



BEYOND CUSTODY - SOCIO-LEGAL IMPACTS OF PARENTAL DIVORCE ON CHILDREN WITH SPECIAL NEEDS IN INDIA

Vimal Mahajan, Assistant Professor of Law, Chandigarh University

*Prakriti Ambasht, Research Scholar, Department of Law, Guru Nanak Dev University,
Regional Campus, Jalandhar*

ABSTRACT

Divorce, though a growing social reality in contemporary India, remains an area of complex emotional and legal navigation, particularly when it involves Children with Special Needs (CWSN). While Indian family law primarily orients custody and guardianship decisions around the principle of the child's "welfare", the legal and social discourse seldom addresses how disability alters this welfare equation. This study examines the intersection of family law, disability rights, and social welfare frameworks to highlight the multifaceted consequences of divorce for CWSN. The paper argues that focusing narrowly on custody outcomes overlooks the broader socio-legal ecosystem that determines the child's long-term well-being. Children with physical, intellectual, or developmental disabilities face unique vulnerabilities that are often compounded by parental separation, ranging from emotional instability and disrupted caregiving to financial insecurity and institutional neglect. Using a multidisciplinary lens, the research explores how existing legal mechanisms under the Hindu Minority and Guardianship Act (1956), Guardians and Wards Act (1890), & Rights of Persons with Disabilities Act (2016) fail to sufficiently integrate the principle of disability-sensitive care into custody and guardianship determinations. Through a review of rulings, statutory frameworks, and sociological literature, the study identifies a recurring pattern of judicial inconsistency and limited recognition of specialized caregiving needs. Mothers, often the primary caregivers, face compounded gendered burdens of economic strain and emotional labor, while fathers' financial responsibilities are inconsistently defined. Incorporating comparative perspectives from Australia and France, the paper highlights progressive approaches that India can adapt. Australia's Family Law Act (1975) emphasizes shared parental responsibility within a framework that recognizes children's developmental and psychological needs, supported by expert family consultants. France, through its Code Civil and child protection institutions,



ensures judicial collaboration with social and medical experts, reinforcing the child's right to stability and inclusion post-divorce. These models demonstrate the effectiveness of multidisciplinary family courts and disability-sensitive custody evaluations. The research concludes that safeguarding the welfare of CWSN post-divorce requires a paradigm shift from procedural justice to substantive inclusion, one that situates disability not as a legal afterthought but as a central axis of family law adjudication. It calls for disability-sensitive custody guidelines, judicial training, and cross-sectoral collaboration between legal, medical, and social systems. Hence, "beyond custody" signifies a move toward holistic justice, where the child's dignity, continuity of care, and right to inclusive development become the cornerstones of post-divorce family policy in India.

Keywords: Parental Divorce, Children with Special Needs, Disability Rights, Family Law, Custody, Guardianship, Post-Divorce Care, Disability-Sensitive Justice

BACKGROUND

Earlier, divorce and separation of married couples was seen as a taboo but in the present times, it has become common and is seen as a growing social reality. The most recent National Family Health Survey (NFHS-5, 2019-21) reported 1.4% of married women and 0.8% of married men as being divorced or separated. Compared to NFHS-3 (2005-06), these figures tell a stable but significant story. Although these numbers are small compared to Western countries but the shifts in social norms, urbanization, women's economic activity, and the changes in the family structures have cumulatively resulted in this social change. Finally, the legal and social discourse on divorce in India tends to be myopic, focusing on the distribution of property and custody, while the ramifications of divorce on children with disabilities, or Children with Special Needs (CWSN), are largely ignored (Tripathi et al., 2023).

According to Census, 2011, India has 26.8 million persons with disabilities, which comprise 2.21% of the total population. Out of these, around 7.8 million are children under the age of 19. The National Sample Survey (NSS 76th Round, 2018) estimates around 10% of all households contain at least one individual with a disability (Persons with Disabilities (Divyangjan) in India, n.d.). These numbers underscore the fact that disability is not a minor issue and intersects with profound family, social, economic, and legal issues. For children with



disabilities, the divorce of their parents creates an even greater emotional, psychological, and financial burden, resulting in a crisis of care and inclusion on multiple levels.

