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Research Paper

Co-Parenting After Separation: Socio-Legal Challenges and Opportunities in Protecting Children's Rights

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ABSTRACT	Manuscript Info.
<p>Parental separation and divorce are increasingly common in modern society and carry profound consequences for all parties involved—especially children. These disruptions often lead to emotional, psychological, and socio-legal challenges that hinder a child's sense of stability, identity, and overall well-being. In traditional custody models, particularly in India, one parent (often the mother) is granted primary custody, while the other parent plays a limited role. This system has been criticised for marginalising one parent and failing to serve the child's best interests, particularly when both parents are capable and willing to provide care and support. Co-parenting is emerging as a more balanced and child-centric alternative. Co-parenting refers to a post-separation parenting arrangement in which both parents continue to share legal and physical responsibilities for their child's upbringing. This model not only protects the emotional needs of the child but also encourages cooperative parenting practices, mitigates adversarial custody disputes, and promotes gender neutrality in caregiving roles. This paper aims to examine the socio-legal challenges and opportunities associated with co-parenting in the Indian legal and cultural context. It critically evaluates existing personal and secular legal frameworks, the attitudes of family courts, societal norms, and the role of institutions such as the judiciary and child welfare bodies. Additionally, the paper compares international practices in jurisdictions like the US, UK, and Australia, where shared parenting laws are more mature and structured. This paper identifies critical gaps in Indian custody laws and makes policy recommendations aimed at institutionalising co-parenting as a norm rather than an exception. The paper recommends legislative reforms and provides suggestions in the best interests of the child.</p>	<p>✓ ISSN No:2584- 184X ✓ Received: 11-09-2025 ✓ Accepted: 29-10-2025 ✓ Published: 30-11-2025 ✓ MRR:3(11): 2025;58-63 ✓ ©2025, All Rights Reserved. ✓ Peer Review Process: Yes ✓ Plagiarism Checked: Yes</p>
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KEYWORDS: Co-Parenting, Children's Rights, Divorce, Indian Judiciary, Shared Parenting, Legal Framework

1. INTRODUCTION

In recent decades, the nature of family dynamics has undergone a significant transformation. The rise in divorce and separation rates across the world, including India, has compelled legal systems to rethink traditional custody models.¹ Amid this change, children are often the most affected, both emotionally and developmentally. Traditional sole custody models, which designate one parent as the primary custodian and marginalise the role of the other, have shown adverse effects on children's mental health, identity formation, and sense of security.² Indian society, deeply rooted in patriarchal and familial norms, has long associated the primary caregiving role with mothers.³ Consequently, family courts have routinely awarded custody to mothers while relegating fathers to the role of visitors.⁴ This approach, although well-intentioned, fails to acknowledge the evolving dynamics of modern parenting where both parents play equally crucial roles in the psychological, emotional, and moral development of a child.⁵ Furthermore, this outdated model does not reflect the gender-neutral reality of modern parenthood, where fathers are increasingly involved in child-rearing responsibilities.⁶

Co-parenting emerges as a progressive and child-centric approach to mitigate these challenges. It refers to a post-separation parenting arrangement where both parents continue to share responsibilities and actively participate in the child's upbringing.⁷ Co-parenting ensures continuity, stability, and emotional security for children, and aligns with the "best interest of the child" principle that forms the bedrock of custody law worldwide.⁸

Globally, countries like the United States, the United Kingdom, and Australia have adopted shared parenting laws and frameworks to uphold children's rights and minimise the trauma of separation. These jurisdictions mandate parenting plans,

shared custody, and equal parenting time, thereby ensuring that children do not lose access to either parent.⁹

This paper aims to explore the scope, legal underpinnings, and societal barriers associated with co-parenting in the Indian context. It investigates the existing legal frameworks, judicial interpretations, and socio-cultural attitudes, and proposes reforms by drawing insights from international best practices. Through this doctrinal analysis, the paper advocates for institutionalising co-parenting as a viable and rights-based alternative to conventional custody arrangements in India.

2. REVIEW OF LITERATURE

The academic and policy discourse on co-parenting has evolved significantly over the last two decades, particularly in Western countries. In the Indian context, however, the concept is still developing, with limited but growing contributions from legal scholars, child psychologists, and judicial bodies.

Bhatia, R. (2020) explored the psychological consequences of sole custody on children, emphasising that such arrangements often lead to emotional distress, behavioural issues, and identity confusion. His study highlighted how the absence of a balanced parental presence could hinder a child's mental and emotional development. The author emphasised the child's psychological need for both parents post-divorce and the detrimental effects of single-parent custody on the child's development.

