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Children in the Crossfire: Legal and Psychological Insights into Divorce and its Toll on Children

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ABSTRACT

Divorce can be a profoundly challenging experience, especially for children caught in the middle of judicial separation. In India, where the family unit is often considered sacrosanct, divorce can have unique implications for children, both psychologically and socially. This article explores the effects of divorce on children in India, legal provisions and landmark judgments related to child custody, and suggests ways to support children through this difficult transition.

Divorce in India, where family ties are deeply valued, presents unique challenges for children caught in the crossfire of judicial separation. This article delves into the emotional, social, and academic impacts of divorce on children, highlighting the psychological distress and behavioural challenges they often face. The legal framework in India, governed by a mix of personal and secular laws, aims to protect children's welfare during custody disputes. Landmark judgments have underscored the importance of prioritizing the child's best interests, leading to evolving practices in child custody arrangements. Additionally, the article explores pathways for supporting children through this challenging time, offering practical recommendations for parents, educators, legal professionals, and policymakers. By fostering open communication, maintaining consistent routines, and advocating for a child-centric approach, society can help mitigate the adverse effects of divorce on children and empower them to thrive despite the challenges.

Keywords: *Divorce in India, Child Custody Laws, Psychological Impact on Children, Child Welfare and Custody, Parental Separation Effects, Child-Centric Legal Approach, Family Law in India, Joint Custody Arrangements, Parental Alienation, Emotional Support for Children, Custody Dispute Judgments, Co-Parenting Strategies, Legal Reforms in Family Law, Child's Best Interests, Impact on Academic Performance, Social Challenges of Divorce, Intergenerational Effects of Divorce.*

I. INTRODUCTION

Divorce rates in India have been on the rise, reflecting a shift in societal attitudes towards

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marriage and family. With this change, there is a growing concern about the impact of parental separation on children. Divorce can affect a child's emotional well-being, social relationships, and academic performance. Understanding these impacts is essential for mitigating negative consequences and ensuring the child's best interests are prioritized in legal proceedings.

In this article, we will examine the various effects of divorce on children, explore the legal framework governing child custody and support in India, and review landmark judgments that have shaped current practices. Finally, we will provide recommendations for parents, educators, and legal professionals to better support children through this challenging time.

II. EFFECTS OF DIVORCE ON CHILDREN

(A) Emotional and Psychological Effects

1. **Emotional Distress:** Children often experience a range of emotions, including sadness, anger, confusion, and anxiety. The dissolution of their family unit can lead to feelings of insecurity and abandonment. These emotions may manifest as behavioural problems or withdrawal from social interactions.
2. **Anxiety and Depression:** The uncertainty surrounding custody arrangements and changes in living situations can lead to anxiety and depression. Children may worry about losing contact with one parent or feel guilty about the separation.
3. **Identity and Self-Esteem Issues:** Children may struggle with their identity and self-worth, particularly if they perceive themselves as the cause of the divorce. This can result in low self-esteem and a lack of confidence in personal relationships.
4. **Adjustment Disorders:** The transition to a new family dynamic can lead to adjustment disorders. Children may have difficulty adapting to new routines, schools, or homes, leading to stress and confusion.

(B) Academic and Behavioural Effects

1. **Decline in Academic Performance:** The emotional turmoil of divorce can impact a child's concentration and motivation, leading to a decline in academic performance. Disruptions in daily life, such as moving to a new school, can exacerbate these challenges.
2. **Behavioural Problems:** Children of divorced parents may exhibit behavioural issues, such as aggression, defiance, or withdrawal. These behaviours can be a coping mechanism for the stress and confusion they feel.

3. **Social Challenges:** Divorce can affect a child's social life, making it difficult to form and maintain friendships. Children may feel embarrassed about their family situation or fear judgment from peers.

(C) Long-term Effects

1. **Impact on Future Relationships:** The experience of parental divorce can shape a child's views on relationships and marriage. They may develop a fear of commitment or replicate dysfunctional patterns observed in their parents' relationship.
2. **Intergenerational Impact:** Studies have shown that children of divorced parents are more likely to experience divorce in their own marriages. This intergenerational cycle underscores the importance of addressing the effects of divorce early on.

III. LEGAL PROVISIONS FOR CHILDREN IN DIVORCE CASES IN INDIA

(A) Overview of the Legal Framework

In India, the legal framework governing divorce and child custody is primarily rooted in personal laws based on religion, such as Hindu, Muslim, Christian, and Parsi laws, as well as secular laws like the Special Marriage Act, 1954. The primary concern in all these legal systems is the welfare and best interests of the child.

