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# PUBLIC PERCEPTION OF CHILD CUSTODY LAWS IN INDIA: AN EMPIRICAL STUDY

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## ABSTRACT

Child custody disputes constitute one of the most sensitive, complex, and emotionally charged areas of family law, as they directly shape a child's future, emotional stability, and overall development. In the Indian context, custody determinations are legally governed by the overarching principle of the welfare and best interests of the child.<sup>1</sup> This principle acts as the polestar for judicial discretion, theoretically superseding the rigid claims of parents. However, public discourse, anecdotal evidence, and media narratives often suggest that custody outcomes disproportionately favour mothers, leading to widespread perceptions of systemic gender bias within the legal machinery.<sup>2</sup>

This study undertakes a comprehensive empirical examination of public perception regarding child custody laws in India, with a particular focus on awareness levels, societal attitudes, and beliefs relating to gender neutrality. Primary data was collected through a structured survey administered to respondents from varied demographic and educational backgrounds to capture a holistic societal view. The findings indicate a pronounced disconnect between the formal legal position and public understanding of custody principles. While Indian custody law remains child-centric and gender-neutral in theory, deeply embedded social norms surrounding caregiving roles continue to influence and often distort public perception.

The study further observes an emerging societal shift toward acceptance of joint custody and shared parenting arrangements, reflecting changing notions of parental responsibility and gender roles. The paper concludes by recommending reforms aimed at strengthening gender neutrality, enhancing legal awareness, institutionalising mediation, and aligning custody practices more closely with contemporary social realities.

**Keywords:** Child Custody, Family Law, Public Perception, Welfare of the Child, Empirical Study, India.

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<sup>1</sup> Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.

<sup>2</sup> 'Flavia Agnes', 'Family Law: Volume I', 2nd edn. (New Delhi: LexisNexis, 2011)

## **Introduction**

Child custody law occupies a crucial and often contentious position within the broader ambit of family law. It directly affects the emotional security, psychological well-being, and long-term development of children following the marital breakdown or parental separation. Unlike most civil disputes, which revolve around property rights or contractual obligations, custody cases involve a primary stakeholder—the child—who is often voiceless, unable to articulate their interests, or safeguard their own rights in the adversarial environment of a courtroom. Consequently, legal systems worldwide have evolved specialised principles that prioritise child welfare over the claims, rights, or entitlements of the parents.

In India, custody adjudication is firmly grounded in the principle that the “welfare of the child is paramount”.<sup>3</sup> This is not merely a judicial platitude but a well-established legal doctrine. Courts have repeatedly emphasised that custody is neither a matter of parental entitlement nor a mechanism to reward or penalise either parent based on their conduct during the marriage. Instead, it represents a fiduciary responsibility that must be exercised in a manner that best serves the child’s physical, emotional, educational, and psychological needs. This approach has been consistently reaffirmed by the Supreme Court and various High Courts through decades of jurisprudence.

Despite this settled legal position, public perception surrounding child custody laws often reflects scepticism, cynicism, and dissatisfaction. A widely held belief persists that courts tend to favour mothers, particularly in cases involving younger children.<sup>4</sup> Fathers are frequently perceived as being confined to limited visitation rights rather than recognised as equal caregivers. Such perceptions have been amplified by social media narratives, advocacy by fathers’ rights groups, and the gradual transformation of traditional family structures from joint families to nuclear units.<sup>5</sup>

Understanding public perception is essential because societal attitudes significantly influence litigation choices, the willingness of parties to settle disputes out of court, compliance with court orders, and the overall trust in the justice delivery system. Law functions within a social context, shaped by cultural norms and gender expectations. If the public perceives the law as

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<sup>3</sup> Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413

<sup>4</sup> Jijabai Vithalrao Ajgirkar v. Pathankhan Amiruddin Khan, (1969) 1 SCC 28

<sup>5</sup> Law Commission of India, “Report No. 257 on Review of Guardians and Wards Act, 1890” (2015)

biased, it erodes the legitimacy of judicial decisions, regardless of their legal soundness. In this backdrop, empirical research becomes a necessary tool to assess whether legal principles align with societal understanding and expectations. This study, therefore, seeks to empirically analyse public perception of child custody laws in India and to evaluate whether the existing legal framework adequately responds to evolving social realities and changing concepts of parenting.

