family in Pakistan is not limited to the parents, this study attempts to re-grind the welfare principle in Pakistani territory. The court ignores reality itself when it ignores the grandparents. They must be treated by the law as part of the homes foundation, quiet, enduring, and the reason it still stands, not as the strangers at the gate.

II. Literature Review

A. The Welfare Principle in Custody Jurisprudence

The fundamental tenant of the law is that minor's welfare must be the courts top priority. The Guardians and Wards Act (1890) states as much in Section 17, but it doesn't define "welfare". The judge is left to make the interpretation, which differs from bench to bench based on experience.

According to Rahman (2018), Pakistani courts have frequently viewed welfare as a moral feeling rather than a methodical investigation. Naqvi (2021) goes a step further. He argues that courtrelies relies excessively on affidavits that they write in a state of emotion without any clear standard or investigation framework. Uncertainty is the outcome. The pro-side of the debate might turn out to be what is more appropriate to the child.

In *Gaurav Nagpal v. Indian Supreme Court*, the court made a very comparable statement. The fact that custody is not a parental rights issue but a child welfare issue was established by *Sumedha Nagpal (2009)*. Though that thought is easy to understand, Pakistan has not implemented it. Rather than the law the space seems to be within the procedure. There is still no uniform way of deciding what welfare actually requires in our courts.

B. Grandparental Roles in Custody and Child Development

The interesting research sheds a clearer light. The studies carried out in South Asia and the West show that grandparents play a significant role in the family structure as reliable hands and not replacements to parents. Children who regularly interact with their grandparents tend to exhibit better emotional balance, according to Cherlin and Fustenberg's (1992) research. Grandparents act as "buffers to affection," protecting children from the shocks of parental conflict, according to Thomas (2016).

Nearer to home, Ahmad (2019) observes that grandparents are inherently at the centre of a child's early education and discipline in Pakistan's joint family system. According to UNICEF (2025), grandparents provide daily care in more than half of urban households. However, their role is rarely documented in court. Everyone, with the exception of law, can see the sociology of family life.

C. Philosophical and Theoretical Perspectives

The structure of duty and love in families has long been a topic of philosophical discussion. Plato dreamt of a Republic where children would belong to all, so that affection might be impartial (Plato, trans. 2007). Aristotle responded that this kind of generality was empty; love had to be tied to personal relationships (Aristotle, trans. 1998). This debate was rekindled by subsequently famous philosophers such as Sandel (1998) and Nussbaum (2006), who cautioned that justice devoid of attachment becomes cold rather quickly.

The practical wisdom of the modern court is the wisdom expressed between Plato and Aristotle between idealism and realism. In this regard, grandparents are a symbol of balance. They are in love that is specific enough to be concerned, but distant enough to direct. They carry what Plato envisaged a society of care without destroying the personal character that Aristotle championed.

D. Comparative Legal Literature

The same is the case with comparative law. The Children Act (1989) permits grandparents to request contact in the United Kingdom but makes the court leave to grant the contact, meaning that merit and not status determine the matter (Barlow, and Eekelaar, 2018). The law in Canada under kids applied in Section 21(3), Kids Law Reform Act, gives any individual the right to seek a contact order (Kelly, 2021).

India follows a similar path. The following rulings of Kumar v. after Gaurav, Nagpal State of U.P. (2025) identified that the extended family members are the ones that can help in the welfare of the child. The tendency is obvious: welfare investigations are expanding not two-party but the entire family context.

E. Psychological and Developmental Research

This approach is also supported by psychological studies. A regular grandparental interaction increases the emotional control and social adjustment of a child, It has been stated by the World Health Organization (WHO, 2023) and the American Psychological Association (APA, 2022). Using a multi-generational family structure, Imran and Yasmeen (2020) discovered that children brought up in such families are also more resilient during the time of parental separation. However, Hafeez (2021) warns that the lack of structure of such interference may only worsen the conflict; the supervision of the judicial body is, thus, imperative. These results imply that the inclusion should be counterbalanced by control.

F. Gaps in Existing Literature

In spite of these, academic and legal writing is scanty on the topic in Pakistan. Little empirical research has been done on the effect of the influence of grandparents on welfare decisions. Under the Guardians and Wards Act, a judge does not have to consider any procedural rule. The inequality is both institutional and intellectual. The law still considers the joint family as a background information and not as evidence.

G. Synthesis

Jurisprudence, psychology and philosophy are in a clear agreement. True welfare is comes from relationship and interaction, it's not a matter of simply managing or taking custody of individuals. Children grow up in an inter-relationship of care and not in isolation. In case parents separate, the grand parent is important in ensuring that web does not get broken.

Consequently, the courts need to change their passive adjudication to active adjudication. The witness box in itself cannot be utilized to determine the welfare of the child. We must understand the reality of the situation within the complex daily life of a family, where obligation often clashes with love. In this situation the presence of grandparents often has a greater and immediate impact than pleading or words.

III. Methodology

A law that lacks methodology is just like a judgment that lacks logic. It has a sound argument but cannot stand scrutiny. This study is therefore methodical but understanding. It is an integration of lived experiences, law and philosophy. It mixes theories with the daily life in Pakistan seen in the guardian courts, books with benches and statues with stories.

1. Research Design

This work is based on a mixed qualitative-doxtrinal approach. It's not a mechanical process. It is interpretive as it is more concerned with meanings, rather than numbers.

The first is the doxtrinal. It examines the interpretation of the term by the courts regarding the welfare of the minor with reference to the Section 17 of the Gaurdians and Wards Act (1890) as its basis. Besides comparative rulings made by the India, the UK, and Canada, the analysis also uses the rulings made by the High Courts of Pakistan. Each case is read with what it tells-judicial conscience on which the decision is based, and not what it contains (Rahman, 2018; Naqvi, 2021; Gaurav Nagpal v.). Sumedha Nagpal, 2009).

