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## Exploring the Impact of Child Custody Battles: An Analysis from Legal and Psychological Perspective

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*The number of children experiencing the divorce of their parents, custody, visitation, and living disputes is rising exponentially every year. The undertaking of the whole situation from the time the dispute between the parents begins to the time it ends in divorce creates a great deal of ruckus over the mental state of the child. The effects can be seen for a prolonged duration of time. In this article, “Child custody” and the parental disputes arising out of it, laws related disturbed psyche of the child have been thoroughly discussed. It also focuses on “Parental Alienation Syndrome” which is an unjustified disdain of parents toward their children. Along with that, it includes a segment on the “effect of prolonged custody disputes” on the mental and physical health of the children. The article begins with a brief introduction and then follows the order. Custodial disputes do not catch the light often and there is a lot of room for research to have a better understanding of how such cases affect the lives of children.*

**Keywords:** *parental alienation syndrome, child custody, psychological impact, laws.*

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### INTRODUCTION

Child custody dispute is a rising and burning topic in most parts of the world. Custody of a child refers to the right granted to a parent by the court to look after the child if the child is minor in age. As per the courts in India custody is vested in a parent who can look after the financial

security and maintenance i.e. the division of the child's expenses between both the parents, of the child concerning proper lifestyle, healthcare, and physical, emotional, and mental support, which the child needs to grow up in a well-functioned manner and on the other hand the later parent is provided only the right to access and meet the child. Such decisions are taken by the court after thoroughly looking into the facts of the cases and formulating their decisions in the best interest of the child. Along with that, the judge also acts on certain guidelines allotted to the parents so as to regulate their act keeping the best of their child in mind. Parents are bound to adhere to the rules issued by the court and function according to them. Custody disputes arise when the divorced parents disagree about the child's matters involving taking care, education, healthcare, living arrangement, etc. In some cases, the child custody dispute may also involve some allegation of abuse or neglect, which can complicate the legal process and require the involvement of child protection services.

### **PARENTAL ALIENATION SYNDROME**

Parental Alienation Syndrome (PAS) is a term that was coined by psychiatrist Richard A. alienation<sup>1</sup>. It usually refers to a situation where "the alienating parent" engages in such conduct which undermines the child's relationship with "the target parent". These types of behavior sometimes include derogatory and ill comments about the target parent to create a cynical and negative impression in the head of the child. This is done mostly with the purpose to prevent the child to spend time with the target parent. According to Gardner, PAS is a specific type of psychological manipulation that can have a long-lasting effect on a child's relationship with the non-custodial parent. He believed that the alienating parent is often motivated by feeling of anger, resentment, or jealousy toward the target parent. It puts the feeling of disdain in the mind of a child toward the target parent which eventually grows over time during the period of custodial proceedings of the courts.<sup>1</sup>

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<sup>1</sup> Saurabh Gupta, 'Parental Alienation Syndrome: Analysis in India' (2020) Socio-Legal Review <<https://www.sociolegalreview.com/post/parental-alienation-syndrome>> accessed 05 April 2023

## **NARCISSISTIC PARENTAL ALIENATION SYNDROME**

Narcissistic Parental Alienation Syndrome (NPAS) is a term used to describe a situation in which one of the parents (often the narcissistic one) engages in behaviors that cause a child to reject the other parent. This syndrome is characterized by the alienating parent's manipulative and coercive behavior, which aims to turn the child against the other parent. Divorcing a narcissist can take an ugly turn as they are a victim of an inflated sense of self-importance. A process such as a divorce can completely devastate this perception because that can totally ruin their self-perception and might burst the shell they have made for themselves. It becomes very difficult for them to cope with the ongoing situation which eventually leads to a distorted mess and chaos.<sup>2</sup> The whole process can be challenging and emotionally draining as narcissists tend to be extremely self-centered, lack empathy, and may use manipulation tactics to get what they want.

**The custodial parent may face some potential challenges in the aftermath of the divorce. Narcissists have the tendency to seek revenge on their ex-spouse in various ways:**

**Legal Proceedings** - Narcissists often use the method of legal proceedings to get into the skin of their ex-partner and gain control over them. They may refuse to compromise, and use evil tactics to manipulate the legal system.

