



Economic Consequences of Divorce on Children: A Comparative Historical and Institutional Analysis of European and Indian Legal Frameworks

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Abstract

Divorce is no longer a rare social event it is a demographic reality affecting millions of children worldwide. Yet the economic consequences it carries for children remain poorly understood across different legal and cultural settings. This paper examines how divorce reshapes children's financial lives, comparing the historical evolution and institutional design of European nations with India's personal law-based framework. Drawing on longitudinal socio-economic data, legislative history, and judicial decisions, the paper argues that while both systems nominally protect children's economic interests, the enforcement mechanisms, welfare state structures, and cultural assumptions embedded in each framework produce dramatically different outcomes in practice. The paper concludes with specific reform recommendations for India, drawing on the institutional lessons of European models.

Keywords: Divorce, Children, Economic Consequences, Child Maintenance, India, Europe, Comparative Family Law, Personal Laws, Welfare State

1. Introduction

When a marriage ends, the emotional toll on children tends to dominate public conversation. But there is another wound quieter and often more lasting that cuts through a child's life when parents separate: economic insecurity. The family unit that once pooled two incomes to sustain one household must now stretch those resources across two. Children sitting in the middle of that arithmetic often bear the greatest cost. This paper is not about whether divorce is good or bad. What it asks is simpler and more practical: once divorce happens, how does the law respond to protect children's economic interests? And more importantly does it actually work? To answer these questions, the paper compares two very different legal worlds. On one side stands Europe, a continent with formal welfare states, codified child maintenance obligations, and active enforcement mechanisms. On the other stands India, a country with plural personal laws rooted in religion, weak enforcement, and where millions of children in post-divorce households receive little or no formal financial support. Recent empirical evidence drives home the severity of these consequences. A 2025 study by Johnston, Jones, and Pope analysing over five million children across the United States found that parental divorce during early childhood (ages 0–5) was associated with adult earnings that were 9 to 13 per cent



lower at age 25, an effect comparable to losing one full year of education or spending childhood in a significantly poorer neighbourhood.¹ The same study found that teen birth rates increased by 63 per cent and child mortality by 35 to 55 per cent in the decade following parental divorce.¹ These are not marginal statistical effects. They represent the actual life trajectories of millions of children whose economic protection or lack thereof is fundamentally determined by law. The analysis proceeds as follows. Section 2 reviews research literature on divorce and children's economic outcomes. Section 3 traces the historical development of child maintenance frameworks in Europe. Section 4 examines India's legal landscape in detail. Section 5 offers a comparative institutional analysis. Section 6 identifies key reform pathways. Section 7 concludes.

2. What Research Tells Us About Divorce and Children's Economic Lives

The relationship between parental divorce and child poverty has been studied extensively, though most research originates in Europe and North America. The findings are consistent: children whose parents divorce face elevated risks of poverty, reduced educational attainment, and long-term income disadvantage compared to children raised in intact families.

2.1 Income Loss and Gendered Asymmetry

A foundational insight from this literature is that the economic damage from divorce is not equally distributed by gender. Women who in most societies retain primary custody of children bear a sharper income decline than men following divorce. Data from Germany's Socio-Economic Panel Study (SOEP), which tracked over 18,000 individuals across 1984 to 2015, found that women's household incomes one year after divorce amounted to only two-thirds of those of their former husbands.² This income gap directly translates into higher poverty risk for children who live with custodial mothers. Research using fixed effects models on large national datasets confirms that parental divorce and parental death produce overlapping negative outcomes for children across educational, economic, and social dimensions though effect sizes vary considerably depending on pre-divorce family conditions and available public support.³ Children from higher socio-economic backgrounds before divorce tend to recover more quickly because their custodial parent retains greater earning capacity and access to social capital.⁴