There is a comparison included in the second part. It considers how other legal systems have structured the role played by the grandparents. Grandparents in custody disputes are filtered but not excluded in the UK thanks to the Children Act (1989), which gives them access to the court with permission (Barlow & Eekelaar, 2018). Grandparents and others who genuinely care about a child's welfare are eligible to apply under Canada's Children's Law Reform Act (2020) (Kelly, 2021). These examples reflect what Pakistani courts may adopt within their own moral and cultural framework, rather than acting as templates to be imitated.

Philosophy makes up the third strand. It is based on the ageless logic of Aristotle and Plato. The intellectual framework of this argument is composed of Aristotle's emphasis on personal attachment and Plato's ideal of collective care (Plato, trans. 2007; Aristotle, trans. 1998). They serve as a reminder that the conflict between personal love and collective responsibility is as old as thought itself, and are not cited for aesthetic purposes.

The empirical component is the fourth strand. Instead of field surveys, it makes use of already-existing data. Grandparental involvement influences a child's emotional and cognitive development, according to reports from the World Health Organization (2023), the American Psychological Association (2022), and UNICEF (2025). Research from South Asia also demonstrates that joint family environments provide children with stability following parental separation (Ahmad, 2019; Imran & Yasmeen, 2020; Hafez, 2021). The study presents these findings as guidance that helps the law see what life already knows, rather than as gospel.

2. Data Sources

Both primary and secondary sources provided information for this study.

Statutes and court rulings are examples of primary sources. The Guardians and Wards Act (1890) and documented rulings from the Supreme Court of Pakistan, the Lahore High Court, and the Peshawar High Court are the most important of these. The Court of Appeal in the United Kingdom, Canadian provincial courts, and Indian Supreme Court decisions are cited as examples.

Academic publications, law review articles, and institutional reports are examples of secondary sources. The works of philosophers (Sandel, 1998; Nussbaum, 2006), sociologists (Ahmad, 2019; Qureshi, 2022), and legal scholars (Rahman, 2018; Naqvi, 2021) are compared side by side. For psychological support and social context, reports from the WHO, APA, and UNICEF are consulted.

A small amount of judicial observation is also present. Reflections are based on recurring experiences in Lahore's Guardian Court (2024–2025). There, one can observe trends that are not visible in books: the unwillingness of custodial parents to allow contact with grandparents, the desire of certain grandparents to provide stability, and the nuanced yet significant responses of

children to both. The observations are a very vital part of this study as it is the actual evidence of the printed word.

3. Analytical Framework

The analysis has three layers:

The first is a theme. The material is organized into three major concepts, which are institutional involvement, continuity and attachment. In case a child requires constant emotional support despite conflict between parents, this is termed as continuity. Attachment explores the power and love harmony. Institutional involvement examines the ways in which the court as *parens patriae* can make these relationships available without making the court too powerful.

The second level is comparative. It compares jurisdictions with each other to locate a common denominator. Despite the differences in the terminology, laws meet at the same point: the child must be the spirit of the law, not the other way round. The legal practice analysis shows where Pakistan is in line or not with these global trends of legal practice.

The third level is doctrinal extrapolation. It applies previous concepts to new realities. In case welfare of the minor is the most important issue, the court should scrutinize every person that contributes towards the welfare of the minor even grandparents. It is not sympathy but logic that leads to the conclusion that, in case the welfare is wholesome, it needs inquiry that is wholesome.

4. Scope and Limitations

Every research should understand its limitations. This one is no exception. It is limited to the Pakistani law of guardianship and custody proceedings. It has no contact with adoption or maintenance. Enhancing the judicial logic is the real focus rather than introducing any new legal rights.

The information is taken based on the extant judgments, academic texts, and institutional research. There were no major field interviews carried out. This is a reflective approach and not a statistical one. It aims at normative modification not quantification.

The weaknesses are been managed openly. Judicial observations, though exemplary, are anecdotal. While the research which is mostly used is international, this might not perfectly account with the local cultural differences. However, these limits doesn't affect any investigation; they actually indicate that how much helpful it is. The law always improves through incorporating knowledge from different sources and by being open to what others have already learned. Not by acting like it knows everything already.

Conclusion to Method

This approach combines philosophical wisdom, sociological observations and legal reasoning to make the theory more realistic. It considers the court not as a separate entity, but as a vital part of the larger human experience. Justice is a relationship, and the law can be codified in statutes.

A judge as Lord Denning may sometimes have said does not merely listen to the letter of the law he listens to the voice of life. This work is some sort of a whisper testing it against reason and cleaning it up through doctrine and make it base on the realities of Pakistani family life.

IV. Philosophical Foundations: From Plato's Republic to the Modern Guardian Court

Philosophy and law are likely to follow divergent paths, but they aim towards one goal justice. Law is the rule; philosophy is the reason. One without the other limps. When a judge sits to decide who should care for a child, he does not only read a statute. He must also read the human heart. He must see the soul behind the section.

In the long history of ideas, none spoke of the family more boldly than Plato. In his Republic, written over two thousand years ago, he imagined a perfect city. It was a place where love was impartial and justice unclouded. He proposed that in the ruling class, children should not know their parents, and parents should not know their children (Plato, trans. 2007). Every child would be cared for by the State. Every parent would love all children equally. Possession would vanish; envy would die; virtue would thrive.

It was a noble dream, but a dream all the same. Aristotle, Plato's finest student, woke from it with a dose of common sense. In Politics, he replied that what belongs to everyone soon belongs to no one (Aristotle, trans. 1998). A love shared by all is a love felt by none. Children, he said, must have faces to recognize, hands to hold, and names to trust. The soil of attachment is where duty is born, not the clouds of abstraction.

