

On the Path to Perfecting Inter-Generational Visitation Rights

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Abstract: With the change of family structure and the rise of divorce rate, disputes over the right to visit grandchildren have gradually become a common social phenomenon. At present, there is a lack of clear provisions on the right of inter-generational visitation at the legislative level in China, and there is no legal basis for the adjudication of such disputes in practice. However, it can be seen from the summary of the existing judgment ideas that judicial practice has responded to the inter-generational visitation right, and the lack of law does not mean a negative attitude towards the inter-generational visitation right. Based on the specific cases, this paper analyzes the problems existing in the practice according to the legislative and judicial status quo of the inter-generational visitation right, and puts forward some suggestions on the improvement of the inter-generational visitation right based on the principle of maximizing the interests of minors, aiming to build a reasonable inter-generational visitation right, better protect the legitimate rights and interests of minors and the elderly, and promote social harmony and stability.

Keywords: Visitation Rights; Inter-Generational Visitation Rights; Child-Centered Approach; Best Interests of the Child

1. Introduction

Significant demographic shifts and evolving family structures in China have increasingly positioned grandparents as pivotal caregivers for minor grandchildren. Concurrently, the diversification of sociocultural values has eroded traditional marital norms, contributing to a sustained rise in divorce rates. This trend has substantially impeded grandparents' access to their grandchildren. In practice, custodial parents frequently obstruct post-divorce visitation between grandparents and minors, giving rise to legal disputes. The absence of explicit statutory provisions governing inter-generational

visitation rights has created substantial challenges for judicial authorities in adjudicating such cases. Consequently, the legislative recognition of inter-generational visitation rights constitutes not only a response to contemporary familial realities but also an imperative necessity for the effective resolution of related disputes within judicial practice.

2. The Essential Connotation of Inter-Generational Visitation Rights

Neither statutory law nor judicial interpretations in China's legal system provide a precise definition of "inter-generational visitation rights." "The most analogous legal concept is that of visitation rights. In practice, the majority of inter-generational visitation disputes are adjudicated under the legal framework of visitation rights.

Based on existing legal provisions regarding visitation rights, inter-generational visitation rights are currently understood to mean the entitlement of grandparents who do not bear primary custodial responsibilities for their minor grandchildren to maintain contact through visits, meetings, or temporary cohabitation. This legal construct serves dual purposes: first, to preserve the kinship ties between grandparents and minor grandchildren; and second, to fulfill the emotional needs of both parties within reasonable bounds [1].

3. Practical Issues Concerning Inter-Generational Visitation Rights

The Supreme People's Court's Guiding Case No. 229, issued by its Judicial Committee, clearly demonstrates that courts adjudicating inter-generational visitation disputes should adhere to the "principle of the best interests of the minor and the promotion of family harmony." "Provided that the minor's normal life and physical/mental well-being remain unaffected, grandparents' visitation rights should be legally upheld. Notwithstanding this judicial recognition, the currently effective Civil Code restricts the

subject of visitation rights solely to parents, thereby creating persistent challenges in the judicial application of inter-generational visitation rights.

3.1 Legislative Vacuum in Statutory Framework

The currently effective Civil Code contains no explicit provisions regarding inter-generational visitation rights, nor does the Judicial Interpretation (I) on the Marriage and Family Section of the Civil Code make any reference to such rights. During the legislative process of the Civil Code revision, both the first and second review drafts of the Marriage and Family Section affirmed inter-generational visitation rights by allowing their adjudication by analogy to provisions on parental visitation rights [2]. However, the final third review draft eliminated all provisions concerning inter-generational visitation rights. The Constitution and Law Committee of the relevant department explained this deletion as reflecting the current lack of consensus on inter-generational visitation issues. An analysis of inter-generational visitation disputes reveals that courts predominantly apply Article 8 and Article 1086 of the Civil Code when adjudicating such cases. Article 8 constitutes a general legal principle, while Article 1086 represents a specific legal rule. According to the doctrine that legal principles prevail over legal rules in judicial application, the concurrent application of these two provisions frequently creates normative conflicts [3]. Despite the issuance of relevant judicial guidance, the absence of clear and uniform adjudicative standards renders court decisions particularly ineffective, failing to meet public expectations for judicial outcomes. When Article 1086 of the Civil Code serves as the sole legal basis for claims regarding visitation rights, it inevitably raises questions about the legal legitimacy of such judgments [4].

