

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 4
2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

The Impact of Divorce on Children Ensuring Smooth Transition in Custody Arrangements

DR. LINY JOSE K¹

ABSTRACT

Divorce, though sometimes a necessary conclusion to a marriage, invariably impacts all involved, especially the children. Following the legal dissolution of a marriage, child custody becomes paramount. Divorce initiates a complex transition for families, often resulting in emotional, behavioural, and intellectual challenges for children. These challenges are influenced by a combination of factors and can manifest differently depending on the child's age and maturity. In our country where family ties are strong and societal expectations are complex, understanding these impacts and prioritizing children's needs during custody arrangements is crucial. The paper addresses the primary factors that affect children's adjustment during divorce, including the intensity and duration of parental conflict, which can create a stressful and destabilizing environment. The multifaceted impacts of divorce on children, exploring the short-term and long-term consequences across various developmental stages are also examined in detail. It also considers the economic changes that frequently accompany divorce, such as decreased household income, which can affect a child's access to resources and opportunities.

Furthermore, the article delves into the critical considerations for custody arrangements, emphasizing the importance of prioritizing the child's best interests above all other factors. The paper analyzes the potential benefits and drawbacks of different models of custody arrangements, considering factors such as the child's age, the parents' ability to co-operate, and the overall family dynamics. Ultimately, it advocates for custody arrangements that promote stability, security, and on-going relationships with both parents, to the extent possible. The article analyses the judicial considerations while evaluating an application for the custody of children. These factors include maintaining stable and supportive parent-child relationships, minimizing the child's exposure to parental conflict, and ensuring that adequate support systems including extended family, friends, and professional resources that are in place to help children navigate the challenges of divorce.

¹ Author is an Associate Professor (on Deputation) at Institute of Management in Government, Regional Centre, Kochi, Kerala, India.

I. INTRODUCTION

The idea of family is deeply ingrained in Indian society, often leading to view those outside this familial structure with suspicion. However, family and the relations that stem from the same faces a crisis in the present era. The soaring divorce rates and the subsequent legal battles are stark indicators of this alarming crisis. Divorce, though sometimes a necessary conclusion to a marriage, invariably impacts all involved, especially the children. It is the legal act that fundamentally alters the status and rights of individuals, brings forth complex issues, particularly concerning custody of minor children. Divorce initiates a complex transition for families, often resulting in emotional, behavioural, and intellectual challenges for children. These challenges can manifest differently depending on the child's age and maturity, and are influenced by a combination of factors.

Following the legal dissolution of a marriage, child custody becomes paramount. In our country where family ties are strong and societal expectations are complex, understanding these impacts and prioritizing children's needs during custody arrangements is crucial. Child custody, in family law, connotes the legal guardianship of a child less than 18 years of age when parents separate or pass away. With whom the custody of minor children is to be granted during judicial separation or after the divorce is a major issue to be considered by the adjudicating court. While the courts lack a uniform procedure in deciding custody, the paramount consideration remains the 'welfare of the child.' This principle guides family courts while they deliberate on with whom the custody is to be granted following a divorce. When parents separate, the courts prioritize the child's well-being and development, making crucial decisions aimed at mitigating any adverse effects on the child's life. Indian laws relating to custody of children upholds the equal rights of both parents post-separation to the extent that while one parent may be the primary caregiver, the other has the right to meet the child.

II. UNDERSTANDING THE EMOTIONAL AND PSYCHOLOGICAL IMPACT ON CHILDREN

The fracturing of a family unit through divorce is a seismic event, and while the legal and logistical aspects often take centre stage, the profound psychological impact on children can leave unseen scars that linger long after the paperwork is finalized. Children, caught in the crossfire of their parents' separation, traverse a turbulent landscape of shifting loyalties, altered routines, and profound emotional upheaval. Understanding the multifaceted nature of

this impact is crucial for parents, educators, and support systems to provide the necessary care and guidance.

As the initial shockwaves of separation reverberate through a child's world, a cascade of complex emotions can surface. **Confusion and uncertainty** often take hold, as children grapple with the unfamiliar reality of their family structure. They may struggle to comprehend why their parents, the pillars of their security, the stability they once knew are choosing to live apart, leading to anxieties about their own future. Younger children, in their egocentric view of the world, may internalize the separation, leading to feelings of **guilt and self-blame**. They might mistakenly believe that their actions or misbehaviour somehow caused the divorce, fostering a sense of inadequacy and responsibility for an adult decision. As the reality of the situation sinks in, **anger and resentment** can brew directed towards one or both parents.