### **Objectives of the Study**

The present study has been undertaken with a multi-faceted approach to understand the interplay between law and society. The specific objectives are:

1. To assess the level of public awareness regarding child custody laws in India: It is crucial to understand how much the average citizen knows about the statutes governing custody, such as the Guardians and Wards Act, 1890, and the Hindu Minority and Guardianship Act, 1956, as well as the judicial precedents that guide these matters.
2. To examine societal perceptions relating to gender bias in custody adjudication: The study aims to quantify and qualify the belief that the legal system favours one gender over the other and to identify the demographic factors that influence this belief.
3. To analyse public attitudes toward joint custody and shared parenting arrangements: As family dynamics evolve, joint custody is becoming a global norm. This study seeks to gauge the Indian public's readiness to accept such arrangements where both parents share responsibility.
4. To evaluate the extent to which public perception aligns with established legal principles: By comparing survey responses with actual legal provisions and landmark judgments, the study seeks to identify the "perception gap."
5. To suggest reforms aimed at strengthening a child-centric and gender-neutral custody framework: Based on the empirical data and comparative analysis, the study intends to propose legislative and procedural changes to bridge the gap between law and perception.

### **Review of Literature**

Academic discourse on child custody laws in India has largely concentrated on doctrinal

analysis and judicial interpretation, with less focus on empirical data regarding public perception. Scholars consistently highlight that custody decisions are guided by the welfare principle, as reiterated in landmark judgments such as *\*Gaurav Nagpal v. Sumedha Nagpal\** and *\*Nil Ratan Kundu v. Abhijit Kundu\**. These decisions clarify that custody is not an inherent right of either parent but a fiduciary obligation owed to the child.

Legal commentators such as Paras Diwan and Kailash Rai note a gradual shift in Indian custody jurisprudence away from rigid patriarchal notions of guardianship—where the father was the supreme guardian—toward a more child-focused approach.<sup>6</sup> However, they also point out that fragmented personal laws and statutory ambiguities often result in inconsistent application across cases, leading to confusion among the public.

Socio-legal scholars have drawn attention to the gap between legal standards and public understanding. Flavia Agnes argues that although custody laws are formally gender-neutral, their operation is deeply influenced by entrenched gender roles.<sup>7</sup> Cultural assumptions that associate caregiving primarily with motherhood continue to shape societal beliefs, irrespective of legal doctrine. She suggests that while the law has moved forward, society clings to traditional stereotypes, which colour the interpretation of court judgments.

Comparative legal studies reveal a global trend toward joint custody and shared parenting. Jurisdictions such as the United Kingdom and Australia have adopted frameworks that encourage continued involvement of both parents after separation. Empirical evidence from these jurisdictions suggests that such arrangements often promote better child welfare outcomes and reduce adversarial litigation. Indian scholars like Archana Parashar and Amrita Chachra cautiously support similar reforms, while emphasising the need for contextual adaptation to the unique socio-cultural fabric of India, where extended family support systems often play a critical role in child-rearing.<sup>8</sup> The present study contributes to this body of literature by empirically examining public attitudes toward custody laws and reform possibilities within the Indian socio-legal context.

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<sup>6</sup> Kailash Rai, *'Hindu Law'*, 3rd edn. (Allahabad: Central Law Agency, 2019)

<sup>7</sup> Flavia Agnes, *'Family Law: Volume I'*, 2nd edn. (New Delhi: LexisNexis, 2011)

<sup>8</sup> Archana Parashar, *'Women and Family Law Reform in India: Uniform Civil Code and Gender Equality'* (New Delhi: SAGE Publications, 1992)

## Legal Framework Governing Child Custody in India

India's child custody regime is characterised by legal pluralism. Custody matters are governed by personal laws applicable to different religious communities, supplemented by the Guardians and Wards Act, 1890 (GWA), which serves as a secular framework of general application.<sup>9</sup>

### Statutory Provisions

Under Hindu law, the "Hindu Minority and Guardianship Act, 1956" (HMGA) designates the father as the natural guardian of a minor child, followed by the mother.<sup>10</sup> Section 6(a) of the HMGA explicitly states that the natural guardian of a Hindu minor is the father, and the mother shall be the guardian only "after" the father.<sup>11</sup> This archaic provision has often been criticised for being patriarchal and inconsistent with the welfare principle. However, in practice, custody disputes are primarily adjudicated under the Guardians and Wards Act, 1890. Section 17 of the GWA mandates that courts must consider the welfare of the minor as the paramount consideration.<sup>12</sup> This judicial principle of "welfare of the child" often overrides the statutory preference for the father found in the HMGA.