3.2 Judicial Discretion with Multiple Legal Bases

In judicial practice, the majority of adjudications in grandparent visitation rights disputes tend to support or protect the visitation interests of grandparents. However, cases exist where such visitation requests are denied or dismissed. In the absence of clear and uniform statutory support, judges exercise differing value judgments and balancing tests in individual

cases. Illustratively, in the Wei Hongmei and Wang Renchang Visitation Rights Dispute case, the first-instance court upheld the grandparent visitation request based on considerations of the child's best interests, public policy (*ordre public*), and social morality. Conversely, the second-instance court dismissed the claim. The appellate decision emphasized that the child, taken away by Ms. Wei from the Wang family at just over one year old, had no recollection of the grandparents. Furthermore, Ms. Wei had remarried, and the ruling prioritized the child's healthy development. This demonstrates how local courts attempt to find jurisprudential pathways through the application of general principles in civil law, protection of minors' and elderly persons' rights, and the restoration of familial ethics and bonds. Nevertheless, the legislative void continues to impede adjudicative consistency, resulting in inconsistent rulings for factually analogous cases (inconsistent adjudication of similar cases). Even when courts uniformly rule in favor of grandparent visitation, divergent legal reasoning underlies these judgments.

3.3 Insufficient Legal Reasoning and Justification

How should disputes over grandparent visitation rights be resolved? The Constitution and Law Committee of the relevant department posits that parties should first attempt negotiation. If consensus cannot be reached, resolution may be sought through court judgments and rulings. While this framework provides a pathway for resolving grandparent visitation disputes, its application in judicial adjudication suffers from inadequately reasoned decisions. Taking the principle of public policy (*ordre public*) as an example: when invoked as the legal basis, public policy is utilized to create a novel civil right—a function exceeding its conventional scope. Furthermore, People's Courts currently lack thorough justification when employing the public policy principle to establish grandparent visitation rights and have failed to develop operationalizable case-specific standards [5]. This deficiency inevitably fosters public skepticism regarding the legal system's rationality and undermines judicial authority.

3.4 Marginalization of Minors' Interests in Current Jurisprudence

Given the absence of express statutory

provisions governing inter-generational visitation rights, our analysis must proceed by analogy to the most closely related legal concept - parental visitation rights.

Historically, the concept of visitation rights traces its origins to *patria potestas* (paternal power) in Roman law. The original legislative framework for visitation rights adopted a “family-centric” approach [6], imbuing the concept with strong paternalistic overtones that positioned children as mere objects of rights rather than rights-holders. China’s initial institutional design of visitation rights similarly adopted a “parent-centric” orientation, prioritizing parental interests over those of minors.

Article 1086 of the Civil Code further compounds this issue by exclusively designating grandparents as the rightful claimants of inter-generational visitation rights. This statutory construction disproportionately emphasizes grandparents’ legal standing while marginalizing minors’ interests, reflecting an unduly restrictive approach to standing requirements [7]. Notably, minor grandchildren possess legitimate emotional needs for grandparental companionship and should accordingly enjoy standing to initiate visitation petitions. Certain judicial decisions that dismiss inter-generational visitation claims based on standing requirements - holding that only qualified parties may bring such actions - manifestly contravene the paramount principle of the best interests of the child.