The uncertainty inherent in divorce often breeds **anxiety and fear**. Children may perceive one parent as the instigator or feel their needs are being overlooked amidst the conflict, leading to outbursts of frustration and defiance. Beyond anger, a deep **sadness and depression** can engulf children as they grieve the loss of their intact family. The familiar routines, shared moments, and sense of belonging are disrupted, leading to feelings of loss and isolation that can, in some cases, escalate into clinical depression. Children may worry about changes in their living arrangements, financial security, schooling, and their relationships with both parents and extended family members. This constant state of worry can manifest in various ways, impacting their sleep, appetite, and overall well-being.

A particularly challenging emotional tightrope children often need to walk is the experience of **loyalty conflicts**. Feeling torn between their parents, they may fear that expressing affection or aligning with one parent will displease the other. This can create immense internal pressure and prevent them from forming healthy relationships with both parents. It is crucial to recognize that the impact of divorce is not uniform across all ages. A child's developmental stage significantly influences how they perceive and react to their parents' separation.

The stress and emotional turmoil of divorce can also trigger **regression**, particularly in younger children. Behaviours such as bedwetting, thumb-sucking, increased clinginess, and tantrums may resurface as coping mechanisms in the face of overwhelming change. Furthermore, the psychological strain can spill over into other areas of a child's life, leading to **academic and behavioural problems**. Difficulty in concentrating school, declining grades, defiance, aggression, and withdrawal can all be manifestations of the underlying emotional distress.

III. THE CHILDREN IN HIGH-CONFLICT DIVORCE

At its core, high-conflict divorce signifies a deeply entrenched and persistent state of animosity between separated parents. The enduring nature of this conflict distinguishes it from a divorce with typical disagreements as it is not just about occasional disagreements which have led to the legal proceeding but, a pattern of intense hostility that manifest in a multitude of ways. This hostility may be expressed explicitly where the legal system becomes the battle ground with frequent allegations and multiple proceedings indicating a general unwillingness to compromise or it can also result in a communication breakdown leading to insults and threats and in most severe cases, physical violence.

Sometimes the high conflict between the parents is revealed implicitly through tactics of sabotage and deception where one or both parents may actively try to undermine the other's relationship with the child by spreading rumours or manipulating situations to their advantage. The intensity and duration create a toxic environment that significantly impacts everyone involved, especially the children. Even without the specific dynamic of Parental Alienation Syndrome (PAS), children in high-conflict divorces find themselves in a tremendously difficult position. They navigate a landscape fraught with tension and emotional strain. Children may develop sophisticated strategies of active manoeuvring to manage the conflict among the parents. This could involve being hyper-aware of each parent's moods, carefully choosing what they say to whom, and becoming adept at de-escalating tense situations. Children may also develop a survival strategy of equal distance and fairness, treating both parents with equal politeness but maintaining an emotional distance to avoid being drawn into the conflict. This can be a protective mechanism but might also prevent them from fully engaging in their relationships with either parent.

However, children may unintentionally fuel the conflict due to their own anxieties and developmental stages. Telling each parent what they want to hear can be a way to seek reassurance or avoid disappointing a parent, but it can also lead to misunderstandings and further arguments between the adults. Similarly, shifting allegiances can be a manifestation of their internal struggle and desire to maintain a connection with both parents. Generally, in situations *without* significant Parental Alienation Syndrome, children retain their ability to love and connect with both the parents. While the transitions between homes might be challenging and emotionally charged, once they are with a parent, they usually enjoy that time and maintain their own perspective without consistently aligning themselves against one parent.

IV. THE SHIFT: HIGH-CONFLICT DIVORCE *WITH* SIGNIFICANT PARENTAL ALIENATION SYNDROME

When a child experiences significant Parental Alienation Syndrome, their behavioural patterns undergo a fundamental shift. Here, the child is no longer an observer navigating the parental conflict instead they become an active participant, deeply enmeshed in the battle. The children may often become really firm and take a hostile stance by aligning themselves with the alienating parent and actively rejecting the alienated parent. The alienating parent is idealized, while the targeted parent is demonized. This black-and-white thinking is a hallmark of Parental Alienation Syndrome and is often based on misinformation or exaggerated claims. Occasionally, the alienation process actively undermines the child's ability to maintain a healthy and loving relationship with the targeted parent as the child's perspective becomes skewed, often mirroring the alienating parent's negative view. Thus the child's emotional well-being becomes intertwined with the parental conflict in a profound way as they are not just witnessing it but internalizing it and taking sides. This results in inability to preserve affection for both parents.

