

Changing Scenario in Parent Children Relations: A Critical Study of Legal Framework in India



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Abstract

The Parent-Child Relationship is one that nurtures the physical, emotional and social development of the child. It is a unique bond that every child and parent will can enjoy and nurture. This relationship lays the foundation for the child's personality, life choices and overall behaviour. It can also affect the strength of their social, physical, mental and emotional health. Parenting is a dynamic process, influenced by socio-cultural factors. It is an important contributing factor to child development and childhood psychopathology. Research investigating association between parenting styles and child outcome are limited in India. This paper aims to review studies conducted in new pattern of changing of law in parenting styles and its outcome. We found that our legal system is so progressive on our family system, the effect of parenting styles on children appear to be similar across culture, and culture did not serve as a moderator for parenting style and children outcomes. An Authoritative parenting styles was associated with better outcome than authoritarian and neglectful/uninvolved parenting style in India. Findings on indulgent/ permissive parenting styles were mixed in all part of communities. The article discusses and focus on in India's Changing Scenario in Parent Children Relations Legal Cases and Framework.

Keywords:- Children, Parents, Relationship, India, Legal, Cases, Family Law

Introduction

In India, beneficial provisions for maintenance of children and parents are provided under various Acts. Objective of such provisions is to achieve a social purpose and to prevent vagrancy and destitution and to provide simple, inexpensive and speedy mechanism for providing support and maintenance to children and parents. Some of the benefits include. Young children who grow with a secure and healthy attachment to their parents stand a better chance of developing happy and content relationships with others in their life. A child who has a secure relationship with parent learns to regulate emotions under stress and in difficult situations. Promotes the child's mental, linguistic and emotional development. Helps the child exhibit optimistic and confident social behaviours. Healthy parent involvement and intervention in the child's day-to-day life lay the foundation for better social and academic skills. A secure attachment leads to a

healthy social, emotional, cognitive, and motivational development. Children also gain strong problem-solving skills when they have a positive relationship with their parents.

The Objective of the Paper

- To Know the Importance of Law about Parent Children Relationship in India.
- We Will Find to Know Some New Aspects and Legal Cases Related to Parent and Child Relationship in India.
- To Concern Legal Provision of Parenting Maintenance and Custody of Children in India.

These provisions along with important cases are discussed below:

Statutory Provisions

Hindu Marriage Act, 1955, Section 26 – During the proceedings under the Act, the court may pass orders with respect to the custody, maintenance, and education of minor children. Under this Act, both parents (father as

well as mother or either of them) are liable to maintain the children as ordered by the court. While making such orders, the court takes into account wishes of the children, as far as possible. Such orders and provisions may be altered from time to time. Any application in respect to maintenance and education of minor children during pendency of proceedings under the Act has to be decided within sixty days from the date of service of notice on the respondent, as far as possible.

Hindu Adoption and Maintenance Act, 1956,

Section 20 – A Hindu male or female is bound to maintain his or her legitimate/illegitimate minor children and aged/infirm parents. Aged or infirm parent (which includes childless stepmother) or unmarried daughter have to be maintained if they are unable to maintain themselves. Section 23 sub-section (2) states that while determining the amount of maintenance to be awarded to children or aged or infirm parents, the court shall consider the following:

(a) position and status of the parties; (b) reasonable wants of the claimants; (c) if the claimant is living separately, whether the claimant is justified in doing so; (d) claimants income and value of property held by him, if any; etc.

If a person ceases to be a Hindu (changes his religion), he/she cannot claim maintenance under this Act (Section 24). The amount of maintenance may be modified if there is a change in circumstances warranting so (Section 25).

Under this Act, even the heirs of a deceased Hindu are bound to maintain his/her “dependants” out of his/her estate inherited by them (Section 22). Dependents include deceased person’s minor son, unmarried daughter, widowed daughter, minor illegitimate son, minor illegitimate daughter (Section 21).

