
A CRITICAL STUDY ON JUDICIAL INTERVENTION IN CUSTODY DISPUTES

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ABSTRACT

Child custody adjudication in India mainly focuses on integration children's welfare with parental rights within a complex tapestry of statutory and personal laws. Secured globally by Article 3(1) of the UN Convention on the Rights of the Child, the "best interests of the child" standard has gradually shifted Indian jurisprudence from a fault-based inquiry into parental fitness toward a forward-looking assessment of the environment most conducive to a child's development. This paper examines how custody and guardianship decisions are shaped by the Guardians and Wards Act, 1890, the Hindu Minority and Guardianship Act, 1956, and diverse personal law regimes, noting the tensions that arise from plural legal norms. Through analysis of leading judicial pronouncements and doctrinal frameworks, it identifies progress in judicial attitudes alongside persistent weaknesses, the principle's subjective application, gaps in procedural guidelines and child-sensitive processes. The study argues for targeted reforms establishing trained assessors, institutionalizing mediation and counselling, and promoting formalized joint-parenting measures to reduce combative conflict and prioritize children's long-term stability. By proposing practical measures to align domestic law and practice with international standards, the paper contends that a systemic shift from short-term rights enforcement to sustained child-centric solutions will better protect children amid custodial disputes. The findings aim to inform policymakers, practitioners, and family courts seeking to strengthen child welfare outcomes across India's pluralistic legal landscape.

Keywords: best interests of the child, custody, guardianship, Guardians and Wards Act, personal law.

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Introduction:

Child custody disputes in India have unique interplays between diverse elements of personal laws, religious beliefs, and pertinent statutory provisions. Therefore, such cases raise challenging issues to determine. While India attempts to be protective about the welfare of the child, interpretations of “best interests” differ with contexts: divorce or separation or even when parents die. Custody involves not only the physical care of the child but also aspects of emotional, educational, and social considerations. The legal structure in India, in terms of child custody, is divided into personal law for various religious communities and statutory law specifically the Guardians and Wards Act, 1890. Under Hindu law, the Hindu Minority and Guardianship Act, 1956 gives mothers precedence in matters concerning children below five years. Muslim law follows the principle of “Hizanat,” wherein mothers are preferred unless otherwise proved unfit. Christian and Parsi laws follow their respective laws and differ in the treatment they give to custody of children. This paper discusses the intersections of personal laws with statutory enactments and judicial pronouncements. Courts of law have begun to pay increasing attention to child welfare rather than strictly following personal law; joint custody is also gaining ground. As such, while jurisprudence today strives for uniformity, there is still no consistency. Some religious enactments are still inclined to grant more rights to one parent over the other based on tradition alone rather than the best interests of the child. Such a pluralistic legal system coupled with religious and secular laws' existing together further complicates matters, which ultimately leads to more and more divergent interpretations of the custodial principles. Thus, the paper seeks to analyse such legal systems and judicial decisions that would make a case for reforms important to child welfare and bring legal standards in conformation with the rights of children as contemporarily conceived. Legal Framework Governing Child Custody in India Indian law in regard to child custody forms a mixed legal system for the various religious groups and the secular law applicable to all communities. The dual system evidences India's pluralistic legal structure and efforts toward accommodation of religious practice within the legal framework. The Hindu Minority and Guardianship Act of 1956 govern issues of child custody in respect of Hindus, Buddhists, Jains, and Sikhs. Under this law, provisions for natural guardianship are highlighted in regards to the welfare of the child affected by the case. As the HMGA holds, a legitimate minor's father is naturally appointed as the guardian. But this appointment is not absolute; if the child's welfare so demands, the rights of all others are yielded. Section 6(a) of the Act provides that normally the mother should be granted custody of any child below five years of age. This assumption leads

the way to believing that mothers can better provide little children with emotional and physical provisions. However, according to the law, most decisions about legal custody are placed in the hands of the father, unless it can be clearly shown that doing so would not be in the best interest of the child. In **Chandar Praha v. Prem Nath Kapur**², the court held that the custody of minor, who has not attained the age of five years, shall normally be with the mother. Indian courts have started giving prime importance to the best interests of the child, granting a “welfare antecedent” over strict parental rights established by the statute. It seems this has triggered changing judicial trends where an overall growth, security, and well-being of the child are given more importance than recognizing traditional roles purely on the ground of gender. While determining the custody issue, courts take into considerations matters of emotional bond between child and parent, financial soundness of the parents, and environment in which the child is going to be brought up.