For Muslims, custody is governed by personal law (Sharia), distinguishing between \*Hizanat\* (right of custody of the mother) and \*Wilayat\* (right of guardianship of the father). Generally, the mother has the right of custody of young children, while the father retains guardianship regarding property and education. The age at which a mother retains custody varies by school of Islamic law.<sup>13</sup>

### Judicial Interpretation and the "Paramount Welfare Doctrine"

Judicial interpretation has consistently reinforced the welfare-centric approach. Courts evaluate factors such as the child's age, emotional and educational needs, stability, moral upbringing, and the ability of each parent to provide a nurturing environment.

#### 1. **Roxann Sharma v. Arun Sharma (2015):** The Supreme Court reaffirmed that custody

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<sup>9</sup> 'The Guardian and Wards Act, 1890', Act No. 8 of 1890, India Code (1890)

<sup>10</sup> 'The Hindu Minority and Guardianship Act, 1956', Act No. 32 of 1956, India Code (1956)

<sup>11</sup> "Section 6", "The Hindu Minority and Guardianship Act, 1956."

<sup>12</sup> "Section 17", "The Guardian and Wards Act, 1890."

<sup>13</sup> Rashida Banu v. Ziauddin, AIR 1982 MP 141

determinations must prioritise the child's welfare over parental rights. The Court held that the term "welfare" must be given its widest meaning, and the court must act as the "parens patriae" (parent of the nation).<sup>14</sup>

2. **Gaurav Nagpal v. Sumedha Nagpal (2008):** This landmark judgment emphasised that the welfare of the child is not merely physical well-being but includes moral, educational, and emotional welfare. The Supreme Court observed that courts are not bound by the strict letter of personal law provisions regarding natural guardianship if they conflict with the child's welfare.<sup>15</sup>
3. **Vivek Singh v. Romani Singh (2017):** The Supreme Court emphasised that emotional bonding and psychological security are as significant as physical comfort. In this case, the Court highlighted that the father cannot be deprived of custody solely on the ground that the child is of a tender age if the father is better equipped to ensure the child's welfare.<sup>16</sup>
4. **Nil Ratan Kundu v. Abhijit Kundu (2008):** The Court laid down several factors to determine the welfare of the child, including the careful handling of the child's impressionable mind, the assurance of safety, and the development of a healthy personality.<sup>17</sup>

## Forms of Custody

Indian courts recognise different forms of custody to suit varying circumstances:

1. **Physical Custody:** The child lives with one parent, who is responsible for the day-to-day care.
2. **Legal Custody:** Grants a parent the right to make major decisions regarding the child's upbringing, education, and health, even if the child does not live with them.
3. **Joint Custody:** A concept gaining traction where both parents share legal and physical

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<sup>14</sup> Roxann Sharma v. Arun Sharma\*\*, (2015) 8 SCC 318.

<sup>15</sup> Gaurav Nagpal v. Sumedha Nagpal\*\*, (2009) 1 SCC 42.

<sup>16</sup> Vivek Singh v. Romani Singh\*\*, (2017) 3 SCC 231.

<sup>17</sup> Nil Ratan Kundu v. Abhijit Kundu\*\*, (2008) 9 SCC 413.

custody. While not explicitly defined in statutes, courts have occasionally passed orders allowing the child to spend alternating periods with both parents.

4. **Sole Custody:** Exclusive rights to one parent, generally when the other parent is deemed unfit due to abuse, neglect, or incapacity.

In recent years, there has been an observable judicial inclination toward joint custody and shared parenting, particularly in urban settings. However, the absence of explicit statutory recognition continues to create uncertainty, which in turn influences public perception.