Criminal Procedure Code, 1973, Section

125 – Magistrate may order a person to make monthly allowance for maintenance in a case where any person who despite having sufficient means neglects or refuses to maintain – (i) his legitimate or illegitimate minor child who is unable to maintain itself; or (ii) legitimate or illegitimate major child (not being a married

daughter) unable to maintain itself due to any physical or mental abnormality/injury; or (iii) married daughter till she attains majority if her husband is not able to maintain her; or (iv) his/her father or mother who are unable to maintain themselves. This section also makes a provision for maintenance during the pendency of proceedings regarding monthly allowance for maintenance. Also, application for interim maintenance during pending proceedings is to be decided by the Magistrate, as far as possible, within sixty days of the date of service of notice of application to such person. A person who fails to comply with the order of the Magistrate without showing sufficient cause may also be sent to prison. The order of maintenance passed under this section may be altered by the Magistrate on proof of change in circumstances (Section 127).

Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3

– A divorced Muslim woman is entitled to a reasonable and fair provision and maintenance for children born to her for a period of two years from the respective dates of birth of such children. It does not matter if the children were born before or after the divorce, the former husband is liable to pay maintenance. If the former husband fails to comply with the order passed by Magistrate without showing sufficient reason, he may have to suffer imprisonment up to one year.

Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Section 4 – Parent (father or mother whether biological, adoptive or step father or step mother, whether senior citizen or not) or grand-parent who is unable to maintain himself is entitled to claim maintenance from one or more of his adult children (son, daughter, grandson and grand-daughter but does not include a minor). Obligation of the children to maintain their parents extends to such needs of the parents which will allow them to lead a normal life. Additionally, this Act also makes provision for maintenance of childless senior citizens (who has attained the age of sixty years or above) by their relatives. The “relative” means any legal heir of childless senior citizen who is in

possession of his property or would inherit it after his death, but it does not include a minor.

If the parents or senior citizens are incapable of applying for monthly allowance for maintenance themselves, in that case, an application can be made through any other person or organisation authorised by them. Such an application has to be decided by Maintenance Tribunal within a maximum period of 120 days from the date of service of notice to children/relative. If children/relative fails to comply with the orders of the Tribunal, this may result in imprisonment upto one month. (Section 5). The Tribunal may order the children/relative to make a monthly allowance at a rate deemed fit by the Tribunal. However, the maximum amount of maintenance cannot exceed Rs 10,000 per month. (Section 9). The order of maintenance may be altered by the Tribunal on proof of change in circumstances (Section 10).

Cases

Children of Void Marriage Entitled to Maintenance

A child born out of a void marriage between a woman and a man who already has a wife is to be treated as a legitimate child who is entitled to maintenance under Section 125 CrPC, *Bakulabai v. Gangaram*, (1988) 1 SCC 537.

Father to Maintain the Unmarried Daughter

An unmarried daughter unable to maintain herself is entitled to claim maintenance under the Hindu Adoption and Maintenance Act, 1956. The father is obliged to maintain her unmarried daughters even if they are living separately with their mother, *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7.

Daughter to be Maintained Until She Gets Married Even After Attaining Majority

Daughter is entitled to maintenance under CrPC when read with Hindu Adoption and Maintenance Act, 1956 even after attaining majority but till her marriage, *Jagdish Jugtawat v. Manju Lata*, (2002) 5 SCC 422.

Hindu Earning Mother is also Obligated to Maintain Children

Both, a Hindu divorcee father and a Hindu divorcee earning mother are obliged to contribute for maintenance of their children under the Hindu Adoption and Maintenance Act, 1956. Father is not exclusively responsible to maintain children regardless of mother being affluent, *Padmja Sharma v. Ratan Lal Sharma*, (2000) 4 SCC 266.

CrPC applies only when there is neglect or refusal to maintain despite having sufficient means

A case for grant of maintenance under Section 125 CrPC arises only when a person despite having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor children who are unable to maintain themselves, *Amarendra Kumar Paul v. Maya Paul*, (2009) 8 SCC 359.

Maintenance under CrPC & 1986 Act runs parallel (Muslim children entitled to maintenance under CrPC The benefit under Section 125 CrPC is available to all children irrespective of religion. Right under Muslim Women (Protection of Rights on Divorce) Act, 1986 is that of the mother to claim maintenance for children for two years from their date of birth and is distinct and independent of the right to maintenance under CrPC to minor children unable to maintain themselves, *Noor Saba Khatoon v. Mohd. Quasim*, (1997) 6 SCC 233.