2.2 Educational Consequences and Life Outcomes

Parental divorce reduces children's educational attainment through at least two causal pathways. The first is economic: falling household income restricts access to educational resources, private tutoring, and enrichment activities. The second is indirect: residential instability, school changes, and parental stress following divorce disrupt children's learning environment.⁵ A causal mediation analysis using linked panel data found that economic resource loss and household instability together accounted for a substantial share of the educational gap between children of divorced and non-divorced parents.⁵ For Europe specifically, data from Denmark show that the timing of parental divorce matters: children whose parents divorce during early childhood suffer stronger negative effects on educational performance than those who experience parental separation during adolescence.⁶ This timing sensitivity reinforces the importance of early institutional intervention particularly child

maintenance enforcement to cushion the economic shock at the most developmentally vulnerable stage.

2.3 Long-Term Income Effects of Divorce Legalization

A striking natural experiment from European legal history confirms these patterns. Exploiting the different timing of divorce legalization across European countries, González and Viitanen compared the adult outcomes of cohorts raised when divorce was prohibited against cohorts raised after its legalization in the same country.⁷ The findings were striking: women who grew up under a legal divorce regime had lower earnings and worse health as adults compared to women raised when divorce was banned.⁷ This counterintuitive result reflects the fact that without institutional support maintenance enforcement, welfare state guarantees divorce legalization alone shifts economic risk onto children and custodial mothers without providing the mechanisms needed to absorb it.

2.4 Single-Parent Families and Child Poverty

At the macro level, children in single-parent households face consistently higher poverty rates than those in two-parent families across Europe. A study of all 28 EU Member States over 2008–2018 found a strong inverse relationship between social expenditure on families and child poverty rates, demonstrating that state investment in child welfare measurably reduces poverty outcomes.⁸ In several Eastern European countries, the child poverty rate among single-parent households exceeds 34 per cent, compared to around 6 per cent for two-parent single-child families.⁹ Research on single-parent families in Southern Europe Italy and Spain shows that mothers without higher education face compound disadvantage: restricted earning capacity, limited access to childcare, and inadequate maintenance enforcement combine to push their children into material deprivation.¹⁰ This mirrors conditions common across India's post-divorce landscape, where educational limitations and weak enforcement similarly concentrate economic risk in custodial-mother households.

3. Historical Evolution of Child Maintenance Law in Europe

3.1 From Moral Duty to Legal Right

Europe's approach to child maintenance did not begin as a legal entitlement. For most of the nineteenth century, a father's obligation to support his children after marital breakdown was considered a moral duty rooted in natural law, not a justiciable right that courts would actively enforce. Courts were reluctant to intervene in domestic financial arrangements, treating them as private family matters.¹¹ The shift came gradually, driven by two reinforcing forces: rising divorce rates in industrializing societies, and the emergence of the welfare state. As wage economies replaced subsistence agriculture, a father's failure to maintain children became a visible public problem children appeared in poorhouses and charitable institutions rather than merely a private misfortune.¹¹ This visibility pushed governments toward formalization. By the early twentieth century, most Western European countries had incorporated maintenance obligations into their civil codes. Germany's *Bürgerliches Gesetzbuch* (BGB), enacted in 1900, codified maintenance as a formal parental legal duty. The Scandinavian countries went further, conceptualizing child welfare as a matter of social policy rather than purely private law a

distinction that would prove enormously consequential in the following century.