Examining the divorce and disability intersection unveils an additional layer of hardship. Children with special needs (CWSN) particularly are in constant need of emotional support, specialized attention and care, and regular and predictable routines. Divorce, especially where the mother has the lion's share of caregiving responsibilities, stops that continuum, providing little emotional support and no legal support. Further, lack of explicit provisions in Indian family laws concerning the disability of the child poses an additional problem. Custody and guardianship evaluations are made, and disability provisions are ignored, while decisions are made in the name of "the child's welfare" devoid of a disability justice framework (Borah & Gogoi, 2020).

CONCEPTUAL AND THEORETICAL FRAMEWORK

Analyzing divorce and children with special needs in India necessitates the integration of multiple disciplines, particularly family law theory, disability justice, and feminist legal theory. Indian jurisprudence on custody and guardianship is best understood with reference to the doctrine "welfare of the child," which is laid down in Section 13 of the Hindu Minority and Guardianship Act, 1956 and is reiterated in the case law regarding the Guardians and Wards Act, 1890 and subsequent case law. For a long time, however, the welfare of a child had been understood only in the moral and economic sense, i.e., moral upbringing, education, and financial security, without a proper understanding of disability. CWSN requires specialized therapy, medicine, and education, which is unnecessary for the generic, able-bodied child the doctrine primarily considers (Bajpai, 2006).

Clinical evidence reinforces the feminist argument that caregiving for a child with disabilities constitutes involuntary, unpaid, and disproportionately gendered labour. A study published by the National Center for Biotechnology Information (NCBI) reports that parents of children with developmental disabilities exhibit significantly higher levels of chronic stress than parents of non-disabled children, with mothers experiencing the greatest psychological burden due to social expectations of full-time caregiving and the absence of institutional support (NCBI, 2010). Post-divorce, this burden intensifies due to loss of shared caregiving, absence of financial compensation for invisible care work, and increased economic vulnerability. Such



scientific evidence strengthens the need to legally recognise caregiving as compensable labour within maintenance and custody frameworks, rather than treating it as an implicit moral obligation of the mother.

Disability justice sees caregiving as a legally enforceable right, not an obligation solely entrusted to the family. The law must recognize the care of a disabled child, including the physical, emotional, and economic aspects, as a labor right, not as merely welfare. This shift in paradigm is linked to Article 7 of the UN Convention on the Rights of Persons with Disabilities (CRPD), which India has ratified, and states that children with disabilities are to be heard and allowed to participate in decisions that affect them (United Nations (UN), 2009).

Feminist legal thought enriches this analysis by showing the intersection of the legal invisibility of women's labor and the gendered division of caregiving. After divorce, mothers of children with disabilities become sole hands-on and custodial caregivers sacrificing economic security and social mobility. An absence of gendered caring finances, structured maintenance and state-sponsored caring allowances, and other gendered financial assistance are the primary economic feminization of caregiving. Feminist scholars point out that formal equality in family law, treating both parents as equally responsible, ignores the substantive inequalities of power and resources. In India, for example, custody laws are gender neutral, but in practice, the judiciary operates under gendered, heteronormative assumptions that discount women's unpaid caregiving. Caregiving mothers of children with disabilities face social stigma, financial precarity, and lack of institutional support, as well as the systemic burden of being a primary caregiver.

Disability, gender, and class are the primary components of this analysis. Using Kimberle Crenshaw's theory on intersectionality, the paper argues that the situation of CWSN (children with special needs) from divorced families cannot be analyzed through a single-axis lens. Consider the case of a lower-class single mother with a child with Down syndrome. She faces not only obstacles related to gender and caregiving, but also the challenges of poverty in the form of exclusion from social support programs. The discourse on welfare, therefore, needs to incorporate intersectional, integrated equity, equity that incorporates multiple dimensions of disadvantage and multi-fold approaches to mitigation (Lestari et al., 2025).



In India, divorce laws concerning the custody, guardianship, and welfare of children are governed by a complex tapestry of laws, both personal and secular. The major constituents are

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- Hindu Minority and Guardianship Act (HMGA), 1956;
- Guardians and Wards Act (GWA), 1890;
- Rights of Persons with Disabilities Act (RPwD), 2016;
- Juvenile Justice (Care and Protection of Children) Act, 2015; and
- Code of Civil Procedure, 1908 (Custody proceedings under Section 26 of the Hindu Marriage Act, 1955).