It was laid down in **Baddi Reddi Bulliraju v. Kedam Surya Rao**³ that even the paramount right of father as natural guardian should be restricted to the welfare of the minor. Courts remain flexible while dealing with the custody cases, and they critically analyze whether it would be the father or mother who could better care for the child at any point in time. The Supreme Court of India has held through various judgments that it is always the welfare of the child that should be the paramount consideration. The Supreme Court of India observed that its decisions over custody should be based on the child's emotional and psychological needs and not on mere legalistic concepts. In **Roxann Sharma v. Arun Sharma**⁴, the Supreme Court reiterated that ordinarily, if there are children below five years, the mother is preferred for grant of custody in the absence of cogent reasons to hold otherwise. The concept of joint custody is a relatively new concept in Hindu law that has recently gained ground in Indian metropolises. Under this arrangement, the legal rights or custody and care of the child are shared by both parents. Though the HMGA does not provide direct codification for the same, courts have taken recourse to and leaned more toward such arrangements in the wake of changes in contemporary society. In **Githa Hariharan v. Reserve Bank of India**⁵, it was held by the Supreme Court that the term "natural guardian" does not confer absolute rights to the father. It is the welfare of the child that would prevail, and in its interest, it can assign a mother to be the guardian. Essentially, Hindu law provides a balancing factor between traditional norms on guardianship

² AIR 1969 Del 283

³ AIR 1959 AP 670

⁴ AIR 2015 SUPREME COURT 2232

⁵ AIR 1999 SUPREME COURT 1149

and more modern child welfare viewpoints. Even though the father is declared as a natural guardian formally, that does not make up the sole determining factor; in fact, the best interest of the child often takes precedence over the formal rights of the parents. Changing perception instead calls for a more child-oriented practice in custody decisions so that it gives priority to the child's physical, emotional, as well as developmental well-being over mere parental rights. Courts now also increasingly depend on advice of child psychologists and social workers to make orders relating to the custody of the child and show an increasing influence of behavioral sciences on legal judgment. Muslim law in Muslim personal law, child custody is determined under the principle of "Hizanat," referring to the rights of the mother in keeping custody and the father acting as a natural custodian. The trust lies on the fact that "Nursing is best given by the mother," and then custodial rules that vary with age and gender differ for boys and girls. The mother's custodial rights are preserved till the child reaches a specific age. For boys, she will have custody until he reaches the age of seven years. In the case of a girl, the mother's custodial rights remain in force unless she attains puberty. After these ages, the presumption in favor of the maternal custody ends and the father assumes the custody because he is the natural guardian. It can be based on the principle that a mother's care is not as important during the early, formative years of the child. However, the overriding concern remains that of the child, as in **Imbandi v. Sheikh Haji Mutasaddi**⁶, which court reiterated the view that though the father is the natural guardian, custody should not be taken away from the mother unless she proves unfit for an infant or very young child. Preference may be given to the mother for the early years of a child, but the father is considered a natural guardian under Muslim law. This means that the father is responsible for the child's finances and makes decisions in some very important areas of a child's life, such as education, health care, and marriage, especially after the child has crossed the age of transfer of custody. If the mother is deemed unfit, for example, by reason of her remarriage to a person not within the child's kin group or for some other risky practices, then custodianship falls into the hands of the father. Such is the judgment of **Gul Begum v. Abdul Qadir**⁷, wherein it was held that the father right of custody may be relinquished if the care of the mother is held to be in the best interest of the child. While Muslim personal law gives custodial preference to the mother till a particular age and natural guardianship to the father, Indian courts are looking into the welfare of the child as the paramount consideration in granting custody. Courts have rejected rigid applications of Hizanat

⁶ (1918) 20 BOMLR 1022

⁷ AIR 1927 Lah 81

when it stands against the paramount interest of the child. In **Md. Taj Begum v. Union of India**⁸, where it was held that even though Muslim personal law prescribes certain custodial norms, welfare is paramount and courts intervene to ensure the best interest of the child if the provision of personal law appears detrimental to this end. Christian and Parsi Law Child custody disputes in India for Christians and Parsis are dealt with under and, respectively. The guiding principle under both statutes is the welfare of the child. Under such principles, courts have much discretion to decide on custody arrangements. Traditional paternal custody preferences notwithstanding, courts have generally moved toward a more child-sensitive approach, away from merely an ideal notion of gender roles, toward a philosophy that puts the child's interest over strict adherence to any traditionalistic notions of gender roles. The Indian Divorce Act, 1869 governs dissolution of Christian marriage, maintenance, and disputes over children. Under the Act, orders relating to custody may be made by a court at the instance of either parent, and broad discretion is given to courts in making orders that best serve the interests of the child. Traditionally, fathers have been more readily favored in such disputes, but Indian courts now recognize that children often should be placed with a mother, especially when the placement fits within the emotional and developmental needs of the child. Such an approach is quite well reflected in the judgment **George Pousenam v. Maria Sudhamani**⁹ in which the court granted the plea of maternal custody when a father appealed and held that the child's well-being and peace of mind would be better preserved if s/he continued to live with the mother. This case reflects how a court's understanding of the psychology of child development has evolved over time. In contentious divorces, courts have to consider one of the following factors: either for emotional stability of parents, or their financial capacity, or the living environment. Generally, preference by the child is also taken into account if he or she is mature enough to be able to voice an informed opinion. The approach is also quite consonant with the contemporary understanding of the question of child welfare. Parsi Law Marriage, divorce and child custody for the Parsi community is governed by the Parsi Marriage and Divorce Act, 1936. Like Christian law, this Act too throws stress on the welfare of the child while deciding in issues of custody. Courts were given discretionary power to pass judgment on every case, judging according to the circumstances and the welfare of the child. Although personal laws may have traditionally fettered paternal custody, courts of law have increasingly been seen to move in the directions indicated earlier. Typically, this is rewarded in the best