3.5 Deficiency in Remedial Mechanisms for Rights Enforcement

The safeguarding of rights relies not only on state coercive power but also necessitates the proactive cooperation of the obligated parties. Where either parent fails to actively fulfill their cooperation obligations or even obstructs grandparent visitation, grandparents relying solely on a written judgment is far from sufficient. What is truly required is a comprehensive relief system equipped with specific enforcement measures. Although relevant judicial interpretations provide for compulsory measures such as detention and fines against parties failing to fulfill their duty of assistance, these measures are overly harsh and overly broad. They risk further exacerbating family conflicts, adversely affecting the healthy development of the minor child, and

contravening the paramount principle of the best interests of the child.

4. The Path to Perfecting Inter-Generational Visitation Rights

The principle of the best interests of the child, as a cornerstone of modern child-centric legislation, must be established as the paramount guiding doctrine for both the Marriage and Family Book of the Civil Code and all other legal instruments regulating relationships involving minors. Accordingly, in constructing China’s inter-generational visitation rights framework, it is essential to consistently prioritize the maximization of minors’ welfare through comprehensive statutory provisions that precisely define the scope of eligible rights-holders, establish structured modalities for exercising such rights, enumerate legitimate grounds for restriction, and implement effective remedial mechanisms. This systematic approach ensures the development of a legally robust visitation regime that properly balances inter-generational familial bonds with the fundamental rights and developmental needs of children, while maintaining consistency with internationally recognized standards of child protection jurisprudence.

4.1 Establishing the Juridical Nature of Inter-Generational Visitation Rights

The recognition of inter-generational visitation rights as an autonomous legal right constitutes the foundational premise for constructing a coherent institutional framework. Jurisprudentially, while inter-generational visitation rights maintain substantive connections with parental visitation rights, they embody distinct legal characteristics. As a right deriving from consanguineous kinship relations yet existing independently of extraneous factors, inter-generational visitation rights demand recognition as an independent juridical category. Contemporary judicial practice reveals that most claims arise from circumstances of parental divorce or demise, superficially suggesting that such rights merely extend parental visitation privileges - serving as supplementary mechanisms when parental authority cannot be exercised. This interpretation, however, proves conceptually deficient when confronted with complex scenarios such as posthumous children born outside wedlock. Were inter-generational visitation rights construed merely as extensions

of parental rights, grandparents would be deprived of any legal basis for asserting claims in such cases, thereby undermining the protection of both minors' and elderly persons' legitimate interests, while simultaneously jeopardizing familial stability and social harmony. Consequently, the imperative exists to expressly codify inter-generational visitation rights as an independent legal entitlement meriting statutory protection.

4.2 Legislative Clarification of Inter-Generational Visitation Rights

Notwithstanding the judicial recognition of inter-generational visitation rights in practice, which has provided case-specific protections, the persistent legislative lacuna poses substantial challenges to consistent application. Consequently, statutory codification of such rights must be accorded legislative priority without delay. The recognition of inter-generational visitation rights is predicated upon both jurisprudential foundations and considerations of equity - a position that aligns harmoniously with the legislative philosophy underlying the Civil Code while simultaneously resonating with traditional Chinese familial values.

The Supreme People's Court should systematically issue guiding cases reflecting contemporary social realities to establish preferred adjudicative approaches for inter-generational visitation disputes, with subsequent formal legislative enactment to incorporate these rights into positive law. At the statutory level, the law should expressly stipulate that grandparents maintain visitation rights irrespective of parental marital status or survivorship, provided a substantive consanguineous relationship exists between grandparents and grandchildren [8]. This legislative imperative derives from the necessity to protect both the legitimate rights and emotional well-being of elderly persons. Furthermore, the law must explicitly affirm grandparents' standing as proper parties in related litigation, a procedural safeguard that corresponds with the inherent nature of inter-generational visitation rights as an independent legal entitlement.

4.3 Expansion of the Scope of Rights-Holders in Inter-Generational Visitation

Guided by the legislative intent of the Civil

Code and the paramount principle of the best interests of the child, the implementation of inter-generational visitation rights should evolve from a "family-centric" approach to a "child-centered" paradigm, with heightened emphasis on safeguarding minors' physical and psychological well-being. This transformation will establish inter-generational visitation rights as a genuine statutory mechanism for protecting minors' lawful rights and interests. Consequently, it becomes imperative to expand the scope of eligible rights-holders under this framework.