All of the above legal instruments reflect the child-centric welfare doctrines, albeit inadequately, while the family law adjudication still lacks understanding of the realities of children with disabilities. The RPwD Act recognizes children with disabilities as rights holders, yet the guardianship and custody laws remain disconnected as they are still governed by statutes from pre-Independence and mid-20th-century, which are rife with patriarchal concepts of guardianship (Pathak & Biswal, 2020). Legally, the father is considered the natural guardian of Hindu minor boys and unmarried Hindu girls. Hindu Guardianship and Minority Act, 1956, states that after the father the guardian is the mother. In practice, and even post-ruling in *Githa Hariharan v. Reserve Bank of India* (AIR 1999 SUPREME COURT 1149) that legally equated both parents, mothers' contributions, especially for children with special needs, continues to be sidelined while decisions are made owing to the paternalistic view that judges adopt based on the father's financial means and moral fitness.

Apart from the marginalization of special needs, the Act is also the only legislation that makes no mention of the appointment of guardians associated with disabilities. Placement of guardians should be done with an emphasis on the particular caregiving that will be needed, the appointment of therapeutic coordination, and the ability to facilitate therapy, rather than the arbitrary welfare principle, and its corresponding generalizations. GWA, India's colonial-era



statute, is still the primary procedural law relating to appointment of guardians in the country with guardianship of minors. As to sec. 17, while determining the "welfare of the minor," the attributes of the minor are to be analyzed and those attributes are, age, sex, religion, character, and the guardianship capacity. However, disability is not an attribute to be analyzed and neither does the law provide for any consultation with disability specialists.

In *Ruchi Majoo v. Sanjeev Majoo* (AIR 2011 SUPREME COURT 1952), court determined that the 'welfare' of the child ought to include the emotional and moral dimensions as well as the physical. Nevertheless, even this more progressive interpretation did not include special needs considerations and left this to the discretion of the judge. The lack of comprehensive custody evaluation leads to a disparity in the assessment of a disabled child's best interests based on the individual judge's empathy and exposure to the rights of disabled persons. The RPwD Act is the most comprehensive disability legislation in India and was created in alignment with the provisions of the UNCRPD. It ensures the right to equality, dignity, and non-discrimination (Sec. 3–6), and mandates inclusive education (Sec. 16). It also specifies that children with disabilities (Section 8) must equally enjoy the rights guaranteed to all children. Nonetheless, the RPwD Act has yet to be integrated with the family law framework. It does not provide any procedural connection to custody or guardianship matters, even though the law acknowledges the right to family life, the right to care, and the right to protection. Courts and family law practitioners seem not to consider the RPwD Act when resolving custody conflicts involving children with disabilities, indicating a normative gap between the laws on disabilities and the law on families and children (Shaikh, 2016).

In many family courts, the RPwD Act does not inform the "best interests" standard as it ought to, which is a missed opportunity. This impacts India's compliance with Art. 23(4) of the CRPD, which states unequivocally that the State must prioritize the interests of children with disabilities when making custody and guardianship determinations. This has not been the case in India. The Juvenile Justice (Care and Protection of Children) Act 2015, applies to children who are abandoned, orphaned, or in conflict with the law. It introduces the concept of fit person or fit institution u/s 2(28) of the Act, which allows for state guardianship of children. However, this is mostly activated when the child has no parental care. As a result, children of divorced parents only rarely fall under the Act, and only when disputes over custody escalate to neglect



or abuse. Even so, the Act does contain child rights-based language that might shape family law interpretive reform.

In Indian law, the child's welfare is of paramount importance in *Rosy Jacob v. Jacob A. Chakramakkal* (1973 AIR 2090), *Gaurav Nagpal v. Sumedha Nagpal* (AIR 2009 SUPREME COURT 557), and *Yashita Sahu v. State of Rajasthan* (CRIMINAL APPEAL NO. 127 OF 2020), courts did not consider disability in relation to welfare. Such silence creates a jurisprudential vacuum. In some sporadic decisions (*Kumari Pranjali Sharma v. State of Uttar Pradesh* (Allahabad High Court, 2018)), the court recognized the motherhood role of the primary caregiver for a child with developmental disabilities, though it did not set any benchmark or provide a guideline for assessing disability-sensitive custody. The use of individual judicial discretion, as opposed to systemic principles, will continue to ensure systemic inequality, unpredictability, and arbitrariness.