Sharma, A. & Narang, R. (2017) argued for institutionalising co-parenting laws in India, and conducted a comparative legal analysis that underscored the importance of co-parenting frameworks in countries like the United States, United Kingdom, and Canada. Their work emphasised that structured joint custody models, legally mandated parenting plans, and judicial oversight have contributed to better child welfare outcomes in those jurisdictions. They urged Indian lawmakers to take cues from these global practices.

UNCRC,¹⁰ Provided that a child should not be separated from their parents against their will, unless it is in the child's best interest.¹¹

¹Ministry of Law and Justice, Government of India, Report on Reforms in Guardianship and Custody Laws, 2015

²Bhatia, R., Psychological Impact of Sole Custody on Children, Indian Journal of Child Psychology, Vol. 12, Issue 2, 2020

³Agnes, Flavia, Law and Gender Inequality: The Politics of Women's Rights in India, Oxford University Press, 2011

⁴Infra Note at 17

⁵UNICEF, The Impact of Family Structure on the Well-being of Children: Evidence from India, 2018.

⁶Sharma, A., & Narang, R., Shared Parenting Laws in Global Jurisdictions, Journal of Comparative Family Law, Vol. 9, 2017

⁷Elizabeth, V., Negotiating Parental Roles after Separation, Sociological Bulletin, Vol. 61, No. 2, 2012

⁸Art. 3 of United Nations Convention on the Rights of the Child, 1989- Best Interests of the Child

⁹Kelly, J. B., Children's Living Arrangements Following Separation and Divorce: Insights from Empirical and Clinical Research, Family Process, 46(1), 35-52, 2007

¹⁰United Nations Convention on the Rights of the Child (CRC), 1989

¹¹ Art.9 of UNCRC, 1989 – (1) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Malik, P. (2019) criticised the ambiguity and inconsistency in India's personal and secular custody laws. Her analysis noted that the lack of specific legislative backing for shared parenting often results in judicial arbitrariness, where outcomes heavily depend on individual judges' interpretations of the "best interest of the child" doctrine. Malik called for uniform, codified laws that incorporate co-parenting principles.

National Commission for Protection of Child Rights (NCPCR) advocated for shared parenting as a mechanism to reduce post-divorce trauma in children. The Commission has also supported co-parenting arrangements. The NCPCR has recommended the implementation of structured parenting plans, equal parenting time, and the establishment of monitoring mechanisms to ensure compliance with custody orders. These reports stress that adversarial custody battles damage not just the co-parenting relationship but also the emotional well-being of children caught in litigation.

The literature reveals a gap in the practical implementation of co-parenting in India due to legal ambiguity, social stigma, and a lack of enforcement mechanisms.

3. Scope of the Study

This research is confined to analysing co-parenting within the Indian legal and socio-cultural context. It examines civil laws that govern child custody, including Hindu personal law, the Guardians and Wards Act, and judicial interpretations. The paper also considers international conventions like the CRC to understand India's obligations toward child rights. Comparative insights from jurisdictions such as the United States, the United Kingdom, and Australia provide a broader understanding of co-parenting models.

The scope excludes criminal issues related to child abuse or neglect and focuses purely on post-divorce custody,

(2) In any proceedings pursuant to para 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

(3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

(4) Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent members of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person concerned.

guardianship, and the protection of child rights through shared parenting. The doctrinal nature of the research limits it to theoretical and legal analyses without empirical fieldwork or statistical surveys.

4. RESEARCH METHODOLOGY

This study adopts a doctrinal research methodology, analyzing Constitutional provisions, personal laws (Hindu, Muslim, Christian), the Guardians and Wards Act, 1890, case laws from the Supreme Court and High Courts, and international conventions. Even the books, academic journals, legal commentaries, NGO reports, and government publications are also part of this study. The analysis is qualitative and aims to construct a normative argument for institutionalizing co-parenting in India.

5. OBJECTIVES OF THE STUDY

1. To examine the legal frameworks governing custody and guardianship in India.
2. To analyse socio-legal challenges faced in implementing co-parenting.
3. To study the rights of children as enshrined in Indian and international law.
4. To explore best practices from global jurisdictions.
5. To provide policy suggestions for strengthening co-parenting as a child welfare tool.

6. Existing Legal Framework in India

India does not have a uniform codified law specifically addressing co-parenting or shared custody post-divorce or separation. Instead, child custody and guardianship are governed by a combination of religious personal laws and Secular statutes, such as the Guardians and Wards Act, 1890. This fragmented legal structure often results in inconsistent outcomes, especially in cases involving inter-religious marriages or modern family arrangements.

