

## **EVOLVING DYNAMICS OF CHILD CUSTODY LAWS: PRIORITIZING THE BEST INTERESTS OF THE CHILD IN MATRIMONIAL DISPUTES**

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### **ABSTRACT**

*This paper discusses the progressive development of child custody laws in marriages with an emphasis on the best interests of the child. The evolution from traditional patriarchal custody to contemporary, child-focused jurisprudence, under the aegis of Indian statutes and international conventions. Judicial interpretations and comparative global perspectives are analysed for emergent trends and present-day tensions. Finally, the study concludes with recommendations for additional legal reform, in order to achieve comprehensive child welfare in the pluralistic Indian legal system.*

**Keywords:** Child custody, best interests of the child, matrimonial disputes, Indian custody law, guardianship, judicial reforms, international law.

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## I. Introduction

The development of child custody law in India mirrors this slow yet definite movement from the traditional parent centric model to one that is child welfare centric. Courts today are not setting at parental battlegrounds, they are guardians of child rights. Thus, to address the need for comprehensive justice, India needs to blend existing structures into a unified welfare-oriented system that implements the best interests of the child in spirit and substance.

Child custody issues exist at this intersection of family breakdown, emotional trauma, and legal adjudication. They necessitate that courts play a balancing act between the rights of a parent and the best interest of the trust. Traditionally, custody and guardianship have been viewed merely as incidents of paternal power by Hindu and colonial law alike. Under the Hindu Minority and Guardianship Act, 1956 (HMGA), the father was deemed to be the minor child's 'natural guardian'; the Act placed mother in the subordinate role (HMGA §6).

Independent India became a constitutional state and brought in an egalitarian approach through provisions of Article 14 and 15 of the Constitution. Welfare and Equality: Transformation of Guardianship and Custody through Judicial Activism. The Indian judiciary shifting towards international human rights norms, specifically the UNCRC, meant a significant move away from the idea of "parental right" to "child welfare" as the guiding principle. This paper examines that evolution, both statutory and judicial, and juxtaposes development in India with global child-centred custody paradigms.

## II. Legal Context and Statutory Framework

Child custody laws in India have plural dimensions, rooted in the country's religious personal laws and secular statutes. The end result is a fragmented and ever evolving framework based on multiple sources of law.

### A. Hindu Law

Section 6(a) of the HMGA, 1956, originally suggested that the father is the natural guardian of a boy child or an unmarried girl, and the mother shall have the right only after the death of the father. This patriarchal formulation was not representative of constitutional morality, but a reflection of the social structure that existed before the Constitution. Then at a later stage, judicial reinterpretation in *Githa Hariharan v. Reserve Bank of India* interpreted the word

"after" in Section 6(a) not literally but allowed for both parents to act as natural guardians at the same time in the event of the father being absent or indifferent. <sup>1</sup>The reorientation of guardianship law towards principles of gender equality is a constitutional one.

### **B. The Guardians and Wards Act, 1890**

The Guardians and Wards Act (GWA) is a non-religious law that applies to all faiths. Section 17 goes beyond this, all but stating that when appointing guardians the welfare of the minor shall be the paramount consideration. <sup>2</sup> In this material sense, welfare has been judicially interpreted to also include moral, emotional and educational aspects of well-being. <sup>3</sup>

### **C. Other Relevant Statutes**

- The Divorce Act, 1869, Grants Courts powers of incidental orders of custody when granting matrimonial reliefs.
- Custody is also determined in a similar fashion as under the Special Marriage Act, 1954 and Parsi Marriage and Divorce Act, 1936 with respect to custody.
- Child protection: The Juvenile Justice (Care and Protection of Children) Act, 2015 integrates the standards on child protection as enshrined in the UNCRC. <sup>4</sup>

While this multiplicity of laws often results in jurisdictional overlaps and are messy in their respective consistencies they collectively point to an developing legislative ethos in favour of the welfare of the child over and above parental liberties.

### **III. The Principle of the Best Interests of the Child**

The best interests of the child standard now represents the foundation of child custody jurisprudence around the world. As per Article 3(1) of the UNCRC:

The best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. <sup>5</sup>

Indian courts have incorporated this standard by interpreting it in the Constitution and in statutes. The Supreme Court stated in *Mausami Moitra Ganguli v. Jayant Ganguli* <sup>6</sup> that — "while rights of parents cannot be undermined they cannot prevail over the welfare of the

child". The Court ruled that family court judges shouldn't be forced to view custody disputes as contests between parents, but should view them instead as inquiries into which outcome is in the best interests of the child.

Likewise, in *Rosy Jacob v. Jacob A. Chakramakkal*,<sup>7</sup> the Court observed that custody is not a bounty to the parent but a burden imposed by law to ensure the welfare of the child. The best interests standard, therefore, is based on a multi-factor analysis involving:

1. The safety and stability of the child, both physically and emotionally.
2. The instruction and morals that each parent can offer.
3. The wishes of the child (age-dependent) The desires of the child and their relationship with both parents
4. Any type of abuse, neglect and/or domestic violence

Judicial decisions in the recent past (*Roxann Sharma v. Arun Sharma*)<sup>8</sup> reiterate that it is the welfare of the child and not the gender of the parent or the status of the parent that remains the touchstone for deciding custody, while maintaining that even related to tender years, it is the mother who is equally capable to be custodian.