**Financial Abuse** - Narcissists may use financial tools to establish control over their ex-partner. For example, they may deny paying child support, or maintenance or hide their financial assets.

**Parental Alienation or Emotional Manipulation** - Narcissists may try to brainwash their child against their ex-partner. In some cases, it is witnessed that they even try to manipulate their ex-partner by making them feel guilty about the whole scenario.

It is important that the custodial parent should not be alone in such a situation. It is wise to take advice or help from any psychologist or divorce lawyer or therapist who has a specialization in

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<sup>2</sup> Rozin, 'Why you need to know about narcissists and parental alienation syndrome' (Rozin, Gollinder Law, LLC, 22 March 2021) <<https://www.rgfamilylaw.com/blog/2021/march/what-you-need-to-know-about-narcissists-and-pare/>> accessed 06 April 2023

dealing with narcissistic personalities. They can provide strong mental and legal support out of this turmoil and may suggest an actual and efficient way out.

## INDIA'S TAKE ON PARENTAL ALIENATION SYNDROME

India is a fast-developing nation and has seen rapid development in almost every field including the legal sector. There have been a series of legal reforms to improve the legal infrastructure and several steps have been taken for the smooth and efficient functioning of the judiciary. India is beginning to touch on the issues which were not given so much importance earlier but are now talked about sternly and hold a great deal of importance in the legal curriculum. Parental Alienation Syndrome was one of the undebated issues until 2017 in the judgment of Vivek Singh v Romani Singh<sup>3</sup> on 13<sup>th</sup> February 2017. A bench of two judges, Justice Chelameshwar and Justice A.K. Sikri heard the case and gave acknowledgment to Parental Alienation Syndrome.<sup>4</sup>

In this case, the appellant Vivek Singh was married to Romani Singh. Due to fights and spats between the married couple, Romani Singh left her marital house. But the appellant Vivek Singh prohibited their two-year-old daughter to go away with her mother. Following this, Romani Singh filed a petition in the court under Sections 25<sup>5</sup>, 12<sup>6</sup>, and 10<sup>7</sup> of the Guardians and Wards Act for the custody of her minor daughter before the judge of the family court.<sup>8</sup> The Court further dismissed the petition of Romani Singh stating that Vivek Singh is a fit and fine guardian of the child and thus can retain custody of his daughter. Romani Singh, unsatisfied with the decision went up to High Court and filed an appeal based on the opinion that "being a child of fewer than 5 years of age, she was better off being taken care of by her mother" who is a more appropriate fit for the daughter. The High Court made its decision and granted visitors the right

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<sup>3</sup> *Vivek Singh v Romani Singh* (2017) 3 SCC 231

<sup>4</sup> *Ibid*

<sup>5</sup> Guardians and Wards Act 1890, s 25

<sup>6</sup> Guardians and Wards Act 1890, s 12

<sup>7</sup> Guardians and Wards Act 1890, s 10

<sup>8</sup> Aishwarya Sandeep, 'Recognition of Parental Alienation Syndrome: Vivek Singh v Romani Singh' (*WordPress*) <<https://aishwaryasandeep.com/2022/01/10/recognition-of-parental-alienation-syndrome-vivek-singh-v-romani-singh>> accessed 06 April 2023

to Vivek Singh. Thereafter, Vivek Singh aggrieved by the High Court's decision went on and appealed to Supreme Court.

During the hearing of the case, it was argued that children suffer from emotional turmoil and an agitated state of mind when their parents go through a divorce. The whole process can be very stressful and sensitive due to several factors occurring in the course of separation. It may result in a very long-lasting impact on children and has the potential of leaving a deep mental scar that may take years to recover from. The decision should be taken by keeping the best interest of the child in mind so that it does not result in any catastrophe in the future. The counsel presented the facts of the case that the child had the habit of living with her father from the very beginning under his take care and well-being. She is very well taken care of by her father. When asked by the court, she mentioned that she is happy and healthy under the guidance of her father and does want to leave him, and is not at all interested in changing her environment. It was argued that putting the child in such a battle is damaging to her sensitive age. Children at such tender ages do not have an understanding of right and wrong and they are incapable of making calculated decisions. They are mostly driven by emotions that their parents have attached to them<sup>9</sup>. After the argument of the appellant, the respondent, on the contrary, presented that the child was forcibly taken away from her mother, and before the respondent, Romani, left her matrimonial home, the child was in primary care of her. When she was forced to separate from her daughter by the father, she immediately filed a petition in the court of law seeking custody of her child. While responding, she also mentioned that the child, from an early age, has always seen her father all the time and has lived with him throughout so it is obvious that she would want to live with him. But this cannot be the basis for denying a mother the custody of her child as she could provide all the love, care, and support that her kid deserves.

