



Research Article

Legal Challenges in Enforcing Child Custody Orders Across Indian States

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Abstract

Child custody disputes are among the most sensitive areas of Indian family law, where the paramount consideration is the welfare and best interests of the child. While Indian courts have consistently emphasized this principle, the effective enforcement of custody orders remains a significant challenge, particularly in interstate disputes. This paper examines the legal and administrative barriers affecting the execution of child custody orders across Indian States. It analyzes the statutory framework, including the Guardians and Wards Act, 1890, the Hindu Minority and Guardianship Act, 1956, the Family Courts Act, and relevant constitutional provisions. The study highlights key issues such as jurisdictional conflicts, interstate parental relocation, procedural delays, police reluctance, lack of institutional coordination, and inconsistent administrative practices. It further discusses the psychological impact of prolonged custody litigation on children and evaluates the role of mediation and alternative dispute resolution mechanisms. Drawing on comparative international practices, the paper proposes reforms including a uniform interstate enforcement mechanism, centralized custody databases, improved judicial infrastructure, enhanced coordination among enforcement agencies, and expedited execution procedures. Strengthening these measures would promote consistent implementation of custody orders while safeguarding the welfare, stability, and rights of children across India.

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INTRODUCTION

Child custody issues are one of the most delicate and intricate aspects of Indian family law. Custody cases are not the same as any other civil action—they involve the welfare, emotional, educational, safety and future development of children. Although the best interests of the child have always been a guiding principle in determining custody disputes, it is a huge legal and administrative issue to enforce a custody order. A competent court's order of custody does not mean that everyone will abide by it. Usually, one parent will not give up custody, it is not possible to locate the child, one parent will move to another state or they will intentionally delay the implementation of court orders¹. This can result in continuous litigation, stress for the children and hardship for the parent who is the custodial parent.

The state of federalism in India also poses difficulties in enforcing custody orders. In family law, administration of justice is largely in the hands of the individual States, though central law does play an important part. The implementation of custody orders is inconsistent, due to the differences in law enforcement, court facilities, administrative coordination, and court procedure across states. Without a system in place to enforce a valid decree of custody in a state across the country, parents often face many legal and practical hurdles trying to enforce a valid custody decree issued in another state.

Interstate custody disputes are occurring more frequently due to the number of interstate moves, jobs, re-marriages and urbanization. When parents relocate for work, school or other reasons, it may lead to jurisdictional conflicts and enforcement problems between parent(s) and child(ren)². This means that the courts must address issues of territorial jurisdiction, transferring proceedings and the production of children, and the importance of not overlooking the child's welfare.

Legal Framework Governing Child Custody in India

The laws relating to child custody in India are based on various laws in accordance with the religion, the age of the child and the nature of the disputes. The Guardians and Wards Act, 1890 is the most important secular law relating to guardianship and custody. It does not require district courts to take into account the legal rights of the parents in determining the custody and it puts the interest of the minor child first in establishing a guardianship and determining the custody.

The Hindu Minority and Guardianship Act, 1956 extends to the situations of custody and also outlines the natural guardians and further stipulates the welfare of the child as paramount over the rights of its parents. Muslims have a right to their mother until the child is seven years old (according to the welfare principle

which means taking care of the child's best interests). The solution adopted by Christians and Parsis to settle their problems of custody is through the provisions of Indian Divorce Act 1869 and Parsi Marriage and Divorce Act, 1936, respectively.

The Paramount Welfare Principle

Welfare principle is the cornerstone of Indian child custody law. There has always been a strong focus on the physical, emotional, educational, moral, psychological and social welfare of the child in Indian courts' interpretation of the right to custody, rather than just the parents.

The Supreme Court has stated numerous times that a custody determination cannot be made through the imposition of rigid rules. Instead, the judge's decision must be based on individual circumstances, including the child's age, emotional needs, continuity of education, health, financial stability of parents, moral atmosphere and the child's desires (if any).