Our courts are still reverberating with the teacher-student debate. The State's obligation as parents' patriate, the parent of last resort, embodies Plato's idea of collective care. The wisdom of Aristotle lives in the close relationship that exists between a parent and a child. The modern judge has to be a mediator between the two in a guardian court in London or Lahore. He has to strike the fine line between personal love and social responsibility.

There is no other time that this balance is tested like it is in custody battles. Love turns into a weapon and care into a claim when families disintegrate. The role of the law must be that of a gardener, pruning rather than destroying, rather than a soldier. Here, Plato and Aristotle's ancient dialogue transforms from theory into guidance.

According to Plato's communal ideal, no one should be the sole owner of a child's affection. Since the child will grow up to be a citizen, the state is interested in their welfare. The court represents that silent third party society in every custody case. However, love devoid of personal devotion is thin gruel, as Aristotle cautioned. No one is nourished by it. The child requires affection that has a name.

These traditional ideas are brought down to the seats of our own guardian courts in this article. A judge is influencing the child's moral world when he decides whether a grandparent should meet the child, not just deciding on visitation. Plato would remind him that love needs to be reciprocated and that a child is just as much a part of the community as the parent. According to Aristotle, community starts within the family and does not extend beyond it.

Modern jurisprudence is situated between these two viewpoints. According to Sandel (1998), justice must recognize people for who they are to one another and is not blind to relationships. According to Nussbaum (2006), the real test of humanity is compassion based on common sense. These contemporary philosophers revive the age-old argument. They beg the law to act with both heart and mind.

It is simply a normal thing in life. The development of children is not linear. The family is enormous and only small. Grandparents are not imaginary figures that come every two years, they are the aspect of the daily life of the child. They instruct decency, religion and memory.

They are alive to bring a connection between yesterday and today. They are the roots on which to disregard the tree.

This is where theory takes on practice. The joint care of Plato is achieved in the extended family, the attachment of Aristotle to people in the day-to-day fondness. Despite its flaws, the joint family provides a viable approach to the community and harmonious relations between individuals. It feeds Plato and pragmatism of Aristotle in plenty.

Based on this premise, we have what may be referred to as grandparental synthesis. It is neither Plato cold collectivism, nor Aristotle strict particularism. It is a *via media* communitarianism based on family. Grandparents illustrate it without the name. They have to share upbringing without taking custody power. Their love is not possessive yet relation based.

In the courts, this philosophy becomes policy. The court must regard the child not as property but as a person in a web of affection. The court must ensure that no parent predominates over the child's affection. And yet he must protect the sanctity of parenthood. To give the fact that a grandparents' presence is not to undermine parental authority but to promote the child's welfare. Law, at its best, protects both order and love.

Examples from daily cases substantiate. In one case file, a father protests against the maternal grandparents seeing his son, fearing they will "turn him against" the paternal home. In another, the mother protests against the paternal grandmother's seeing her granddaughter, citing "bad influence." Both sides love the child's truth more than they are afraid of the other side's story. When the court orders a monitored meeting, the miraculous happens. The child senses love where both parents perceive danger. Tears dry up, smiles appear, and hostility gives way. The law, when used with compassion, brings humaneness back. An austere application of statute will not suffice; Section 17 of the Guardians and Wards Act (1890) requires the court to look to the welfare, and welfare cannot be defined abstractly. Philosophy dies that for us.

Thus, the contemporary guardian judge, must be a silent philosopher. He need not to mention Plato in the court, but he should be familiar with him. He has not to refer to Aristotle, but he must experience the reality of his warnings. All domestic battles of custody contain within them that old argument in a nutshell: Plato murmuring share, Aristotle cautioning preserve. The prudent decision gives both sides a hearing and makes a decision that is in the best interest of the child.

On the whole, the philosophical roots of the custody law are not the abstract and distant notions. They are living in the middle of family life itself. Plato provided us with the ideal, Aristotle with the limit, judging nowadays is to discover the middle way. By acknowledging the significance of the grandparents, the court addresses the two intentions of Plato, his concept of joint prudence and the prudence of being a responsible person suggested by Aristotle.

Thus the connection between the old philosophy and the modern guardian court is not established in rhetoric but in reason. Justice conforms that the family's flexibility comes from its shared past. The welfare of the child must be treated as a commitment not as court motto. and as the judge signs his order, he prolongs a conversation which had been initiated at Athens, and continued at Lahore, and possibly indefinitely.

V. The Pakistani Context: Law, Culture, and the Joint Family System

The law of custody is not in vacuity because it is the family itself. It is imbued with the atmosphere of the place and time. In Pakistan, such an atmosphere is kin-filled. This is not a bony branch but a tree which grows deep and shaded in every direction. It is not just a house

hold it is a line. To refer to the welfare of the child otherwise than in this frame is to be making pictures of the sky without the earth in the ground.

A. The Law and Its Language

Our starting point departure is the Guardians and Wards Act (1890). It is an ancient law but an extremely durable one. Although written during colonial rule, it has endured a century of turmoil because it is founded on a universal principle — welfare of the minor shall be the over-riding consideration. These few words, plain as they are, contain the entire philosophy of wardship. But the Act does not define "welfare." It depends more upon the judge's conscience than upon the legislator's hand.

Section 17 of the Act mandates the court to consider the "age, sex, religion, character, and capacity of the proposed guardian." The law also permits the judge to examine "any existing or previous relations of the proposed guardian with the minor or his property." In short, the legislation leaves the door open to relationships outside of the parents. It invites the court to inquire, to observe, and to decide in the round (Rahman, 2018).