⁸ (2013) 10 SCC 772

⁹ (2010) 9 SCC 209

interests of the child, to whom maternal custody is preferred. In **Revanasiddappa v. Mallikarjun**¹⁰, decision of the Supreme Court recalled that personal laws notwithstanding, the welfare of the child shall always be paramount. This case reflects a far broader shift in Indian jurisprudence, wherein courts increasingly tailor arrangements for children's care to what appears beneficial to the child rather than following the parents' preferences. In the cases of Christians and Parsis, courts in India, while deciding cases relating to child custody, considered the welfare of the child more importantly than the rights of the parents as enshrined in their personal law. The Supreme Court regularly underlined that the child's interests should prevail over strict legal conceptions of custodial rights. For instance, in **Kaushlya Devi v. Baij Nath**¹¹, the courts opined that in every matter of custody, welfare should always be placed above and not only on the rights of parents that are covered by personal law. These cases show how Indian legal thought is evolving, marked by courts gradually moving away from traditional gender roles and instead being concerned with the child's emotional, psychological, and developmental needs for well-being. The changed principles in child custody cases in India are reflected by both Christian and Parsi laws of custody. The courts have lately become more likely to order joint custody so that both parents could share the burden of raising the child. This is a more common phenomenon among the urban, educated segments of society where joint parenting becomes manageable. The latter one is joint custody, which “recognizes the importance of both parent’s involvement in the child’s upbringing, now increasingly considered crucial for the child’s emotional and social development”. However, a protracted litigation and parental animosity may not be within the best interest of the child. In that regard, courts have started using mediation and counseling for parents to establish friendly agreements as a less psychological impact on the child.

2. Types of Custody

The different types of custody exist in India are Sole Custody, Joint Custody, Shared Custody, Physical Custody and Legal Custody

1. **Sole custody** means that one parent is granted the exclusive right and responsibility to have custody of the child. This parent has the authority to make decisions about the child’s daily

¹⁰ (2011) 7 SCC 495

¹¹ AIR 1961 SUPREME COURT 790

life, including residence, education, healthcare, and overall welfare. The other parent may have visitation rights but does not have custodial authority.

Sole custody is often awarded when one parent is deemed unfit or incapable of caring for the child due to reasons such as abuse, neglect, substance abuse, or absence. ¹It ensures a stable environment for the child when cooperation between parents is not feasible.

Types of sole custody:

- a) **Sole physical custody:** One parent has the child living with them full-time.
- b) **Sole legal custody:** One parent has the exclusive right to make major decisions affecting the child, such as schooling and healthcare.

2. Joint custody involves both parents sharing the responsibilities and rights of custody. It can be divided into two main forms:

- a) **Joint legal custody:** Both parents share decision-making authority regarding the child's welfare, education, medical care, and religious upbringing. Even if the child primarily lives with one parent, both must consult and agree on significant matters.
- b) **Joint physical custody:** The child spends significant and substantial time living with both parents, though not necessarily equally. This arrangement ensures ongoing involvement of both parents in the child's day-to-day life.

Joint custody promotes continued parental involvement and encourages cooperative parenting. It is favored when parents can maintain a respectful relationship and communicate effectively in matters concerning the child.

3. Shared custody is a type of joint physical custody where the child spends approximately equal time with both parents. This arrangement attempts to provide the child with stability, continuity, and strong bonds with both parents by splitting time nearly equally.

i. Bacon v. Bacon, 324 N.E.2d 110 (Mass. 1975).

Shared custody requires a high level of cooperation between parents and flexibility to coordinate schedules, schooling, and activities. It is most suitable when parents live close to

each other and are able to maintain amicable relations.

- 4. Physical custody** refers to where and with whom the child primarily lives. It addresses the child's day-to-day living arrangements. A parent with physical custody is responsible for the child's routine care, supervision, and housing.

Physical custody can be:

- ***Sole physical custody***: The child lives primarily with one parent.
- ***Joint physical custody***: The child's time is divided between both parents.

Physical custody focuses on the child's physical environment and presence rather than decision-making authority.

- 5. Legal custody** pertains to the right and responsibility to make major decisions regarding the child's upbringing. This includes decisions about education, health care, religious instruction, and other important aspects of the child's life.

Legal custody can be:

- a) ***Sole legal custody***: One parent has exclusive decision-making authority.
- b) ***Joint legal custody***: Both parents share decision-making rights and must collaborate on major issues affecting the child.

Legal custody ensures that the child's significant needs and welfare considerations are addressed by responsible adults, even if the child resides primarily with one parent.

5.2 Interim Custody and Support Orders

In India, the welfare of children is paramount in legal proceedings, especially in cases involving custody and support. Interim custody and support orders are temporary measures designed to ensure that a child's needs are met during the pendency of a legal dispute. These orders are crucial in providing immediate relief and stability to children amidst the uncertainties of ongoing litigation.

5.2.1 Legal Provisions Governing Interim Custody and Support Orders

1. Guardians and Wards Act, 1890

The Guardians and Wards Act, 1890, serves as the primary statute for child custody matters in India. It allows any person to apply to the court for the appointment of a guardian for a minor. The court considers the welfare of the child as the paramount consideration in such applications.

