CHAPTER X

FAMILY: THE SEAT OF CHILD RIGHTS

Family constitutes a unique socio-economic-juridical unit which is a community of love and solidarity. It is uniquely knit to teach and transmit cultural, ethical and social values essential for the overall development of an individual. It is a place where different generations may come together where they mutually help to grow in tolerance, wisdom and harmony of individual rights.

The link of the family to society has a complementary function with political, economic, social and cultural advancements in the society. Thus, a study about the role of family in protecting the human rights of child becomes important and the same can be done by evaluating the following aspects.

1. The concept of family and its importance.

2. Balancing the rights of the child in the family environment.

3. The Responsibilities of the State towards family.

Concept of family

Although the family is still acknowledged as the basic unit of the society\textsuperscript{1}, it is felt that not all forms of family are conducive to the protection of the best interests of children.

\textsuperscript{1} See for a detailed study on definition of family, Chris Barton, Gillian Douglas, \textit{Law & Parenthood}, Butterworths, London, 1995 at pp.8-18: The authors have highlighted the definition of Jessel, MR, who has defined family in a sense that the word includes children only; thus when a man speaks about his wife and family he means his wife and children.
Nuclear Family

A nuclear family is a family group consisting of only a father and mother and their children, who share living quarters. This can be contrasted with an extended family. It is a version of conjugal family which includes only the husband, the wife, and unmarried children who are not of age.

Nuclear families can be of any size, as long as these are only of children and two parents. Nuclear families meet their individual members’ basic needs because available resources are divided among only a few individuals. Otherwise the family would be known as an extended family.

Extended Family

It means a family consisting of the nuclear family and their blood relatives. The term extended family has several distinct meanings. First, it is used synonymously with consanguineous family or joint family. A family consisting of parents and children, along with grandparents, grandchildren, aunts or uncles etc is also termed as an extended family. To be more precise, it is a family that includes three or more generations. Normally, that would include grandparents, their sons or daughters, and their children, as opposed to a "nuclear family," which is only a married couple and their offspring.

It is a welcoming attitude of the US Supreme Court that even extended family members who act like parents, also have constitutionally recognized rights, though they are less firmly rooted in law. When state officials attempt to interfere with the relationship, the court tried to regard the extended family members as the equivalent of parents. It was held in Moore v. City of East Cleveland

“…Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of

2 htp://wordnetweb.princeton.edu/perl/webwn visited on 01-04-2010
3 en.wikipedia.org/wiki/Extended family
4 431 US 494 (1977),pp.503-504
uncles, aunts, cousins, and especially grand parents sharing a house hold along with parents and children has roots equally venerable and equally deserving of constitutional recognition”.

**Single-Parent Family(Lone Parent, Sole Parent or Solo Parent Family)**

Here, the sole parent cares for one or more children without the assistance of the other biological parent in the home. "Single Parenthood" may vary according to the local laws of different nations or regions. It may occur for a variety of reasons. It could be opted for by the parent (as in divorce, adoption, artificial insemination, surrogate motherhood, or extramarital pregnancy), or be the result of an unforeseeable occurrence (such as a death, child abuse, child neglect or abandonment by the absentee biological parent). It is a term that is mostly used to suggest that one parent has the most of the day-to-day responsibility in the raising of the child or children. In western society, in general, following separation, a child will end up with a ‘primary carer’ (the main carer, eg in UK over 90% of the time the mother) and a ‘secondary carer’, normally the father. In the UK, and U.S.A for example, it is widely practiced, that it is in the 'children's best interests' for the children to have both parents, encourage each parent to respect the other parent in the presence of children and to provide financial help through child support for the parent that carried the most responsibility when parents separate. Any benefits, tax credits and related government-sponsored assistance are given to the primary carer if the secondary parent does not have the ability to financially care for their child.