### **Research Methodology.**

This study adopts an empirical research methodology based on primary data collected through a structured questionnaire. The study utilised a cross-sectional survey design to capture a snapshot of public opinion at a specific point in time.

### **Sample and Sampling Technique.**

The survey was administered to one hundred respondents (n = 100) representing diverse age groups, genders, educational qualifications, and professional backgrounds. A non-probability convenience sampling technique was employed, given the constraints of an academic study, but efforts were made to ensure heterogeneity in the sample. The inclusion of legal professionals, non-legal professionals, and students provided a comparative perspective on how legal training influences perception.

### **Data Collection Instrument.**

The questionnaire included both objective and opinion-based questions. It was designed to be neutral and avoid leading questions that could bias the responses. The focus areas were:

- **Awareness of custody laws:** Testing knowledge of the "welfare principle" and statutory provisions.
- **Perceptions of gender bias:** Asking respondents who they believe the courts favour.

- **Preferences regarding custodial arrangements:** Specific scenarios, such as the custody of infants (under 5 years).
- **Attitudes toward joint custody:** Gauging support for shared parenting.
- **Views on considering the child's opinion:** Assessing support for the child's voice in legal proceedings.

## **Data Analysis**

Secondary sources, including statutes, judicial decisions, Law Commission reports, and academic literature, were used to supplement and contextualise the empirical findings. Data analysis was conducted using descriptive statistical methods, with responses expressed in percentage terms. While inferential statistics (like correlation) were not the primary focus due to sample size, the cross-tabulation of demographics with responses provided qualitative insights.

## **Data Analysis and Interpretation**

### **1. Demographic Profile (Table 1)**

The demographic data reveal a balanced but skewed sample. Gender distribution was fairly even (52% Male, 46% Female). The age group was predominantly young, with 62% of respondents falling between 18 and 35 years. This suggests the findings heavily reflect the attitudes of the "millennial" and "Gen Z" generations, who are typically more exposed to global discourses on gender equality. Furthermore, 76% of respondents had postgraduate or doctoral/professional degrees, and 22% were from a legal background. This high level of education likely influenced the awareness levels, potentially making them higher than the general Indian population.

### **2. Awareness of Laws (Table 2)**

The survey results indicate that while a majority of respondents are aware that custody decisions are based on the welfare of the child (68%), the depth of understanding varies considerably.

**Gender Neutrality:** Only 42% believed that custody laws are gender-neutral, while 39% disagreed. This is a significant finding, indicating that nearly half the sampled population perceives a bias in the law itself, rather than just judicial discretion.

**Father's Standing:** 46% believed fathers have equal legal standing, but a close 36% disagreed. This dichotomy highlights the confusion between the statutory position (e.g., HMGA favouring father as natural guardian)[11] and the practical reality (courts often awarding custody to mothers of young children).

**Child's Opinion:** 71% correctly identified that the child's opinion is legally relevant, showing high awareness of the procedural aspects where older children are heard by the court.<sup>18</sup>

Respondents with higher educational or legal backgrounds demonstrated greater familiarity with custody principles, confirming the hypothesis that legal literacy is directly correlated with accurate perception.

### **3. Perception of Gender Bias (Table 3)**

A dominant perception emerging from the study is the belief that custody laws favour mothers. A staggering 58% of respondents felt courts favoured mothers, compared to only 6% who felt courts favoured fathers. Only 24% believed courts are gender-neutral. This perception was particularly strong among male respondents. This aligns with the narrative often seen in men's rights advocacy. However, many participants also recognised that courts consider multiple factors beyond gender, indicating a coexistence of generalised assumptions and nuanced understanding. The perception likely stems from the "tender years" tendency seen in lower courts, where mothers are often preferred for infants.

### **4. Attitudes Toward Joint Custody (Table 4)**

Notably, a majority of respondents expressed support for joint custody and shared parenting arrangements. 72% agreed that joint custody benefits child welfare, and 76% agreed that both parents should share parenting post-divorce. Furthermore, 69% supported explicit statutory recognition of joint custody. This is a progressive finding. It suggests that despite the perception

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<sup>18</sup> Smt. Surinder Kaur Sandhu v. Harbax Singh Sandhu\*\*, (1984) 3 SCC 434

of bias, the public \*desires\* a neutral, shared arrangement. There was also widespread agreement that the child's opinion should be considered, subject to age and maturity.

