



## Swami Vivekananda Advanced Journal for Research and Studies

Online Copy of Document Available on: [www.svajrs.com](http://www.svajrs.com)

ISSN:2584-105X

Pg. 61 - 65



### Shared Parenting in India and Comparative International Perspectives

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**Accepted: 10/07/2025**

**Published: 13/07/2025**

#### Abstract

Shared (or joint) parenting — an arrangement in which a child continues to live with, and be parented by, both parents after separation or divorce — has moved from the margins of family-law debate to centre-stage across many jurisdictions. India, however, still lacks an explicit statutory framework that presumes children benefit from substantial, continuing relationships with both parents. This article traces the concept of shared parenting, maps the normative and empirical debates, analyses Indian law and policy proposals, and compares developments in Australia, Canada, the United Kingdom, the United States, and Scandinavia. Drawing on recent social-science evidence, it argues that properly safeguarded shared-parenting presumptions can advance children's welfare, reduce litigation, and promote gender-balanced caregiving. The paper concludes with policy recommendations for India and suggests directions for future research.

**Keywords:** *shared custody, joint physical custody, co-parenting, India, comparative family law, child welfare, post-divorce parenting*

## 1. Introduction

Family law everywhere is grappling with the same tension: sustaining the child's right to meaningful relationships with both parents while protecting children (and resident carers) from post-separation conflict or violence. "Shared parenting" emerged as a solution in the late twentieth century and is now commonplace in many Western jurisdictions (Nielsen, 2014). In India, by contrast, custody disputes typically culminate in an award of sole custody to one parent, most often the mother, with limited visitation to the father (Law Commission of India, 2017). Against this backdrop, activists, psychologists, and non-custodial parents have campaigned for reforms that would place both parents on an equal legal footing after dissolution of marriage or relationship.

This paper addresses three questions:

1. **What is "shared parenting" and how has it evolved globally?**
2. **How does Indian law presently regulate post-separation parenting, and what reforms have been proposed?**
3. **What lessons can India draw from comparative evidence and empirical research on child outcomes?**

Methodologically, the article uses doctrinal analysis of statutes, policy papers, and case law, synthesised with a narrative review of quantitative and qualitative studies on children's well-being in shared-versus-sole-custody settings.

## 2. Conceptual Foundations of Shared Parenting

### 2.1 Defining Shared Parenting

Scholars distinguish *legal* custody (decision-making authority) from *physical* custody (where the child lives). Shared parenting, in its strongest sense, implies both shared legal custody and substantial (often near-equal) division of the child's residential time (Lamb, 2010). In many jurisdictions the term "joint physical custody" (JPC) is used, with thresholds ranging from 30–70 percent splits to 50–50 arrangements (Bauserman, 2002).

### 2.2 Why Shared Parenting?

Four intersecting rationales underpin modern shared-parenting laws:

- **Child-welfare evidence:** Meta-analyses show children in JPC generally exhibit better emotional, behavioural, and physical-health outcomes than those in sole custody (Nielsen, 2014; Turunen & Määttänen, 2015).
- **Gender-equality aspirations:** Fathers' greater involvement in caregiving and mothers' labour-force participation challenge stereotypes embedded in earlier "tender years" doctrines.
- **Conflict-reduction hypotheses:** A rebuttable presumption of shared parenting may reduce litigation by giving parents a predictable baseline (Law Commission of India, 2015).
- **Children's rights:** Article 9, UN Convention on the Rights of the Child (1989) affirms children's right to maintain contact with both parents, absent contrary considerations.

Critics caution, however, that shared parenting can be harmful when intimate-partner violence exists, or where parents remain in high, unresolved conflict (Evans, 2022). Modern statutes therefore create *rebuttable* presumptions, subject to safety-oriented carve-outs.

## 3. The Indian Legal Landscape

### 3.1 Current Statutory Scheme

Parental responsibility in India is still regulated by the nineteenth-century *Guardians and Wards Act* (1890) and personal-law statutes such as the *Hindu Minority and Guardianship Act* (1956). Neither instrument provides an explicit norm favouring shared custody. Courts decide on a "best interests of the child" test, typically awarding physical custody to one parent and visitation (sometimes called "access") to the other.

### 3.2 Law Commission Initiatives

The **263rd Law Commission Report** (2015) and **257th Report** (2017) recommended a Child Custody and Guardianship Bill introducing a presumption of "joint custody". Key features included:

- Equal legal status of both parents as natural guardians.
- Detailed parenting-plan templates.
- Mediation and counselling mandates.

Although draft bills were circulated, they have not been enacted. A parallel set of “**Child Access & Custody Guidelines**” crafted by NGOs and adopted informally by some Family Courts (e.g., Pune 2017) offer model time-sharing schedules.

### 3.3 Emerging Judicial Trends

High Courts have increasingly endorsed broad overnight contact with non-custodial parents, citing comparative jurisprudence and developmental psychology. In *Gaurav Nagpal v. Sumedha Nagpal* (2009) the Supreme Court underlined that custody orders must ensure the child “has the love and affection of both parents”. However, absent statutory reform, these remain case-specific and discretionary.