A consanguineal family consists of a parent and his or her children, and other people. A matrilocal family consists of a mother and her children. Generally, these children are her biological offspring, although adoption of children is a practice in nearly every society. This kind of family is common where women have the resources to rear their children by themselves, or where men are more mobile than women.
Cohabitation

Concept of family has been changed in the last several decades. Instead of getting married, many people are living together or 'cohabiting'. Some of these cohabitating couples eventually get married. Many of them withdraw in the course of time. A few remain as cohabitants for all the time.

Children born to cohabiting parents are more likely to experience a series of disruptions in their family life, which can have negative consequences for their emotional and educational development. Children living with cohabiting couples do less well at school and are more likely to suffer from emotional problems than children of married couples. Financially, children of cohabitants are less well off than children whose parents are married. Married fathers are more likely than cohabiting fathers to support their children. Even after the break-up of their parents' relationship, children of divorced parents are more likely than children of cohabiting couples who have split up to receive support from their fathers. Unmarried fathers, even those cohabiting with their children's mother, do not automatically have the same parental rights as married or divorced fathers. If their parents break up, children born to cohabiting couples are less likely than children of divorced parents to maintain contact with their fathers.

The right of the child to live united with his family has developed from the following fundamental human rights:

1. the right to development

2. the right to respect for family life
Rights of the Child in Broken-Home

The rights of the child in a family and those which are due from his parents do not terminate when the parents are separated⁵.

The legal recognition of the definition of family is critical to the child. The different concepts of family explained above will have its own profound implications for the upbringing of children.

The extended family forms a single unit, with all members of the family sharing the responsibilities. It is extended vertically, with grand parents, parents and sibling and horizontally, with cousins and married children. The extended family assigns each member a role, which allows the family to function as an economic, reproductive, and socialization unity. Hence individual members of an extended family other than the parents can be as important to a child, because they have been involved in the child’s development. This has important implication for the legal system on the rights of the child as, individual extended family members have a legitimate basis for asserting responsibilities towards the child. Another important implication with extended family structure is that rights are closely related to duties⁶. The right of one kinship member is the duty of another kinship member. It is this interwoven pattern which forms the basis of the kinship system.

The nuclear family is a comparatively recent social structure, coinciding with the development of an industrialized society which has members of the family working separately and people moving away from the family home for the purpose of work. The family ties of the past era were centripetal as they tended to draw family members together whereas the ties of the post modern family are centrifugal because they force members apart and in particular cause stress for


children leading to intervention by the State, to provide a ‘family environment’ to the child.

On examining the various facets of family life, the European Commission of Human Rights observed that cohabitation was not a prerequisite for family life and concluded that a relationship could still fall within the term ‘family life’. Such an approach is consistent with the best interests of the child as it allows a child to maintain links with those relatives who have a substantively role to play in his life and it also gives *locus standi* to family members other than the parents, enabling them to enforce their right to family life against the State.

Art. 5 of the convention on the Rights of the Child focuses State Parties’ attention towards the potential of the extended family and the community. This approach does not detract from the primacy of the parents; consistent with the best interests of the child but provides the child with additional sources of protection.

Although divorce legally ends a marriage, it cannot dissolve the bond uniting father – or mother – and child; this bond does not depend on the continuation of the parents’ marriage. It would seem that the priority given to the child’s interests is compatible with this rule.

In the triangular relationship between the child, family and the state, in addition to the responsibilities which are placed on family members towards their children, two regional general human rights instruments place duties on the child towards their parents. The African Charter on Human and Peoples’ Rights places children with responsibility to respect their parents ‘at all times’. These reciprocal rights and responsibilities of the child are seen as an integral part of family life. The American Declaration of the Rights and Duties of Man places a duty on

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7 Article 5 “State Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present convention.”
children to honour their parents always and to aid support and protect them when they need it.\(^8\)

The concept of responsibility is particularly important for children as it helps educate others in the potential value of children’s contribution towards society,\(^9\) a potential often overlooked.

African charter provides that children have a responsibility to work for the cohesion of the family, to respect parents and elders at all times and to assist them in cases of need. Working for family cohesion can provide children with a sense of value but it may also prove a daunting task. There is the risk that the child will be exploited by family members and that it may be regarded as a debt for which children are obliged to compensate their parents.

