



POST-DIVORCE LEGAL ISSUES: A COMPREHENSIVE ANALYSIS OF ALIMONY, CHILD CUSTODY, AND VISITATION RIGHTS

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ABSTRACT

A dissolution of marriage can lead to many legal problems that go well beyond the immediate end of the marriage and the divorce itself. Some of the important legal concerns that usually come into force after dissolution of marriage include; alimony, child support and custody, and visitation rights. Such issues should be addressed by exercising great discretion by judges and qualities that such verdicts should be fair and reasonably served to each party especially the children involved. This article aims to make a legal commentary on these post-divorce problems, including statutory provisions, case laws, and even new social-legal trends in handling such problems in the field of family law. Divorce is not only the ending of a marriage but the starting of a legal process by which people rearrange their lives, their finances, and their children. Apart from the disruptive and turbulent feelings, the people going through the process of divorce meet numerous and diverse legal concerns that must be addressed properly. Three of the toughest legal proceedings to deal with in the aftermath of a divorce are alimony, child support, and visitation. All these components are not only fraught with major consequences for the further life of those parties to divorce but are also related to the well-being and personal growth of any offspring.

Keywords: Legal Commentary, Statutory Provisions, Alimony, Child Support, Visitation.

INTRODUCTION

Divorce signifies the dissolution of a marital union but this comes as a legal decision and its legal implications go past the decree of divorce. Matters such as spousal maintenance, parenting, and access to children become matters of protracted litigation. All these post-divorce

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legal matters are provided under the various statutory laws and judicial cases in different jurisdictions as well as through discretionary judgments of the law courts.¹

In each country divorce is not only the annulment of marriage but the beginning of a range of legal disputes connected to child support and custody along with access rights and responsibilities. In this research article, the author analyzes the most important legal issues related to the post-divorce situation in India with an emphasis on the problems of maintenance, child custody, and access rights. Through a critical discussion of an array of relevant case laws and statutes, this article aims to contribute to the reader's knowledge of the jurisprudential developments of this subject area. In the Indian context marriage is considered a sacred relation and getting a divorce is not recognized easily due to this stigma involved the legal process becomes cumbersome. After divorce, challenges arise even in the most liberal states, and the court cannot turn a blind eye to traditional values and the new legislation at the same time, protect the helpless parties, and respect the rights of spouses and children.²

ALIMONY: LEGAL FOUNDATIONS AND JUDICIAL DISCRETION

Alimony, also referred to as spousal maintenance, is money that is paid by one spouse to the other after the dissolution of marriage to support the other spouse. The right to alimony arises from the dependency that usually develops in a marriage and which may serve to derogate the economic difference between the couple especially where one of the spouses has relinquished job opportunities for the sake of the family or the other spouse's career.

A. TYPES OF ALIMONY

Alimony can take several forms, each with distinct legal implications:

1. **Temporary Alimony (Pendente Lite):** Temporary alimony is spousal support given during divorce to allow the economically weaker spouse to have a competent lifestyle until the final matter is concluded and the marriage terminated.
2. **Rehabilitative Alimony:** This sort of alimony is intended for the receiving spouse to be awarded an education or skill to make the recipient independent. It is most often granted for a specific time and is renewable on review.

¹ <https://pdfs.semanticscholar.org/87fb/db98fb9ef82b6c0bbc71e294e057355efdab.pdf>

² <https://jurnal.unissula.ac.id/index.php/rlj/article/download/30378/8683>

3. **Permanent Alimony:** This is mostly given when the spouse receiving it will be incapable of earning an independent living since issues have to do with age health or any other reason known to the court. This form of alimony persists until the time when the recipient gets a new spouse or either of the spouses dies.
4. **Lump-Sum Alimony:** At times, the court may direct the paying spouse to make a lump sum payment to the receiving spouse thus doing away with periodic payments.³

LEGAL PROVISIONS

The legal provisions governing alimony in India are spread across various statutes depending on the religious affiliation of the parties:

1. **Hindu Marriage Act, 1955:** Section 25 of the Hindu Marriage Act provides for permanent alimony and maintenance. It grants discretion to the court to award alimony to either spouse based on factors such as income, conduct, and needs.
2. **Special Marriage Act, 1954:** Section 37 of the Special Marriage Act contains provisions similar to Section 25 of the Hindu Marriage Act, allowing either spouse to seek alimony post-divorce.
3. **Muslim Personal Law (Shariat) Application Act, 1937:** Muslim women can seek maintenance under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which provides for maintenance during the iddat period and a reasonable and fair provision thereafter.
4. **Parsi Marriage and Divorce Act, 1936:** Section 40 of this Act empowers courts to grant alimony to the wife, taking into consideration her financial situation and the husband's means.
5. **Indian Divorce Act, 1869:** For Christians, the Indian Divorce Act allows the court to order alimony in cases of dissolution of marriage, judicial separation, or nullity of marriage.⁴

³ <https://supremoamicus.org/wp-content/uploads/2021/12/Aditi-Aditi-Poddar-and-Sudipti-Mukhopadhyay.pdf>

⁴ http://www.iipabiharbranch.org/upload/BJPA_Vol.%20XIX%20No.%201%20Jan-June%202022.pdf#page=200

B. JUDICIAL FACTORS IN DETERMINING ALIMONY

Several factors are taken into account when courts assess the kind and the period of alimony payments. These factors often include:

- **Length of the Marriage:** The data also showed that the duration of the marriage predicted the size of alimony paid; the longer the marriage the higher the likelihood of paying a higher alimony.
- **Financial Needs and Resources:** The financial aspects that are considered by the courts are, the income, property, cash flow, and earning capabilities of both spouses.
- **Standard of Living:** Other factors that influence the award of alimony include but are not limited to; the standard of living that was enjoyed during the marriage.
- **Contributions to the Marriage:** Even other such non-economic contributions made by individuals such as homemaking, child-rearing, etc., are included.
- **Fault or Marital Misconduct:** In some states, the behavior of the parties during the marriage, such as cheating or desertion, can play a part in awarding or denying alimony.

Indian courts have a great contribution to the development of the jurisprudence of alimony. The Supreme Court in the case **Kusum Sharma v. Mahinder Kumar Sharma (2017)** summarized certain principles guiding the award of alimony, including the duration of the spousal relationship, the economic condition of the parties, and the conduct of the concerned spouse during the marriage.

It also took cognizance of the fact that in awarding alimony it should not be done in a punitive manner but more as a way of enabling the spouse that depends on the other to be financially independent. In the case of **Vinny Parmar v. Paramvir Parmar in 2011**, the apex court said that the purpose of the alimony is to ensure that the economically weaker spouse receives some monetary support to be able to fend for herself while at the same time retain the dignity of a human person.⁵

CHILD CUSTODY: PRIORITIZING THE BEST INTERESTS OF THE CHILD

One of the most sensitive issues arising out of divorce perhaps is the custody of the children where the court reviewing the matter is left with the arduous task of deciding on arrangements

⁵http://www.iipabiharbranch.org/upload/BJPA_Vol.%20XIX%20No.%201%20JanJune%202022.pdf#page=200

that best suit the needs of the child after the divorce. The legal rules regarding the custody of children are based on the concept of “the parents’ patriate” rule which presides over all decisions made by the judge in matters to the children.

A. LEGAL VS. PHYSICAL CUSTODY

Child custody can be categorized into two main types:

1. **Legal Custody:** This pertains to the legal right to make major decisions on the upbringing of the child such as on matters of education, health, and religion. Legal custody can be assigned to one of the parents only (exclusive legal custody) or can be given to both parents (shared legal custody).
2. **Physical Custody:** Earlier, physical custody only referred to where the child would be living, but this has now changed over the years. Physical custody like legal custody can be sole or joint and joint physical custody does not necessarily mean that children will spend an equal amount of time with both parents but such a parenting plan assures the children reasonable and significant time with each parent.