Interstate Jurisdictional Challenges

A major legal issue that can create problems is establishing jurisdiction between the states when parents are in different states. A minor's jurisdiction is normally over the minor, when the minor is "ordinarily resident" in the jurisdiction. When one parent moves with the child without the other parent's consent, determining the question of ordinary residence becomes a tricky one.

In some instances, parents will even intentionally relocate to other states just prior to or during proceedings for custody in order to "confuse" the jurisdictions. This could lead to many proceedings being filed in various courts and conflicting orders being issued by various courts, which may cause further litigation to take place.

Difficulties in Executing Custody Orders

Enforcing post-award rights to custody can sometimes be a huge burden. Courts have little executive means to ensure the execution of custody order. Unlike monetary decisions, which can be carried out by attachment of properties, the enforcement of custody decisions requires the active cooperation of the police, district administration and child welfare committees and local authorities.

Non-custodial parents could refuse to tell where the child is, move residence several times or purposely avoid police. In some instances, children are transferred from one State to another, with the result that they are very hard to find.

Variations in Administrative Efficiency Across States

The administration in India is multi-level, resulting in different levels of enforcement across different States. In a few states, there exists some relatively effective judicial and executive system in the state, relatively effective family court, and child protection system, and there exists some effective liaison between the judicial and executive system in the state. Some continue to report insufficient funding for child care, poorly equipped police departments and a lack of judges, as well as that of delayed police response.

¹ Kumar, S. And Mdu-Cpas, G., Shared Parenting and Joint Custody in Indian Family Law: A Doctrinal Critique of Legislative Silence and Judicial Activism. *Indian Journal of Integrated Research in Law Volume V Issue IV* | ISSN, 2583, P.0538.

² Kumar, S., Child Custody Battles: Balancing Parental Rights and Child Welfare.

Police Reluctance and Enforcement Limitations

Police officers are embedded at the centre of how people enforce custody orders, but they may not have the inclination to be involved in family issues³. Many officers think that the custody battle is a private family matter and not a judicial matter that is in dire need of enforcement.

Procedural Delays in Family Courts

A huge backlog of pending cases in Indian family courts. Custody issues may be considered in the immediate future as they directly impact the children, but there is a tendency to adjourn, formalities, overload judiciary which leads to delay in adjudication and execution.

Children's developmental needs change rapidly with age. When the initial custody order is issued, the facts may change as a result of delays. The Court will not automatically enforce custody orders, but will reconsider custody arrangements, adding to the confusion.

Misuse of Legal Remedies

There are those who are making a claim with the intention of setting up a delay in action. Often, they will be filing several applications to a number of courts in response to criminal charges against the custodial parent, false domestic violence claims, multiple modification applications when there are few, if any, changes and repeated review applications. The use of legally available remedies is fundamental to safeguarding individual rights, but is sometimes misused and hampers enforcement and judicial efficiency.

Constitutional Dimensions of Custody Enforcement

Articles of the Constitution of India which have a significant impact on enforcement of custody are 21, 32 and 226. The Supreme Court has given a broad interpretation to Article 21 which also includes children's developmental interests, and the family relationship and right to live with dignity.

High Courts are continually issuing writ petitions under Habeas Corpus jurisdiction in cases where the child is unlawfully detained by one of the parents, in violation of the judicial custody order. Habeas corpus is a speedy constitutional procedure for issuing a court order that the child be released immediately.

Role of the Supreme Court and High Courts

Custody jurisprudence has been given a boost by Indian constitutional courts. In addition, the Supreme Court has time and again held that Welfare is primary, irrespective of statutory guardianship or the parents' preference to it.

The higher courts have also in their various rulings further encouraged the pending of cases expeditiously by directing the parties to end their case at a speedy pace and also by advocating mediation wherever suitable. The State Supreme Court is very

likely to take jurisdiction of the case where the dispute is between the state and another state.

Interstate Child Relocation and Parental Abduction

Unauthorized interstate relocation is among the most challenging enforcement issues. Parent can immediately move child to another state without court's permission, thereby negating the existing custody plan.

While this may be a contempt of court offence or may be a criminal offence, under some conditions, it may be required to coordinate between several police jurisdictions to locate and recover the child.