**The Responsibility of the State towards family**

International community regards the family as providing society with an organized unity upon which the structure of the society is based. The recognition of the family as the basic unit of society and its need for protection is highlighted many a time by a number of international and regional instruments.\(^10\) Again, International law strives for protecting the family by imposing many specific duties on the State with regard to its economic, social and legal existence.

The most essential and effective measure to ensure the unity of the family as the basic unit in society is to provide it the necessary support. Under the Convention on the Rights of the Child, State Parties are under an obligation to

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\(^8\) Art. 30


\(^10\) See, Article 16(3) of the UDHR “The family is the natural and fundamental group unity of society and is entitled to protection by society and the State”. See also, Art. 10, ICESR; Art. 23(1), ICCPR; Preamble, Convention on the Rights of the Child, 1989.
provide appropriate assistance to parents and guardians in the performance of their child rearing responsibilities.

The state should have an interest in maintaining family unity, so that potentially disruptive situations leading to the separation of the child from the family and placing the child in the care of the state can be avoided. The acknowledgement of the family as the basic unit of society and its need for protection is contained in a wide range of international and regional instruments.

International law seeks to protect the family by imposing specific duties on the state in regard to its economic, social and legal protection.\footnote{Article 16(3), UDHR, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”}

The most effective measure to ensure the unity of the family as the basic unit in society is to offer it the necessary support.\footnote{Article 18(2), Convention on the Rights of the Child, 1989; Article 10(10), ICESCR}

Although the family is defined as the basic unit, its procedural capacity to enforce its rights is limited\footnote{Emphasis supplied} due to the excessive individualization which characterizes many aspects of international human rights law. An individual family member cannot petition on behalf of the entire family unit that the State is in breach of its obligations to protect the family as a group unit. The entitlement of the family to protection by society and the state is formulated as a group right, but the basic procedural hurdles only allow for individual claims.

According to the European Commission of Human Rights, only ‘the most pressing grounds’ can be sufficient to justify the disruption of family ties even when the material conditions of the family are poor. Poverty is therefore not a ground for separating the child from the family.

Emigration is one of the causes of family separation. Where a state wishes to deport a person, one of the considerations it has to bear in mind is that
of family unity. The right to have respect for family life may also be breached not only where there is the possibility of separation through deportation but also where the state, acting in what it regards as the best interests of the child, determines that a child is at risk from the parents and then separates the child from the family.

Surprisingly the CRC does not contain any express provisions as to the importance to have children access to and contact with their siblings. A point here arisen is that under European Convention on Human Rights, a child’s rights of access and contact with siblings falls within Art. 16 of the UN convention asamounting to unlawful interference with the family.

Where children have lined for a period in a foster home, reunion with biological family needs preparation.

Although the state is described as acting in loco parentis, in reality it can rarely provide the desired atmosphere which the Declaration of the Rights of the child clearly states as one children need for the ‘full and harmonious development’ of their personality; i.e., the atmosphere of ‘love & understanding’.

Art 3(3) of the CRC, places a duty on the States Parties to ensure competent supervision of the officials and the personnel who are directly responsible for the care of children.

One of the underlying premises is that intervention by the State in the form of separation of the child and the family is an extreme solution to an extreme situation.

The major challenge faced by the states is whether law is able to protect the family without intruding upon family privacy\(^{15}\) and without over regulating the very existence of institution which many want to promote and nurture with its natural blooming up\(^{16}\).

There is no doubt that presently the structure of family life is changing\(^{17}\). The number of divorces is increasing; in many cases divorces are initiated by women. The proportion of people cohabiting is also increased. Lone parent hood is also on the highest proportion. The biggest increase in the number of lone parents is accounted for by divorce and single motherhood (unmarried). More children live with a step parent.

Families have always been subject to change. It has been common throughout history for children to experience diverse forms of family life and to be looked after by people other than their natural parents. The characteristics of family and community life, and the way in which they change over time are highly complex\(^{18}\).