But practice often falls short of principle. Many courts still treat custody as a private contest between parents -mother versus father, petitioner versus respondent. The grandparents stand in the hallway, hopeful but unheard. They are treated as spectators in a play that once revolved around them. In truth, the Act never asked for such exclusion. Its silence on grandparents is not a denial but an invitation for the court to interpret welfare considering the society it serves.

B. The Voice of the Courts

The broad view has been rediscovered in the Pakistani judgments, notably the High Court of Lahore and the Peshawar. *Rukhsana v. The court* ruled that the welfare of the minor is not confined to either financial or biological claim but is inclusive of emotional and moral security (Muhammad Shafi, 2019, Lahore High Court). In another case, *Sajida Bibi v. Custody A* temporary custody was awarded to a maternal grandmother because both parents were involved in a protracted court battle (Bashir Ahmad, Peshawar High Court, 2020). The court noted that grandparents are blood and close to the child, therefore, they offer continuity of love and setting (Naqvi, 2021).

These instances are silent developments. They shift the emphasis towards right to relationship. The court's focus has shifted to a single question: Which placement will be best to ensure the complete well-being of the child? Instead of trying to determine the legal custody. That is a question that though very simple, is very profound as it makes custody look more like a search of stability, rather than supremacy.

Nevertheless, this argument is not balanced. The physical and customary burden of numerous trial courts is reluctant to go beyond the direct parties and extend the investigation. The welfare test becomes procedural rather than perceptive. The judge may weigh income, housing, and schooling but leave affection unmeasured. It is here that philosophy and culture must guide law. As Denning himself used to say, the law spirit must be mounted on the horse of common sense.

C. The Joint Family: A Living Institution

The joint family system cannot be discussed without mentioning welfare in Pakistan. UNICEF (2025) reports that almost 68 percent of children below fifteen years in Pakistan are in extended family households. Grandparents, uncles and aunts are not at the farthest in the emotional sense; they are core. The word of grandfather still counts in most of the homes and the first school is still the lap of the grandmother.

According to Ahmad, this administrative system acts as an inherent welfare system (2019). In case of quarrels or separation between the parents, the grandparents end up being the peacemakers. They make sure that the child does not stop feeling loved and guided even in case the relationship of the parents collapses. Its effectiveness can be the subject of debate among sociologists, but its longevity is self-evident.

The extended family is not good. It may be obtrusive, authoritative, even suffocating. But it offers support, a safety net, which is made of loyalty and collectivity. The western models of family law which assume independence and privacy are not very compatible with this cloth. The Pakistani court then has to evaluate welfare in this tradition of living and not opposing it.

D. Involvement, Not Replacement

This leads to an important fact that grandparents play a role and not a replacement. It is not meant to make parents vacate their proper position. The father and mother are still considered as the natural guardians under the law. However, where the fight between the parents endangers the stability of a child, the grandparents can bring back balance.

This is common in the evening Guardian Courts in Lahore. A mother does not want the paternal grandparents to be around because they are said to be intrusive. The father is adamant that his parents are not in pursuit of power, but love. The reality is normally in the middle. Strict rules are something that the court should not establish, but rather, ways to assist should be discovered. Children should not be the winning points in a revenge match. Kids are able to cope with the experience of divorce when the grandparents and grandchildren interact regularly and in a guided manner as Hafeez (2021) noted.

The court should therefore be intelligent in the way they handle things. Any visits under supervision can be allowed. They can record even the interactions to determine the relaxation of everyone. They may request families to attend counseling centers. But the main point? The grandparents are not substitutes to the parents, they are just individuals who are interested in what is best to the child.

E. The Need for a Pakistani Doctrine of Welfare

The Pakistani courts have traditionally embraced Indian and English concepts of jurisprudence. The time however, has come to evolve a welfare doctrine that is anchored on our social tradition in Pakistan. The joint family system is the basis of that. It holds that our society takes care of each other. Child-rearing is a social activity that is ethical, emotional, and more often, economic. In a study by UNICEF conducted in 202, the interactive children with their grandparents have better social values and self-esteem. The same report warns that withdrawal or behavioral anxiety may occur if such contact is abruptly cut off. These are the cornerstones of welfare, not psychological indulgences.

As a result, the law must be considered. Whether grandparents are present, willing, and qualified to assist should be documented for the courts. Like with financial security or education, their contribution ought to be taken into account when determining welfare. The judge will find that a brief conversation with a grandparent often yields more information than hours of cross-examination.

F. Conclusion: Law in the Mirror of Culture

Laws and practice are friends rather than foes in Pakistan. Although the Guardians and Ward Act (1890) may have been created by foreigners, it now needs to take into account the native tongue

of our society. A welfare inquiry that ignores grandparents is equivalent to a claim without evidence.

"Law must move with the times, but the times must move with the truth," as Denning would have said. The reality is straightforward: Pakistani families are plural. The child is member of a circle rather than a pair. A judge who considers that will be closer to justice than one who reads the passage but not the narrative.

Therefore, grandparents' status cannot be given sentimental courtesy in our guardian courts. It is necessary from a structural standpoint. Their intervention guarantees the very goal for which the act was created: to advance the complete and undivided welfare of minors.

VI. Judicial Duty Beyond Party Evidence

The role of a guardian judge is to balance truth, not to count the affidavits. A child's welfare cannot be measured in pages. It must be seen, heard, and felt. The court sees only half of the picture, and often the dark half, if it only considers what the parents say. The law demand more. It calls on the judge to look past the pleadings and consider the child's actual welfare in the context of human experiences.

