



Shared Parenting in India: A Child-Centric Alternative to Sole Custody

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ABSTRACT

Child custody adjudication in India has historically revolved around the concept of sole custody, in which one parent—most commonly the mother—is granted the exclusive physical custody, while the other parent is allowed limited visitation rights. While this approach was earlier justified on grounds of stability and caregiving norms, contemporary social realities, psychological research, and evolving constitutional jurisprudence demand a reassessment of this model. This article tries to critically examine how shared parenting is a child-centric alternative to sole custody within the Indian legal framework. It analyses the existing statutory regime, judicial interpretations of the “best interests of the child” principle, and emerging trends that recognise the importance of both parents’ continued involvement in a child’s life. Through an examination of landmark and recent case laws, Law Commission recommendations, and comparative international practices, the article argues that shared parenting—though not explicitly codified—has begun to influence Indian custody jurisprudence. The article concludes by encouraging planned legislative reform to formally recognise shared parenting while safeguarding children from conflict, abuse, and instability.

I. Introduction

The breakdown of marriage or intimate relationships deeply affects children, often leaving them caught between adversarial parents and prolonged legal battles. In India, custody disputes are the most



emotionally charged and legally complex aspects of family law. Traditionally, Indian courts have preferred sole custody arrangements, granting primary physical custody to one parent stereotypically the mother, while permitting the other parent only periodic visitation. This approach, though deeply-rooted in welfare considerations, it has often resulted in the gradual marginalisation of one parent from the child's daily life.

In recent decades, however, there has been a noticeable shift in judicial thinking. Courts recognise that a child's welfare is not limited to material comfort or physical care alone, but includes emotional security, psychological development, and continuity of parental relationships. Against this framework, the concept of shared parenting has evolved as a viable alternative to sole custody of a child. Shared parenting emphasises the child's right to maintain meaningful relationships with both their parents after separation, provided such arrangements are consistent with the child's best interests. This article explores whether Indian law is equipped to accommodate shared parenting and see how courts have responded to this evolving concept, and what reforms are necessary to align the custody jurisprudence with child-centric principles.

II. **Conceptual Understanding of Shared Parenting**

Shared parenting, which is often referred to as joint custody, does not imply a rigid division of time or mechanical equality between parents. Shared parenting is a post-separation or post-divorce parenting model in which both parents can actively participate in the upbringing of their child, ensuring regular contact and equal decision-making authority. Rather, it denotes an arrangement in which both parents retain substantial involvement in the child's upbringing, decision-making, and emotional life after separation.

Shared parenting generally encompasses two dimensions:

1. **Shared Legal Custody** – Both parents participate in major decisions concerning the child's education, healthcare, religion, and overall welfare.
2. **Shared Physical Custody** – The child resides with each parent for significant periods, enabling continuity of care and emotional bonding. The central premise of shared parenting is that children benefit from sustained and meaningful relationships with both parents, unless there are compelling reasons—such as abuse or neglect—to limit such contact. Psychological research consistently indicates that children deprived of one parent often experience emotional distress, identity issues, and long-term psychological harm. While shared parenting has statutory backing



in jurisdictions such as in the UK and Australia, in India, these concepts are largely judge-driven, reflecting a judicial response to changing family dynamics rather than legislative intent

III. Statutory Framework Governing Child Custody in India

A. Guardians and Wards Act, 1890

The Guardians and Wards Act, 1890 (GWA) is the primary secular legislation governing the guardianship and custody of minors in India. The Act empowers courts to appoint guardians and make orders concerning the care, custody, and education of minors, guided by the welfare of the child. However, the GWA reflects a colonial-era focus, on the appointment of a single guardian rather than cooperative parenting. It does not plainly recognise joint or shared custody, leaving courts to exercise broad discretion.

B. Hindu Minority and Guardianship Act, 1956

The Hindu Minority and Guardianship Act, 1956 (HMGA) supplements the GWA for Hindus. While Section 13 emphasises the welfare of the minor as the paramount consideration, the Act titles the father as the natural guardian, followed by the mother, strengthening traditional hierarchies. Although courts have interpreted these provisions progressively, the statutory text does not envisage shared parenting as a norm. The absence of provisions on joint custody under the HMGA forces courts to rely on broad interpretative powers, contributing to inconsistency.