**Need of State Intervention on Divorce & Single parenthood**

Taking into account the best interest of children\(^{19}\) the State should have a mechanism to look into:

a) How divorce affects the development of children, in particular the nature of the child with divorced parents.

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\(^{15}\) In US, the right to privacy located in the 14\(^{th}\) Amendment’s Due Process Clause was first secured in family matters in *Griswold v. Connecticut*, 381 US 479, 495

\(^{16}\) H. Wilson, “Parental Supervision Re-examined”, (1987) 27 *British Journal of Criminology* 275


\(^{18}\)See the discussions generally, in M. wyness, “Parental Responsibilities, Social Policy and the Maintenance of Boundaries”, (1997) 45 *Sociological Review* 305

b) How children are affected by being brought up mainly by a single parent, in particular how lone parenthood might be linked with ‘anti-social behaviour.

c) How remarriage affects children, particularly the relationship between remarriage and the incidence of child sexual abuse.

It is worse to lose contact with a parent through divorce than through death, for a number of reasons; firstly, the child was a lot more likely to feel deliberately abandoned; secondly the remaining parent is less likely to convey positive feelings about the absent parent; thirdly, the child is more likely to lose contact with grand parents and other relations on the absent parent’s side of the family.

Lone parent hood is itself a cause of under-achievement of children, juvenile delinquency, crime or general social disintegrations. Children from ‘broken’ and ‘intact’ homes will have a negative attitude in self-concept, peer relationships, family-ties etc.

In India, there is ample evidence that lone parent-hood (particularly lone mother hood) is associated with poverty.20

Many women divorce to escape from the abusive behaviour of their husbands; but on remarriage they put their kids to abusive behaviour.21 It is suggested that women should be more careful in their evaluation of prospective men friends, lovers or remarriage partners; they should be watchful, avoid placing their children, especially daughters in vulnerable situations.

20 In England, the Child Support Act, 1991 establishes a regime to ensure that the absent parent, whether or not married, makes significant contribution to the financial support of his or her child.

21 See John Fekelaar & Mavis Maclean (ed), A Reader on family Law, Oxford University Press, 1994 at p.56
These social factors shall be taken into account, especially, by a welfare state. The powers and functions as suggested to be had by the Commissions for children\textsuperscript{22} can be effectively utilized in this regard.

In England, under the Children Act\textsuperscript{23}, the Social Services Departments have the power to remove children from their parents at any time, where this is necessity for child’s protection. The Act gives parents the procedural legal right to challenge these decisions in Court, and it asks the court to make a wide range of decisions where the rights of parents and families to self preservation and self-determination have to be balanced against the rights of children to be protected from harm. This Act, gives substantive rights to families to be free from interference by State agencies, as long as the children are not abused or in danger of harm. Still, parental autonomy may be circumscribed once the local authority takes compulsory measures to protect children who are at risk of significant harm.\textsuperscript{24}

A major problem faced by the child welfare Agencies is the need for the law to establish the facts: in other words, much of the time and energy of social workers and staff of these agencies is devoted to investigative work to the obvious detriment of family support works\textsuperscript{25}.

The French Model is suggested in this regard where investigations into child abuse are carried out mainly by the prosecutors, court social workers and specialized sections of the police. This would leave the social welfare departments free to work for the welfare of children and families and would be

\textsuperscript{22} See, Commissions for the Protection of the Rights of Children Act, 2005
\textsuperscript{23} Children Act, 1989 provides for the concept of parental responsibility. It addresses the statutory recognition of the change in emphasis from \textit{rights over children} to \textit{responsibility towards children}. (emphasis supplied); See also, Tina Bond, Jill Black & Jane Bridge, \textit{Family Law}, Blackstone Press Ltd: 3\textsuperscript{rd} edn: 1996; H. Wilson, “Parental Supervision: A Neglected Aspect of Delinquency”, (1980) 20 \textit{British Journal of Criminology} 203

\textsuperscript{24} Section 100, Children Act 1989
\textsuperscript{25} H. Wilson, “Parental Supervision: A Neglected Aspect of Delinquency”, (1980) 20 \textit{British Journal of Criminology} 203, p. 334
helpful in securing parental co-operations which might have been jeopardized by the need to collect and present ‘facts’ against the parents in the court.