A. The Limits of Parental Assertions

In most custody petitions, the battle starts long before the case arrives in court. Both parents portray the other as an evil-doer and present himself or herself as a saint. The adjectives change; the tactic does not. The father accuses the mother of neglect; the mother accuses the father of controlling. They both lose sight of the fact that the courtroom is not a battlefield but a sanctuary for the child's future.

According to Rahman (2018), Pakistani courts also too often ignore independent research in favor of "the adversarial account of the parents." Naqvi (2021) adds that the way things are done now runs the risk of "confusing proof with welfare." Even if evidence passes a legal test, it may not pass a moral one. As a result, the judge must be both an investigator, and an umpire. He needs to look beyond the advocacy and look into the actual living situation.

B. The Duty to Inquire and to Observe

Section 17 of the Guardians and Wards Act (1890) grants broad discretion under the welfare principle. It gives the court the authority to take into account "any existing or previous relation of the proposed guardian with the minor." The secret lies in those words. They encourage investigation. They demand attention.

A judge should not sit too far away from the facts if they wish to administer justice. He must be able to see the child if necessary. He needs to speak politely and quickly with grandparents or any other permanent family members. Reason demands such contact; the law does not forbid it. In *Mst. Rukhsana v. Muhammad Shafi* (2019, Lahore High Court), the court reminded that "no welfare inquiry is complete without considering the child's emotional environment." That environment often encompasses the grandparents.

UNICEF (2025) notes that more than sixty percent of Pakistani children grow up in joint families. Omitting grandparents from a welfare case is equivalent to condemning a play based on

one act. They can indicate if the house is warm or cold, if love flows freely or dries into resentment.

C. Proposed Procedural Steps

The time has come to implement a modest reform. It is not necessary for the guardian court to wait for the parties to call grandparents as the witnesses. They may be invited for examination by the court itself. Pages of accusations are far less effective at guiding the courts conscience than a quick appearance, a few questions, and an assessment of their demeanor towards the child.

A few simple actions could make all the difference:

1. Extended family disclosure: Both parents should disclose at the first hearing whether the child is regularly cared for by grandparents or close relatives.
2. Initial interview: To gauge the grandparents' interest and temperament, the court may, when appropriate, meet with them informally in chambers.
3. Supervised interaction: If contact is a problem, the court may allow a supervised meeting on the court grounds, where the bailiff or welfare officer will keep an eye on things.
4. Record of observation: The judge should briefly record their impressions, including whether the child is at ease, afraid or unconcerned. Such impressions are illumination rather than concrete proof.

Litigation would not be increased by such procedural measures. Confusion would be lessened by them. "A little common sense is worth a tone of technicality," as Denning would say.

D. Relevance in Re-marriage and Blended Families

When one or both parents have remarried, the need for investigation increases. New conflicts and allegiances are brought about by a new family. In blended homes, the child often feels like a guest in a house that once was his own. Here the grandparents frequently become the only thread of continuity.

Ahmad (2019) observes that in such situations "grandparental presence restores identity to the displaced child." Hafeez (2021) adds that structured grandparental contact reduces emotional shock after remarriage. Yet, unless the court asks, such support remains unseen.

In practice, I have seen a child who, after his mother's second marriage, found comfort only in visiting his maternal grandparents on weekends. The stepfather didn't object; he just didn't think it was significant enough to bring up, nothing about it was mentioned in the file. The truth emerged when the grandparents spoke; the boy's laughter resided there. Before deciding on complicated rights, the law must learn to see such basic facts.

E. The Judicial Mind at Work

A guardian judge is the keeper of conscience, not just a referee. He needs to be able to read between lines. Observation starts where evidence stops. Welfare must be the guiding principle when pleadings conflict. The court has parental, not punitive, authority. It is there to protect, not to punish.

Additionally, the judge must avoid going too far. Investigations must not turn into intrusions. Balance, firmness, fairness and humanity are the objectives. When properly interpreted, the welfare principle is the highest form of the law, not an exception to it. It requests that the judge apply both human understanding and legal knowledge. A court of guardianship is a welfare court, not a court of victory.

F. Conclusion: Beyond the File

Ultimately, the file doesn't reveal much. It transports papers, not fates. The living world outside of record is where the child true welfare is found. The judge needs to enter the world, in a symbolic sense. He needs to see the family behind the file, the child behind the claim, and the people behind the pleadings.

This obligation is mandatory in Pakistan's guardian courts. It seems from the enduring function of the judge as a guardian of the weak and the spirit of Section 17 of the Guardians and Wards Act (1890). Conscience provides guidance, while the law grants discretion. Together, the two make up justice.

Therefore, the court that considers the grandparents and listens to them above the parents does not stray from its mandate. It satisfies it.

VII. Comparative Jurisprudence

Law learns by comparison, just like people do. A courts conscience is shaped by what it observes another court has done. Despite linguistic and cultural differences, countries may have the same moral compass- the welfare of the child. This compass consistently indicates that the minors best interest comes first in guardianship matters.

A. India: The Expanding Circle of Care

India, our nearest neighbor, has followed the same lawful path. The Guardians and Wards Act (1890) was passed down to both nations. However, India is taken its interpretation a step further. The Supreme Court of India established the precedent in *Gaurav Nagpal v. Sumedha Nagpal* (2009). "Custody is not about the right of the parent, but the right of the child to be properly cared for," the court ruled. The shift from ownership to stewardship was a silent revolution. The case transformed the whole philosophy of guardianship, not to resolve a dispute (Rahman, 2018). This was refined later through judgments. In *Vivek Kumar Chaturvedi v. The Allahabad High Court in the case of State of U.P.* (2025) acknowledged that extended family members especially the grand parents could be instrumental in maintaining continuity of affection. The court held that the welfare test cannot be complete without taking into account persons who contribute to the moral and emotional environment within which the child is being brought up (Naqvi, 2021).