3.2 The Welfare State Turn: Post-War Institutional Design

The post-World War II expansion of the welfare state in Western Europe transformed child maintenance from a bilateral private arrangement into a multi-actor institutional system. Governments created specialized agencies, advance payment schemes, and enforcement mechanisms that backed paper obligations with real consequences. Germany's *Unterhaltsvorschussgesetz* (Maintenance Advance Act) provides an instructive example. Under this law, the state advances child maintenance payments when the non-custodial parent defaults, and then separately pursues recovery from that parent.¹¹ Sweden went furthest: by 2004, 100 per cent of single parents in Sweden were receiving child maintenance payments, because the Swedish state guaranteed payment regardless of the non-custodial parent's compliance and pursued reimbursement independently.¹¹ This approach effectively decoupled a child's financial security from the non-custodial parent's willingness to pay. In stark contrast, the United Kingdom retained a more residual welfare model, treating maintenance as a private family obligation with the state stepping in only as a last resort. The result was predictable: only approximately 22 per cent of single parents in the UK received any child maintenance in the early 2000s.¹¹ This dramatic contrast between the Scandinavian and Anglo-liberal welfare models reveals the central finding of this institutional comparison: the same legal obligation both parents must support their child produces radically different outcomes depending entirely on what institutional infrastructure backs it up. Job insecurity and unstable employment among single parents amplify these differences. Research across European countries finds that cash family benefits and gender equality in the labour market measurably reduce child deprivation in single-parent families but only where both are present simultaneously.¹² Where these supports are absent, single parents and their children remain economically exposed regardless of what the law formally provides.

3.3 Child-Centred Divorce Law Reform

The late twentieth century brought a further wave of reform in European family law, this time centred on formalizing children's interests within divorce proceedings. Earlier frameworks had focused on spousal rights, treating children almost as secondary consequences of the marriage's dissolution. The shift toward child-centred divorce law anchored in the principle of the "best interests of the child" drawn from the United Nations Convention on the Rights of the Child, 1989 reshaped how courts handled custody and maintenance decisions throughout the continent.¹³ In Germany, maintenance law reforms in the early 2000s sought to push custodial parents predominantly mothers toward financial independence by limiting spousal support entitlements and expanding public childcare provision.² These reforms were driven by the recognition that the male breadwinner model had created structural dependency that made economic recovery after divorce particularly difficult for women and their children.² Most EU Member States now have legislation making child maintenance a formal legal obligation enforced through mechanisms ranging from salary deductions and bank account seizures to, in some countries, criminal imprisonment for non-payment.¹¹ The EU additionally created a framework for judicial cooperation between Member States Council Regulation (EC) No 4/2009 to enforce maintenance orders across borders, addressing the problem of parents who relocate abroad to evade their obligations.¹⁴



4. India's Legal Framework for Child Maintenance After Divorce

4.1 The Plural Law Problem

India presents a fundamentally different institutional landscape from Europe. Unlike Europe, where family law is broadly unified under secular civil codes, India operates through a system of personal laws based on religious identity. Hindu families are governed primarily by the Hindu Marriage Act, 1955, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956.¹⁵¹⁶¹⁷ Muslim families fall under Muslim Personal Law as applied through the *Shariat* Application Act, 1937. Christians are governed by the Indian Divorce Act, 1869. Parsis by the Parsi Marriage and Divorce Act, 1936. This fragmentation means that a child's entitlement to post-divorce maintenance depends partly on the religion of their parents an outcome that sits uneasily alongside the constitutional guarantees of equality under Articles 14 and 15 of the Constitution of India, 1950. There is, however, a secular provision that cuts across all religious communities: Section 125 of the Code of Criminal Procedure, 1973, now replicated in Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023.¹⁸¹⁹ This provision allows any child regardless of religion to claim maintenance from a parent who has sufficient means but neglects or refuses to maintain them. Courts have repeatedly confirmed that this provision operates in parallel with personal law remedies and does not displace them. The Supreme Court articulated this position most clearly in *Captain Ramesh Chandra Kaushal v Veena Kaushal & Ors* (1978), holding that Section 125 CrPC is "a measure of social justice, specially enacted to protect women and children" and falls within the "constitutional sweep of Article 15(3), reinforced by Article 39."²⁰