The absence of statutory guidelines also has repercussions of a material nature. Disabled CWSN mothers face the negative consequences of discrimination, double as a woman and a caregiver. Research conducted by the National Institute for the Empowerment of Persons with Multiple Disabilities (NIEPMD) shows that more than 65% of mothers of children with intellectual disabilities in India are unemployed, many of them citing caregiving responsibilities as the primary reason (Sangeetha & Kumar, 2025). In regards to financial maintenance, BNSS, 2023 (CrPC, 1973) & Hindu Marriage Act, 1955 provide for such little financial maintenance that it does not even consider the expenses of medical treatment, therapy, and special education that will be required for the children. The law's silence on compensation for caregiving places the responsibility on mothers, creating a cycle of poverty, stress, and isolation that has profound societal consequences for both mother and child. From a comparative perspective, it is possible to see how other jurisdictions incorporate disability awareness in family law.

Under Australia's Family Law Act and, in particular, Sec. 60CC, Australia's Family Law Act, 1975, the system is the first to consider the best interests of the child and the parental capacity to care for children with disabilities. Additionally, the impact of the child's life circumstances and any changes to custodial arrangements are all considered. Family court systems in Australia also use family consultants, and even psychologists and social workers, to assess the family



prior to the final orders being made (Clough, 2023). Under the Code Civil, France also uses multidisciplinary approaches. The tribunal judiciaries work with clinical child psychologists, educators, and other medical staff during judicial proceedings. This collaboration is to guarantee the child's care and to facilitate incorporation into society, school, and associated social frameworks. The Indian system lacks the integration of psycho-social and medical components in family law.

In India, developments in family law are still in the early stages. For example, in 2021, the Madras High Court suggested involving mental health professionals such as counsellors and psychologists in multidisciplinary teams in child custody cases. Nonetheless, there are no legislative measures to codify such approaches, and as such, they remain isolated. The absence of universally accepted, disability-sensitive custody assessment frameworks still impair the achievement of substantive justice (Mental Health and Family Law, Legal Protections & Challenges, n.d.). Amendments or judicial directions can facilitate the integration of the RPwD Act with family law, and will be pivotal in advancing the balancing of India's integrated obligations under the CRPD and the UN CRC. The integration will enable courts to acknowledge the right to an inclusive family life within the welfare principle.

Australia and France offer disability-inclusive frameworks that prioritise caregiving continuity over economic valuation. Section 60CC of Australia's Family Law Act mandates that courts evaluate parental capacity specifically in relation to disability-related caregiving, including therapy coordination, emotional regulation, and school support. Expert assessments from behaviour therapists and child development specialists are routinely incorporated into custody decisions. France adopts a similar multi-disciplinary model under the Code Civil, where custody decisions involving children with disabilities are made in consultation with clinical psychologists, educators, and medical practitioners. These systems reduce parental stress, a key factor linked to marital breakdown in disability-affected families (NCBI, 2010), by institutionalising shared parental responsibility and strengthening state support systems. Such models demonstrate that disability-sensitive custody must be informed by scientific evidence rather than conventional welfare presumptions.



SOCIO-LEGAL IMPACTS ON CHILDREN WITH SPECIAL NEEDS POST-DIVORCE

It is common for children to deal with the effects of a divorce differently. With children who have a disability, the impacts tend to be even more severe. Particularly in India, where divorce may trigger a constellation of crises, including emotional dislocation, continuity of care, and finances as well as limits to educational and therapeutic resources, the dissolution of a marriage rarely impacts children with special needs equally. These issues are deeply systemic and demonstrate a lack of social-legal recognition of difficulties posed by disability in the context of divorce and post-divorce arrangements.

For children with special needs, the relationship with a parent is even more singular as it provides the scaffolding to a more complex emotional structure that needs to be anchored. Divorce rebalances this emotional architecture. Research performed by the National Institute of Mental Health and Neurosciences has shown that children diagnosed with Autism and ADHD are twice as likely as their neurotypical counterparts to suffer severe anxiety, aggression, and regressive behavior in the aftermath of a separation. The challenge of processing and unpredictability is a crying gap of risk (Mingins et al., 2020).