Child custody is a critical issue in divorce proceedings, as it directly impacts the well-being and future of the child involved. In India, the legal framework governing child custody after divorce involves a combination of personal laws based on religion, secular laws and landmark judicial pronouncements. The primary focus of these laws is the welfare of the child, ensuring that their best interests are prioritized over other considerations.

(B) Hindu Marriage Act, 1955:

This Act is one of the most important legal frameworks governing divorce and child custody and maintenance for Hindus, Buddhists, Jains, and Sikhs in India. Under this act, the court decides on custody decisions, prioritizing the welfare and best interests of the child.

a. Key Provisions:

- **Section 26:** This section allows the court to issue orders regarding the custody, maintenance, and education of minor children during and after legal proceedings for divorce or judicial separation. The court can make interim orders and alter or revoke previous orders as circumstances change.
- **Welfare of the Child:** The act emphasizes that the welfare of the child is paramount in

custody decisions. Factors considered include the child's age, gender, physical and emotional needs, education, and the ability of the parents to meet these needs.

b. Custody Types:

- **Physical Custody:** One parent is granted custody, while the other is given visitation rights. The custodial parent is responsible for the child's day-to-day care and upbringing.
- **Joint Custody:** Both parents share custody responsibilities, allowing the child to spend time with each parent. This arrangement is encouraged to maintain the child's relationship with both parents.
- **Legal Custody:** This involves decision-making authority over the child's education, health, and welfare. Legal custody can be awarded to one or both parents, regardless of physical custody arrangements.

(C) Hindu Minority and Guardianship Act, 1956

The **Hindu Minority and Guardianship Act, 1956** complements the Hindu Marriage Act and specifically addresses the guardianship and custody of Hindu children.

a. Key Provisions:

- **Section 6:** The father is considered the natural guardian of a minor child, followed by the mother. However, the mother is the primary guardian for children under five years of age.
- **Section 13:** The welfare of the child is the paramount consideration in determining custody and guardianship matters. The act explicitly states that no person shall be appointed as a guardian if it is not in the child's best interest.

(D) Muslim Personal Law (Shariat) Application Act, 1937:

Muslim personal law is based on the Shariat although not a codified law, this act governs divorce under Islamic law and outlines the principles of child custody (Hizanat) prioritize the child's welfare and maintenance for Muslims in India.

a. Key Provisions:

- **Mother's Right to Custody:** Under Islamic law, the mother has the right to custody of her minor children until a certain age, usually seven years for boys and puberty for girls. However, this right is contingent upon the mother's ability to provide proper care and upbringing.

- **Father's Right to Custody:** The father is considered the natural guardian and has custodial rights after the mother's custody period ends. The father's responsibility includes the child's education, maintenance, and overall welfare.
- **Welfare of the Child:** The welfare of the child remains the guiding principle in custody disputes, allowing the court to deviate from traditional norms if it serves the child's best interests.

(E) Indian Divorce Act, 1869:

The **Indian Divorce Act, 1869** governs divorce and child custody and maintenance matters for Christians in India. The act provides provisions for custody, maintenance, and education of children involved in divorce proceedings.

a. Key Provisions:

- **Section 41:** The court has the authority to make orders regarding the custody, maintenance, and education of minor children during divorce proceedings. The court considers the child's welfare as the primary factor.
- **Section 42:** The court can place the child in the custody of either parent, another relative, or a third party if it serves the child's best interests. The court can modify its orders as circumstances change.

(F) Parsi Marriage and Divorce Act, 1936

The **Parsi Marriage and Divorce Act, 1936** regulates divorce and child custody matters for Parsis in India. Similar to other personal laws, the child's welfare is the primary consideration.

a. Key Provisions:

Section 49: The court can issue orders regarding the custody, maintenance, and education of minor children during divorce proceedings. The court prioritizes the child's welfare and can modify orders as needed.

(G) Special Marriage Act, 1954:

The **Special Marriage Act, 1954** applies to marriages between individuals of different religions and provides guidelines for divorce and child custody matters.

a. Key Provisions:

- **Section 38:** This section empowers the court to make orders regarding the custody, maintenance, and education of minor children during divorce proceedings. The court prioritizes the child's welfare and considers various factors in custody decisions.