This is not an emotional way but a method of organization. The Indian judiciary has also been taught to pose such wider questions. Who will watch the child when parents fight? Who instructs the child in memory and manners? The family network that still serves as the child's social cradle in South Asia is highlighted by these inquiries: grandparents, uncles and aunts.

A more comprehensive welfare investigation is the end result. According to Hafeez (2021), "the Indian courts have elevated extended-family presence from a background factor to a visible component of welfare analysis." Pakistan, which shares both family tradition and legal heritage, can learn from this evolution.

B. The United Kingdom: Leave and Balance

The United Kingdom has a different story to tell. There, family law was changed by the Children Act of 1989. Child arrangements orders, which are more about responsibility than possession, took the place of custody and access. Grandparents and other family members may request such orders under this Act, but only with permission from the court. Although the leave requirement may seem onerous, it has a purpose.

Once leave is granted, the court examines the quality of the bond not its label. The principle is still set out in section 1(1): "the welfare of the child is to be the paramount consideration of the court." This sweeping simple sentence is the essence of British child law. It does not only provide the judge with discretion but also guidance.

It is further determined in recent case law. *Re J (A Minor)* (2019) the Court of Appeal allowed regular contact between a grandchild and her paternal grandparents against the opposition of the mother. The court concluded that the grandparents provided "emotional continuity" and denying contact would deny the child a part of her identity. As Lord Justice Baker said, "*grandparental affection is one of those silent forces that determine a child's sense of belonging.*"

The British model depicts balance in movement, accessibility by merit and not by mere relation. Here are a few ways to rephrase that sentence, focusing on making it clear and easy to understand: The conclusion is simple that family law can respect both including parents authority and can still allow for love between grandparents and grandchildren.

C. Canada: A Model of Normalization

In Canada, this is even more clearly laid out in law. *The section 21(3) of Ontario's Children's Law Reform Act (CLRA) allows "any person, including grandparent" to seek a contact order.* While the term 'any person' appears to be wide-ranging, the impact of the term is both subtle yet powerful in normalizing the notion that care is multiple (Kelly 2021)

Canadian courts do not consider grandparental involvement as an exception to be justified but as a relationship to be analyzed. The investigation is still a factual investigation. The child's well-being is the main concern, judges cares about cooperation, affection and contact when they make a decision it's based on practical matters and simple factors like genetics or traditional family roles.

The court of appeal held In the case of *Chapman v. Chapman* (2001) that even parents still have the main authority but still judge must recognize the steady and good effect that grandparents can have on a child's life. Later, in *Perron v. Perron* (2019), the court took the opportunity to say denial of contact needlessly may be detrimental to emotional development of the child. Now the law is properly developed and it recognizes that the grandparents are fundamentally important for the welfare of the child, they are family not just visitors.

D. Lessons and Takeaways

From these jurisdictions three lessons may be derived.

First, the welfare inquiry requires broadening its scope of vision. The courts from round the world like Delhi to London and London to Toronto have acknowledged that a child's happiness depends upon not just parents but all people in their life. Grandparents often embody that network.

Second, procedure strengthens principle. India uses judicial discretion; the U.K. employs leave; Canada codifies participation. Each provides a structured pathway for courts to consider extended family involvement. Pakistan, too, can formalize such practice through a rule, a circular, or judicial precedent without rewriting the Act.

Third, structured participation enhances precision. By hearing from grandparents and observing their interaction with the child, the judge gains a fuller picture. Welfare then ceases to be an abstraction; it becomes a living fact.

Comparative law, at its best, does not ask us to imitate but to understand. Pakistan's legal and cultural soil is distinct, yet the roots of family affection are the same. The joint family system

already provides what other nations are trying to recover a sense that love is collective, not competitive. The challenge is not to create a new principle but to make tangible one which already exists.

The combined wisdom of Canada, India, and Britain comes from one common acknowledgement that the child's best interest is served when the court hears from people beside the parents.

VIII. Empirical and Psychological Dimensions

The law speaks of welfare. Psychology tells what that welfare is in flesh and blood. The two are not unknown, they are neighborly. Knowing intellectually is good, but knowing psychologically is far better in protecting the child's heart. Science is the friend of conscience in this area.

A. The Evidence of Mind and Heart

Modern research does not allow for doubt. According to the American Psychological Association (APA, 2022), the association shows that when kids have regular and loving interactions with their grandparents, they have better emotional regulation and are less prone to have outbursts and are more likely to be active in the school. The reason is simple. Grandparents tend to be able to provide an element of stability that the parents are often unable to do. Their love is sure, slow, uncompetitive.

The World Health Organization (WHO, 2023) has conformed these findings. Its international report on family well-being for 2017 says that "grandparental involvement buffers the psychological impact of internalizing family conflict or parental separation on children." In simple terms, the home breakdown is smoothed over by the grandparent, who solidifies a child's world. On a restless shoulder It is the still hand resting.

Psychologists attribute this to what they refer to as secure attachment theory. A child's trust is developed when they know they know that love is stronger than fighting. This trust leads to the foundation for toughness, self-worth and kindness. This differentiate between a child who is brittle and a child who is flexible during hard times.

B. The South Asian Experience

A recognizable face of this trust has been developed in South Asia. These people do not live in pairs, but in circles. As Ahmad (2019) states, "the joint family system provides a context of shared care and collective stability." When one link fails, another one becomes stronger. Grandparents provide a sense of stability and continuity without trying to take the place of the child's parents, they totally act as a buffer.