In essence, their feelings and perceptions become distorted by the alienating parent's influence, leading to a painful and often unwarranted rejection of the other parent. Understanding these distinctions is crucial for recognizing the different dynamics at play in high-conflict divorces and for developing appropriate interventions to support the well-being of the children involved while custody applications are considered by the courts.

V. CONVENTION ON THE RIGHTS OF THE CHILD: THE GLOBAL BLUE PRINT OF CHILDHOOD RIGHTS

The 'patriarch's rights' and 'maternal preferences' were the rules in deciding the custody of minor children on divorce during the late 18th and early 19th Century. However, in the present social context children have a right to grow into balanced and productive members of society, and hence the idea of parents having absolute control over their children's lives has been replaced by the principle of prioritizing the children's well-being.

The Convention on the Rights of the Child² (CRC) is an international treaty that has revolutionized the approach towards children from the status of objects of charity to subjects with inherent rights. Its conception was not an instantaneous epiphany but the culmination of

² Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

a chain of global attempts fuelled by humanitarian issues and scientific progress to conceptualize and safe guard the rights of the children. This historic achievement represented international consensus that children need special protection and that their rights should be legally codified and internationally assured. The CRC rapidly became the most ratified human rights instrument ever, indicating an unprecedented worldwide commitment to the welfare and dignity of all children.

A major change with regard to the rights of the children happened during this time were the transition from a 'needs-based' to a 'rights-based' approach. This involved seeing children as 'rights holders' and not merely passive receivers of care, with the ability to engage in decisions about their lives as they grow up. The 'best interests of the child' became the core principle, emphasizing that everything done for and by children should be done for their benefit. From 'benevolent welfare' to a 'legally enforceable right,' the path to the CRC was a revolutionary transformation in the way that humanity sees and safeguards its youngest members, entrenching a worldwide commitment to ensure that every child can grow, flourish and realize their potential.

VI. FAMILY UNITY AS A CHILD'S RIGHT

The primary thrust of Article 9³ of the Convention on the Rights of the Child is the presumption that children should remain with their parents. It underscores the importance of the family as the natural environment for a child's growth and well-being. This isn't just about physical cohabitation but about maintaining meaningful parental relationships. The language "shall not be separated from his or her parents against their will" establishes a strong baseline, implying a high threshold for any state intervention that would lead to such separation. While upholding family unity, Article 9 wisely acknowledges that there are exceptional circumstances where separation may be necessary. However, the Convention places strict procedural safeguards on such separations. Removing a child from parents is a drastic measure, reserved only when unavoidable in the child's best interests. This is where the paramount principle of the "best interests of the child" comes into play. It is the last resort applied only when less invasive methods cannot provide the child with safety. Any such decision to take a child away from parents has to be non-arbitrary. It has to be taken by competent authorities and importantly, it should be subject to judicial review. This implies that any such decision should be based on "applicable law and procedures." This guarantees accountability and openness, where an independent body will be able to determine if the

³ Convention on the Rights of the Child Article 9.1.

separation is justified and really needed. Lastly, the child's voice must play a crucial role in these proceedings. Article 9(2) of the Convention on the Rights of the Child provides that "all interested parties shall be given an opportunity to participate in the proceedings and make their view known." This guarantees that the right of the child to be heard is maintained.

VII. WELFARE OF THE CHILD: THE UNDERLYING PRINCIPLE

Even when separation is deemed necessary, Article 9(3) asserts the child's right 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." This is crucial for mitigating the negative impact of separation and preserving familial bonds where ever possible.

In legal proceedings concerning child custody, the court's primary and overriding concern is the welfare and best interests of the minor children. The interests of the litigating parties, though relevant to the context, are subordinate to this paramount consideration. The court should examine several factors to determine who would be the child's custodians, all under the umbrella of the supposedly neutral 'best interests' standard. Therefore, in custody disputes between parents, the court must balance the welfare of the children with the parents' rights.⁴ How parents balance the competing needs of the child during custody arrangements can significantly influence children's adjustment to divorce. A smooth transition minimizes disruption and provides children with a sense of stability and security.

