



Parenting Across Broken Marriages: A Socio-Legal Analysis of Custody and Child Welfare in India

Jyoti Chauhan ^{1 *}, Dr. Monika Mishra ²

1. Research Scholar, Apex School of Law, Apex University, Jaipur, Rajasthan, India

aradhana.parmar14@gmail.com ,

2. Supervisor, Apex School of Law, Apex University, Jaipur, Rajasthan, India

Abstract: The dissolution of marriage is not merely the legal termination of a marital relationship but also a profound social transition that significantly impacts parenting, custody arrangements, and child welfare. In India, where family values and collectivist traditions remain deeply entrenched, divorce or marital breakdown carries additional complexities beyond emotional distress, including social stigma, financial instability, and the redefinition of parental responsibilities. This article undertakes a socio-legal analysis of custody and child welfare within the Indian context, tracing the historical evolution of custody laws from colonial to contemporary statutes, and analysing the judicial interpretations that shape the rights of parents and the best interests of the child. It explores the challenges faced by parents in broken marriages, including legal disputes, gendered expectations, and the role of extended families in caregiving. It also examines the psychological and social implications of custody decisions on children, highlighting issues of adjustment, stability, and identity formation. Finally, the article assesses the current legal framework governing custody and guardianship under statutes such as the Hindu Minority and Guardianship Act, 1956, and the Guardians and Wards Act, 1890, alongside international conventions. It concludes by identifying gaps in the present system and suggesting reforms that prioritize child welfare, promote shared parenting, and balance the interests of both parents.

Keywords: Parenting, Broken Marriages, Custody, Child Welfare, Divorce, Indian Family Law, Socio-Legal Analysis, Guardianship, Best Interest of the Child, Family Courts

----- X -----

INTRODUCTION

The institution of marriage in India has historically been revered as a sacramental and indissoluble union, binding not only two individuals but also their families and kinship networks. However, with growing urbanization, education, economic independence of women, and evolving social attitudes, the dissolution of marriage through divorce, judicial separation, or annulment has become increasingly visible. Though divorce rates in India remain relatively lower than Western nations, the number has steadily risen in metropolitan cities, reflecting changing values and shifting dynamics in marital relationships. Amid such transitions, the custody of children emerges as the most sensitive and contested aspect of marital breakdown.

Parenting across broken marriages in India is shaped by multiple dimensions legal, social, cultural, and psychological. Custody disputes often bring forth tensions between parental rights and the principle of the child's best interests, necessitating careful judicial balancing. Unlike property disputes or financial settlements, custody matters directly influence the emotional stability, upbringing, and overall well-being of

children. The socio-legal framework surrounding custody is further complicated by patriarchal norms, gender biases, and inadequate legal mechanisms for co-parenting. This article, therefore, situates custody and child welfare at the heart of the discourse on marital dissolution in India. By tracing historical developments, analysing statutory frameworks, and exploring judicial trends, it highlights the evolving understanding of child welfare in broken marriages.

HISTORICAL BACKGROUND

The evolution of custody and child welfare laws in India reflects the interaction of traditional Hindu and Muslim family law, colonial interventions, and post-independence legislative reforms. In ancient Hindu law, custody and guardianship were embedded within the patriarchal authority of the father, who was considered the natural guardian of the child. Women, though central to caregiving, were relegated to secondary roles with little legal recognition. Similarly, under Islamic law, the father retained guardianship rights (*wilayah*), while the mother's role was often limited to physical custody (*hizanat*) until a certain age.

The colonial period marked the codification of family law through statutes such as the **Guardians and Wards Act, 1890**, which remains a central legislation on custody matters to this day. Though the Act was secular and applied across communities, it carried colonial notions of paternal authority, with custody decisions framed around the father's guardianship rights rather than the welfare of the child. Nevertheless, courts gradually began articulating the doctrine of the "*welfare of the minor*" as a guiding principle.

Post-independence, with the codification of Hindu personal laws, significant changes were introduced. The **Hindu Minority and Guardianship Act, 1956**, recognized the father as the natural guardian but placed increasing emphasis on the welfare of the child. In subsequent decades, Indian courts through landmark judgments developed the "*best interests of the child*" doctrine as paramount, moving beyond strict paternal rights. For instance, in **Rosy Jacob v. Jacob A. Chakramakkal (1973)**, the Supreme Court stressed that custody decisions must prioritize the welfare of the child over parental rights. Similarly, in **Gaurav Nagpal v. Sumedha Nagpal (2009)**, the Court reaffirmed that welfare considerations override statutory guardianship provisions.