The court after hearing the arguments of both sides, in the process of arriving at a decision, observed the judgment of the High Court that the respondent has showcased her love and affection towards her daughter which goes against the claims made by the appellant that the respondent has deserted the child. It was also observed by the court that the appellant has also

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<sup>9</sup> *Vivek Singh v Romani Singh* (2017) 3 SCC 231

shown love and care for his daughter during the court proceedings but the fact that the appellant is an army officer was taken into consideration because due to his job, he won't be available to his daughter all the time. Grandparents of the appellant can look after the child in his absence but if there is the presence of the mother then the child should stay with her mother instead of the grandparents because it would not be fair to deprive the child of the motherhood rights. The court then considering the wish of the child mentioned that she has to be given a chance to have contact with both parents. The court stated that the child may believe his father's side of the story as he was his primary custodial guardian after the separation which may have led to diminished affection towards the mother. The court discussing the parental alienation syndrome mentioned that such type of issues put the child in a loyalty battle with the parents. This results in unfair pressure on the child to choose either of the parents secondly it mentioned that often the custodial parent tries to picture a negative image of the target parent in the mind of the child which is contrary to the reality in most cases.

The court while making its decision said that it can be seen that the father is better suited for the custody but that does not mean washing away the rights of the mother. So the court arrived at the arrangement of giving custody to the respondent's mother for at least a year and not just mere visitation rights and keeping the option open in case of any variation in the future.

## **PARENTAL ALIENATION VERSUS REALISTIC ESTRANGEMENT**

Parental Alienation and Realistic estrangement are two different concepts describing the absence of a child-parent relationship. Both of these terms might sound similar but the main difference is the underlying reason behind the breakdown of the relationship between the parents. We have already discussed Parental Alienation in depth which cut short means that one parent actively excessively undermines the relationship between the child and the other parent. On the other hand, Realistic Estrangement means when the relationship between a child and a parent breaks down without any *malafide* intention at the end of the parents.<sup>10</sup>

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<sup>10</sup> Lisa Zeiderman, 'Parental Alienation vs Realistic Estrangement; Which is it?' (*Psychology Today*, 09 September 2021) <<https://www.psychologytoday.com/intl/blog/legal-matters/202109/parental-alienation-vs-realistic>

In the abstract of a recent article in the *Journal Of Forensic Sciences*, the difference between parental alienation and realistic estrangement is defined this way: Parental alienation is the rejection of the parent without legitimate justification and Realistic Estrangement is the rejection of the parent for a good reason.<sup>11</sup> Alienated children are those who have been coerced or maneuvered by one of the parents to reject the target parent by drawing a negative image in their mind which often leads to a smeared relationship whereas Estranged children are those who on their own will choose to maintain a distance from their reason without any influence from the end of their parents. Estrangement can occur due to various reasons such as lack of attention or neglect, abuse, or toxicity in the relationship or it may also take place due to any past trauma related to the family which the child finds himself/herself to fit according to it. Disagreement or differences in the set of lifestyle or the way of living is also one of the potential reasons for estrangement.

It has been observed that for alienated children the consequences of divorce can be more challenging and visceral. Alienation can change the perspective of the child toward himself as well as toward his parents because it generates a sense of confusion and guilt, and puts the child in a loyalty battle with the parents as they may feel pressurized to choose either side. How is a 3 or 4-year child supposed to choose sides? Such a tender age is not made to witness the complexities of familial issues. As the child grows, it leads to low self-esteem, depression, anxiety, and difficulty forming healthy relationships in the future because of the trauma they witnessed in the past. These children also build up trust issues, and a sense of doubt, and have a negative view of themselves and others.