Fundamentally, minors themselves should be recognized as active subjects of inter-generational visitation rights, thereby rectifying the current paradigm where children remain passive recipients of visitation arrangements. In circumstances involving family dissolution or bereavement, grandparents play an indispensable role in restoring minors' sense of happiness, stability, and security. Minors must accordingly be entitled to initiate visitation with grandparents and other family members deemed significant to their welfare. Moreover, any proposed visitation must be contingent upon obtaining the minor's consent following proper consultation. While minors possess evolving capacity to form autonomous views that warrant respect commensurate with their age and maturity, the determination of their standing as rights-holders should be carefully circumscribed by assessments of their behavioral and cognitive capacities.

Complementarily, custodial parents should be accorded derivative standing to petition for inter-generational visitation on behalf of their children. Empirical realities demonstrate instances where parents legitimately seek grandparent visitation to promote their children's well-being. Incorporating parents as ancillary rights-holders within this framework will facilitate the creation of more harmonious familial environments conducive to minors' healthy development.

4.4 Defining the Substantive Content of Inter-Generational Visitation Rights

To prevent the difficulties grandparents may encounter in exercising visitation rights under overly generalized legislative provisions, statutory guidance should be established to clarify the substantive content of inter-generational visitation rights. Such clarification would facilitate both private negotiations

between parties and judicial administration in practice.

Regarding modalities of exercise, China's current approach favors case-by-case judicial determination, with only vague statutory guidance providing for party negotiation as a first recourse, followed by discretionary court intervention when negotiations fail. While this legislative model acknowledges the multifaceted nature of visitation arrangements, its lack of definitive standards has resulted in inconsistent adjudication outcomes for factually similar cases. Drawing upon existing provisions governing parental visitation, the Supreme People's Court should issue judicial interpretations establishing illustrative modalities for inter-generational visitation, including but not limited to: in-person meetings, overnight stays, telephone communication, electronic correspondence, video conferencing, and other technologically facilitated interactions. Given the prevalence of preexisting interpersonal conflicts between parties, primary reliance on virtual visitation methods should be encouraged to minimize direct contact and prevent escalation of tensions. Concerning grounds for restriction, Chinese law currently fails to specify the concrete circumstances constituting the statutory standard of "detrimental to the minor's physical or mental health." "To properly safeguard minors' welfare, explicit criteria must be established. Where grandparents engage in conduct potentially harmful to minors, custodial parents should retain standing to petition courts for suspension of visitation rights. When delineating specific suspension criteria, the principle of the child's best interests must serve as the paramount consideration. Judicial practice suggests six appropriate grounds for suspension:

1. Grandparents' instigation or encouragement of minors to engage in proscribed behaviors under Article 14 of the Juvenile Delinquency Prevention Law [9];
2. Commission of tortious or criminal acts against grandchildren by grandparents;
3. Grandparents suffering from contagious diseases posing substantial health risks to minors;
4. Demonstrable deterioration of emotional bonds resulting in the minor's refusal of visitation;
5. Grandparents' abuse of visitation privileges;
6. Grandparents being judicially determined as lacking or having limited legal capacity.

The presence of any such circumstances should

trigger mandatory suspension of inter-generational visitation rights [10].

4.5 Implementing Remedial Measures for Inter-Generational Visitation Rights

First, mediation should be established as a mandatory preliminary procedure. Given that inter-generational visitation disputes inherently stem from familial conflicts - primarily between grandparents and custodial parents - the adversarial nature of litigation risks exacerbating tensions and creating long-term obstacles to visitation rights enforcement. Therefore, parties should be actively encouraged to resolve conflicts through mediation. This conciliatory approach facilitates mutual understanding and relationship rehabilitation while reducing litigation burdens and protecting minors from being drawn into contentious disputes [11].