In their study, Imran and Yasmeen (2020) discovered that following parental separation, children of multi-generational families in Pakistan are more socially confident and less anxious than those brought up in socially isolated nuclear families. Hafeez (2021) further states that "the intergenerational relationship when correctly guided serves as an emotional remedy in the family." In other words, where there is a wound from litigation, affection heals.

This is not the theory read from books. It is life being observed in courtrooms. The child who is able to spend an hour with a loving grandparent leaves lighter and less confused. The judge who understands this transformation realizes that psychological effects like this are based on factual and solid evidence not on any emotional sentiments.

C. The Role of the Court

Still not all grandparental relationships are innocent. Some are bridled with animosities or ill-applied zeal. The law should not create a door without holding the key. Hence the need for participation that is court overshadowed.

Supervision does not mean suspicion. It means structure. It allows love to move around in the quantities it is safe. The visits may be permitted by the courts in the courthouse or the presence of a welfare officer. In 2022 the American Psychological Association (APA) said that is an important kind of supervision since it keeps people from using psychological tricks on one another and promotes good interactions.

It can be remembered by the court that it is not giving rights to the grandparents but rather is safe guarding the welfare of the child. In such situations the judge is like a doctor they locate the problem and give its solution and look after the results. Eventually, the law is like medicine that must heal.

D. The Balance of Emotion and Order

While look after a child's welfare, we must always carefully balance between showing concerns and acting careful. The court should also be careful while using its authorities, it should never overstep. Grandparents should be supportive instead of being controlling with in the family, and parents should be cooperative instead of fighting. As per Lord Denning, Justice must be sharp, aware and understanding, it shouldn't be naïve or blind.

Through providing a proper structure, this guide involvement can successfully combine the affection of families with of the help of courts order. This makes the judge essentially the protector of both legal rules and love itself.

E. Conclusion: Welfare in Living Terms

Different researches and institutions both have confirmed that children grow more on shared love. Grandparents are vital because they show the child that love doesn't disappear just because there are any arguments and even when family is broken, a sense of home can be rebuilt.

The human truth is so simple that it needs to be acknowledged by the law based on the guidance of psychology. The courts often focus only on measurable aspects of a child's well-being, such as housing and money. But a child's true welfare is also found in boundless things like memories, trust and feeling like they belong and are important, things that can't be put on a form but are what truly matter to them.

A child's isn't something that can be calculated, it's a way of life. It's a judge's responsibility to combine caring with the facts to make sure that the child gets a stable life, not just an easy one. Love without discipline is a mess and discipline without love is a failure, this is what any smart judge out there knows.

IX. Doctrinal Clarifications and Limits

Every good principle needs to know its boundaries, even love if it goes unchecked. It can become unwelcome intrusion. Welfare of child is most important, but it still has limits like everything. The law must draw those lines carefully, so they are firm enough which is gentle enough to guide and protect.

A. The Primacy of Parents

The first and most stable rule is the following: parents are the natural guardians of their children. The Guardians and Wards Act, 1890 doesn't change the truth it only guides that how it operates and it's applied. The Act acknowledges what nature already determined. The parent's right is not based on ownership but on responsibility. It is both an advantage and a burden.

As Rahman (2018) reminds, the court can only intervene when parental responsibility has failed or clashed. The judge is not there to replace the parent, but just to reestablish the sense of fairness and balance. *Rukhsana v. In spite of this*, the bench of the Lahore High Court in Muhammad Shafi (2019) pointed out that the court does not seek to replace affection but to control its manifestation in the best interest of a child. The law honors parenthood while at the same time rectifying it..

B. The Supportive Role of Grandparents

Grandparents are not competitive but supportive. Their function is very important. They can teach, console and nurture, but they never displace. The Welfare Principle is in no way an expression of dissent against parental authority, but an expression of the concern that their presence is in the interest of the child, and not in the interest of the parental authority itself.

As per Naqvi (2021) Grandparents are there to strengthen the family not to weaken it. They make sure child's stability without ignoring discipline. The Courts task is to logically explain their role. As Denning said "Love must have boundaries, or it loses its purpose.

C. Custody Transfer: An Exception, Not a Rule

The custody can be transferred to grandparents only in exceptional cases when both parents are found unfit or otherwise unable to care for the child. Anyone's fitness shouldn't be calculated by their gender or wealth but is measured through their behavior and ability. Before a court may take custody from a natural guardian it must find positive unfitness.

In *Sajida Bibi v. Bashir Ahmad* (Peshawar High Court, 2020), the court awarded the interim custody to a maternal grandmother due to the fact that parents were involved in acrimonious litigation, which was an immediate threat to the peace of the child. The judgement emphasised that such transfer is a temporary welfare order and not a permanent change of guardianship. This principle is only subject to proof of a compelling reason to the contrary (Hafeez, 2021).

D. Judicial Reasoning and Record

Every order that allows or refuses access must have a basis in logic. The judge's duty is not merely to decide but to explain. Section 17 of the Act demands consideration of the child's age, sex, religion, and surroundings but the reasoning must appear on record. A well-reasoned judgment is justice made visible.

Recording reasons serve two purposes. It guards against arbitrariness and provides guidance for future cases. The Lahore High Court has repeatedly urged that custody and visitation orders must reveal the path of thought that led to the result (Naqvi, 2021). The child, though silent in the courtroom, deserves to know that the decision was not a matter of chance.

E. The Boundary Between Emotion and Law

In family law, emotion often comes first; reason must come last. The judge must feel with the heart but decide with the head. The law cannot allow affection to overturn order. As Lord Denning once said, “Discretion must be exercised not by sympathy alone but by principle.”

Hence, the doctrine is clear. Parents first. Grandparents next. The State last. Each in its place, each in its time. The welfare of the minor remains the constant star, but the law charts the course.