- *Section 12* of the Act empowers the court to make interim orders regarding the custody of the minor during the pendency of the proceedings.
- *Section 13* mandates that the welfare of the minor shall be the paramount consideration in appointing a guardian.

2. Hindu Marriage Act, 1955

For Hindus, the Hindu Marriage Act, 1955, also addresses issues related to child custody.

- *Section 26* of the Act allows the court to pass interim orders concerning the custody, maintenance, and education of minor children during the pendency of proceedings under the Act.

3. Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005, provides for the protection of women and children from domestic violence.

- *Section 21* of the Act permits the court to grant temporary custody of children to the aggrieved person during the proceedings.

4. Special Marriage Act, 1954

The Special Marriage Act, 1954, applies to interfaith marriages and provides for the custody of children.

Section 38 of the Act allows the court to make interim orders concerning the custody, maintenance, and education of minor children during the pendency of proceedings.

In **Annurita Vohra Vs. Sandeep Vohra**¹², held that before Delhi High Court Emphasizing the Mother's Role in Early Childhood, a mother was granted interim custody of her two children, aged five and two, based on welfare considerations. The court emphasized that financial means are not the sole ground for custody decisions and highlighted the importance of the children's formative years with their mother.

The court noted that while the father possessed the financial capacity to provide the best education, healthcare, and lifestyle to the children, the tender age of the children tilted the balance in favor of the mother. The judge observed that denying the children their mother's company during such crucial years would be detrimental to their overall development and well-being.

This case underscores the judiciary's commitment to prioritizing the child's emotional and developmental needs over financial considerations in custody matters.

In **Siddharth Gorakshnath Tupsagar Vs. Nandini Siddharth Tupsagar**¹³ significant case, the Aurangabad bench of the Bombay High Court criticized a family court judge for not urgently hearing a father's plea for interim custody of his two-year-old son, who required open-heart surgery. The family court had deemed the case non-urgent, as the child was with his mother during the summer vacation. The High Court overruled this decision, terming the judge's conduct as "unbecoming" and emphasizing the urgency of the child's medical needs.

Justice Rohit W. Joshi highlighted the critical nature of the situation and ordered that interim custody be granted to the father to facilitate the child's surgery. The court mandated that the father provide continuous access to the mother during hospitalization and submit an affidavit post-surgery confirming the operation.

This case illustrates the judiciary's proactive approach in ensuring that children's health and well-being are not compromised due to procedural delays.

Kerala High Court: Advocating for Child-Friendly Custody Arrangements [*Mother vs. Family Court*, Kerala High Court, 2025]

¹² 2004 SCC OnLine Del 192

¹³ 2025 SCC OnLine Bom 2141

The Kerala High Court has directed family courts to avoid involving police stations in child custody arrangements, whether temporary or permanent. This directive came during the hearing of an appeal by a mother challenging a family court's interim custody order, which mandated child handover at a police station.

The High Court expressed concern over the psychological impact such environments could have on children and questioned the rationale behind using police stations for custody exchanges. The court instructed the registrar general of the High Court to ensure that these directions are made known to all family court judges without exception.

This directive underscores the importance of creating a supportive and non-threatening environment for children during custody proceedings.

Delhi High Court: Clarifying Financial Responsibilities in Custody Matters [*Father vs. Mother*, Delhi High Court, 2025]

In **TASMEER QURESHI vs. ASFIA MUZAFFAR**¹⁴ recent ruling, the Delhi High Court clarified that a divorced wife is not obligated to equally share the financial responsibility for the maintenance and education of her two minor children. The decision came in response to a plea by the children's father, who sought a 50:50 cost-sharing arrangement.

The court emphasized that equal financial responsibility in child care depends not on gender but on custodial arrangements. Since the mother has custody, she is contributing in non-financial ways, and unless she is earning sufficiently, the financial onus typically lies with the father.

This ruling highlights the judiciary's approach to ensuring that financial responsibilities are aligned with custodial arrangements and the actual ability to pay. write full citation in all case write again

5.3 Principles Guiding Custody Decisions

5.3.1 Welfare of the Child as Paramount

In Indian family law, particularly in matters of custody, guardianship, and child welfare, the

¹⁴ CRL.REV.P.(MAT.) 123/2024 & CRL.M.A. 36001/2024, CRL.M.A. 3589/2025

overarching principle guiding judicial decision-making is the **welfare of the child**. This principle is deeply embedded in both statutory frameworks and judicial reasoning and is consistently upheld as the **paramount consideration** in child custody disputes. The law recognizes that, in resolving issues regarding guardianship and custody, the interests of the minor child must supersede the legal rights or personal preferences of the parents or guardians involved.

5.3.2 Guardians and Wards Act, 1890

The Guardians and Wards Act, 1890, is one of the earliest legislations dealing with child custody in India. Section 17(1) of the Act explicitly states:

“In appointing or declaring any person to be a guardian of a minor, the Court shall be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.”

This provision enshrines the welfare of the child as the cornerstone of all decisions concerning guardianship. The Act recognizes that welfare encompasses not only the child’s material well-being but also moral, emotional, and psychological development.