C. Personal Laws of Other Communities

Indian personal laws for religious minorities similarly lack codified recognition of joint Custody:

Muslim Law: Custody (hizanat) is primarily viewed as a religious duty, and a mother has the right for the early childhood years, while guardianship of property remains with the father or male relatives of the father .

Christian and Parsi Laws: The Indian Divorce Act, 1869, and the Parsi Marriage and Divorce Act, 1936, also provide courts' discretion to decide custody based on welfare, but remain silent on the concept of joint parenting. This diversity creates a patchwork system in which courts can apply varying principles, often relying on the GWA as a unifying statute, but without a consistent statutory guidance on shared parenting.



The absence of a codified standard or Parenting Plans:

Unlike many jurisdictions, which provide a clear parenting plan and the statutory presumptions for joint custody, Indian law is devoid of detailed procedural frameworks. There are no statutory guidelines on:

- Equal parenting time schedules.
- Decision-making authority and its allocation.
- Conflict resolution mechanisms between separated parents.

This absence has led to a system in which family courts exercise wide discretion, resulting in inconsistent outcomes that depend on the bench, region, and interpretation.

Juvenile Justice (Care and Protection of Children) Act, 2015 :

Although the Act is primarily intended for children who are in conflict with the law or require care and protection, the Act plays a crucial role in custody matters involving abandoned, orphaned, or trafficked children. It allows for the appointment of guardians or adoptive parents under state supervision and ensures that the child's rights and safety are protected. The Act also facilitates for the rehabilitation, psychological care, and long-term welfare planning. This legal framework reveals the diversity and complexity of child custody laws in India. The emphasis on child welfare is universal across statutes, and personal laws often reflect traditional, gendered assumptions that may not align with the lived realities of contemporary families. Moreover, the absence of a uniform code or collective guideline have resulted in discrepancies and judicial discretion that can lead to varied outcomes.

IV. The Paramountcy of the “Best Interests of the Child”

Indian courts have constantly held that the welfare of the child is paramount, overriding parental rights, personal laws, and even statutory presumptions. This principle has been interpreted expansively to include the emotional and psychological well-being of the child, the stability and continuity in upbringing the child, the moral and educational development needs for the child and the child's wishes. These flexible welfare standards have enabled courts to move beyond rigid custody models and consider arrangements that foster balanced parental involvement.

V. Judicial Evolution Towards Shared Parenting

A. Early Recognition of Balanced Parenting



The Supreme Court of India and almost all High Courts have held that, in custody disputes, the best interests/welfare of the child supersede even the statutory provisions outlined above. While earlier cases under the GWA unequivocally hold that the father can be deprived of his position as the natural guardian only if he is found unfit for guardianship, there are many instances where the courts have made exceptions to this notion.

B. Parental Alienation and Judicial Response

Indian courts have approved parental alienation, where one parent deliberately undermines the child's relationship with the other parent. Such conduct has been held contrary to the child's welfare. Courts have responded to this by restoring visitation rights, modifying custody orders, and, in some cases, transferring custody to prevent emotional harm to the child. The Delhi High Court, In an appeal which arises out of a protracted custody dispute between estranged spouses concerning their two minor children, further involving allegations and counter-allegations of matrimonial cruelty, parental alienation and abuse of legal process have dismissed the matrimonial appeal and upheld the judgment of the Family Court directing that the custody of both minor children be handed over to the father, along with structured visitation and communication rights for the mother.

C. Recognition of the Child's Right to Both Parents

Judicial pronouncements have emphasised that custody decisions should not be punitive towards one parent. The child's right to receive love, care, and guidance from both parents has been recognised as integral to welfare determinations.