Daughter is also Obligated to Maintain Parents

Along with a son, Section 125 CrPC imposes liability even on daughter whether married or unmarried, having sufficient means to pay maintenance to her parents who are unable to maintain themselves, *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*, (1987) 2 SCC 278.

When can a stepmother claim maintenance from her stepson

A childless stepmother may claim maintenance from her stepson provided she is a widow or her husband, if living, is incapable of supporting and maintaining her, *Kirtikant D. Vadodaria v. State of Gujarat*, (1996) 4 SCC 479.

Conditions for grant of maintenance to parents and senior citizens under 2007 Act

Senior citizens, including parents, will be entitled to maintenance under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 if only they are unable to maintain themselves from their own earnings or out of the income from the property owned by them, *M. Venugopal v. DM, Kanyakumari*, 2014 SCC OnLine Mad 5642.

Custody of Children

The law governing custody of children is closely linked with that of guardianship. Guardianship refers to a bundle of rights and powers that an adult has in relation to the person and property of a minor, while custody is a narrower concept relating to the upbringing and day-to-day care and control of the minor. The term “custody” is not defined in any Indian family law, whether secular or religious.

Principles in Relation to Parents Custody of Children

An order of custody of minor children either under the provisions of the Guardians and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956 is required to be made by the court treating the interest and welfare of the minor to be of paramount importance. It is not the better right of either parent that would require adjudication while deciding their entitlement to custody. The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the parent concerned to take care of the child are some of the relevant factors that have to be taken into account by the court while deciding the issue of custody of a minor, *Gaytri Bajaj v. Jiten Bhalla*, (2012) 12 SCC 471 .

Object and purpose of the Guardians and Wards Act, 1890 is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. In considering the question of welfare of minor, due regard has, of course, to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship, *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840.

Children are not mere chattels nor are they toys for their parents. Absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them, *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 .

Statutory Law

(i) Guardians and Wards Act, 1890: This Act is a secular law regulating questions of guardianship and custody for all children within the territory of India, irrespective of their religion.

(ii) Hindu Law: It is to be noted that the following two Acts discussed under “Hindu Law” are applicable to any person who is a Hindu, Buddhist, Jaina or Sikh by religion.

(a) Hindu Minority and Guardianship Act, 1956: Classical Hindu law did not contain principles dealing with guardianship and custody of children. However, in modern statutory Hindu law, the Hindu Minority and Guardianship Act provides various provisions concerning the matters of guardianship and custody of minor Hindu children.

(b) Hindu Marriage Act, 1955: Section 26 of the Hindu Marriage Act authorises courts to pass interim orders in any proceeding under the Act, with respect to custody, maintenance and education of minor children, in consonance with their wishes. The Section also authorises courts to revoke, suspend or vary such interim orders passed previously.

(iii) Islamic Law: In Islamic law, the father is the natural guardian, but custody vests with the mother until the son reaches the age of seven and the daughter reaches puberty. The concept of *Hizanat* provides that, of all persons, the mother is the most suited to have the custody of her children up to a certain age, both during the marriage and after its dissolution. A mother

cannot be deprived of this right unless she is disqualified because of apostasy or misconduct and her custody is found to be unfavorable to the welfare of the child.

(iv) Parsi and Christian Law: Under Section 49 of the Parsi Marriage and Divorce Act, 1936 and Section 41 of the Divorce Act, 1869, courts are authorised to issue interim orders for custody, maintenance and education of minor children in any proceeding under these Acts.(9)

(v) Marriages registered under Special Marriage Act, 1954: This Act provides for a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess. Couples who register their marriage under Special Marriage Act can take resort to Section 38 of the Act for the purposes of custody of children. Section 38 empowers the district court to pass interim orders during pendency of proceedings and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible.

The Paramount Consideration

While taking a decision regarding custody or other issues pertaining to a child, “welfare of the child” is of paramount consideration, Sheoli Hati v. Somnath Das, (2019) 7 SCC 490.

It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which is the paramount consideration, Saraswatibai Shripad Vad v. Shripad Vasanti Vad, 1940 SCC OnLine Bom 77.

Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the child. It is here that a heavy-duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration, Mausami

Moitra Ganguli v. Jayant Ganguli, (2008) 7 SCC 673.

The word “welfare” used in Section 13 of the Hindu Minority and Guardianship Act, 1956 has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *patria potestas* jurisdiction arising in such cases, Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.

Section 6 of the Hindu Minority and Guardianship Act, 1956 constitutes the father as the natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is conducive to the welfare of the minor, Surinder Kaur Sandhu v. Harbax Singh Sandhu, (1984) 3 SCC 698.

Even an interim order of custody in favour of the parent should not insulate the minor from the parental touch and influence of the other parent which is so very important for the healthy growth of the minor and the development of his personality, Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479.

Before deciding the issue as to whether the custody should be given to the mother or the father or partially to one and partially to the other, the High Court must (a) take into account the wishes of the child concerned, and (b) assess the psychological impact, if any, on the change in custody after obtaining the opinion of a child psychiatrist or a child welfare worker. All this must be done in addition to ascertaining the comparative material welfare that the child/children may enjoy with either parent, Mamta v. Ashok Jagannath Bharuka, (2005) 12 SCC 452.

The principles laid down in proceedings under the Guardians and Wards Act, 1890 are equally applicable in dealing with the custody of a child under Section 26 of the Hindu Marriage Act, 1955, since in both the situations two things are

common: the first, being orders relating to custody of a growing child and secondly, the paramount consideration of the welfare of the child. Such considerations are never static nor can they be squeezed in a straitjacket. Therefore, each case has to be dealt with on the basis of its peculiar facts, *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 SCC 409.

It is not the “negative test” that the father is not “unfit” or disqualified to have custody of his son/daughter that is relevant, but the “positive test” that such custody would be in the welfare of the minor which is material and it is on that basis that the court should exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian, *Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413.

Welfare Principle

The welfare principle is aimed at serving twin objectives. In the first instance, it is to ensure that the child grows and develops in the best environment. The best interest of the child has been placed at the vanguard of family/custody disputes according to the optimal growth and development of the child and has primacy over other considerations. This right of the child is also based on individual dignity. The second justification behind the welfare principle is the public interest that stands served with the optimal growth of the children. Child-centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation, *Vivek Singh v. Romani Singh*, (2017) 3 SCC 231.

Related Decisions of the Supreme Court

Divorce and custody battles can become a quagmire and it is heart-wrenching to see that the innocent child is the ultimate sufferer who gets caught up in the legal and psychological battle between the parents. The eventful agreement about custody may often be a reflection of the parents’ interests, rather than the child’s. The issue in a child custody dispute is what will become of the child, but ordinarily, the child is

not a true participant in the process. While the best-interests principle requires that the primary focus be on the interests of the child, the child ordinarily does not define those interests himself nor does he have representation in the ordinary sense. The child’s psychological balance is deeply affected through the marital disruption and adjustment for changes is affected by the way parents continue positive relationships with their children. To focus on the child rights in case of parental conflict is a proactive step towards looking into this special situation demanding a specific articulation of child rights, *Lahiri Sakhamuri v. Sobhan Kodali*, (2019) 7 SCC 311.

Conclusion

The Supreme Court in the year 2017 highlighted the concept of 'Parental Alienation Syndrome' in *Vivek Singh vs. Romani Singh*. It refers to the undue disdain of a child towards his parents. The decision outlined its "psychologically disastrous effects". In the year 2019, the Supreme Court in *Lahiri Sakhamuri v. Shobhan Kodali* case held that "best interest of the child" is broad in its meaning and "in the case of primary care, mother's love and care alone is not enough." Vasudha in the year 2022 In *Sethi v. Kiran V. Bhaskar*, the Supreme Court held that the welfare of a child is paramount in the fight for custody and not only the individual or individual legal right of the parent. The welfare of the child must take precedence over the rights of the parents. Family is a very fluid social institution and in the process of constant change. The modern family or, rather the post-modern family is also witnessing several new forms of it cropping up. Modernity is witnessing the emergence of same-sex couples (LGBT relationship), cohabitation or live-in relations, single-parent households, a large chunk of divorced living alone or with their children.

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