For estranged children, the blow of divorce may be less dreadful compared to alienated children as in most cases they choose to distance themselves from their parents voluntarily. The effect can vary from situation to situation. In some circumstances, children may have a strong sense of self-conservation and may have this notion that distancing themselves from their parents is

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[estrangement-which-is-it#:~:text=In%20the%20abstract%20for%20a,parent%20for%20a%20good%20reason.>](#)  
accessed 07 April 2023

<sup>11</sup> Dr. Ralph Kueche, 'Parental Alienation versus Realistic Estrangement' (*Harbour Menatal Health Association*, 27 November 2021) <<https://harbormentalhealth.com/2021/11/27/parental-alienation-versus-realistic-estrangement>> accessed 07 April 2023

beneficial for their self-growth and security. They might overcome the reason for their estrangement which may be abuse, neglect, toxicity, etc, and have this mindset that in the future, to not let those things happen again, it is better to maintain a distance from such relationships. But there are also some cases where the children may feel a range of emotions like anger, hurt, betrayal and a sense of abandonment by their parents. It may also develop this feeling that they were not deserving of the love and care because their parents eventually failed to provide that which may lead to the feeling of guilt, shame, and breakdown of the relationship. It is important to understand the difference between alienation and estrangement as alienation can be grievous and harmful whereas estrangement can be beneficial for the child sometimes. Also, it can be noted that not all estranged children are victims of abuse, neglect, or toxicity, and not all alienated children have had a positive relationship with the parents they were manipulated to reject. That is why it is important to distinguish between both situations and seek help according to that, so that it may not lead to something impossible to cure.

### **EFFECTS OF PROLONGED CUSTODY DISPUTES ON CHILD**

A psychologist is someone who is a professional in studying human behavior and mental process using scientific methods to understand, explain and predict human behavior. A psychologist can be helpful in the state of a mental crisis by acting as a guide throughout the turmoil. In a country like India, earlier the stigma or the notion towards psychologists was not very recognized and understood. People had this perception that seeking help from a psychologist is a sign of weakness or mental illness per se and that there is some mental issue going on with them. Time by time, this impression has changed, though gradually but has managed to make changes and establish psychology as a mainstream option. Now, there is a noticeable growth in the awareness and acceptance of the importance of mental health and the importance of psychologists in the prevention of issues related to mental health. A psychologist can perform different types of evaluation on the child as well as the parent, and then assess the situation and make recommendations to the court which can be helpful to carry on the proceedings in a more effective and better manner. These psychological sessions, apart from



recommending the issues to the court, can also be beneficial to help foster the relationship and determine the underlying issue.

A psychological evaluation in case of disputes of divorce or matters related to custody can be really helpful in order to understand the psyche of the child who is experiencing turmoil. There are many ways by which psychologists can help in such cases. For example, psychologists have well-established and well-developed knowledge about the psyche and mental state of the child which can help them understand the emotional and psychological needs of the child and provide support and recommendations for the child as well as the family in case of divorce or separation. Psychologists can observe and evaluate the assessments conducted for the child, their parents, and also the family members which can help them help them to get to the depth of the issue and suggest the course of action to carry out the arrangement between both the parents keeping the best interest of the child in mind. This better understanding of the whole case can help the psychologists to mediate the issue between the parents and negotiate the agreement and resolve conflict related to custody and visitation. They provide a safe and neutral environment for the parents to discuss their problems related to their marriage and custody arrangements. Overall, psychologists can provide a great deal of support to the child and parents as well. Children can get emotional, mental, and psychological support and help them cope with stress and depression as an aftermath of the situation. Their expertise can help children, parents, and families to navigate their way through difficult times.

### **IMPORTANCE OF PARENT EVALUATOR AND CHILD PSYCHOLOGIST**

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## **KINDS OF CUSTODY ARRANGEMENTS IN INDIA**

**Physical Custody:** Physical Custody when awarded to a parent means that the minor child is under the guardianship of that parent with time-to-time issued interaction and visitation rights with the other parent as per agreed by both parties under the authority of the court. This kind of arrangement is generally carried out to provide a better and healthy life to the child in a safe and accomplished environment so that the child is not deprived of any arrangement that is necessary for his affectionate and formative growth.