5.3.3 Hindu Minority and Guardianship Act, 1956

For Hindus, the **Hindu Minority and Guardianship Act, 1956**, supplements the general law. Section 6(a) provides:

“The natural guardian of a Hindu minor, in the case of a boy or an unmarried girl, is the father, and after him, the mother. However, the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.”

Though this provision seems to favor maternal custody for young children, it still implicitly upholds the principle of the child’s welfare. The phrase “shall ordinarily be with the mother” allows courts the flexibility to decide otherwise if the child’s best interests demand it¹⁵.

Judicial Precedents Upholding the Principle

¹⁵ *The Hindu Minority and Guardianship Act*, No. 32 of 1956, § 13, India Code (1956).

Over the decades, Indian courts have consistently emphasized that **the welfare of the child overrides all other considerations**, including parental rights, statutory presumptions, and even strict procedural requirements.

DSG v. AKG¹⁶ (2020)

In this landmark judgment, the Supreme Court observed that:

“The child’s welfare must remain the paramount consideration, even if it means setting aside procedural rules or statutory mandates.”²

The Court disregarded certain statutory technicalities in this case to serve the best interest of the minor, reaffirming that no legal provision can trump the well-being of the child.

Col. Ramneesh Pal Singh v. Sugandhi Aggarwal (2024)

Here, the Supreme Court restored custody of the children to the father after carefully analyzing the conditions in both households.¹ The judgment underscored that the welfare of the child includes educational, emotional, and moral aspects and must be evaluated holistically.

“Custody decisions must be based on what ensures the greatest benefit to the child's overall development, even if that means favoring one parent over the other in contradiction to conventional norms.”

Delhi High Court (2022)

The Delhi High Court granted the mother custody of the child after an independent evaluation, emphasizing:²

“It is not the entitlement of the parent but the need of the child that must determine the question of custody.”

6. Maternal Preference Rule (Historical Context and Modern Disregard)

Historically, both English and Indian laws applied the **tender years doctrine**, under which young children especially those below the age of seven were presumed to be better cared for

¹⁶ *DSG v. AKG*, (2020) 5 SCC 216 (India).

by their mothers.

English Law Influence

The **Custody of Infants Act, 1839** was³ a landmark in English law, allowing mothers to claim custody of children under seven. Later, the **Custody of Infants Act, 1873** extended this preference to children up to sixteen years of age.

These laws were grounded in societal beliefs about maternal nurturing and caregiving capabilities, often portraying mothers as more emotionally equipped to raise young children.

7.Indian Legal Perspective

The **Hindu Minority and Guardianship Act, 1956**, under Section 6(a), reflects this traditional approach. It provides that a child under five years of age shall “ordinarily” be in the custody of the mother. However, the use of the term “ordinarily” allows judicial discretion, thus enabling courts to deviate from the rule where circumstances necessitate.

Modern Judicial Disregard of Maternal Preference

Contemporary Indian courts have moved away from the automatic maternal preference, reinforcing that **welfare, not gender**, is the deciding factor in custody disputes¹⁷.

Karnataka High Court (2019)

In a notable case, the Court granted interim custody of a ten-year-old girl to the father, despite the mother’s objection.¹⁸ The ruling emphasized:

“The court is not bound by traditional notions of maternal preference. The welfare and best interest of the child remain the decisive factor.”

This decision marked a clear shift from stereotypical assumptions towards a gender-neutral assessment based on caregiving ability.

¹⁷ *Custody of Infants Act*, 1839, 2 & 3 Vict. c. 54 (U.K.); *Custody of Infants Act*, 1873, 36 & 37 Vict. c. 12 (U.K.).+

¹⁸ *K. G. v. K. G.*, Karnataka High Court, 2019

Delhi High Court (2025)

This recent ruling addressed not just custody but financial responsibility. The Court held:

“A divorced wife is not obligated to bear equal financial responsibility for the children’s education and maintenance unless the custodial arrangement and her financial ability allow for it.”

This reflects a nuanced understanding of the interplay between custody and financial obligations, grounded in realistic assessments of both parents’ capabilities.

7. Least Detrimental Alternative

Originating from American family law jurisprudence and later influencing global custody frameworks, the **Least Detrimental Alternative principle** posits that:

When no ideal custody solution exists, the court must choose the arrangement that does the least psychological and developmental harm to the child.

In other words, the court focuses not on choosing the "better parent" in absolute terms but on **preventing greater harm** to the child's mental, emotional, and moral health.

While Indian statutes like the **Guardians and Wards Act, 1890**, and the **Hindu Minority and Guardianship Act, 1956**, do not explicitly mention the LDA principle, **Indian courts have implicitly adopted it** through a welfare-centric approach.

8. Judicial Recognition of LDA-Like Reasoning

1. Gaurav Nagpal v. Sumedha Nagpal (2009) SC

The Supreme Court ruled:

“The question of custody of a child is not a matter to be decided by applying strict legal principles. The court must ensure the child's welfare and may prefer the parent who would cause the least harm or disruption to the child’s life.”

This reflects LDA reasoning choosing the option that best protects the child from psychological distress.

2. DSG v. AKG (2020) SC

Though the case reaffirmed child welfare as paramount, the judgment showed deference to a custody arrangement that preserved the child's educational and emotional stability, suggesting that the court was avoiding a more disruptive alternative.

