

Child Custody: Legal Framework, Constitutional Vision, and Challenges in Cases of Domestic Violence

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ABSTRACT

When it comes to family law, few topics are as emotionally and legally fraught as child custody. The "best interests of the child" criterion, which originates from constitutional principles and international obligations such as the UN Convention on the Rights of the Child (UNCRC), is the guiding factor in child custody judgments in India. Civil legislation like the Special Marriage Act of 1954, the Guardians and Wards Act of 1890, and the Hindu Minority and Guardianship Act of 1956 are the main tools used by the Indian legal system to handle custody issues. But the criminal justice system is as vital in protecting children from abuse and violence in the home. Claims of abuse, neglect, or violence in the context of a custody dispute highlight the importance of the interaction between criminal and family law. Articles 14, 15(3), 21, and 39 of the Indian Constitution provide children the right to a secure and caring home, and it is the responsibility of the courts to strike a balance between the two. This article delves at the Indian legal system's approach to child custody, the constitution's goals for children's welfare, and the way courts handle domestic violence cases, drawing attention to the difficulties courts have while trying to protect children's rights. At the end, it stresses the need of child-centered justice, better communication between criminal and family courts, and counseling programs that safeguard children's mental and legal health.

Keywords: *Child; Custody; Legal; Constitutional; Case*

1. Introduction

Child custody after a divorce or separation is a very contentious and sensitive area of Indian family law. A child's future and emotional stability are at stake in a custody lawsuit, unlike in other types of legal conflicts. Emotional connection, financial capabilities, moral integrity, and most importantly, the child's welfare are the criteria that should be considered when deciding who should be entrusted with a child's upbringing. The patriarchal beliefs that the father is the natural guardian have long informed India's child custody laws. A more progressive, welfare-oriented approach has evolved in the courts over the years, placing a premium on the child's mental and emotional well. The main legislative framework is provided by the Guardians and Wards Act (1890) and the Hindu Minority and Guardianship Act (1956), with similar provisions found in the personal laws of other faiths, including Christian, Parsi, and Muslim laws. In spite of these different origins, the best interest of the child remains the guiding concept in every child custody case.

An important factor in determining this strategy is the Indian Constitution. According to the Supreme Court's interpretation of Articles 14 and 21, which guarantee equality, personal liberty, and the right to life, children also have

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the right to be protected and to grow to their full potential. Article 15(3) grants the power to the state to establish specific measures for the benefit of women and children, and Article 39(f) of the Directive Principles mandates that the state must guarantee that every child has the chance to grow up in an environment that promotes their health and dignity. The moral and legal basis of India's custody laws is jointly provided by these constitutional obligations.

Dignity, safety, and equality are the cornerstones of the Constitutional Vision for Children. It views every kid as a priceless resource for the country and treats their well-being as a top priority. Child custody judgments impact the child's constitutional rights and the State's commitment to safeguard them, rather than being seen as simple parent disagreements. The importance of parents' duty to their children's well-being, rather than their own personal gain, has been emphasized time and time again by Indian courts in cases like *Rosy Jacob v. Jacob A. Chakramakkal* (1973) and *Gaurav Nagpal v. Sumedha Nagpal* (2009). When domestic violence or other criminal offenses occur alongside custody fights, the situation gets more difficult. The criminal justice system intervenes in such situations to ensure the safety of the mother and child. For example, in cases where a kid has observed or suffered abuse, courts are empowered to grant child custody orders under the Protection of Women from Domestic Abuse Act, 2005. Children who are victims of domestic violence have additional legal protections thanks to the Juvenile Justice (Care and Protection of Children) Act, 2015, and sections 498A and 499 of the Indian Penal Code (IPC), which deal with cruelty and abuse, respectively.

When one parent is accused of violent behavior, the courts must strike a delicate balance between protecting the kid and granting the accused parent the presumption of innocent. Until the criminal case is decided, the court often favors interim custody agreements or monitored visiting rights. Although cautious, this method seeks to shield the youngster from more stress. Custody procedures have been further transformed by the Family Courts Act, 1984, which promotes mediation and counseling. Family courts have the authority to manage delicate and informal matters pertaining to marriage and child custody. The well-being of the kid is of first importance, and they also strive to foster reconciliation wherever feasible. In order to reach fair judgments, these courts often consider psychological evaluations, social worker reports, and counseling sessions.