**Legal Custody:** Legal Custody granted by the court to one of the parents brings up the responsibility of upbringing, education, healthcare, lifestyle, etc. with that parent while the other parent is granted limited rights whereas the custodial parent gets to take the major decision of their child's life in certain areas of his/her life.

**Sole Custody:** Sole Custody means that one parent has both physical and legal custody of his kid whereas the other parent does not get any type of custody or rights assigned by the decision of the court.

**Joint Custody:** Joint Custody means that both parents get to share equal rights regarding their kids. They are equally granted legal and physical rights and they get to share every aspect of their upbringing together. In a country like India, joint custody is not very favorable and courts prefer to grant sole custody in most cases.

**Visitation and Parenting Time:** Visitation or Parenting time is the right granted to the non-custodial parent which allows them to spend time with their child. In India, visitation and parenting time are generally granted to the non-custodial parent but the duration or amount of time may differ as per the circumstances of the case.

## **LAWS RELATED TO CHILD CUSTODY IN INDIA**

India being a secular country, from time to time has implemented laws in every particular religion as per the requirement of the society. These laws are also described as "Personal Laws"

in different religions. They direct people to believe as well as focus on the conduct of their operations.

### **GUARDIANS AND WARDS ACT, 1890**

The Guardians and Wards Act 1890, formulated in India, deals with matters related to the custody and guardianship of minors. This Act applies to each individual irrespective of religion, race, caste, and nationality and provides a framework for the appointment and duties of the guardians of the minor. The act was enacted and came into force to the whole of India on 1<sup>st</sup> July 1890 in order to protect the rights and interests of the minor and his property. The act focuses on the welfare of minors and consolidates the laws related to guardians and wards. Under the act, a “guardian” is defined as “a person having the care of a person of a minor or of his property, or of both his person and his property.”<sup>6</sup>

The act provides for the appointment of a guardian by the court, who may be a natural guardian, testamentary guardian, or guardian appointed by the court. The act also mentions the removal or replacement of a guardian, if the appointed guardian is not acting as per the guidelines of the court or is not following the interest of the minor child. The act has also provided the provisions of terminating the guardianship of the minor on attaining the age of majority. The act also provides for the maintenance of the minor by the guardian, which includes providing for the child’s education healthcare, lifestyle, and other necessary expenses. The court may also order the parent or other person liable to maintain the minor to provide financial support for the minor’s maintenance.

### **HINDU MARRIAGE ACT, 1955**

Hindu marriage act, 1955, under Section 26<sup>12</sup>, has laid down the rules regarding the custody of children during the pendency of any proceedings. This section provides that, “In any proceeding under this act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody,

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<sup>12</sup> Hindu Marriage Act 1955, s 26

maintenance, and education of the minor children, consistently with their wishes, wherever possible and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders, and provisions with respect to custody, maintenance and education of such children as might have been made by such decree and/or interim order in case the proceeding for obtaining such decree were still pending and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.”<sup>13</sup> In the case of *Kartarchand Dalliram Jain v Smt. Tarawati Kartarchand Jain*, the Hon'ble Bombay High Court provided for interim orders from time to time and also made provisions related to the custody, maintenance, and education of a minor child.<sup>14</sup> Section 26 provides for the maintenance of both *pendente lite* (i.e. during litigation) as also after the passing of the order or command by the court of law. It has been provided that the application concerning the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall as far as possible, be disposed of within sixty days from the date of service of notice of the respondent.

### **HINDU MINORITY AND GUARDIANSHIP ACT, 1956**

The Hindu Minority and Guardianship Act, of 1956 brought on certain effective changes in the situation and paradigm of the existing situation of guardianship and custody-related scenarios. The Act has improved the status of the mother as the natural guardian.<sup>15</sup> As per Section 9(1)<sup>16</sup> of the act even if the father appoints a testamentary guardian, then upon his death it is not the testamentary guardian, but the mother who acts as the natural guardian, and under Section 9(2)<sup>17</sup> it is mentioned that if the mother leaves behind the testamentary guardian it is the guardian appointed by her who will precedence over the guardian appointed by the father.

Under the act, the father cannot deprive the mother from assuming guardianship of the minor by appointing a testamentary guardian. Section 11 of the Hindu Minority and Guardianship Act forbids a *de facto* guardian from dealing with or disposing of the properties of a Hindu minor.