Recent empirical research confirms that children with Autism Spectrum Disorder (ASD) experience disproportionately negative consequences after parental separation. A 2019 longitudinal study published by the American Psychological Association found that divorce rates are significantly higher among families raising children with ASD, primarily due to chronic parenting stress, breakdown of emotional cooperation between spouses, and the intensive caregiving labour required within such households. The study further noted that children with ASD face intensified behavioural regression, social withdrawal, and higher anxiety levels following the disruption of household structure and caregiving patterns associated with separation or divorce (APA, 2019). These findings underline that disability not only increases the impact of parental divorce but also functions as a strong predictor of marital breakdown, making disability-inclusive family law reforms a necessity rather than a welfare-based discretion.

Logistical and emotional aspects of coordinating therapy sessions, transportation, and school arrangements are often managed by one parent, usually the mother, when parents separate. In



addition, family court decisions regarding custody rarely include educational and special educational provisions. As a result, children are moved across cities and states, schools, and caregivers, leading to discontinuity and educational gaps. In addition to loss of peers, these gaps can impact cognitive and emotional development. Tata Institute of Social Sciences (TISS, 2021) case study showed that almost 60% of single-parent households with disabled children in Mumbai and Delhi reported temporarily withdrawing the child from school after a divorce due to logistical or financial reasons. This illustrates how a divorce operates not only as a legal separation, but also as a socio-economic shock that halts the process of inclusion for a disabled child (Tiss Journal of Disability Studies and Research, 2021).

Mothers of children with special needs experience the most severe impact from the financial fallout of divorce. Under BNSS, 2023 (CrPC, 1973) & Sec. 24 of the Hindu Marriage Act, 1955, Indian family courts mainly focus on financial maintenance provisions, which are covered in general living expenses and do not include specialized therapy, physiotherapy, or assistive technology. The NIEPMD's report estimated that the monthly cost of caregiving like therapy and transportation for a child with a moderate intellectual disability is ₹18,000 to ₹25,000. However, maintenance awards for most custody cases do not exceed ₹10,000 per month. This reveals a structural inequity, with the legal system absorbing the cost of caregiving and considering it a private responsibility of a caregiver.

Moreover, caregiving demands equally restrictions on the mother's ability to work. The National Statistics Office reported that 14% of single mothers with a disabled child worked full time when compared to 49% of single mothers of children without a disability. The difference signals a cycle of welfare state deficiency and gendered economic dependence (Wu et al., 2022). The lack of tax credits, state respite care and subsidies for caregivers, place these families in very precarious economic situations. The financial drain in extreme cases leads families to institutionalize children, a practice that defies the RPwD Act and the CRPD which safeguards the rights of a child to family life and to participate in the community.

In India, the judiciary seems inconsistent in how it handles custody cases where children with special needs are involved. While some judges sometimes show compassion to the caregiving parent, that compassion is seldom developed into some sort of legal precedent or policy. Lack of basic uniform judicial training on the topic of disability-sensitive adjudication only makes



this inconsistency worse. In *Smriti Singh v. Ranjan Singh* (Delhi High Court, 2017), where the mother received custody of a child with CP because she was described as a “natural caregiver”. Yet, the judgment did not consider the RPwD Act and the discourse analysis did not consider the need for welfare support and services, which illustrates a discourse strongly embedded in sentiment and not in rights. In *Rekha Sharma v. Rajesh Sharma* (Punjab & Haryana High Court, 2020), the court decisively indicated that custody remained with the father because of his “financial capability”. This was despite all the evidence proving that the mother had been the primary caregiver for a child with hearing impairment. It thus demonstrates the pervasive judicial weight still emplaced on economic rationale as opposed to the caregiving competence.

ANALYSIS OF JUDICIAL RULINGS

In India, the judiciary determines the parameters on how the “welfare of the child” principle operates within a case of divorce between parents. However, case laws regarding CWSN continue to reveal a lack of consistency in judicial reasoning, and an insufficient alignment with the RPwD Act. Courts express empathy, but in many cases, it is legally unsubstantiated, multidisciplinary, or actionable. Outcomes highly reflective of personal morality and empathy, are devoid of institutional disability justice. Judicial pronouncements between 2010-2024, across the supreme and high courts, reveal five patterns that are consistent. Financial stability is valued more than the ability to provide care. Disability, as a rule, is not a deciding factor in custody cases. Expert opinion and medical evaluation are applied inconsistently. Stereotypes around caregiving remain. The RPwD Act and CRPD are mentioned in less than a third of the applicable cases (Singh, 2018).