(a) In Hinduism

HMGA¹² Prioritises natural guardianship but doesn't mandate co-parenting. Under this act, the father is the natural guardian of a Hindu minor boy or unmarried girl, and the mother is the guardian after the father.¹³

The Act does not explicitly recognise or mandate joint custody or co-parenting. However, courts have interpreted custody issues in line with the welfare of the child, prioritising the child's emotional, educational, and psychological needs.

(b) GWA Act

This vests discretion in the court to decide custody "in the welfare of the child." This secular legislation applies to all children regardless of religion, unless personal laws apply more specifically. This act empowers the court to decide on guardianship solely based on the "welfare of the

¹²Hindu Minority and Guardianship Act, 1956

¹³Under Sec. 6 of Hindu Minority and Guardianship Act, 1956

child."¹⁴ Although not expressly provide for shared parenting, it offers courts discretion to grant joint custody or liberal visitation rights where beneficial.

Personal Laws of Muslims, Christians, and Parsis: Similarly, they do not provide for shared parenting explicitly.

(c) In Muslims

Muslim law in India is uncodified and is largely based on interpretations of the Quran, Hadith, and customary practices.

Custody (Hizanat): Mothers are generally entitled to custody of young children (up to 7 years for boys and puberty for girls), while the father is considered the natural guardian.¹⁵ There is no concept of joint custody or shared parenting under Muslim personal law. The father retains financial responsibility, while the mother may be granted custody if deemed in the child's best interest. Decisions are subject to the overriding principle of child welfare, applied by courts under the Guardians and Wards Act.

(d) In Christians

Christian custody matters are generally addressed under the Indian Divorce Act, 1869. This act empowers courts to issue interim orders for custody, education, and maintenance of minor children during and after divorce proceedings.¹⁶ However, there is no statutory mandate for shared custody or co-parenting. Courts have discretionary powers, often invoking the Guardianship and Wards Act to resolve issues in the best interest of the child.

(e) Parsi Law

The PMDA,¹⁷ Governs matters of marriage and divorce among the Parsis. The Act permits the court to pass orders concerning custody, maintenance, and education of children upon granting a decree of divorce or judicial separation.¹⁸ Like other personal laws, it does not explicitly support shared parenting. The welfare of the child remains the guiding principle.

(f) Constitutional Mandate

While personal laws do not explicitly support shared parenting, the Indian Constitution provides guiding principles under Article 15(3)¹⁹ and 39(e)²⁰ and (f)²¹ Highlight state responsibility in protecting child welfare. These provisions obligate the State to

promote child-centric policies, including rethinking custody models to incorporate shared parenting where suitable.

While courts have increasingly considered the child's psychological needs, statutory reform has lagged. Without legislative reform, shared parenting remains an exception rather than the norm.

7. Judicial Interpretation and Trends

The judiciary in India has progressively evolved in its approach toward custody and co-parenting, particularly in cases arising from divorce or separation. The judiciary has played a progressive role in certain judgments:

In the landmark case of **Gaurav Nagpal v. Sumedha Nagpal**²² The Supreme Court firmly established that the welfare of the minor child must be the paramount consideration in custody disputes, even above the rights and preferences of the parents. The Court clarified that custody decisions should not be based merely on legal entitlements or parental desires, but must prioritise the overall physical, emotional, and psychological well-being of the child.

Further development in the jurisprudence of child custody was seen in **Roxann Sharma v. Arun Sharma**.²³ The Supreme Court took a progressive step by advocating for shared custody and ensuring regular visitation rights for the non-custodial parent. The Court recognised the importance of joint parenting, even post-divorce, acknowledging that both parents play a crucial role in a child's development. This case marked a shift towards balancing the responsibilities and rights of both parents, and not merely treating custody as a sole right of one party. Summarily, the court advocated for shared custody and consistent visitation rights, recognising the evolving need for joint parenting.

In **Vikram Vir Vohra v. Shalini Bhalla**²⁴ The Court again emphasised the significance of the emotional bond between the child and both parents, reiterating that such bonds cannot be ignored when deciding custody. The Court cautioned against decisions that alienate the child from either parent, highlighting the adverse psychological impact it can have on the child's overall development. These judgments collectively demonstrate the judiciary's progressive stance in moving towards a more child-centric and balanced framework for custody and co-parenting in the context of marital dissolution.

Despite such progressive views, inconsistent application and lack of monitoring mechanisms weaken their impact.

8. Socio-Legal Challenges

1. Gender Bias in Custody: Courts tend to favour mothers, perpetuating the stereotype of women as primary caregivers and men as financial providers.