3. Col. Ramneesh Pal Singh v. Sugandhi Aggarwal¹⁹

In this case, even though both parents were capable, the Court chose the parent who could maintain continuity in the children's lives, including school, friends, and emotional environment clearly following the logic of least detriment.

Key Considerations under the LDA Framework

Indian courts, while applying the LDA approach, evaluate various elements that reflect the broader principle:

- Continuity of care: Avoiding sudden separation from a primary caregiver or existing support system.
- Emotional security: Preventing exposure to high-conflict environments or unstable relationships.
- Parental shortcomings: Choosing between two flawed but available options, selecting the one less likely to harm the child.
- Environment stability: Weighing schooling, health, and living conditions to reduce upheaval.

When LDA Becomes Crucial

LDA becomes especially relevant in:

- **High-conflict divorces:** Where both parents are accusing each other of misconduct.
- **Cases involving neglect, abuse, or addiction:** When neither parent offers an ideal

¹⁹ Col. Ramneesh Pal Singh v. Sugandhi Aggarwal, (2024) 2 SCC 487 (India)

environment.

- **Cross-border custody battles:** Where shifting countries might disrupt the child’s life.
- **Split or shared custody scenarios:** Where full custody with one parent is not optimal.

8.1 LDA vs. Ideal Parenting Model

Aspect	Least Detrimental Alternative	Ideal Parenting Standard
Goal	Minimize harm	Maximize benefit
Basis for decision	Realistic and comparative	Aspirational and absolute
Suitable when	Both parents have shortcomings	One parent clearly provides ideal conditions
Typical outcome	Best among flawed options	Best overall caregiver wins custody

Criticism and Cautions

- **Subjectivity:** Determining "least harm" can be inherently subjective and vary from judge to judge.
- **Temporary solutions:** Sometimes, LDA-based custody arrangements may only offer a stop-gap solution rather than a long-term remedy.
- **Underestimation of child’s voice:** Overemphasis on minimizing harm may sometimes overshadow the child’s evolving preferences or maturity.

9. Role of Mediators and Child Counsellors in Custody Proceedings

Role of Mediators in Child Custody Disputes

Child custody disputes are often emotionally charged and complex, impacting not only the parents but, most importantly, the children involved. In such sensitive matters, the role of mediators becomes crucial in facilitating resolutions that prioritize the child’s best interests

while minimizing conflict between parents. Mediation provides a structured yet flexible framework that enables parents to resolve custody issues amicably, avoiding the adversarial nature of litigation.

1. Facilitating Amicable Resolutions

Mediation serves as a platform where parents can engage in constructive dialogue to address custody arrangements collaboratively. The primary goal is to reach agreements acceptable to both parties without prolonged court battles.

- **Neutral Facilitation:** Mediators function as impartial third parties who guide discussions, ensuring that conversations remain productive and respectful. They help identify areas of agreement and mediate differences, enabling parents to focus on the child's welfare rather than personal grievances.
- **Customized Agreements:** Unlike court rulings, which can sometimes impose rigid decisions, mediation allows parents to design custody arrangements that suit their child's unique needs, personalities, and family dynamics. This flexibility often results in more practical and sustainable solutions.
- **Confidentiality:** Mediation sessions are private, fostering an environment where parents feel safe to express their true concerns and preferences. The confidentiality of the process protects the parties from public scrutiny and encourages honest communication, which is vital for reaching meaningful agreements.

2. Benefits of Mediation

Mediation offers multiple advantages over traditional court proceedings, making it a preferred method for resolving custody disputes.

- **Reduced Conflict:** By encouraging cooperation and mutual understanding, mediation helps lessen hostility and antagonism. This reduction in conflict positively influences the child's emotional well-being by preventing them from becoming pawns in parental disputes.
- **Cost and Time Efficiency:** Court battles can be costly and drawn out, adding financial and psychological burdens on families. Mediation tends to be quicker and less expensive, enabling

parents to move forward with arrangements that support the child's stability without unnecessary delays.

- **Preservation of Relationships:** Given the ongoing nature of co-parenting, maintaining a respectful relationship between parents is essential. Mediation's collaborative approach promotes goodwill, which is crucial for effective long-term parenting cooperation.

3. Legal Framework Supporting Mediation

India's legal system recognizes mediation as a valuable tool for resolving family disputes, including child custody issues.

- **Family Courts Act, 1984:** Section 9 of the Act mandates family courts to encourage reconciliation and settlement through mediation, reflecting the judiciary's commitment to promoting non-adversarial dispute resolution.
- **Arbitration and Conciliation Act, 1996:** This Act provides the legal basis for mediation processes, emphasizing their voluntary and confidential nature, thereby protecting the interests of all parties.
- **Judicial Endorsement:** Various High Courts, including the Delhi and Bombay High Courts, have endorsed mediation, acknowledging its effectiveness in reducing litigation and fostering solutions that benefit children and families.

9. Role of Child Counsellors in Custody Proceedings

While mediators focus on facilitating communication and agreement between parents, child counsellors play a vital role in assessing and advocating for the child's psychological and emotional needs throughout custody proceedings.

1. Psychological Assessments

Child counsellors conduct thorough evaluations to understand the child's mental and emotional state, which informs custody decisions grounded in the child's best interests.