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<sup>13</sup> R K Aggarwal, *Hindu Law (Codified and Uncodified)* (23rd edn, Central Law Agency)

<sup>14</sup> *Mansi D/O Aniruddha Pusalkar v Aniruddha Ramchandra Pusalkar* (2002) Bom CR 262

<sup>15</sup> R K Aggarwal (n 13)

<sup>16</sup> Hindu Minority and Guardianship Act 1956, s 9(1)

<sup>17</sup> Hindu Minority and Guardianship Act 1956, s 9(2)

Section 6<sup>18</sup> states that person shall be entitled to act as a guardian if he or she has ceased to be a Hindu or has renounced the world by becoming a *sanyasi*. Section 8(2)<sup>19</sup> mentions that the power of the natural guardian regarding the alienation of the immovable property of the minor cannot be exercised without the previous permission of the court<sup>20</sup>.

## GUARDIANSHIP AND CUSTODY UNDER MUSLIM LAW

A remarkable feature of the Muslim Law of guardianship and custody is that, on the one hand, detailed rules have been laid down for guardianship of a minor's property, while on the other, there are very few rules relating to the guardianship of a minor's person. The reason for such conduct is that guardianship of a minor person is more a matter of custody than of guardianship. The sources of the law of guardianship and custody are certain verses in the Koran and a few *ahadis*.<sup>21</sup> Under Muslim law, the custody of the child is typically granted based on his/her age and gender. The court assigns the first and foremost custodial rights to the mother and states that she cannot be deprived of her right until and unless she deems unfit for custody or involved in any type of misconduct. This right is known as the right of *Hizanat* and can be enforced against the father or any other person. In the case of "sons," the mother's right to *hizanat* terminates when the son completes the age of 7 years. The Shias believe and follow that the mother has custody of the son till he is weaned and among the Malilikis, the mother's right to *hizanat* continues till the son has attained the age of puberty. Whereas in the case of girls, the Hanaffis believe that the mother has the custody of the daughter till she has attained the age of puberty and among the Malilikis, Shaffisa, and Hanabalis, the mother's right over the custody of her daughter continues till they are married.<sup>22</sup> The father's right of *Hizanat* is recognized under two conditions that are firstly the completion of the age of the child up to which the mother or other females are entitled to custody and secondly in the absence of the mother or other female for the

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<sup>18</sup> Hindu Minority and Guardianship Act 1956, s 6

<sup>19</sup> Hindu Minority and Guardianship Act 1956, s 8(2)

<sup>20</sup> R K Aggarwal (n 13)

<sup>21</sup> Dr. Paras Diwan, *Muslim Law in Modern India*, (10th edn, Allahabad Law Agency)

<sup>22</sup> Mohit Agarwal & Romit Agarwal, 'Child Custody under Hindu, Muslim, Christian and Parsi Laws' (*Legal Service India*, 06 October 2007) <<https://www.legalserviceindia.com/article/134-Custody-Laws.html>> accessed 12 April 2023

custody of the minor child. However, the father has the power of appointing a testamentary guardian and entrusting the custody of the child to them.

### **CUSTODY UNDER CHRISTIAN LAW**

Child custody in every law means the legal rights and responsibilities that a guardian or parent has in relation to their child. The concept of custody is often rooted in the belief that children are a gift from god and that parents have a sacred responsibility to raise their children following Christian values. However, there is no codified or specific set of rules in Christian Law related to child custody that applies to all Christian denominations. When a situation like a divorce or separation occurs, Christian Law invigorates the parents to take the decision by keeping the best interest of the child in mind. However, such issues are solved by the Indian Divorce Act, 1869 which applies to all the religions in the country. The Act provides guidelines relating to the custody of children which mentions that “In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provisions in the decree, as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such suit, and may if it think fits, direct proceedings to be taken for placing such children under the protection of the said court.”<sup>23</sup>