#### IV. Judicial Pronouncements and Landmark Cases

Judicial interpretation has been central to reshaping Indian child custody law into a welfare-oriented regime.

1. **Githa Hariharan v. Reserve Bank of India**, (1999) 2 S.C.C. 228 The Court read down Section 6(a) of the HMGA to ensure gender parity in guardianship. It observed that "the welfare of the child is of paramount consideration" and that interpretation must align with Articles 14 and 15 of the Constitution.
2. **Rupali Gupta v. Union of India**, 2009 S.C.C. OnLine Del 2595 The Delhi High Court underscored that a parent's ability to provide emotional security outweighs financial status in determining custody.
3. **Mausami Moitra Ganguli v. Jayant Ganguli**, (2008) 7 S.C.C. 673 the Supreme Court refused to treat custody as an adversarial proceeding, stressing the importance of the child's psychological comfort.

4. **Vivek Singh v. Romani Singh**, (2017) 3 S.C.C. 231 the Court highlighted that “the child’s welfare must trump parental ego and litigation tactics.”
5. **ABC v. The State (NCT of Delhi)**, (2015) 10 S.C.C. 1 the Court upheld the right of an unwed mother to be the sole guardian without requiring the father’s consent, citing the child’s welfare and the mother’s autonomy.
6. **Recent Supreme Court (2024)** though anonymized, the Court repudiated automatic paternal preference, emphasizing that welfare must be determined through individualized assessments, including the child’s own preferences.

Through these rulings, the judiciary has steadily dismantled patriarchal assumptions and constitutionalized the welfare doctrine, making it the lodestar of custody adjudication.

## V. Comparative International Perspectives

### A. United Kingdom

The welfare principle is paramount and enshrined as such in Section 1(1) of the Children Act 1989. Courts consider the desires of the child, emotional requirements, harm/safety risk and parental capacity. Courts in Britain are becoming more supportive of shared parenting but also protecting children from destructive conflict.

### B. Canada

The Divorce Act, R.S.C. 1985 Section 16(3) provides that custody orders shall give “priority to the consideration of the physical, emotional and psychological safety, security and well-being of the children.”<sup>10</sup> The recent amendments (2021) directly added in a factor of “family violence,” and established that such exposure to domestic abuse diminishes the suitability for custody.

### C. Australia

Pros The child has a right to maintain meaningful relationships with both parents under s 60CC of the Family Law Act 1975 (Cth) (Subject to ensuring this does not expose the child or parent to domestic violence).<sup>11</sup> Australian courts commonly order shared parenting arrangements where they are in the best interests of a child.

## D. Japan

Japan has been moving in the direction of awarding joint custody because of amended Civil Code (2011), which focuses on continuity, stability and non-parental alienation.<sup>12</sup>

Together, these areas constitute a global movement from parental rights to participatory child welfare that locates the voices and psychological well-being of children at the center of custody determinations. The Indian courts are referring to these models being applied in interpreting welfare in transnational custody disputes.

## VI. Challenges and Reform Recommendations

Despite jurisprudential progress, Indian custody law faces persistent structural and procedural challenges.

1. **Fragmented Legal Framework:** Multiple personal and secular laws create inconsistency and unequal application.
2. **Limited Child Participation:** Indian courts rarely obtain children's views directly, despite UNCRC Article 12 mandating their right to be heard.
3. **Lack of Professional Support Systems:** Custody assessments often proceed without input from psychologists, social workers, or child experts.
4. **Enforcement Difficulties:** Non-compliance with custody orders, especially in inter-state or cross-border disputes, remains common.
5. **Cultural and Gender Biases:** Societal stereotypes about maternal or paternal suitability persist, influencing judicial discretion.

## VII. Recommendations

1. **Unified Legislation:** Enact a *Uniform Child Custody and Guardianship Code* applicable to all citizens, integrating welfare principles across personal laws.
2. **Child Participation Mechanisms:** Institutionalize child interviews conducted by trained experts, consistent with Article 12 of the UNCRC.
3. **Professional Assessments:** Mandate psychological and social evaluations in contested custody cases.
4. **Judicial Training:** Establish continuous training programs for judges on child psychology and trauma-informed adjudication.

5. Parenting Plans & Mediation: Promote collaborative parenting and mediation to minimize adversarial conflict.
6. **International Compliance:** Ratify the **Hague Convention on International Child Abduction (1980)** to facilitate prompt cross-border child recovery.

These reforms would align India's custody law with global standards while safeguarding constitutional values of equality and dignity.

### VIII. Conclusion

In India, the law of child custody has gradually transitioned from a strict father-centred approach to the principles of child welfare. The judiciary has been essential in constitutionalizing the best-interests standard, frequently creatively inserting it when legislators fall short. But this cannot happen by only providing services since the structural reform is necessary for the child holistic welfare, the one stop law, mandate of professional's involvement, and most importantly refusal for children's participatory rights. The custody law transformation is emblematic of the larger constitutional journey in India: from hierarchy to equality, from authority to empathy, and from formal guardianship to substantive child rights.

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