### 5. Preference for Young Children (Table 5)

When questioned about the custody of children below five years of age, a significant proportion preferred mothers (54%), citing emotional attachment and caregiving roles. However, 24% supported joint custody even for this age group. This preference reflects prevailing social norms rather than explicit legal requirements. At the same time, the fact that 18% preferred the father for young children shows that traditional norms are eroding. The preference for the mother in the 0-5 age group is often rationalised by the "breastfeeding argument" or the notion of primary attachment, but legal theory posits that this is not an absolute rule.<sup>19</sup>

### Discussion: The Law–Perception Gap in Child Custody

The findings reveal a clear gap between the normative legal framework and public perception. While custody law in India is formally gender-neutral and child-centric, societal beliefs continue to associate caregiving primarily with mothers. The 58% perception of maternal bias in courts is a powerful statistic. It suggests that the judiciary's adherence to the "welfare principle," which often results in mothers getting custody of young children due to established societal roles, is interpreted by the public as "judicial bias against fathers."

This perception gap has significant implications. It influences litigation strategies, contributing to adversarial approaches where fathers anticipate a loss and may resort to filing for custody only as a bargaining chip or to deny maintenance, rather than a genuine attempt at parenting. It contributes to distrust in judicial processes and may discourage fathers from seeking meaningful parenting roles. Simultaneously, mothers may experience heightened emotional and social pressure due to expectations of primary caregiving; if they lose custody, the social stigma can be devastating.

The growing acceptance of shared parenting reflects changing societal attitudes. The demographic skew toward younger respondents indicates a generational shift. Younger Indians, increasingly part of dual-income households, view parenting as a shared responsibility. They are more likely to perceive parenting as a skill rather than a gendered biological imperative.

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<sup>19</sup> "Dhanwanti Joshi v. Madhav Unde", (1998) 1 SCC 112

This suggests that legal reforms recognising joint custody may receive broader public support, particularly among urban and educated populations.

### **Comparative Perspective**

To address these issues, it is instructive to look at international models. In countries such as the United Kingdom and Australia, custody laws explicitly promote shared parental responsibility.

- United Kingdom: The “Children Act 1989” abolished the terminology of "custody" and "access," replacing it with "Residence Order" and "Contact Order." The Act stipulates that the court must not make an order unless it is better for the child than making no order. There is a strong emphasis on parental responsibility continuing even after separation.<sup>20</sup>
- Australia: The “Family Law Amendment (Shared Parental Responsibility) Act 2006” established a presumption of equal shared parental responsibility. This means courts must consider making an order for the child to spend equal time or substantial and significant time with both parents. The focus is on ensuring the child maintains a meaningful relationship with both parents, provided there is no risk of family violence.<sup>21</sup>

These systems emphasise mediation, cooperation, and structured parenting plans, thereby reducing adversarial litigation. While Indian socio-cultural conditions differ—often relying on grandparents for childcare—selective adaptation of such models could be beneficial. Specifically, introducing a statutory presumption of shared responsibility (rather than equal time) would signal legal neutrality and encourage parents to collaborate rather than fight.

### **Findings of the Study**

Based on the empirical data and analysis, the study draws the following conclusions:

1. Public awareness of custody laws remains limited and uneven. While the concept of "welfare" is known, the specifics of gender neutrality are misunderstood.

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<sup>20</sup> “The Children Act 1989”, c. 41 (United Kingdom) (Section 1(2A)).

<sup>21</sup> Family Law Amendment (Shared Parental Responsibility) Act 2006.

2. A strong perception of maternal bias persists despite legal neutrality. A majority of the public believes the system is rigged against fathers.
3. Social norms significantly shape beliefs about caregiving roles. The preference for mothers for young children (54%) shows that biology and tradition still dictate legal preferences in the public mind.
4. There is growing public support for joint custody and shared parenting. Over 70% of respondents support shared arrangements, indicating a readiness for legislative reform.
5. Respondents favour considering the child's opinion in custody decisions. There is a strong consensus that children should have a voice.