Limited Institutional Coordination

To effectively enforce these laws, family court and district administration, police, child welfare committees, legal services authorities and counselors must work together. Unfortunately, there is still a lack of institutional coordination in many states⁴. There can be a lag time in manual communication between authorities as well. Final complete interstate adoption of digital records in family court has yet to be achieved. It can therefore be challenging for enforcement bodies to make sure that orders are properly adhered to on time.

Child welfare committees' worry is about neglected and abandoned children and lack of/insufficient institutional support in execution proceedings.

Psychological Impact on Children

If children are not turning out to be the same or better, they suffer as a result of enforcement delays. Children suffer from exposure to parental conflict, emotional manipulation, issues of loyalty, disruption of their education and mental stress as a result of prolonged litigation.

Children may refuse to cooperate with the changes in custodial arrangements as a result of being separated from one of their parents for an extended period or deliberate separation from the parent. Then it becomes the job of the courts to distinguish the child's tastes from the parents' tastes.

Alternative Dispute Resolution in Custody Matters

Mediation is a viable method for resolving child custody disputes without going through the conflict of a fight. The Family Courts Act Promotes conciliation prior to formal adjudication.

With mediation, it will be more likely that both parties can successfully follow the custody agreement, thus avoiding the enforcement issues. Parents who reach their own agreements for parenting plans are more likely to comply with the plan in the long term than parents whose plans are ordered by the court. But mediation will not work if one parent is always reluctant to participate or openly defies court orders. For these, effective enforcement is crucial.

³ Agarwal, S., 2025. The Effectiveness of ADR Methods in Resolving Child Custody Disputes: A Comprehensive Study. Available at SSRN 5195796.

⁴ Khan, M.N.I., 2025. Cross-border data privacy and legal support: a systematic review of international compliance standards and cyber law practices.

Comparative Perspective

There are a few countries that have national systems that help enforce child custody, through a specialized family enforcement agency⁵. In many countries electronic judicial databases are used, there are procedures for interstate enforcement, and emergency child recovery facilities and special child psychologists in family courts.

In the federal states, e.g., U.S., interstate custody arrangements are recognized and enforced via legislation that provides uniform statutes. The interstate enforcement system in India could be improved by similar legislations that can also do respect Constitutional Federalism.

Recommendations for Strengthening Enforcement

A comprehensive statutory framework that mandates cooperation in enforcing child custody orders between States is needed in India. In India there is a need of a proper statutory provision that can be made in the statutory level for the cooperation among the States in enforcing child custody order. The legislation should set forth a uniform process for executions throughout the country.

A centralised database of custody orders would be useful and accessible for all family courts, police and child welfare offices so that they could check and comply with custody orders. A protocol should be in place to ensure children will be recovered promptly in the event of a breach of custody between the various state police departments.

It is essential that the family courts have improved support, including more judges, improved IT systems, and regular training for judges. If expedited execution proceedings with a time limitation would be observed there would be less unnecessary delay.

CONCLUSION

Enforcement of child custody order is one of the most challenging issues in the administration of family law in the Indian States. In the courts of India, the main guiding principle in determining custody is the 'welfare approach', however, there are a number of challenges with its implementation in practice, such as jurisdictional conflicts, inefficiency in administration of the courts, delays in the court process, lack of institutional coordination, police opposition, and variations in the implementation at state level. These difficulties have been exacerbated by the federalism and through increased mobility of populations and family life.

Existing laws provide for enforcement through numerous mechanisms, including the Guardians and Wards Act, personal laws, Family Courts Act, constitutional remedies and contempt jurisdiction, but these are very diffuse and are unwieldy to use.

⁵ Korol, E. and Korol, S., 2025. AI, legal Pluralism, and property governance: comparative insights on rulemaking and enforcement from the US, UK, Ukraine, China, and India. *Journal of Business and Management Studies*, 7(4), pp.182-193.

Even though this jurisprudence of substantive custody rights has been picked up by judicial activism of Supreme Court and/or High Courts, if no measures are taken at the administrative level, there is no possibility of achieving effective implementation.

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