D. Recent Judicial Trends

The concept of shared parenting is even now new to Indian custody jurisprudence, while the old principle of the father being the natural guardian has been laid to rest in its place, the best interest of the child principle is applied to disputes regarding custody of child. It has been held by the Supreme Court of India that in custody disputes, the concern for the best interest of the child supersedes even statutory provisions on the subject outlined above, Under this principle, the custody of minor children is mostly awarded to mothers. For instance, in a 2010 judgment, the Supreme Court altered the fortnightly visitation rights of the father and allowed the mother to take the minor son to Australia where she had got a job, based on this principle. Similarly, in *Gaurav Nagpal v Sumedha Nagpal*, although the son had been with the father since the time of his birth, which was a strong argument in favour of the father, the Supreme Court reversed this arrangement and awarded custody to the mother with visitation rights for the



father. Different High Courts have held that the greater economic prosperity of the father and his relatives is not a guarantee of the welfare of a minor and that it does not disturb the presumption in favour of the mother while deciding custody. There are plenty of such examples from both the Supreme Court of India and the High Courts. But in recent times, there have also been instances in which the Apex Court has emphasised that it cannot be assumed that a mother is naturally a better custodian for the child or better placed to respond to the child's diverse needs. In a 2004 judgment, commenting upon a judgment of the Karnataka High Court, that reversed the Family Court order and allowed the mother to retain the custody of the minor daughter, the Apex Court noted, "We make it clear that we do not subscribe to the general observations and comments made by the High Court in favour of mother as parent to be always preferable to the father to retain custody of the child. In our considered opinion, such generalisation in favour of the mother should not have been made." A reflection of this attitude was seen in *Ashish Ranjan v Anupama Tandon* where the Court, referring to the mother, who had been given custody originally, noted: —The mind of the child has been influenced to such an extent that he has no affection/respect for the applicant (the father). Thus, the Court held that the violation of the visitation rights granted to the father amounted to contempt of the Court. Thus, at present, in judicial practice, there is neither a presumption that the father is the natural guardian nor a presumption that the mother is biologically better equipped to care for the minor. The judicial approach to child custody has evolved to the point that the context is favourable for taking the discussion to the logical next step: shared parenting. Though shared parenting or joint custody is not specifically spelt out in Indian law, it is reported that Family Court judges do use this concept at times to decide custody battles. Two examples of attempts to institutionalise shared parenting in India are noted below. A set of guidelines on a child access and child custody' prepared by the Tata Institute of Social Sciences (Mumbai) for Family Court judges and Counsellors in Maharashtra understands joint custody in the following manner: child may reside alternately, one week with the custodial parent and one week with non-custodial parent, and that both custodial and non-custodial parent share joint responsibility for decisions involving child's long term care, welfare and development. to resolve the custody battle over a twelve-year-old boy. Increased use of structured visitation schedules have given more emphasis on shared parental responsibility for education and expenses, Judicial encouragement of mediation and counselling, and sensitivity to the psychological impact of prolonged litigation on children. Although courts rarely label such arrangements as "shared parenting," their substance reflects shared parenting principles.

Although the guidelines state that the above framing of the idea of joint custody is consistent with the 1989 UN Convention on the Rights of the Child, it must be noted that such a mechanical approach to



understanding joint custody is inimical to the notion of best interest of the child, as it treats the child as a chattel to be passed around between the two parents every alternate week. The second example of joint custody is found in a recent judgment of the Karnataka High Court, which used the concept In *Githa Hariharan v. Reserve Bank of India* (1999): The Supreme Court of India ruled that both parents have equal rights in guardianship and custody matters, challenging the traditional bias towards paternal custody under Hindu law. *Nil Ratan Kundu & Anr v. Abhijit Kundu* (2008), this case has emphasised that the child's welfare is of paramount importance, and custody decisions should prioritise the child's best interests over parental rights. 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*, the Supreme Court have firmly established that the welfare of the minor child must be the paramount consideration in custody disputes, even above the rights and preferences of their parents. The Court clarified that decisions for custody should not be based solely on legal entitlements or parental desires, but must give priority to the child's overall physical, emotional, and psychological well-being. Further development in the jurisprudence of child custody was seen in *Roxann Sharma v. Arun Sharma*, the Supreme Court have taken a progressive step by advocating for shared custody and ensuring regular visitation rights for the non-custodial parent. The Court have recognised the importance of joint parenting, even post-divorce, acknowledging that both parents play a crucial role in the 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*, 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. In *Dr. V. Ravi Chandran v. Union of India*, the apex court emphasised that the custody orders should encourage shared responsibility and not promote parental rivalry. These judgments, which were discussed above collectively demonstrate the judiciary's progressive stand 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.