4.2 Hindu Law: The Framework of Shared Obligation

Under the Hindu Adoptions and Maintenance Act, 1956, both parents carry a maintenance obligation toward their minor children.¹⁷ Indian courts have been consistent: the financial capacity of the custodial parent does not extinguish the non-custodial father's obligation to contribute. An affluent custodial mother does not relieve the father of his duty; courts may require both parents to contribute proportionally to their respective incomes. The Hindu Minority and Guardianship Act, 1956 establishes the father as the natural guardian of a Hindu minor, with the mother assuming guardianship in his absence or incapacity.¹⁶ This guardianship framework interacts with maintenance in important ways. Courts have held that a father cannot condition maintenance payments on the child residing with him the obligation exists independently of custody arrangements. On the standard of maintenance, Indian courts have progressively held that awards must reflect the standard of living the child would have enjoyed had the marriage continued, not merely a subsistence-level sum. This child-centred standard, while in principle generous, remains practically limited by the evidentiary difficulties of establishing the non-custodial parent's actual income before overburdened family courts.²¹

4.3 Muslim Law: The Duration Problem

Under classical Muslim personal law, a father's obligation to maintain his children is recognized and clear. What has been deeply contested is the scope and duration of that obligation after divorce. The Muslim Women (Protection of Rights on Divorce) Act, 1986 enacted in the political aftermath of the *Shah Bano* case provides a divorced Muslim woman

the right to claim maintenance for her minor children for two years from the children's date of birth.²² This two-year limitation is significantly more restrictive than what Hindu or secular law provides, and it has been a persistent subject of criticism from child welfare advocates and constitutional scholars alike. The practical consequence is that Muslim children must frequently pursue maintenance through the secular CrPC route, because the personal law provision is temporally limited and structured primarily around the mother's claim rather than the child's independent entitlement. In *Danial Latifi v Union of India* (2001) 7 SCC 740, the Supreme Court upheld the 1986 Act but interpreted it expansively to include a reasonable provision for the child's future well-being a decision that partially addressed the limitation, though the fundamental tension between personal law obligations and constitutional child rights remains unresolved.²³

4.4 The Judicial Expansion of Children's Maintenance Rights

India's maintenance jurisprudence has developed substantially through judge-made law rather than legislative reform. In *Vimala (K) v Veeraswamy (K)* (1991) 2 SCC 375, the Supreme Court clarified that Section 125 CrPC establishes an enforceable right in the child against any person with sufficient means who neglects to maintain them.²⁴ More recently, in *Rajnesh v Neha* (2021) 2 SCC 324, the Supreme Court issued comprehensive guidelines on maintenance including mandatory financial disclosure, computation methodology, and enforcement through execution proceedings an attempt to address the chronic problem of underreporting of income and non-compliance with maintenance orders.²⁵ In January 2025, the Supreme Court in a significant ruling reaffirmed the social-welfare character of Section 125 CrPC, holding that a husband cannot evade maintenance obligations on technical grounds and emphasizing the broad constitutional purpose of the provision to prevent destitution among women and children.²⁶

4.5 Socio-Legal Dimensions: Custody, Gender, and Special Needs Children

The socio-legal landscape of post-divorce child welfare in India is further complicated by gendered assumptions embedded in guardianship law. The Guardians and Wards Act, 1890 still operative for non-Hindu communities was enacted before the concept of child rights had any meaningful presence in law, and its formulations reflect the family structures of British India rather than contemporary constitutional values.²³ A 2025 socio-legal analysis of custody and child welfare in India traces the persistence of these patriarchal presumptions from the colonial era through contemporary statutes, noting that the best interests of the child standard is applied inconsistently across different courts and jurisdictions.²¹

A particularly underexplored dimension concerns children with special needs. Recent scholarship documents that children with physical, intellectual, or developmental disabilities face compound vulnerabilities after parental divorce: disrupted caregiving, financial insecurity, and institutional neglect intersect with disability-related needs that standard maintenance frameworks fail to address.²⁷ The Rights of Persons with Disabilities Act, 2016 establishes strong protective obligations in principle, but its integration with family law custody and maintenance frameworks remains minimal and inconsistent.^{27,28} Mothers who serve as primary caregivers for children with disabilities face the heaviest combined burden economic strain, full-time caregiving, and social stigma in the post-divorce period, with little specific legal protection.