### **Suggestions and Reforms.**

To bridge the gap between law and perception and to improve child welfare outcomes, the study recommends:

1. **Enactment of a Uniform, Gender-Neutral Custody Law:** India currently has a patchwork of personal laws. A comprehensive legislation, perhaps an amendment to the Guardians and Wards Act or a new "Child Custody and Welfare Act," should be enacted. This law should explicitly state that neither parent has primacy based on gender.<sup>22</sup>
2. **Explicit Statutory Recognition of Joint Custody:** The law should define "joint custody" and provide guidelines for its implementation, including parenting plans. This would remove the current ambiguity that forces judges to improvise.
3. **Strengthening Mediation and Counselling Mechanisms:** Family courts should be equipped with mandatory mediation and counselling focused on co-parenting. Adversarial battles should be the last resort.
4. **Judicial Training:** Judges need continuous training in child psychology and contemporary parenting dynamics to move beyond traditional stereotypes regarding gender roles.

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<sup>22</sup> Law Commission of India, "Report No. 257 on Review of Guardians and Wards Act, 1890" (2015).

**5. Public Legal Awareness Initiatives:** The government and bar councils should launch campaigns to educate the public about the "welfare of the child" principle and the reality that courts do not automatically favour mothers. This can help manage expectations and reduce distrust.

### **Limitations and Future Scope**

The study is limited by its relatively small sample size (n=100) and geographic concentration (likely urban areas, given the demographics). The opinions of rural populations, where family structures differ vastly, are underrepresented. Furthermore, the high percentage of legally educated respondents may inflate the awareness metrics compared to the general populace.

Future research could incorporate larger, regionally diverse samples, including tier-2 and tier-3 cities and rural districts, to capture a more accurate picture of pan-India perception. Qualitative interviews with litigants involved in ongoing custody battles, as well as family court judges and lawyers, would provide deeper insights into the practical hurdles of shared parenting. Longitudinal studies examining post-custody outcomes—i.e., how children fare in joint custody vs. sole custody arrangements in India—would further enrich the discourse and provide evidence-based data for policymakers.

### **Conclusion**

This empirical study has examined public perception of child custody laws in India with the objective of assessing whether societal understanding aligns with the legal principle of the welfare of the child. While Indian family law and judicial precedent consistently emphasise that custody decisions are to be guided by the best interests of the child rather than parental entitlement or gender, the findings of this study reveal a significant perceptual gap among the public.

The survey data indicate that a majority of respondents continue to believe that custody decisions are inherently biased in favour of mothers. This perception persists despite repeated judicial clarification that neither parent possesses a superior right over the child. Such misconceptions appear to be rooted in traditional gender norms that associate caregiving exclusively with mothers, as well as limited public engagement with judicial reasoning and statutory interpretation. The demographic profile of the respondents suggests that while the

younger generation is more open to shared parenting, the shadow of traditional bias remains long.

At the same time, the study reveals an encouraging trend: increasing public acceptance of joint custody and shared parenting arrangements. Respondents, particularly from younger age groups, demonstrated a willingness to move beyond adversarial custody models and recognise the importance of the continued involvement of both parents in a child's upbringing. This shift mirrors international developments in family law and suggests that Indian custody jurisprudence may be socially prepared for progressive reforms.

However, the absence of clear legislative recognition of joint custody and structured parenting plans remains a limitation. Courts continue to exercise discretion on a case-by-case basis, which, while flexible, can lead to inconsistency and unpredictability. Strengthening mediation mechanisms, promoting parenting plans, and providing statutory guidance on shared parental responsibility would enhance both judicial efficiency and child welfare outcomes.

In conclusion, the study underscores the need to bridge the gap between legal doctrine and public perception. Legal literacy initiatives, transparent judicial communication, and legislative clarity are essential to ensure that custody law is not only fair in substance but also perceived as fair by society. A balanced, child-centric, and perception-sensitive custody framework is indispensable for reinforcing trust in India's family justice system. The law must lead the way in de-gendering parenting, ensuring that the child enjoys the love and support of both parents, regardless of marital status.