When a court determines the custody of minor children under the Guardians and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956 or any other law, the paramount consideration should be the child's welfare, encompassing their physical, emotional, and developmental needs. While the '*Best interests of the Child*' standard is intentionally flexible to address diverse family situations, several factors consistently appear in most custody analyses. Issues common to all child custody disputes are: (a) continuity and quality of attachments, (b) preference of the child, (c) parental alienation, (d) special needs of children, (e) education, (f) gender issues, (g) sibling relationships, (h) parents' physical and mental health, (i) parents' work schedules, (j) parents' finances, (k) styles of parenting and discipline, (l) conflict resolution, (n) social support systems, (o) cultural and ethnic issues, (p) ethics, values and religion.⁵ In such cases, courts are not strictly bound by statutes, rules of evidence, procedure, or precedents. The decision does not rest on either parent's superior rights. They

⁴ Gaurav Nagpal v. Sumedha Nagpal, 2009 (1) SCC 42

⁵ Summary of Practice Parameters for child Custody Evaluation published by American Academy of Child and Adolescent Psychiatry, <https://www.scconline.com/blog/post/2019/11/25/custody-of-children/>

must consider the child's overall well-being, including their comfort, contentment, health, education, and intellectual development, along with a favourable environment.⁶

Moral and ethical values also take their share along with physical comforts. If the child is mature enough to express an informed preference, the court should consider it, though the final decision on what best serves the child's welfare remains with the court. The court evaluates several key factors, including the child's wishes, ordinary comfort, contentment, health, education, the conduciveness and appropriateness of the environment for upbringing, each parent's capacity and resources to care for the child.⁷ Courts evaluate what living arrangement and parental responsibilities will best support a child's well-being based on these factors.

The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children and equally for the parents can be, inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.⁸

VIII. INTRODUCTION

IX. THE CHALLENGES IN CHILD CUSTODY DETERMINATIONS

Applying the 'Best Interests' standard without specific rules leads to inconsistent and unpredictable custody decisions as there is lack of clear definition and susceptibility to unbridled judicial discretion and bias. Recognizing the inherent uncertainty in predicting a child's optimal future, the courts are nonetheless required to make determinations. These decisions must be grounded in the probabilities arising from the presented testimony interpreted through the lens of ordinary human experience. Though the prevailing legal test is that of the 'best interests of the child', the Courts have also postulated the "least detrimental alternative" as an alternative judicial presumption.⁹

The lack of scientific predictability regarding long-term outcomes pursuant to custody arrangements and a societal absence of consensus on values is the main cause of the challenges associated with determinations of child custody. The long-term impacts of various

⁶ Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413

⁷ Gaytri Bajaj v. Jiten Bhalla, (2012) 12 SCC 471:

Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42

⁸ Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311.

⁹ J. Selvan v. N. Punidha, 2007 SCC On Line Mad 636.

custody arrangements cannot be reliably predicted by psychological theories, so mental health practitioners lack the scientific foundation necessary to make precise predictions. In addition, there is a lack of consensus in society regarding what is "best" or "least detrimental" for a child. Usually, decisions made using State-mandated criteria are indeterminate because they are frequently arbitrary and provide little specific direction. Moreover, determinations relied on intuition rather than intentional, logical reasoning; this indeterminacy runs the risk of breaking the principle that "like cases should be decided alike."¹⁰

In determinations relating to the custody of a child, the Court must remember that it is dealing with a very sensitive issue in considering the nature of care and affection that a child requires in the growing stages of his or her life. Guardianship or custody orders never attain permanence or finality and can be questioned at any time, by any person genuinely concerned for the minor child, if the child's welfare is in peril.¹¹ That is why custody orders are always considered interlocutory orders and by the nature of such proceedings, custody orders cannot be made rigid and final. They are capable of being altered and moulded keeping in mind the needs of the child.¹²

A court has a great deal of discretion when it comes to child custody matters. It is not tightly constrained by particular laws, strict standards of proof, or earlier court decisions. To ensure the welfare of the child, the courts consider many important factors including the parent's ability to be mature and wise, their mental stability to create a stable environment, and their ability to guarantee that their child has access to a good education. In addition, the court looks at a parent's moral fibre, willingness to encourage their child's involvement in the community, and ability to provide for their child's needs financially. Beyond personal traits, the most important factor to take into account is the nature of the parent-child relationship itself, with an emphasis on what best promotes the minor's wellbeing.

In conclusion, the psychological impact of divorce on children is a complex and multifaceted issue that demands sensitivity and understanding. By acknowledging the age-specific vulnerabilities and offering consistent reassurance, open communication, and a stable environment, parents and caregivers can help children navigate this challenging transition and mitigate the long-term psychological scars that divorce can inflict. Prioritizing the emotional well-being of children during separation and after divorce is not just a matter of compassion; it is an investment in their future resilience and healthy development.

¹⁰ Robert Mnookin, *Child Custody Revisited*, <http://lcp.law.duke.edu/>.

¹¹ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1

¹² *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 SCC 409