5. Comparative Institutional Analysis: Structures, Enforcement, and Outcomes

5.1 Architecture of Obligation

Both European and Indian legal systems place formal maintenance obligations on non-custodial parents after divorce. This is the point of convergence. The point of deep divergence lies in what happens when those obligations go unmet.

Dimension	European Framework	Indian Framework
Legal basis	Secular civil codes (largely unified)	Religion-based personal laws CrPC s 125
Welfare state role	Active: state advances payments, pursues recovery	Minimal: no state guarantee; family bears the burden
Enforcement mechanisms	Salary deductions, asset seizure, criminal liability	Court execution orders; largely discretionary
Child poverty safety net	Universal child benefits, housing allowances, childcare	Limited; family-based; no categorical single-parent benefit
Payment rates	64–100% in Scandinavia; 22% in UK	No systematic national data; widely believed low
Cross-border enforcement	Council Regulation (EC) No 4/2009	No comparable mechanism
Child-centred standard	UNCRC integrated into domestic law	Best interests doctrine applied by courts; not uniformly codified

The welfare state dimension is the most consequential structural difference. Where Sweden guarantees maintenance payments and recovers from defaulting parents afterward, India leaves custodial parents who are already economically disadvantaged to initiate and repeatedly pursue enforcement through an overburdened court system.¹¹ A maintenance order in India that goes unpaid requires fresh proceedings for execution; the defaulting parent faces no automatic wage garnishment, no administrative penalty, and in practice, limited risk of imprisonment.

5.2 The Poverty Risk for Children

Given these structural differences, it is unsurprising that children in post-divorce single-parent households in India face acute economic vulnerability. The household income of a custodial mother typically drops sharply following divorce not only because of the loss of the husband's income, but also because Indian women continue to face substantially lower labour force participation rates and a significant gender wage gap. Research across European countries finds that gender equality in the labour market and family cash benefits significantly reduce child deprivation but only where both are present simultaneously.¹² India currently lacks both comprehensive labour market equality for women and any state-guaranteed maintenance advance scheme. The welfare state redistribution literature from the EU confirms that poor families particularly single-parent ones benefit measurably from targeted anti-poverty measures, but that family-related financial obligations often exceed available benefits, leaving net poverty risk still elevated for single parents across much of Europe.²⁹ In India, where neither targeted benefits nor reliable maintenance enforcement exist, this net position is

substantially worse.

5.3 Historical Divergence: When Did the Paths Separate?

The historical divergence between European and Indian approaches can be traced to two critical junctures. The first was the post-World War II construction of welfare states in Western Europe. The deliberate decision to treat child welfare as a public responsibility not merely a private family matter created institutional infrastructure that India did not build at independence or afterward.¹¹ India's social policy in the 1950s and 1960s invested in poverty reduction through land reform, food subsidies, and employment guarantee schemes, but did not develop a dedicated child maintenance support system paralleling the welfare state model.

The second juncture was legal unification versus legal pluralism. Europe moved, over the twentieth century, toward unified secular family law, allowing systematic policy design a single maintenance formula, a single enforcement agency, coherent appellate structures. India, out of genuine respect for religious diversity and intense political pressures surrounding personal law reform, retained plural personal laws. The fragmentation this produces is not merely administrative inconvenience it creates legally constructed differences in the rights children can access depending solely on the religion of their parents, a position difficult to reconcile with constitutional equality principles.