(H) **Guardians and Wards Act, 1890:**

The **Guardians and Wards Act, 1890** is applicable to all communities in India and serves as a comprehensive framework for appointing guardians and deciding custody matters. It is often used in conjunction with personal laws to determine the best custody arrangement for the child.

a. Key Provisions:

- **Section 7:** This section empowers the court to appoint a guardian for a minor if it is deemed necessary for the child's welfare. The court considers various factors, including the child's age, sex, and religion, as well as the guardian's character and capacity.
- **Section 17:** The court must assess the welfare of the child as the paramount consideration in appointing a guardian. The child's age, sex, religion, and the guardians' wishes are taken into account.
- **Preference for Natural Guardians:** The act gives preference to the natural guardians of the child, typically the parents, unless there are compelling reasons to appoint someone else.

IV. CHILD CUSTODY ARRANGEMENTS IN INDIA

1. Custody Types:

- **Physical Custody:** The child resides with the custodial parent. Physical custody involves the child's day-to-day care and living arrangements. The custodial parent is responsible for the child's upbringing, including education, health, and overall welfare. The non-custodial parent is usually granted visitation rights to maintain a relationship with the child.
- **Joint Custody:** Joint custody arrangements involve both parents sharing custody responsibilities, allowing the child to spend time with each parent. This arrangement is increasingly favoured in India as it helps maintain the child's relationship with both parents and reduces feelings of abandonment or alienation.

Benefits of Joint Custody:

- **Emotional Stability:** Joint custody helps provide emotional stability to the child by maintaining relationships with both parents. It reduces the likelihood of psychological issues stemming from parental separation.
- **Shared Responsibilities:** Both parents share responsibilities, ensuring that the

child's needs are met comprehensively. This includes education, health care, and extracurricular activities.

- **Conflict Reduction:** Joint custody arrangements encourage cooperation between parents, reducing conflict and fostering a positive co-parenting relationship.
- **Sole Custody:** Sole custody grants one parent exclusive custody rights, while the other parent may have limited visitation or decision-making authority. Sole custody is typically awarded in cases where one parent is deemed unfit or incapable of providing proper care.

Grounds for Sole Custody:

- **Abuse or Neglect:** If there is evidence of abuse or neglect by one parent, the court may award sole custody to the other parent to protect the child's welfare.
- **Parental Alienation:** If one parent attempts to alienate the child from the other parent, the court may grant sole custody to the aggrieved parent.
- **Substance Abuse:** A parent with substance abuse issues may be denied custody if it poses a risk to the child's safety and well-being.
- **Legal Custody:** Legal custody involves decision-making authority over the child's education, health care, and welfare. Legal custody can be awarded to one or both parents, regardless of physical custody arrangements.

Joint Legal Custody:

- **Shared Decision-Making:** In joint legal custody, both parents have equal decision-making authority regarding the child's upbringing. This arrangement requires cooperation and effective communication between parents.
- **Best Interests of the Child:** Joint legal custody ensures that decisions are made in the child's best interests, taking into account the perspectives and expertise of both parents.

2. Welfare Principle:

The Supreme Court of India has consistently emphasized that the child's welfare is the primary consideration in custody cases. This includes factors such as the child's emotional, educational, and social needs.

3. Parental Rights and Responsibilities:

Both parents have a legal obligation to provide for the child's upbringing and welfare. The non-

custodial parent is typically required to pay child support.

V. LANDMARK JUDGMENTS ON CHILD CUSTODY

1. **Gaurav Nagpal vs. Sumedha Nagpal (2009):**

Case Overview: This case revolved around a custody dispute between a separated couple. The father sought custody of the child, while the mother opposed it.

Judgment: The Supreme Court held that the welfare of the child is the paramount consideration in custody disputes. The court emphasized that the child's happiness, security, and overall development should guide custody decisions. The judgment highlighted that the best interests of the child outweigh any parental rights or preferences.

2. **Roxann Sharma vs. Arun Sharma (2015):**

Case Overview: This case involved a custody battle over a young child. The mother sought custody, arguing that she was the primary caregiver.

Judgment: The Supreme Court ruled that the mother should have custody of a child under five years unless there are compelling reasons against it. This judgment underscored the tender years doctrine, which favours the mother as the primary caregiver for young children. The court emphasized that the child's welfare takes precedence over parental rights.

3. **Yashita Sahu vs. State of Rajasthan (2020):**

Case Overview: This case addressed the issue of joint custody and the importance of shared parenting in custody disputes.

Judgment: The Supreme Court recognized the significance of joint custody arrangements, highlighting that both parents play a crucial role in the child's upbringing. The judgment encouraged shared parenting to ensure the child's emotional well-being. The court emphasized that joint custody can be beneficial for the child's development and should be considered whenever feasible.

4. **ABC vs. The State (NCT of Delhi) (2015):**

Case Overview: This case involved an unwed mother seeking sole guardianship of her child without the father's consent.