### **THE CASE OF ROSY JACOB v JACOB A. CHAKRAMMAKKA**

In the case of Rosy Jacob v Jacob A. Chakrammakka<sup>24</sup>, a landmark judgment, the Supreme Court dealt with the issue of custody of a child after a divorce. The case was heard by the Supreme Court in 1973. The background of the case comprised of a couple who were married in 1955 and had a daughter, named Betty in 1956. The husband and wife were a doctor and a teacher respectively. Due to cruelty and mental torture by the husband, Rosy filed a divorce in a court of law in 1961. The court granted the divorce to the couple in 1963 and assigned the custody of Betty to Rosy. After 3 years, in 1966, Jacob filed a petition in the court requesting the custody of

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<sup>23</sup> Indian Divorce Act 1869, s 41

<sup>24</sup> *Rosy Jacob v Jacob A Chakrammakka* (1973) SCR [3] 918

his daughter on the grounds that Rosy, the mother is not a fit choice for the custody and he can provide a better life, education, wellness, support and equipped upbringing to his daughter, which he thinks, her mother eventually cannot do that in a way that his daughter deserves. After this, the case went to trial and the facts and background of the case were discussed which ultimately led to granting of Jacob's petition, awarding him the custody of Betty. Rosy, unsatisfied with the decision, appealed to the High Court but the appeal was dismissed. She then appealed to the Supreme Court of India. The Supreme Court heard the case in 1973 and reviewed the facts of the case and reversed the lower court's decision and granted the custody of Betty back to Rosy and mentioned that decisions like child custody are taken by keeping the best interest of the child in mind and this case Betty is better off equipped in the custody of her mother than her father.<sup>25</sup>

#### **SPECIAL MARRIAGE ACT 1954**

The Special Marriage Act, of 1954 is a law in India that provides for the registration of marriages, and the granting of divorce, separation, and the nullity of marriage. The act also includes the provision related to custody of children in case of divorce or separation. Under Section 38<sup>26</sup> of the Special Marriage Act, it is mentioned that "In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders 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, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending."<sup>27</sup> It is important to note that under the Special Marriage Act, of 1954 both parents are provided equal rights to the custody of their

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<sup>25</sup> *Ibid*

<sup>26</sup> Special Marriage Act 1954, s 38

<sup>27</sup> *Ibid*



children. The Act does not presume that custody should automatically be awarded to the mother or father but rather by keeping the interest of the child in mind.

### **GROWTH IN THE FIELD OF CUSTODY DISPUTES**

The field of psychology has seen developing growth in recent years because people have started prioritizing their mental health in accordance with their physical health. Researchers and practitioners have gained greater experience and understanding of human behavior. Following that, there has been significant growth in the understanding and development of custodial psychology and procedures. Parents have started paying attention to the mental wellness of their children and its importance in shaping their lives in a befitting manner. The development in this field has introduced certain new methods to enhance and modify the procedure for a better outcome. There has been increased focus on legislation, research, mediation, etc in the field of child custody disputes. The issue has caught the light in recent years and several new beneficial and innovative concepts have been introduced for example Co-Parenting arrangements have emerged and are adopted by divorced parents in most cases. This benefits the children in a way that does not deprive them of the love and affection of their parents, either one or both. This involves parents taking an active role in the life of the child and the decisions of his life by sharing their time. The use of technology has been proven a boon in such disputes as it facilitates communication between the parents and even the child. It helps the parents in coordinating their schedules, sharing information about their child, and maintaining an efficient arrangement out of it. Overall, the growth in the field of custody disputes represents the recognition of the importance of parents in shaping the lives of their children and the need to create a supportive and stable environment for their children to thrive.

### **CONCLUSION**

Based on the above article about the impact of custody disputes and their various circles, it can be concluded that disputes can be an emotional process for all those who are involved in it and especially children. But more than the suffering, it is important that it should not go in vain and there should be some logical and valid outcome of such disputes. Our legal system has focused

hard on resolving such disputes with maximum ease so that it does not hamper the psyche and mental health of the child and arrive at a decision that favors the best interest of the child. As the field keeps on growing and advancing, it is good to see evolvement and understanding in human behavior and recognition of the distress of mental health. Additionally, the legislature should try to inculcate laws and provisions related to counseling and therapy sessions for parents as well as children so that there is minimal space for ambiguity for the courts in logically analyzing the situation of the cases. The rapid development can thus ensure the growth and evolvement of and we can further expect to see more advancement because, in the end, the goal is to create a happy and positive environment for everyone which is best suited for them and their holistic growth.