5.4 What Each System Can Learn

The comparative analysis does not run in only one direction. Europe's welfare state model with state-backed maintenance guarantees that decouple the child's entitlement from the non-custodial parent's compliance is the clearest institutional lesson for India. Countries where children fare best after parental divorce are not necessarily those with the most sophisticated maintenance laws, but those where institutional design makes enforcement automatic and reliable.¹¹ However, European systems carry their own unresolved tensions. Reforms in Germany that pushed custodial mothers into the labour market by limiting spousal support and expanding childcare assumed a more rapid recovery of earning capacity than women actually achieved, because the gender wage gap and part-time employment penalties persisted.² Long-term panel data shows that women's incomes after divorce in Germany recover only partially, and chronic poverty among single-parent households remains a concern even within a robust welfare state.³⁰ India's multi-forum approach to maintenance allowing claims under personal law, Section 125 CrPC, constitutional writ jurisdiction, and family courts simultaneously provides institutional redundancy that protects against systemic failure in any single channel. While inefficient, this plurality of forums is not without value in a country where court systems vary enormously in responsiveness and capacity across jurisdictions.²¹

6. Reform Pathways

6.1 For India

Several concrete reform priorities emerge from this analysis:



- **A unified, religion-neutral Child Maintenance Act**, applying equally to all children regardless of parental religion, would directly address the most fundamental source of inequality in the current framework. A parallel secular code focused specifically on children's economic rights would be constitutionally sustainable and practically meaningful without requiring abolition of personal laws across the board.
- **A state-backed maintenance advance scheme**, modelled on Germany's *Unterhaltsvorschussgesetz*, would protect children from a non-complying parent while preserving the state's right to recover from that parent. The state absorbs short-term risk; the child's welfare is not held hostage to a private individual's willingness to comply.
- **Mandatory income and asset disclosure** in all maintenance proceedings, coupled with administrative wage garnishment orders and bank attachment provisions, would reduce the court burden and dramatically improve compliance. The Supreme Court's guidelines in *Rajnish v Neha* (2021) 2 SCC 324 moved in this direction; legislative codification of those guidelines is the logical next step.²⁵
- **Disability-sensitive custody and maintenance guidelines**, incorporating the framework of the Rights of Persons with Disabilities Act, 2016 into family court adjudication, to address the specific and currently neglected needs of children with disabilities in post-divorce families.²⁷²⁸
- **Integration of child maintenance into existing child welfare schemes** particularly the Integrated Child Development Services (ICDS) framework to create a welfare floor for children in post-divorce households that currently does not exist in Indian law.

6.2 For Europe

- The persistent **gender wage gap and childcare deficit** remain the most important unfinished structural tasks in European family policy. Even the most sophisticated maintenance enforcement system cannot fully compensate for labour market disadvantages that concentrate economic risk in custodial-mother households.²
- **Cross-border enforcement** under Council Regulation (EC) No 4/2009 needs deeper cooperation mechanisms and faster judicial processing to address the growing phenomenon of parents relocating to evade obligations a problem likely to grow as intra-EU mobility increases.¹⁴
- Eastern European EU Member States with high single-parent poverty rates require targeted welfare interventions beyond what the general EU framework currently provides. Research confirms that social expenditure specifically directed at families is the most measurable lever for reducing child poverty rates at the national level.⁸³¹

7. Conclusion

The economic consequences of divorce on children are shaped not only by family dynamics but by the legal and institutional frameworks that govern the aftermath. Europe's long



historical evolution from moral duty to codified legal right to state-guaranteed payment demonstrates that robust institutional infrastructure is what converts a paper obligation into actual protection. India's framework, despite its formal provisions and a genuinely progressive body of judge-made law, has not yet built that infrastructure, leaving millions of children in post-divorce households economically exposed.

The key insight of this comparative analysis is fundamental: legal reform alone is not sufficient. The most important contribution that comparative legal scholarship can make to Indian family law reform is this that child welfare is a public responsibility, not merely a private one, and that the state must be willing to guarantee children's economic security independent of whether any individual parent chooses to comply with a court order. Building that institutional guarantee is, ultimately, the task that remains incomplete.

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