Judgment: The Supreme Court held that an unwed mother could be the sole guardian of her child without the father's consent. This judgment expanded the legal rights of single mothers and emphasized the welfare of the child as the guiding principle. The court recognized the mother's role as the primary caregiver and underscored the importance of considering the

child's best interests in guardianship decisions.

5. Vivek Singh vs. Romani Singh (2016)

Case Overview: The case involved a dispute between parents over the custody of their minor child. The father sought custody, arguing that the mother was financially unstable.

Judgment: The Supreme Court held that financial stability alone is not a sufficient factor to determine custody. The welfare of the child, including emotional and psychological needs, must be the primary consideration. The court emphasized that both parents have a role in the child's upbringing and encouraged shared parenting arrangements.

VI. FACTORS CONSIDERED IN CHILD CUSTODY DECISIONS

The court considers several factors when determining custody arrangements to ensure the child's welfare is prioritized. These factors include:

(A) Child's Age and Gender

- **Age:** Young children are often considered more dependent on their mothers, especially if they are below five years. The tender years doctrine emphasizes the mother's role as the primary caregiver for young children.
- **Gender:** In certain cases, gender-specific considerations may be relevant. For example, girls may be placed in the mother's custody if it is deemed beneficial for their upbringing.

(B) Child's Wishes

- **Mature Minors:** In cases involving older children, the court may consider the child's preferences and wishes. However, the court retains discretion and will not solely rely on the child's choice if it contradicts their best interests.

(C) Parental Capability

- **Emotional and Financial Stability:** The court assesses each parent's emotional and financial stability to ensure they can provide a safe and nurturing environment for the child.
- **Parenting Skills:** The court evaluates the parenting skills of each parent, including their ability to meet the child's physical, emotional, and educational needs.

(D) Relationship with the Child

- **Emotional Bond:** The court considers the emotional bond between the child and each

parent, emphasizing the importance of maintaining strong relationships with both parents.

- **Existing Relationships:** The child's existing relationships with siblings, extended family, and friends are also considered to minimize disruption to their social environment.

(E) Safety and Well-being

- **Abuse or Neglect:** The court examines any history of abuse or neglect by either parent. A parent with a history of abuse may be denied custody to protect the child's safety and well-being.
- **Substance Abuse:** Substance abuse issues are taken into account when determining custody, as they may pose a risk to the child's welfare.

(F) Educational and Social Environment

- **Schooling and Education:** The court assesses the child's educational needs and the ability of each parent to provide a conducive learning environment.
- **Social Stability:** The child's social environment, including their relationships with peers and involvement in extracurricular activities, is considered to ensure continuity and stability.

(G) Parental Cooperation

- **Co-Parenting Ability:** The court evaluates each parent's willingness and ability to cooperate in co-parenting arrangements. Effective communication and cooperation between parents are crucial for joint custody arrangements.
- **Conflict Resolution:** The court assesses the parents' ability to resolve conflicts amicably, as ongoing disputes can negatively impact the child's well-being.

VII. LEGAL PROCEDURES FOR CHILD CUSTODY IN INDIA

1. Filing a Custody Petition

The process of obtaining child custody begins with filing a custody petition in the appropriate court. The petition should outline the reasons for seeking custody and the proposed custody arrangement. The court considers the child's welfare and evaluates the evidence presented by both parties.

2. Interim Custody Orders

During divorce proceedings, the court may issue interim custody orders to ensure the child's immediate welfare is protected. Interim orders are temporary and remain in effect until a final custody decision is made.

3. Custody Evaluation

The court may appoint a custody evaluator or guardian ad litem to assess the child's needs and make recommendations regarding custody arrangements. The evaluator considers various factors, including the child's relationship with each parent, the home environment, and the child's preferences.

4. Mediation and Counselling

In many cases, the court encourages mediation and counselling to facilitate amicable custody agreements between parents. Mediation allows parents to negotiate custody arrangements collaboratively, reducing conflict and prioritizing the child's welfare.

5. Final Custody Orders

Once the court evaluates the evidence and considers the child's best interests, it issues a final custody order. The order specifies the custody arrangement, visitation rights, and any other conditions deemed necessary for the child's welfare.

6. Modification of Custody Orders

Custody orders are not set in stone and can be modified if circumstances change. Parents can file a petition for modification, providing evidence of changed circumstances that warrant a re-evaluation of the custody arrangement.

VIII. RECENT TRENDS AND DEVELOPMENTS IN CHILD CUSTODY LAWS IN INDIA

1. Emphasis on Joint Custody

Recent legal developments in India have seen a shift towards encouraging joint custody arrangements. This approach recognizes the importance of maintaining the child's relationship with both parents and promotes shared responsibilities.