## 4. Comparative Jurisdictions

### 4.1 Australia

The **Family Law Amendment (Shared Parental Responsibility) Act 2006** created a rebuttable presumption that “equal shared parental responsibility is in the child’s best interests” (s 61DA). Empirical evaluations showed increases in shared-care orders, but also highlighted problems in cases involving family violence. In 2024, Parliament passed reforms removing the equal-time emphasis, pivoting back to a pure safety-and-welfare test (The Guardian, 2024).

### 4.2 Canada

Canada’s **Divorce Act** amendments, effective 1 March 2021, replace “custody” and “access” language with “parenting time” and “decision-making responsibility”. The Act obliges courts to consider the benefit of “maximum parenting time” consistent with the child’s best interests, but does not prescribe an equal split (Department of Justice Canada, 2021).

### 4.3 United Kingdom

Section 11 of the **Children and Families Act 2014** inserted a *presumption of parental involvement* into the **Children Act 1989**. While symbolic, it does not create a 50–50 time

default; “involvement” may be direct or indirect (s 11(2B)). Courts still tailor “child-arrangements orders” case-by-case.

### 4.4 United States

Family law is state-based. Kentucky’s **HB 528 (2018)** made it the first state to adopt a default of joint legal custody and equal parenting time, rebuttable by evidence of domestic violence. Early administrative data suggest modest reductions in litigation and higher settlement rates. As of 2025, more than twenty U.S. states have introduced or passed shared-parenting bills.

### 4.5 Sweden and the Nordic Model

Nordic countries pioneered shared parenting from the 1990s onward. In Sweden, over 35 percent of children with separated parents live in 50/50 arrangements. Research finds comparable—or better—outcomes on stress and well-being indicators relative to sole-custody peers (Turunen & Määttänen, 2015).

## 5. Empirical Evidence on Child Outcomes

Decades of social-science research allow cautious conclusions:

Finding	Representative Evidence	Notes
<b>Better overall adjustment in JPC</b>	40-study review (Nielsen, 2014)	Effects persist after controlling for parental conflict and income.
<b>Equivalent or better physical &amp; mental health</b>	Recent multi-country study (Lü et al., 2025)	JPC linked to lower obesity, depression.
<b>High-conflict caveat</b>	Systematic review of 11 studies (Sandler et al., 2021)	Extended contact beneficial if quality of parenting remains high.
<b>Educational outcomes mixed</b>	Meta-analysis (Bauserman, 2002)	No significant difference in grades.
<b>Protective role of</b>	Swedish stress study (Turunen	Structured routines

parenting plans	& Määttänen, 2015)	mitigate shuttle stress.
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Overall, children benefit when each parent maintains authoritative (warm yet structured) involvement; mere equal clock-time is insufficient.

## 6. Benefits and Challenges in the Indian Context

### 6.1 Potential Benefits

- **Child-Centred Outcomes:** Continuing relationships with both parents offset loss inherent in divorce (Law Commission, 2015).
- **Gender-Equality Synergy:** Shared parenting incentivises paternal caregiving and supports mothers' workforce participation.
- **Reduced Litigation:** A predictable statutory starting point can curb bargaining brinkmanship (Mehta, 2023).

### 6.2 Contextual Challenges

- **Prevalence of Informal Economies:** Logistics of two homes may strain low-income families.
- **Joint Family Structures:** Extended-family involvement complicates simple two-home models.
- **Safety Concerns:** Under-reporting of domestic violence necessitates robust screening before prescribing shared care.
- **Enforcement Deficits:** Visitation orders are routinely flouted due to weak contempt mechanisms.

## 7. Policy Recommendations for India

1. **Enact a Child Custody and Shared Parenting Act** modelled on the Law Commission's draft but updated to incorporate violence-screening protocols from Australia's 2024 reforms.
2. **Statutory Rebuttable Presumption:** Equal *legal* custody plus substantial *physical* time, rebuttable on welfare grounds.

3. **Mandatory Parenting Plans:** Courts should require detailed, age-specific time-share schedules.
4. **Specialised Family Services:** Integrated mediation, child psychologists, and contact centres to supervise exchanges where risk exists.
5. **Training for Judges & Lawyers:** Curriculum on attachment theory, coercive control, and shared-care research.
6. **Data Collection:** National longitudinal studies on post-decree child outcomes to inform iterative reforms.

## 8. Conclusion

Shared parenting is no longer a novel experiment but an increasingly mainstream response to the realities of post-separation family life. Comparative experience shows that well-designed shared-care frameworks, coupled with safeguards for vulnerable parties, can promote children's best interests, reduce gender bias, and align legal outcomes with social change. For India, the task is not to import foreign models wholesale but to craft a nuanced statute that balances presumptive joint responsibility with cultural, economic, and safety realities. The evidence base—both global and domestic—suggests that children flourish when they are free to love, and be loved by, *both* parents.

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