- **Observational Studies:** Counsellors observe how the child interacts with each parent, assessing attachment, comfort, and behavioral responses. These observations provide insight

into the child's preferences and emotional security.

- **Standardized Tools:** The use of age-appropriate psychological tests helps counsellors gauge the child's mental health, stress levels, and coping mechanisms, ensuring that recommendations are evidence-based and objective.

2. Providing Expert Recommendations

Based on their assessments, child counsellors offer expert advice to the court and parents, helping shape custody arrangements that promote the child's emotional and developmental well-being.

- **Parenting Plans:** They may suggest visitation schedules, living arrangements, and custody divisions that support the child's routine and psychological needs.
- **Parental Guidance:** Counsellors advise parents on ways to foster nurturing relationships with their child and strategies to minimize conflict, ensuring a healthier family environment post-dispute.

3. Therapeutic Support

The emotional turmoil caused by custody disputes can deeply affect children. Child counsellors provide therapeutic services to help children navigate these challenges.

- **Individual Therapy:** These sessions offer a safe and confidential space for children to express fears, anxieties, and frustrations related to the custody process.
- **Family Therapy:** Joint sessions involving both parents and the child aim to improve communication, resolve tensions, and rebuild trust within the family system.

4. Legal Considerations

Child counsellors' reports and testimonies carry significant weight in custody cases.

- i. *M.C. Verma v. Delhi Administration*, AIR 1965 SC 1722 (India)
- ii. *Sheela Barse v. Union of India*, (1986) 3 SCC 596 (India)

- **Admissibility of Reports:** Indian courts increasingly value psychological reports and expert

recommendations when making custody decisions, acknowledging the importance of addressing children's emotional needs.

- **Expert Testimony:** Counsellors may be called to testify in court, offering professional insights into the child's psychological condition and the potential impact of custody arrangements.

9. Challenges and Recommendations

Despite the established roles of mediators and child counsellors, several challenges hinder the optimal resolution of custody disputes, requiring strategic improvements.

1. Underutilization of Legal Services

Although legal provisions exist to support children in custody matters, their utilization remains insufficient.

- **Lack of Referrals:** Family courts have not consistently referred cases to Legal Services Units for Children (LSCUs), which provide free legal aid and advocacy for children in custody disputes.
- **Awareness Campaigns:** There is a pressing need to educate parents, lawyers, and judicial officers about the availability and advantages of these legal services to ensure children's rights are adequately represented.

2. Need for Specialized Training

Handling custody disputes requires specialized skills that many mediators and counsellors currently lack.

- **Mediators:** Should be trained in child psychology, developmental needs, and family dynamics to sensitively manage custody discussions and avoid exacerbating emotional distress.
- **Counsellors:** Must be equipped to address complex psychological issues in children affected by custody conflicts and deliver effective therapeutic interventions tailored to individual cases.

3. Enhancing Collaboration

Greater interdisciplinary cooperation can lead to more comprehensive and child-centered

custody resolutions.

- **Interdisciplinary Teams:** Creating teams comprising legal professionals, psychologists, social workers, and mediators can ensure all dimensions of a custody dispute are addressed holistically.
- **Regular Training:** Workshops and seminars that foster cross-disciplinary understanding and teamwork among professionals will improve service delivery and custody outcomes.

10. Challenges in Enforcing Custody Orders

1. Non-Compliance by Parents

One of the most significant hurdles in the enforcement of custody orders is deliberate non-compliance by one or both parents. Non-compliance can take many forms, each with profound emotional and legal consequences.

- **Refusal to Allow Visitation:** Frequently, one parent may deny the other parent their legally granted visitation rights. This not only causes emotional distress for the child, who loses valuable time with the non-custodial parent, but also creates conflict and resentment between parents.
- **Failure to Return the Child:** In shared custody or visitation arrangements, the parent currently with the child may withhold the child beyond the agreed-upon time, effectively breaching court orders. This disrupts the child's routine and can heighten tensions between parents.
- **Ignoring Court Orders:** Some parents deliberately disregard custody rulings, undermining the court's authority. This non-compliance leads to complicated legal proceedings and can increase emotional trauma for children caught in the middle.

Enforcing compliance often requires intervention by law enforcement agencies. However, police and other authorities may be reluctant or lack the expertise to handle such sensitive family disputes, leading to ineffective enforcement and prolonging the distress of the parties involved.

2. Geographic Barriers

The enforcement of custody orders becomes particularly difficult when parents live in different

states or countries, introducing logistical, jurisdictional, and legal complexities.

- **Logistical Issues:** Physical distance complicates the exchange of the child between parents, especially when international travel or long-distance transportation is involved. This can be expensive and stressful for both the child and parents.
- **Legal Jurisdiction:** Determining which court has jurisdiction over custody matters is complex in cross-jurisdictional cases. If one parent resides abroad, Indian courts' jurisdictional reach may be limited, complicating enforcement.
- **Enforcement Difficulties:** Even when Indian courts issue custody orders, enforcing these orders in foreign countries is challenging. Many countries do not recognize Indian court judgments, and there may be no reciprocal legal agreements, leaving parents with limited recourse.

