A STUDY ON IMPACT OF CHILD BEHAVIOUR ON PARENTIAL SEPERATION

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**ABSTRACT:**

Divorce is a heart breaking experience that transforms the lives of parents and children. This devastating event affects parent’s emotional, psychological, and economical stability. It also impacts parent’s relationship with their offspring. Divorce modifies the family structure and the concept children had about their family and the world around them. These multiple changes attached to the family separation generate conflicting emotions in children that deeply affect their well-being. For some children of divorce, parental separation would become a destructive experience that would harm their life without end. For others, divorce would represent an avenue for growth, peace of mind, and an opportunity for more prosperous life conditions. At the end, what would make the difference is the approach that each individual takes after the parental separation. Although it would not be easy, with the commitment and understanding from parents and children the post divorce experience can be more manageable and productive. Post-divorce education, family support, and the assistance of professional support services can be valuable tools in helping parents and children in their adjustment process after divorce.

**INTRODUCTION**:

This paper evaluates the traumatic experience of the children of divorced parents. Initially, the pain experienced by children is distressing as they see the family disintegrating and sense vulnerability. Divorce, in any circumstance, rips a child apart, emotionally and psychologically, thwarting upon the child’s wellbeing. However, long term affects are determined by the behavior on the part of the parents which determines good adjustment for children going through divorce. A major impact of divorce is on the parent-child relationship. The quantity and quality of contact between children and non-custodial parents usually fathers-tend to decrease and the relationship with the custodial parent-usually the mother shows signs of tension. Further, divorce raises the needs of definitive articulation of child rights in the present context and how they must be represented in a divorce proceeding. Divorce is an extremely disturbing experience for all children depending upon the age or maturity level. In the present context, when the family in India is understood as the first line of defense, in an event of divorce, family serves as a source of stability. In light of this let us now observe the experience of children in the family while going through their parents’ divorce. Child’s Behavior Associated with Divorce is inarguably intensely distressing for children. Outside the realm of family, because of the stigmatization of divorce, the child faces a tough time attempting to be accepted by a conservative society. In socioeconomic attainments, children who experience their parents’ divorce have lower educational prospects than children from intact homes. Within the family, the obvious effects are on the physiological behavior of the child. There are also children who are left in a guilty conscious in the post-divorce period especially if they are a frequent witness to the parent’s feuds. They are left thinking what is that they did to cause the divorce. Moreover, in older age groups the assumption of hyper-maturity is also common as children often assume the tasks of adults to stabilize the custodial parent’s household. There is also a reciprocal dependency relationship between the child and the single parent which is in 90 percent of the cases the mother. This principally relates to a closer relationship between the parent and the child more as peers, both struggling to keep the family going. A lack of generational boundaries means a less hierarchical family and less authoritative generational distinctions. This is understood to inadequately socialize children or place them in a disadvantageous position when they find themselves in hierarchical organizations.

Child’s involvement in Parental Conflict In the light of effects of divorce of parents on their children, it is important to note that children are interested and affected parties in a divorce action though they are not directly involved in the divorce proceedings. When parents resort to divorce the rights of a child in the companionship and care of the parents inarguably becomes significant. The phrase ‘children’s rights’ is not definitive. These rights therefore can only be broadly enunciated with the help of the Constitution and the Convention on Rights of the Child relating to the present context. Although a child’s rights may be limited, they should not be ignored or eliminated since children are, in fact, persons under the Constitution wherein all fundamental rights are guaranteed to them. Article 39(f) of the Constitution lays down the responsibility on the State to frame a policy securing the children. The provisions under Article 15(3)23 and Article 51-A (k) also voice the rights of the child. Under the Convention on the Rights of the Child the primary duty is placed on the parents and then on the State. It is provided for the State parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination due to the status of parents or family.

This essentially means that a child of divorcees shall not be discriminated against in educational institutions etc. The most relevant Article which pertains to separated parents provides for the best interest of child to be taken into consideration while deciding the residence of the child. Further, both parents are sought to be responsible for the development of the child and for the necessary assistance. Thus, the broad category of rights ensures the welfare of the child during the parents’ divorce. Despite the strong infringement on a child’s interests implicit in divorce, the law currently does not consider children to be affected parties except in the issues regarding custody. Leaving apart the archaic legislations on personal laws which govern child custody, there is no special legislation to treat child rights on a larger platform and to accord them special status and thus to treat these children as different from others.

There are special set of child rights that come to the fore during divorce proceedings which must be looked into from a distinct point. These rights may include both parents to remain jointly and severally liable for care and maintenance of the child; to establish a stable home for the child close to the pre-divorce standard of living. The reform by the way of a specialized legislation to focus on the child rights in case of parental conflict is a proactive step towards looking into this special situation demanding a specific articulation of child rights. Further, the policy of mediation should be employed rather than the use of solicitors because mediation is seen as a more effective way of reducing hostility and encouraging cooperation. The difference simply lies in recognizing autonomous ‘child rights’ rather than just the ‘rights’ to be protected.