Second, drawing inspiration from divorce cooling-off periods, the introduction of "visitation cooling-off periods" should be considered. When adjudicating inter-generational visitation cases, judges may impose such interim periods to prevent renewed escalation of family conflicts. These cooling-off periods serve dual purposes: providing parties with necessary emotional respite while mitigating psychological stress on minors, thereby preventing potential harm from visitation-related conflicts.

Third, graduated enforcement mechanisms should be implemented to address non-compliance by custodial parents, adopting Australia's tiered approach as a model:

1. Preventive measures: Courts shall include clear notices of enforcement consequences in visitation judgments;
2. Remedial measures: Initial non-compliance shall trigger judicial reprimands against the non-performing party;
3. Punitive measures: Persistent obstruction after reprimand may result in court-imposed fines or emotional distress compensation payable to grandparents, with detention reserved for particularly egregious cases.

Notably, both monetary penalties and detention carry inherent risks of secondary harm to minors' interests and therefore require judicious application, strictly contingent upon comprehensive best-interests assessments. The implementation of such measures must maintain constant vigilance against potential adverse impacts on child welfare while ensuring

effective rights enforcement.

5. Conclusion

inter-generational visitation disputes represent not only legal controversies but also a microcosm of broader societal issues. China's current legislative framework maintains a conspicuous lacuna regarding inter-generational visitation rights, leaving such disputes to be resolved primarily through judicial discretion. This regulatory void underscores the imperative for establishing a comprehensive legal regime governing inter-generational visitation rights.

In the context of rapid social transformation and increasing diversification of family structures, the law must proactively address the practical need for preserving inter-generational bonds. By institutionalizing mechanisms that safeguard familial affection across generations, the legal system can effectively transform statutory provisions from "paper rights" into tangible protections. Such development would not only fill the current legislative gap but also align legal frameworks with evolving social realities, ensuring that the warmth of family relationships receives proper juridical recognition and protection.

References

- [1] Zhuang Xulong. "The Legal Basis, Right Attribute and Type Distinction of 'Grandparent Visitation Rights'". *Law Application*, 2017, (23): 82-90.
- [2] Wang Lei. The embodiment of family civilization construction in the Civil Code. *Journal of Shandong University (Philosophy and Social Sciences Edition)*, 2021, (03): 91-99.
- [3] Wang Geya, Wei Shuang. Flaws in the realization of visitation right and system correction. *Heilongjiang Social Sciences*, 2007, (02): 158-160.
- [4] Yan Hui. The justification of the right to visit the next generation from the perspective of 'family'. *Human Rights Research (Publication)*, 2023,27 (02): 207-226 + 356.
- [5] Li Bei. The refereeing idea of grandparents 'visitation disputes in the era of 'Civil Code'-the shift from the right approach to the obligation approach. *Legal quotient research*, 2022,39 (04): 131-145.
- [6] Lyu Chunjuan, Wang Gang. The dilemma and solution of the exercise of the right of visitation from the perspective of the application of law. *Time Law*, 2025,23 (01): 25-34.
- [7] Li Chunling. Nature exploration and rule construction of grandparents 'visitation right'. *Journal of Chengdu University of Technology (Social Science Edition)*, 2020,28 (06): 29-34.
- [8] Jing Chunlan, Yin Zhaoxian. Legislative thinking on visitation right and its subject expansion - from the perspective of the principle of "the best interests of the child". *Journal of Law*, 2011,32 (08):115-117.
- [9]Xiong Jincai. Research on the grandparents 'visitation right system in the U. S. state statute law. *Law application*, 2010, (06): 86-89.
- [10]Li Jiarui. The theoretical logic, application dilemma and relief approach of grandparents 'visitation right from the perspective of Civil Code. *Journal of Sichuan University of Arts and Sciences*, 2025, 35 (01): 83-90.
- [11]Wu Mengqi. The application of the principle of 'maximization of children 's interests 'in subrogation-type inter-generational visits. *People's Justice*, 2023, (02): 57-59.