B. DETERMINING THE BEST INTERESTS OF THE CHILD

The "best interests of the child" standard is a multifaceted legal concept that varies by jurisdiction but typically includes considerations such as:

- **The Child's Age and Health:** Thus, younger children may need a more stable environment and that may deem them to need more custody.
- **Parental Fitness:** Several factors are decisive here, such as the psychological and physical conditions of both parents and their competency in parenting.
- **Parent-Child Relationship:** Perhaps, the first factor, which may be highly valuable in practice, is the issue of the attachment between the child and each of the parents.
- **Continuity and Stability:** To courts, certain kinds of arrangements such as those that retain the child in the same school or community are preferable to others.
- **Child's Preference:** On some occasions depending on the child’s age and level of understanding, their preference will be considered.⁶

⁶ <https://supremoamicus.org/wp-content/uploads/2023/05/Sumit-Kumar.pdf>

LEGAL FRAMEWORK

Indian law grants custody rights primarily under two statutes:

1. **Hindu Minority and Guardianship Act, 1956:** This Act, read with the Guardian and Wards Act, of 1890, governs the custody of Hindu children. The welfare of the child is the paramount consideration in awarding custody.
2. **Guardian and Wards Act, 1890:** This Act applies to all other religions and empowers the court to appoint guardians for minor children, considering the child's welfare as the most important criterion.

JUDICIAL INTERPRETATION

The courts have consistently ruled that the child's welfare is of paramount importance in custody disputes. In **Githa Hariharan v. Reserve Bank of India (1999)**, the Supreme Court held that both the mother and father are natural guardians of the child, and custody should be decided based on the child's welfare rather than gender stereotypes.

In **Roxann Sharma v. Arun Sharma (2015)**, the Supreme Court held that the custody of a child below the age of five should generally be with the mother unless there are compelling reasons otherwise. This decision reaffirmed the principle that the welfare of the child is paramount, and the court must avoid being influenced by gender biases in custody decisions.⁷

VISITATION RIGHTS: ENSURING PARENTAL ACCESS

If there is an award of physical custody in favor of one parent, the other parent will generally be entitled to reasonable visitation. The rules of visitation rights are legally protected and well-performed so that the parent with whom the child is not being raised has a chance to see the child. However, the grandparent's visitation rights can be limited and their nature may also differ.

A. TYPES OF VISITATIONS

1. **Unsupervised Visitation:** Unsupervised visitation is the most frequent, most typical type of visitation where the non-residential parent is left alone with the child.

⁷ https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/supami27§ion=2

2. **Supervised Visitation:** Needed where the court feels that the child is in danger of suffering some harm when with the parent's unfettered supervision. Such circumstances may be attributed to previous abuse, alcohol, and drug dependency, or a psychological disorder.
3. **Virtual Visitation:** Technologically enabled visitation like the use of video and other related applications is now accepted more and more especially due to distance constraints to physical visitation.

B. MODIFYING VISITATION ORDERS

Visitation orders are not permanent and can be changed from time to time should circumstances change considerably. Hearing a change in a parent's residence, a change in the child's circumstances, or any other reason that may lead to questioning the welfare of the child may require a change.

LEGAL FRAMEWORK

The Guardian and Wards Act, of 1890, empowers courts to grant visitation rights to the non-custodial parent while ensuring that the child's welfare is not compromised. Courts generally encourage visitation arrangements that allow the child to spend adequate time with both parents.

JUDICIAL INTERPRETATION

In **Yashita Sahu v. State of Rajasthan (2020)**, the Supreme Court recognized the importance of visitation rights and emphasized that the non-custodial parent should be allowed to maintain regular contact with the child through physical meetings, phone calls, and video conferencing. The court also held that both parents must cooperate to facilitate visitation in the best interest of the child.

The Supreme Court in **Gaurav Nagpal v. Sumedha Nagpal (2008)** emphasized that visitation rights should be granted in a manner that does not disturb the child's routine and educational progress while also ensuring a continuing bond with the non-custodial parent.⁸

⁸http://www.iipabiharbranch.org/upload/BJPA_Vol.%20XIX%20No.%201%20JanJune%202022.pdf#page=200

CONCLUSION

Interpretation of laws after divorce especially on aspects such as alimony child custody and child visitation rights are sensitive and warrant the attention of the judiciary. Most are provided for by statute and case law while others are within the judge's discretion and all of these are in pursuit of justice and fairness. Advancements in family structures and relationships, and changes in culture and traditions will also be marked by the corresponding shift in law on these core areas of dissolution of marriage. Legal practitioners should be in a position to understand these changes to be in a position to advocate for clients and innocent children.

This article supports the necessity of the complex and reasonable approach to post-divorce legal problems because these problems cannot be solved using identical scripts for all the clients, as each client's situation is different.

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