A court that remembers these limits will not err in kindness nor falter in firmness. For in family matters, justice lies not in choosing sides, but in keeping balance and that, in the end, is the highest art of judging.

X. From Custom to Jurisprudence: Institutionalizing Grandparental Participation

If the law is truly meant to serve life then it must also commit to preserving it. The courts cannot shut their eyes to what goes on in the homes of the people. In Pakistan, the joint family is not a relic; it is a living institution. It carries the weight of care when parents falter and the voice of memory when children forget. Yet, our law books say little about it. The time has come to give form to what already exists in fact.

The welfare of the minor cannot be a lottery or a matter of preferences. Furthermore, the courts cannot turn a blind eye to what happens in the homes of people. In Pakistan, the joint family is not a dead institution; it is a living institution. It has the responsibility of caring in-case the parents neglect their duties and it also play a role as a reminder when children forget their responsibilities.

1. Amendment of Guardian Court Rules

There should be a wider inquiry required by the Guardian Court Rules. When a petition is presented, the court should demand disclosure of the child's extended family not because it is inquisitive, but for the sake of clarity. Most of the times, a child's welfare is spread over numerous hands. A presumption would make this visible, requiring the court to make a record whether grandparents or close kin are available. The judge may then, as necessary, summon them to help in the welfare evaluation. This trivial addition would transform discretion to method (Rahman, 2018).

2. Family Welfare Questionnaires

Alongside, a Family Welfare Questionnaire needs to be added to the record. It would require the parties to list their financial resources as well as family support systems. It would show who lives with the child, who looks after schooling, and who provides moral guidance. Such a document, used in Canada and the United Kingdom, has proved invaluable in revealing the child's real environment (Kelly, 2021; Barlow & Eekelaar, 2018). It ensures that welfare is judged by life, not by law alone.

3. Judicial Training Modules

The law is only as good as the one who applies it. Judges of guardian courts should be given training modules in family psychology, child behaviour, and intergenerational dynamics. These are not academic luxuries; they are practical tools. A judge who understands how a child responds to loss, or how grandparents can stabilise divided homes, will decide more wisely. The

bench must learn to see affection as evidence and behaviour as testimony (APA, 2022; WHO, 2023).

4. Family Welfare Centres as Mediatorial Platforms

The Family Welfare Centers already functioning in several districts should be strengthened and given a clearer mandate. They can also serve as a mediation forum for dispute over grandparents' access. The atmosphere there is more relaxed, and human. An order of the bench often fails to bring out a satisfactory result whereas a discussion in such a center often does so. Grandparents and parents can be taught to work together for the good of the child and not to struggle for control. Mediation transforms hostility to comprehension and litigation to healing (Ahmad, 2019).

5. Legislative Reform

Last but not least, small changes in the legislation are required. The Guardians and Wards Act (1890) should be updated to specifically include grandparents in welfare decisions. This change isn't about giving them new legal rights, but about making it clear that courts already have an obligation to consider their role. The law would then mirror social reality that Pakistan is a country where a child in most cases will not grow up with just two parents. Such acknowledgement would mean that future decisions would be based not on individual creativity but on a statutory basis.

Conclusion

In short, the law should have clear direction, it needs to maintain its pace with the family instead of chasing. Amended rules will provide for consistency. Questionnaires will provide information. Training will give insight. Mediation will give peace. Legislation will provide permanence.

Pakistan's family system already contains the wisdom that modern societies are currently attempting to rediscover, that care is collective, and love is intergenerational. The courts should simply recognize this truth and incorporate it into our system of law. Making our customs and traditions into law is the real way to bring justice to life it will make it real to be seen by everyone.

XI. Conclusion

The family law isn't a battle over who has the most rights; it's about finding a careful balance. A child's well-being can't be treated as a challenge between parents, it's never a competition nor a prize to be won, but a sacred trust that should be carefully maintained. A child truly grows when their life roots are strong and they have a strong relationship with their parents in a loving environment where law also pays attention to the true heart of family life, instead of just listening to the lawyers.

A. Welfare as a Relational Ecology

The welfare principle should be viewed as a system of relationships around a child, not as a conflict between parents. The support system for a child includes parents, grandparents, siblings and other relatives. When a relationship fails, another must be capable of becoming stronger. It is the court's job to preserve this overall family situation rather than destroy it. According to

Rahman (2018), it is the importance of the continuity of these bonds, rather than the sole custody of one of the parents that matters for the child's well-being.

B. Grandparents as Custodians of Continuity

Grandparents are the unseen support of in a child's life. They link a child's past to their present and teach them the crucial lesson that love is forever despite fighting. They provide important moral and emotional guidance. As per Ahmed (2019) they re-establish and restore the balance when a child is upset by parental conflicts because of this, they aren't a secondary figure; they are truly a stabilizing force within his family, their involvement turns a family breakup into source resilience.

C. Courts as Moral Architects

Courts should focus upon establishing peace among the entire family. They can't order love but they can create an environment where love is possible. A judge's power must be strong enough to stop harm but gentle enough to help people heal. The job of law's is to protect the things that allow love to flourish. Guardianship and good justice come from making careful and fair decisions through an open process.

D. The Trinity of Family Justice

Family justice in Pakistan must be based on three pillars viz., law, custom, and compassion. Order comes from the law, understanding comes from traditions and customs and elements of human life come from compassion. Together they constitute trinity to sustain the spirit of welfare. When these three are harmonized by the courts, it is not only legality which is served, but also humanity.

A family is more than any legal idea, it's a child's first classroom for justice. The real test of this truth isn't in any court's legal decisions, but it's in the generation of people it produces. With this it ensures that a child's welfare is not just a legal term but is a living principle of in our society.

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