VI. Constitutional and International Perspectives

A. Constitutional Dimensions



The right to life and personal liberty under Article 21 of the Constitution has been expanded to include the right to live with dignity and emotional well-being. For children, this incorporates the right to parental care and emotional security. Arbitrary deprivation of parental relationships may raise constitutional concerns.

B. United Nations Convention on the Rights of the Child (UNCRC)

India is a signatory to the UNCRC, which mandates that the best interests of the child is the primary consideration in all actions concerning children. The Convention recognises that a child's right is necessary to maintain personal relations and direct contact with both parents, unless contrary to the child's best interests. While not directly enforceable, Indian courts frequently rely on UNCRC principles to interpret domestic law.

VII. Comparative Jurisprudence

The UK's Children Act 1989 have brought significant changes to custody law by replacing the terms "custody" and "access" with "residence" and "contact" orders. This law puts first priority to the child's best interests and also supports both parents' involvement in their child's life. Courts in England and Wales can grant shared residence orders, so that children can spend meaningful time with each parent after separation. The Act focuses mainly on the responsibility of parents rather than parental rights, with the child's welfare being given the primary concern. Courts often encourage for mediation and the creation of a parental planning before the matter is sent to court. This clear legal framework reduces uncertainty and legal disputes, in contrast to India's more flexible approach. In *Re B (A Child)* (2013) case has emphasised the importance of maintaining a child's relationship with both parents, by reinforcing the trend towards shared parenting

In the United States, each state sets its own child custody laws, and many now start with the idea that joint custody is best for children. States in U S like Kentucky and Arizona, have encouraged equal parenting time, and parents have to show why shared custody would not be in the child's best interests if they disagree. This approach is based on the belief that children do better when both parents stay are involved. U.S. courts also require parenting plans, which outline schedules, decision-making, and how to handle disagreements, if any. By making these rules clear, courts have less room for personal judgment, and families know what to expect. India could consider adopting similar rules, especially regarding formal parenting plans and clear support for joint custody. *Troxel v. Granville* (2000): The U.S. Supreme Court reaffirmed the principle that the state must respect the fundamental right of parents to



make decisions concerning the care, custody, and control of their children. Looking at these countries, India can learn several lessons for its family law system. First, the U.S. have clear laws that support joint custody, which helps make court decisions more consistent. Second, the UK shows that using child-focused language can shift the focus from control to responsibility. Third, detailed laws about parenting plans in Western countries help set clear schedules and reduce conflicts. Finally, the use of tools like psychological evaluations and reports of social workers, as seen internationally, can improve how custody decisions are made.

VIII. Critiques and Limitations of Shared Parenting

Despite its advantages, shared parenting is not without challenges:

1. **High-Conflict Relationships:** Where parental conflict is severe, shared parenting may expose children to ongoing hostility.
2. **Domestic Violence and Abuse:** Shared parenting is inappropriate where there are substantiated allegations of abuse.
3. **Practical Difficulties:** Logistical issues such as distance, schooling, and parental work schedules may complicate the shared arrangements.
4. **Enforcement Challenges:** Absence of a clear statutory mechanisms makes the enforcement difficult.

Courts must therefore assess shared parenting case-by-case, rather than treating it as a default rule.

IX. Law Commission Recommendations and the Need for Reform

The Law Commission of India, in its 257th Report, has made following recommendations:

- Statutory recognition of joint custody and shared parenting
- Mandatory consideration of parenting plans
- Emphasis on mediation and alternative dispute resolution
- Clear criteria for determining the suitability of shared custody

Despite these recommendations, legislative reform remains pending.



Conclusion

Shared parenting represents a significant shift from parent-centric to child-centric custody jurisprudence. While Indian law has not officially codified shared parenting, judicial trends clearly reflect a growing awareness that children succeed when both parents remain meaningfully involved in their lives. The challenge lies in transforming these incremental judicial novelties into an intelligible and consistent legal framework. By embracing shared parenting—while retaining strong safeguards—Indian family law can better serve the emotional, psychological, and developmental needs of children in an era of changing family structures.

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