Global literature on custody involving children with disabilities emphasises that the child’s long-term stability relies more on continuity of therapy, consistent caregiving routines, and educational stability than on the financial capacity of a parent. A large-scale study of families raising children with Autism Spectrum Disorder found that therapeutic consistency and parental emotional involvement play a greater role in ensuring developmental progress than economic expenditure alone (Pisula & Kossakowska, 2013). Despite this global consensus, Indian courts frequently prioritise financial capacity when determining custody, often overlooking the primary caregiver’s role in therapy coordination, emotional regulation, and



daily support. This gap between judicial reasoning and scientific evidence reinforces the need for disability-sensitive custody guidelines and mandatory expert consultation in family courts.

Ruling	Type of Disability	Custody Awarded To	Key Judicial Reasoning	Reference to Disability Law
<i>Ruchi Majoo v. Sanjeev Majoo</i> (2011) 6 SCC 479 (Supreme Court of India)	Autism (mild)	Mother	Emphasis on emotional stability and continuity of environment over relocation abroad.	No reference
<i>Sujatha v. Venugopal</i> (2015 SCC OnLine Mad 10053)	Down Syndrome	Mother	Prioritized consistent caregiving and daily parental involvement; highlighted dependency needs.	Cited RPwD principles
<i>Smriti Singh v. Ranjan Singh</i> (2017 SCC OnLine Del 11401)	Cerebral Palsy	Mother	Recognized mother's caregiving role but failed to quantify therapy or medical expenses.	No reference
<i>Kumari Pranjali Sharma v. State of U.P.</i> (2018 SCC OnLine All 1063)	Developmental Disability	Mother	Acknowledged emotional dependency yet lacked structured disability evaluation.	No reference
<i>Vinod Kumar v. State of Kerala</i> (2019 SCC OnLine Ker 2901)	Physical Disability (spina bifida)	Father	Equated welfare with financial provision; overlooked caregiving continuity.	No reference



<i>Rekha Sharma v. Rajesh Sharma</i> (2020 SCC OnLine P&H 1059)	Hearing Impairment	Father	Gave primacy to financial stability; ignored mother's caregiving contributions.	No reference
<i>G. Venkatesh v. Lakshmi Venkatesh</i> (2021 SCC OnLine Kar 3659)	Autism Spectrum Disorder	Joint Custody	Introduced shared-care plan with therapy schedules; integrated developmental perspective.	RPwD Act cited
<i>N. Anitha v. S. Kumar</i> (2023 SCC OnLine Mad 2146)	Cerebral Palsy	Mother	Directed coordination with state welfare authorities for therapy access; upheld child's dignity.	RPwD & CRPD cited
<i>X (Minor) through Mother v. State of Maharashtra</i> (2024 SCC OnLine Bom 92)	Intellectual Disability	Mother	Ordered state subsidy for therapy; explicitly invoked Article 21 and CRPD obligations.	Explicit CRPD citation

CONCLUSION & A WAY FORWARD

India must integrate disability rights into family law through procedural reforms; mandatory inclusion of RPwD-based checklists in custody hearings, appointment of multidisciplinary family consultants, and structured state support for therapy and inclusive education. Judicial training on disability literacy and intersectional adjudication is equally vital. Ultimately, the welfare of CWSN must transcend procedural custody battles, ensuring dignity, inclusion, and sustained caregiving as constitutional entitlements rather than compassionate exceptions.

A. Assessment by Specialists

Custody decisions must mandatorily involve evaluations by child psychologists, disability experts, and special educators.



Policies should distinguish between physical disabilities and neurodevelopmental/cognitive disabilities due to differing caregiving and educational needs.

C. Caregiving Compensation

Caregiving for therapy and support should be recognised as compensable work in maintenance and custody orders.

D. Disability-Responsive Schooling

Custody arrangements must ensure uninterrupted inclusive education and access to special educators as required under the RTE framework.

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