In U.S., the most burdensome aspects of child support, health care and higher education; have been fixed primarily as a social rather than private responsibility. Children’s allowances, subsidized day-care arrangements and subsidized housing are provided for the sake of children.

In England, in *Pabari v. Secretary of State for work and Pensions & Anr.*, where, the husband who was the absent parent and assessed to child maintenance by the Child Support Agency under the Child Support Regulations 1992, it was held:

“It is necessary in a common sense and reasonable way bearing in mind the interests of child and not merely the personal interests of the parents concerned.”

The judgment of Singer, L.J., in *Philips v. Peace* is also noteworthy. It was held:

“……………………… if unmarried parents separate it is only right that the court should be able to make any appropriate order in favour of a child of theirs, just as it could make an order if the child’s parents were in the process of divorce or judicial separation………………”

In *Re X (parental responsibility agreement: children in care)* the powers of the Local Authority to exercise parental responsibility was asserted and held

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26 [2005] 1 All ER (CA) 287
27 *Id.* p. 299
28 (2005) 2 All E R (Fam. D.) 752
29 *Id.* 758
30 (2000) 2 All E R 66
31 section 33, Children Act, 1989
again that this would not preclude a mother in extending her parental responsibility towards the child.\footnote{supra n. 18, pp. 68-69}

In \textit{Lancashire county council & Anr. v. A (a child)}\footnote{[2000] 2 All ER 97; See also \textit{ReH and Ors (Minors) (Sexual) abuse} (1996) 1 A11ERI}, a baby girl who was cared by a paid child minder, was found injured fatally. The Local Authority applied for a care order under the children Act, 1989. Lord Nicholls, J. held:

“when the threshold conditions are satisfied and the court proceeds to consider whether to exercise its discretionary power to make a care order or a supervision order, the child’s welfare is the court’s paramount consideration.”\footnote{Id., p.99} The examples of threshold conditions are significant harms or injuries which may happen to the child, in the absence of the intervention by the State to exercise parental responsibility.\footnote{See also, \textit{Re M(a minor) ( care order: threshold conditions)} [1994] 3 All ER 298; \textit{Re H & ors. (minors) ( sexual abuse: standard of proof)} [1996] 1 All ER 1}

\textbf{Child Support in USA}

The National Assistance Act, 1948 puts some responsibilities on the states; the States eventually provided universal family allowances. The law governing child support in US varies State-by-State; but is an ongoing obligation for a periodic payment made directly or indirectly by an obligor parent to an obligee or receiving party, for the care and support of children of a relationship or marriage that has been terminated, or in some care and support of children of a relationship or marriage that has been terminated, or in some cases never existed.

In US, while the state interfering with the family affairs, the theory of ‘child development’ is applied\footnote{Anna Frued is the propounder of this theory in her book \textit{Beyond the Best Interest of the Child}} in the judicial decision making. The focus was on the child’s physical and emotional well-being. It is concluded that a child needs continuity of care with an adult who wants the child and can provide him or her with affection, stimulation, nurturing and an assurance of safety and protection.
In a divorce case where the parents can not resolve their child’s custody, the judges’ job is to determine who, among the claimants for custody, can fulfill those needs. They introduced terms like ‘psychological parent’ and ‘least detrimental alternative’ which have become part of the legal lexicon. In 1980s, the concept of the ‘primary care taker preference’ in the custody cases was emerged\textsuperscript{37}. The primary caretaker is defined as the person who before the divorce managed and monitored the day-to-day activities of the child and met the child’s basic needs: feeding, clothing, bathing and arranging for the protection of his or her health. It is assumed that the primary caretaker would continue in that role after the divorce. When the state statutes do not include any specific guideline, but state that ‘the best interests of the child’ standard should guide the decision making process, such and such principles will be evolved by the jurists as well as the judges.