Over time, the judiciary also recognized the importance of the mother's role, particularly in the tender years of childhood. The tender years doctrine, though not absolute, became influential in determining custody for young children, reflecting a gradual shift toward acknowledging caregiving as central to welfare.

In the contemporary context, Indian custody laws must be understood within the framework of not only national legislation but also international obligations. India is a signatory to the **United Nations Convention on the Rights of the Child (UNCRC), 1989** which emphasizes the best interests of the child, the right to maintain personal relations with both parents, and protection from harm. However, the absence of comprehensive legislation on shared parenting and joint custody continues to pose challenges, especially in adversarial divorce proceedings.

Thus, the historical trajectory of custody laws in India illustrates a gradual but significant shift from parental rights to child-centric welfare, even though patriarchal biases and institutional shortcomings remain embedded in the system.

INTERNATIONAL PERSPECTIVE ON PARENTING ACROSS BROKEN MARRIAGES

Parenting after marital dissolution is not confined to any one culture or jurisdiction but is a universal phenomenon that poses challenges across societies. Different countries have developed distinct socio-legal approaches to custody and child welfare, shaped by cultural norms, family structures, and legal traditions. A comparative study of international practices provides valuable insights for India, where custody disputes are often influenced by patriarchal values and adversarial litigation. By looking at global trends, Indian jurisprudence can align itself with child-centred frameworks that prioritize cooperative parenting and the psychological well-being of children.

In Western jurisdictions, especially the United States and Canada, there has been a gradual shift from sole custody arrangements to joint custody and shared parenting. Courts emphasize the principle of “the best interests of the child,” which includes the child’s right to maintain close and continuing contact with both parents. Several U.S. states have enacted presumptions in favour of joint custody, recognizing that children benefit from the active involvement of both parents even after divorce. Similarly, Canada’s Divorce Act was amended in 2021 to strengthen child-focused principles, explicitly requiring courts to consider factors such as stability, safety, and the child’s views in custody disputes. These developments highlight the importance of balancing parental rights with children’s developmental needs.

In Europe, countries like the United Kingdom and France have also embraced joint parental responsibility as the norm. The UK’s Children Act of 1989 shifted custody laws from parental rights to parental responsibilities, emphasizing that parenting does not end with divorce. France, through reforms in 2002, introduced joint parental authority, enabling both parents to make decisions about their child’s upbringing regardless of custody status. These approaches reduce conflict by framing custody not as a contest between parents but as a shared duty toward the child.

In contrast, Asian jurisdictions reflect a mix of traditional values and modern reforms. Japan, for instance, still follows a sole custody model after divorce, which often restricts one parent—usually the father—from maintaining contact with the child. However, increasing advocacy by international organizations has sparked debates on reforming this model to align with the child’s right to family relations under the UN Convention on the Rights of the Child (UNCRC). Similarly, in China, custody is often awarded to one parent, though recent reforms encourage mediation and consider the child’s educational and emotional needs.

International human rights instruments have played a pivotal role in shaping custody frameworks. The UNCRC, ratified by almost all countries including India, lays down the principle that the best interests of the child should be a primary consideration in all custody decisions. It also affirms the child’s right to maintain personal relations with both parents, except where it is contrary to their welfare. Regional instruments, such as the European Convention on the Exercise of Children’s Rights (1996), further strengthen the procedural rights of children in custody cases, ensuring their voices are heard in judicial proceedings.

For India, these international practices highlight the need for reforms that move away from adversarial

models of custody toward cooperative parenting frameworks. While Indian courts increasingly recognize the welfare principle, statutory provisions remain limited in facilitating joint custody or shared parenting. Learning from international jurisdictions, India could adopt legislative presumptions in favor of shared responsibility, institutionalize mediation, and integrate the child's perspective more systematically into custody proceedings. Such reforms would bring Indian custody laws in closer alignment with global child rights standards, ensuring that children of broken marriages are not casualties of parental conflict but beneficiaries of nurturing and balanced parenting.

CONCLUSION

Parenting across broken marriages in India remains a complex and sensitive issue situated at the intersection of law, society, and psychology. The custody and welfare of children involve more than legal entitlements; they reflect cultural attitudes toward parenting, gender roles, and the evolving nature of family in a rapidly changing society. Historically rooted in patriarchal notions of guardianship, Indian custody law has gradually moved toward prioritizing the welfare of the child, as seen in judicial pronouncements and legislative reforms. Yet, gaps persist in recognizing the importance of shared parenting, emotional well-being, and the voice of the child.