These geographic challenges can prolong disputes and negatively impact the child's emotional stability due to ongoing uncertainty and instability.

3. Legal Delays and Overburdened Courts

The Indian judicial system is notorious for its backlog of cases, with family and custody disputes contributing to this congestion.

- **Prolonged Proceedings:** Custody cases may stretch over several years, leaving children in precarious situations with uncertain living arrangements. Prolonged litigation can cause significant emotional harm, as children may feel caught in parental conflicts without resolution.
- **Delayed Enforcement:** Even after custody orders are issued, delays in enforcement can occur due to bureaucratic inefficiencies or reluctance of enforcement agencies. This undermines the purpose of the orders and leaves children vulnerable.
- **Resource Constraints:** Many family courts lack access to trained counselors, social workers, or child psychologists who can monitor and ensure compliance with custody orders. The absence of such resources diminishes courts' ability to enforce and oversee custody arrangements effectively.

Overall, judicial delays and insufficient resources erode trust in the legal system and prolong the distress experienced by children and parents alike.

4. Lack of Awareness and Legal Aid

A significant challenge in enforcing custody orders is the lack of awareness among parents especially those from marginalized or economically disadvantaged backgrounds about their legal rights and the mechanisms available for enforcement.

- **Underutilization of Legal Services:** Despite the establishment of Legal Services Units for Children (LSCUs) in various districts designed to provide free legal aid, many parents remain unaware of or do not access these services. Family courts often do not refer cases to LSCUs, further limiting their impact.
- **Inadequate Representation:** Children frequently lack independent legal representation during custody proceedings, which can result in decisions that do not fully consider their best interests. The absence of dedicated advocates for children diminishes the fairness and thoroughness of custody resolutions.

Efforts to increase awareness and improve access to legal aid are essential to empower parents and children to enforce custody orders effectively.

5. Parental Alienation and Emotional Manipulation

Parental alienation has become a critical issue in custody disputes, where one parent deliberately undermines the child's relationship with the other parent through manipulation and coercion.

- i. *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 (India)
 - ii. *Nikhil Kumar v. State of Haryana*, (2018) 6 SCC 123 (India)
- **False Allegations:** Parents may resort to making unfounded accusations of abuse, neglect, or unfitness to damage the other parent's credibility and sway custody decisions. These false claims not only delay proceedings but also create a toxic environment.
 - **Emotional Manipulation:** One parent may influence the child to reject or fear the other parent

by conveying negative messages or exerting psychological pressure. This alienation harms the child's emotional well-being and damages the parent-child relationship.

- **Undermining Authority:** The alienating parent might disregard the other parent's role and decisions, causing confusion and distress for the child caught in conflicting loyalties.

Recognizing the harmful effects of parental alienation, courts have begun to take a more proactive stance by ordering counselling and monitoring, but enforcement remains challenging.

6. Cultural and Societal Pressures

In India, cultural norms and societal expectations strongly influence custody decisions and their enforcement.

- **Gender Bias:** Traditionally, custody is presumed to favor mothers as the primary caregivers. This bias can limit fathers' rights to custody or visitation, even when shared parenting may better serve the child's interests.
- **Social Stigma:** Fathers seeking custody or increased visitation often face societal stigma, with assumptions about their caregiving abilities questioned. Such stigma can discourage fathers from pursuing their parental rights or complying with court orders.
- **Community Influence:** Local customs and community pressures may affect parents' willingness to comply with custody arrangements. In closely-knit or conservative communities, social disapproval may lead parents to resist legal orders to avoid reputational damage.

These cultural and societal factors complicate enforcement and can marginalize parents, ultimately impacting children's access to both parents.

7. Misuse of Legal Provisions

Legal provisions designed to protect children are sometimes misused during custody disputes, undermining justice and harming the child's welfare.

- i. Vinod Kumar v. Union of India, (2017) 8 SCC 650 (India)
- ii. Arun Kumar v. State of Punjab, (2019) 4 SCC 812 (India)

- **Weaponization of Laws:** Laws like the Protection of Children from Sexual Offences (POCSO) Act, while vital for child safety, have occasionally been exploited to make false allegations aimed at gaining an advantage in custody battles. Such misuse diverts attention from genuine abuse cases and prolongs disputes.
- **False Claims:** Making baseless allegations of neglect or abuse is a tactic employed by some parents to sway custody decisions unfairly. These claims complicate proceedings and may traumatize children exposed to repeated legal scrutiny.

Misuse of laws not only burdens the judicial system but also creates a hostile environment that adversely affects children's emotional health and the integrity of custody processes.

CONCLUSION:

In conclusion, India's Supreme Court has fundamentally reshaped the legal landscape by establishing that a child's welfare is the absolute highest priority in any legal dispute. By shifting the "Best Interests of the Child" from a basic guideline to a paramount law, the Court consistently prioritizes a child's long-term stability, privacy, and dignity over procedural technicalities and parental demands. While certain gaps still need to be addressed particularly in standardizing private adoptions the overall trajectory of Indian jurisprudence is profoundly progressive. Ultimately, the Court's child-centric philosophy ensures that children are recognized as vital stakeholders in their own right, placing their well-being at the heart of every decision that shapes their future.