Again, the grounds for involuntary termination of parental rights in US are specific circumstances under which the child cannot safely be returned home because of risk of harm by the parent or the inability of the parent to provide for the child's basic needs. Each State is responsible for establishing its own statutory grounds, and these vary by State. The most common statutory grounds for determining parental unfitness include:

(i) Severe or chronic abuse or neglect
(ii) Abuse or neglect of other children in the household
(iii) Abandonment
(iv) Long-term mental illness or deficiency of the parent(s)
(v) Long-term alcohol- or drug-induced incapacity of the parent(s)
(vi) Failure to support or maintain contact with the child
(vii) Involuntary termination of the rights of the parent to another child\textsuperscript{38}


\textsuperscript{38} See the Adoption and Safe Families Act, 1997
The above factors become grounds for terminating parental rights when reasonable efforts by the State to prevent out-of-home placement or to achieve reunification of the family after placement have failed to correct the conditions and/or parental behaviors that led to State intervention.

Another common ground for termination is a felony conviction of the parent(s) for a crime of violence against the child or another family member, or a conviction for any felony when the term of incarceration is so long as to have a negative impact on the child, and the only available provision of care for the child is foster care.

The Adoption and Safe Families Act requires State agencies to file a petition to terminate parental rights, with certain exceptions, when:

1. A child has been in foster care for 15 of the most recent 22 months.
2. A court has determined:

   a) A child to be an abandoned infant
   b) That the parent has committed murder or voluntary manslaughter of another child of the parent; aided, abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or committed a felony assault that resulted in serious bodily injury to the child or another child of the parent

A termination action can sever the rights of one parent without affecting the rights of the other parent. If the rights of both parents are terminated, the State assumes legal custody of the child along with the responsibility for finalizing a permanent placement for the child, either through adoption or guardianship, within a reasonable amount of time.

Again, the state is bound by law to limit the amount of time children spend in foster care, by making reasonable efforts to reunify children with their birth
families, and if reunification is not possible, to find a new permanent family for the child through adoption.39

**State’s Role in Marital Relationship**

The question of state intervention is often thought of narrowly, primarily in terms of the criminal law or laws dealing with child abuse and neglect.40 In child abuse and neglect, most often the question posed is; under what circumstances and for what reasons should the state intervene or intrude into the parent-child relationship and make some adjustment in that relationship when obligations have been made of abuse or neglect? However, state intervention(control) is also present in subtle ways, i.e., in defining the relationship that constitute a marriage and a family.41

In *MLB v. SLJ*42, the US Supreme Court decided that Mississippi may not deny a mother appellant, review of a termination of parental rights case because of her inability to pay certain court fees. It was held by Ginsburg, J.:

“…choices about marriage, family life and the upbringing of children are among associated right this court has ranked as of basic importance in our society…”43

**Financial Support for Parents in Child Rearing**44

The CRC requires states to recognize the right of every child to a standard of living adequate to the child’s physical, mental, spiritual, moral and social development. Though the primary responsibility for securing the same is on

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41 *Loving v. Virginia*, 388 US 1(1967): The right to marry, as a constitutional right was examined. Held that a statutory scheme that restricted a man and woman from marrying on the basis of their race was unconstitutional as a violation of both the equal protection and due process clause of the 14th Amendment under the Federal Constitution.
42 519 US 102 (1996)
43 *Id.*, p.116
the parents, the state is envisaged as having a duty to aid the parents in this task. The extent to which a state will willingly assume this duty, particularly when the state is to financially support the parents, depends on many factors like the financial capacity of the state, the population policy, welfare strategies of the government etc.

Support to Families with Disabled Children

When a child is born with a disability or subsequently develops any disability, the state’s assistance becomes important and inevitable. Medical care, financial assistance, job assurance to parents, etc., may be seen as expressions of the fulfillment of state’s responsibility to see that a child with disabilities is able to live decently. It is also an incentive to ensure the strong family ties.

The Practice in U.K.

The Family Justice Council exists to promote better and quicker outcomes for the families and children who use the family justice system. The council promotes an inter-disciplinary approach to the needs of family justice, bringing together experts from the worlds of the law, health and social care to support and advise government and the family courts. It is chaired by the President of the Family Division.