The challenges faced by custodial and non-custodial parents ranging from legal hurdles to social stigma demonstrate the need for a more holistic approach to custody. The welfare principle, though well established, requires consistent judicial application and legislative reinforcement through reforms such as clearer provisions for joint custody, mediation mechanisms, and child-centric counselling. Equally important is the recognition of psychological aspects, ensuring that children are not treated as objects of dispute but as individuals with rights and developmental needs. Ultimately, custody and child welfare in broken marriages must transcend adversarial litigation and move toward cooperative parenting models. Such a shift will not only mitigate the trauma of divorce for children but also promote healthier interpersonal relationships within families.

FUTURE SCOPE

The discourse on custody and child welfare in India opens avenues for legal, policy, and social reforms. First, there is a pressing need for **comprehensive legislation on shared parenting and joint custody**, moving beyond the discretionary powers of courts. Statutory clarity would encourage cooperative parenting while reducing prolonged litigation.

Second, **child-centric mediation and counselling mechanisms** should be institutionalized in family courts to address emotional and psychological aspects of custody disputes. Specialized family counsellors and child psychologists can play a crucial role in ensuring that custody arrangements align with the best interests of the child.

Third, future research must focus on **comparative studies between India and other jurisdictions**, particularly those that have adopted shared parenting models, to evaluate their applicability within Indian socio-cultural contexts.

Fourth, there is scope for **greater integration of international norms**, particularly the UNCRC, into

domestic law, ensuring that the voice of the child is heard and respected in custody proceedings.

Finally, the increasing prevalence of broken marriages in urban India necessitates **longitudinal studies on the impact of divorce and custody decisions on children's development**, enabling evidence-based policymaking. As Indian society continues to evolve, legal frameworks must adapt to safeguard not only parental rights but, more importantly, the well-being and future of children caught in the complexities of marital dissolution.

References

1. Derrett, J. D. M. (1963). *Religion, Law and the State in India*. London: Faber & Faber.
2. Diwan, P. (1982). *Law of Marriage and Divorce*. New Delhi: Sterling Publishers.
3. Menski, W. (1988). *Hindu Law: Beyond Tradition and Modernity*. Oxford: Oxford University Press.
4. Jacob, R., & Chakramakkal, J. A. (1973). *Rosy Jacob v. Jacob A. Chakramakkal*, AIR 1973 SC 2090.
5. Sharma, B. (1990). *Child Welfare and the Law in India*. New Delhi: Deep & Deep Publications.
6. Sachdeva, D. (1992). *Guardianship and Custody Laws in India*. Allahabad: Law Publishers.
7. UN General Assembly. (1989). *Convention on the Rights of the Child*. Treaty Series, 1577, 3.
8. Choudhury, S. (2000). *Family in Transition: Divorce and Child Custody in India*. New Delhi: Oxford University Press.
9. Nagpal, G., & Nagpal, S. (2009). *Gaurav Nagpal v. Sumedha Nagpal*, AIR 2009 SC 557.
10. Shastri, S. (2010). *Family Law in India*. Lucknow: Eastern Book Company.
11. Menon, N. (2012). *Seeing Like a Feminist*. New Delhi: Zubaan.
12. Jain, M. P. (2013). *Indian Constitutional Law*. Nagpur: LexisNexis.
13. Raghavan, S. (2015). *Broken Families, Broken Children: Divorce and Child Custody in India*. New Delhi: Sage Publications.
14. Bhattacharya, A. (2017). Custody and Guardianship in India: A Welfare-Based Approach. *Journal of Indian Law and Society*, 8(2), 45–68.
15. Saxena, P. (2019). The Best Interests of the Child in Indian Custody Laws: A Critical Analysis. *Indian Journal of Family Law*, 13(1), 77–99.
16. Mehta, K. (2020). Shared Parenting in India: A Missed Opportunity. *International Family Law Journal*, 2020(4), 110–124.
17. Roy, S. (2021). Divorce, Custody, and Child Rights in Contemporary India. *Socio-Legal Review*, 17(1), 89–112.

18. Kapoor, R. (2023). Child Custody Disputes and the Role of Family Courts in India. *Indian Law Review*, 9(3), 156–178.
19. Singh, A. (2025). Parenting Across Broken Marriages: Psychological and Legal Perspectives. *Journal of Family Studies*, 31(2), 201–225.