**Child Rights vs Parental Rights**

The concept of rights presents special difficulty because of the conflicting interests and rights of the parents and child. Parents are seen as protectors of their children’s interests but their interests may differ vastly from those of their children. We solicit the rights of individuals to emphasize their autonomous selves. Such emphasis may be obscure in the case of parent-child relationships. The problem that emerges in defining the parent and child rights separately is that of demarcating the self of parent and children. The idea of according equality rights in the specific context of Article 14 of the Constitution of India to children is then relatively confounding. The concept of equality that entails differential treatment to respond to different needs must especially be looked into with regards to children. Parental right to raise children is fundamental even though not expressly mentioned in the Constitution. This traditional approach that favors parental rather than children’s rights led the State to affirm the inherent parent’s patria jurisdiction of the State to protect the best interests of the child. When divorcing parents have agreed on a common course of action, there is little reason to believe that the judge is in a position to make a better decision. The parents are far more familiar with their children than any Court could hope to become. While it is possible that some parents would trade off reduced custody or visitation privileges for higher support payments or even a fit parent to not want custody at all, it is not clear how the Courts by forcing such a parent to take unwanted custody would be in the best interests of the child. Hence, only unusual custodial arrangements which pose imminent harm to the child should justify intervention. It is therefore, essential to analyze the aspect of child custody and how the children are affected largely through the custodial arrangements. Custody means the obligation to control, care for and supervise a child. Custodial parent may be the guardian for both the person and property of the minor and is often over-loaded with the child’s responsibility. There are also consequences of being the non-custodial parent, such as not being able to take the child out without the Court’s permission. The basic conflict in social principles in a custody case is whether to treat the child as a detached individual, apart from his/her blood-ties, or to emphasize the family unit from the standpoint of the parent. One of the natural rights incidentals to parenthood is the right to custody of the child recognized as a common law doctrine of ‘parental autonomy’ which the Courts do not easily discard. Also observe that the natural right of the parent to the care of a child prevails as against an entire stranger.

The law cannot prevent all damage to the child’s interests caused by divorce, since it cannot compel harmonious human relationship. It can, however, provide a means for reducing the damage by ensuring that the child’s interests are not neglected in divorce custody proceedings. While there has been no formal enunciation of factors ascertaining best interest, the Courts look at the following decisive factors:

• Child’s age, gender, mental and physical maturity and also of parents;

• Relationship and emotional ties between the parent and the child;

• Parent’s ability to provide the child-food, shelter, clothing, medical care, education; and

• Child’s established living pattern-school, home, community.

When the family unit has been broken in a divorce-custody dispute, neither parent can be presumed to be representative of the child nor the counsel for the parents represent both the child’s best interests and the interests of their clients when those interests are divergent. It has been argued, however, that the child’s interests are protected by the Court as preens patria. However, within the ‘rigors of adversary proceedings’, without separate representation for the child, the Court may neglect important interests of the child in both the outcome and the process of the proceeding. It is therefore important that a child be represented by a guardian ad item whose central responsibility is to assist the Court to determine the best interest of the children. It is only to ensure that the child’s interests receive priority in the midst of other competing interests because the judge who is restricted to the courtroom cannot on his own obtain the facts pertaining particularly to the child’s viewpoint. When applying the ‘best interest’ standard in contested custody proceedings, Courts must consider the question of how much weight to be given to the child’s own custodial preference. In practice, however the broad discretion given to the Courts often means that the child’s preferences may be ignored.56 Some Scholars have argued that the children in a divorce custody proceeding be given an absolute or presumptive choice of custodial parent

**Conclusion**

The analytical efforts made aforesaid conclude on the point that the child’s psychological balance is deeply affected through the marital disruption and adjustment for changes is affected by the way parents continue positive relationships with their children. Also, as regards the recorded rise in female headed households, the scholarly opinion largely asserts that fathers need to take up a larger responsibility and provide for timely maintenance. Apart from the developmental considerations due to family disruption, there are certain rights which need to be looked into from a distinct standpoint to cater to special situations the children are found in during the time of their parents’ divorce. As it has been argued, these rights though cannot be distinctively articulated from that of the parent’s rights, yet the child should be considered as an autonomous self to be accorded individual rights. The researcher also reiterates the need for enumerating the parameters to determine the best interests of the child rather than leaving the judiciary with absolute powers to determine the child’s welfare. From a legal standpoint, the researcher suggests that a single law governing child rights in divorce cases and also matters pertaining to custody and maintenance must come into place for an enhanced framework protecting the child’s future. To ensure that the child receives a stable and nurturing environment after the divorce of the parents, some scholars have opined that if a parent fails to promote the child’s interest at some threshold level of adequacy, a form of intervention, ranging from counseling to obtaining fine from the parent as well as loss of parental rights to the child, may be legitimate. The farfetched idea of a prenuptial agreement may also be worked out though it shall take a while for the Indian environment to be suited to the design.