2. Visitation Disputes: Non-custodial parents often struggle with irregular or denied visitation rights.

¹⁴Under Sec. 17 of Guardians and Wards Act, 1890

¹⁵Mulla, Principles of Mohammedan Law, 20th Ed. LexisNexis, 2014, p. 317–320

¹⁶Sec. 41 of the Indian Divorce Act, 1869

¹⁷The Parsi Marriage and Divorce Act, 1936

¹⁸Sec. 49 of the Parsi Marriage and Divorce Act, 1936

¹⁹Nothing in this article shall prevent the State from making any special provision for women and children.

²⁰Focuses on the protection of workers, stating that individuals—regardless of age or gender—should not be forced into employment that is harmful to their health or well-being

²¹Addresses child welfare, requiring the State to create conditions that ensure children grow up in a healthy and dignified environment, shielded from exploitation and neglect

²²AIR (2009) 1 SCC 42

²³AIR (2015) 8 SCC 318

²⁴AIR (2010) 4 SCC 409

3. Lack of Enforceability: Visitation orders are frequently violated, with minimal recourse for redress.

4. Emotional Manipulation: Cases of parental alienation—where one parent psychologically manipulates the child against the other—are increasing.

5. Social Stigma: Divorced couples, especially women, face societal pressure, making cooperative parenting difficult.

6. Absence of Institutional Support: Lack of family counsellors, mediators, and parenting coordinators within the court system.

7. Legal Ambiguity: Absence of specific co-parenting provisions in statutory law creates discretion-led inconsistency.

9. Opportunities and Emerging Trends

In recent years, the conversation around child custody in the wake of divorce or separation has evolved to emphasise the importance of both parents in a child's life.

In India, the *Shared Parenting Bill, 2015*, proposed by the Ministry of Women and Child Development, marked a significant step in this direction. The bill aimed to institutionalise joint custody arrangements and equal parenting time, promoting a balanced involvement of both parents in the upbringing of their children. However, despite its progressive vision, the bill was never enacted into law, leaving the current legal framework reliant on traditional sole custody arrangements.²⁵

Nonetheless, several family courts in India have begun experimenting with mandatory mediation processes before granting custody.²⁶ This shift reflects a growing recognition of the emotional and psychological needs of the child and attempts to reduce adversarial litigation. Mediation offers a platform for parents to work together and prioritise their child's well-being, fostering a more collaborative parenting approach post-divorce. Adding further momentum to this shift, NCPCR in its 2021 recommendations explicitly endorsed shared parenting models. The Commission recognised that the current sole custody regime often marginalises one parent—typically the father, and does not serve the child's best interests. These recommendations signify institutional support for reforming custody laws to reflect modern family dynamics and international best practices.

International Influence

Globally, many jurisdictions have already implemented progressive shared parenting frameworks. In the United States, the majority of states have adopted laws that require *parenting plans during divorce proceedings*. Several states have also introduced a legal presumption in favour of shared parenting, where both parents retain equal responsibility and access unless proven otherwise. Similarly, the UK, under its law,²⁷ encourages

shared *residency orders*, allowing children to live with both parents alternately, thereby preserving the child's relationship with each parent.

Australia presents another instructive example. Under the compliance of the statute,²⁸ Courts are mandated to consider *equal shared parental responsibility*, emphasising the child's right to benefit from both parents' involvement. Australian law also mandates that courts consider whether equal or substantial and significant time with each parent is in the child's best interest.

India, with its growing recognition of shared parenting, has an opportunity to learn from these international practices and craft a legal framework that supports children's rights through equitable parental involvement. These models can be tailored for India's socio-cultural reality.

11. Suggestions

- i. Amend the Guardians and Wards Act or enact a uniform Family Law Code with explicit co-parenting provisions.
- ii. Require separating couples to submit detailed parenting agreements during custody proceedings.
- iii. Establish local authority mechanisms under family courts to monitor visitation compliance and address grievances.
- iv. Gender-Neutral Custody Determinations- Move away from the mother-centric approach and evaluate both parents' abilities equally.
- v. Integrate mandatory co-parenting counselling in divorce proceedings to promote cooperation.
- vi. Appoint child welfare advocates or guardians ad litem in contentious cases to represent the child's best interest.
- vii. Launch sensitisation programs targeting parents, courts, and society to reduce stigma and promote joint parenting.
- viii. Encourage family court mediation services focused on building co-parenting relationships.

11. CONCLUSION

The Indian legal and social framework needs urgent reform to institutionalise co-parenting as a norm rather than an exception. Protecting children's rights requires more than just custody determinations - it necessitates active engagement from both parents, regardless of marital status. The evolution from adversarial custody battles to collaborative parenting will benefit not just the child but the entire family system. While judicial pronouncements have shown promise, legislative action and societal change are essential to embed co-parenting in India's legal and cultural fabric.

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