The Family Justice System is a network of organizations including family courts, the Children & Family Court Advisory and Support Service, the Child Support Service, the Child Support Agency, lawyers and also professionals from medicine, social work and therapy. This help family to deal with relationship-breakdown and its consequences.

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45 Art.27
47 Report of the Meeting of the family Justice Council, 28th January 2008
Parental Responsibility of the State

Section 3 of the Children Act, 1989 of UK introduces the concept of Parental Responsibility of the State. Accordingly, a local authority which has obtained an order giving it parental responsibility (i.e., an emergency protection, interim care order or care order) shares parental responsibility with the child’s parents, restricting the parent’s exercise of their parental responsibility to the extent required to safeguard or promote the child’s welfare. The Act emphasizes that the primary responsibility for looking after children rests with parents and the local authority’s role is to help them fulfil this responsibility. The Act tries to establish a proper balance between the need to promote the welfare of the child, and the need to respect the rights of parents.

In US, the state’s power to regulate the lawful prerogative of parents over their children or to intrude into the realm of family life is limited by the Constitution. However, in certain cases as follows, the freedom of parents will be curtailed rather interfered by the state by exercising its parental responsibility in the best interest of the child:

(a) in disputes between pre-adoptive parents and birth parents who oppose adoption;

(b) in disputes between foster parents and birth parents;

(c) in disputes between long-term care givers and birth parents;

(d) in non-fulfilling the basic requirements of child by the parents, e.g., providing compulsory education to the child.

In India also the parental responsibility of the state becomes crucial when the problems after divorce arise. Generally the consequences of divorce are:

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48 Meyer v. Nebraska, 262 US 390, 400(1923); held that the rights of parents are protected by the due process clause of the 14th Amendment of the Constitution;

See also, Prince v. Massachusetts, 321 US 158, 166 (1944)

49 Wisconsin v. Yoder, 406 US 205 (1972)
(i) Economic: There is great disparity between the economic ramifications of divorce between men and women. Men remain relatively unaffected while women, especially those with children, have difficulty in providing food, clothing and shelter for themselves and their children. The government in urban areas may provide some form of public assistance to single mothers, but this service is not fully taken advantage of because most people do not know of its existence and also it will not stand as a permanent solution for the problems.

(ii) Social: While India feels that one should have the right to divorce; it is still a highly stigmatizing action. Women are looked upon more harshly than men in this regard. There continue to be segments of Indian society that feel divorce is never an option, regardless of how abusive or adulterous the husband may be which adds to the greater disapproval for women. A divorced woman often will return to her family, but may not be wholeheartedly welcomed. She puts, especially if she has children, an economic burden on her family and is often given lowly household tasks to perform. The children of a divorcee also bear the social stigma, due to the social situations peculiar to India.

Concluding Remarks

No area of law other than that touching the institution of family is so sensitive to the changing values and mores of the society. In addition, it is influenced to a greater extent the changing notions of other branches of social sciences like, psychology, sociology, anthropology, etc. Resultantly, the main focus of this legal frame, shall concentrate mainly on the well-being of children.

50 See, Rajiv Bhatia v. Govt. of NCT, Delhi & Ors., (1999) 8 SCC 525
The state’s power to regulate the lawful prerogatives of parents over their children is limited. The term ‘parental rights’ encompasses a far broader idea than merely the power of a parent over his or her child. However, the law recognizes intervention by the state to protect the interests of child\textsuperscript{52} especially in situations of marital separation, child care, maintenance, etc. In such cases, even the extended family members who have acted like parents may be recognized to have parental rights\textsuperscript{53}, ‘in the interests of child’, even though such a concept is less rooted in Indian law.

\textsuperscript{52} Quillon \textit{v.} Walcott, 434 US 246, 255 (When the state seeks to remove a child from the parent, it must demonstrate that the child would suffer harm unless removed.)

\textsuperscript{53} Moore \textit{v.} City of East Cleveland, 431 US 494 at pp. 503-504