2. Recognition of Parental Alienation

Indian courts increasingly recognize the harmful effects of parental alienation, where one parent attempts to distance the child from the other parent. Courts take a firm stance against such behaviour and prioritize custody arrangements that foster positive relationships with both parents.

3. Focus on Child-Centric Approach

The legal system in India is moving towards a child-centric approach in custody matters, emphasizing the child's needs and well-being over parental rights. Courts are increasingly considering the child's emotional, educational, and social requirements when making custody decisions.

4. Inclusion of Children's Voices

In cases involving older children, courts are more inclined to consider the child's preferences and opinions. While the child's wishes are not the sole determining factor, they play a significant role in shaping custody arrangements.

5. Legal Reforms and Proposals

Several legal reforms and proposals have been introduced to improve the child custody framework in India. These reforms aim to streamline custody proceedings, promote joint custody, and enhance support services for children of divorced parents.

IX. SUGGESTIONS FOR SUPPORTING CHILDREN OF DIVORCED PARENTS

(A) For Parents

1. **Open Communication:** Encourage open and honest communication with the child. Reassure them that they are loved and that the divorce is not their fault. Provide age-appropriate explanations for the separation.
2. **Consistent Routines:** Maintain consistency in daily routines to provide a sense of stability and security. This includes regular meal times, bedtimes, and school schedules.
3. **Co-Parenting Cooperation:** Collaborate with the other parent to ensure a harmonious co-parenting relationship. Avoid exposing the child to parental conflicts or using them as messengers between parents.
4. **Emotional Support:** Be attentive to the child's emotional needs and provide support. Encourage them to express their feelings and seek professional counselling if necessary.
5. **Positive Reinforcement:** Reinforce the child's self-esteem through positive affirmations and encouragement. Celebrate their achievements and milestones to boost their confidence.

(B) For Educators

1. **Awareness and Sensitivity:** Educators should be aware of the child's family situation and approach them with sensitivity and empathy. Create a supportive classroom

environment that fosters inclusion and understanding.

2. **Academic Support:** Provide academic support to children who may be struggling due to the emotional impact of divorce. Offer tutoring or extra help to ensure they keep up with their studies.
3. **Communication with Parents:** Maintain open lines of communication with both parents to ensure they are informed of the child's academic progress and any concerns that arise.
4. **Peer Support Programs:** Implement peer support programs that encourage children to connect with others who may be experiencing similar situations. This can foster a sense of belonging and reduce feelings of isolation.

(C) For Legal Professionals

1. **Child-Centric Approach:** Adopt a child-centric approach in legal proceedings, ensuring that the child's best interests are the primary focus. Advocate for custody arrangements that prioritize the child's emotional and psychological well-being.
2. **Alternative Dispute Resolution:** Encourage mediation and counselling as alternatives to contentious court battles. Collaborative approaches can lead to amicable solutions that benefit the child.
3. **Educating Parents:** Educate parents about the potential impact of divorce on their children and the importance of minimizing conflict. Provide resources and referrals for parenting classes or counselling services.
4. **Ensuring Compliance with Orders:** Monitor compliance with custody and support orders to ensure that the child's needs are being met. Address any violations promptly to maintain stability for the child.

(D) For Policymakers

1. **Legal Reforms:** Consider legal reforms that promote joint custody arrangements and shared parenting responsibilities. Encourage laws that prioritize the child's welfare over parental rights.
2. **Support Services:** Invest in support services for children of divorced parents, including counselling centres, helplines, and community programs. Ensure these services are accessible and affordable.
3. **Awareness Campaigns:** Launch awareness campaigns to educate the public about the

effects of divorce on children and the importance of providing support. Promote understanding and empathy within society.

X. CONCLUSION

Divorce can be a life-altering experience for children, with far-reaching effects on their emotional well-being, academic performance, and future relationships. In India, the legal framework provides mechanisms to protect the child's best interests, but there is still work to be done to ensure that children receive the support they need during and after judicial separation.

Parents, educators, legal professionals, and policymakers all play a crucial role in mitigating the negative impact of divorce on children. By prioritizing the child's welfare, promoting open communication, and fostering a supportive environment, we can help children navigate the challenges of divorce and emerge resilient and empowered.

In conclusion, the journey through divorce can be a challenging one for children, but with the right support and guidance, they can thrive and build a positive future. It is our collective responsibility to ensure that the child's best interests are at the forefront of all decisions, paving the way for a brighter and more hopeful tomorrow.

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