Still, big obstacles stand in the way. Delays in justice are common due to several factors, including insufficient legal representation, unqualified counselors, and disputes that arise between family and criminal courts. Mothers seeking custody after marital violence have additional challenges due to societal shame and emotional manipulation by their parents. So, to make sure that children get humane and quick justice, the Indian legislative and courts need to join forces to standardize criminal and family law processes. Child custody and protection policies in India provide a window into the country's moral fiber. A family court's ruling makes a social statement about India's regard for children as much as a legal one. The law must not be indifferent or robotic while handling the delicate matters of children, as Justice Krishna Iyer said at one point. Protecting children from harm but also guiding them so that their emotional and developmental needs are not hampered by legal complexities is the dual role of the law.

2. Literature Review

Majumdar, Promita & Sarkar, Asok. (2025) The article stresses that non-governmental organizations (NGOs) should be a part of India's child protection system in order to provide vital components, especially those that strengthen families. With a focus on family-oriented care, the Ministry of Women and Child Development launched Mission Vatsalya to guarantee children's well-being. Various policies, legislation, and projects are included under the ministry's purview as the primary authority responsible for child protection. But there have been many obstacles that the Indian child protection system has had to overcome in order to reach its maximum potential. As an added bonus, the writers provide suggestions for faster and more efficient implementation in addition to reviewing the benefits. Furthermore, the paper sheds light on how non-governmental organizations (NGOs) carry out and provide family-centered interventions to forestall child abuse. With the use of several instances, it explains how NGOs may effectively facilitate the implementation of government initiatives. In its last paragraph, the essay argues that in order to stop child abuse, it is important to acknowledge child welfare programs that are founded on facts.

Satyam, Sourabh. (2024) Ensuring the well-being of future generations requires the safeguarding of children's rights. Nations throughout the globe and the United Nations Convention on the Rights of the Child (UNCRC) are among the international legal systems that protect children's rights. Focusing on the legal and judicial frameworks, this research analyzes how well they safeguard children's rights in modern society and the obstacles they encounter while trying to put them into practice. It delves into important topics including juvenile justice, child abuse, education, and child labor, examining the legislative measures meant to safeguard children's rights, the part played by different parties, and enforcement gaps. Child rights are becoming more widely recognized, and society is increasingly taking action to ensure the well-being of children. The research delves deeper into global initiatives like the CRC and national efforts to defend children's rights.

Dinesh, Theertha & Ayilliath, Ambili & Ephraim, Rena & Parikkal, Ramnesh. (2023) Any time another person, whether an adult or another kid, causes injury or neglect to a child, it is considered child abuse. Everyone from every walk of life and economic bracket experiences it. Sexual, physical, emotional-verbal, or neglectful forms of abuse are all possible. Child abuse may lead to life-threatening harm or even death. In this article, we will take a look back at the statutes that deal with child abuse in the United States. To better understand child protection laws and how they might help disadvantaged children, we combed through Google Scholar and electronic journals published by legal aid organizations for relevant literature. At the eleventh hour, many corrupt figures emerge, despite the fact that our nation has several laws meant to safeguard minors and various parts of the Indian criminal code.

Patoli, Heena. (2023) The many facets of child custody law are remapped in this study. Child custody laws in India are the subject of this article. The child's emotional and psychological well-being is impacted by the custody battle. Because he or she feels trapped between both parents, the youngster has a hard time making a decision. While arguing, the parents fail to see the pain their youngster is under. This article investigates whether or not child custody proceedings in India are lawful. The suffering of parents who have become legal slaves is brought to light in this study paper, which poses the straightforward issue of whether or not we can provide these parents with fundamental human rights or justice. Since it is impossible to provide justice to both parents at once, justice can only be served by granting it to one of them. This article investigates Indian child custody rules, the changes needed to make them less favoritism toward one parent, and the lasting impact such laws have on children. The article concludes by outlining the criteria used by the courts to make custody determinations. When parents argue about custody, their children often act out violently; as a result, many criminals are born; some of these formerly innocent youngsters develop criminal tendencies as a result of their exposure to drugs and other vices. It is very tough for kids like that to make it in this world. Even the kids have a hard time fitting in.

Conner, Dana. (2009) In this article, we'll look at how the vast authority of the custody trial judge came to be, why our system can't evaluate bad rulings on appeal, and how poor the standards are when it comes to custody cases involving violence against women. Both the trial court's decision-making process and the criteria used by appellate courts in custody cases involving batterers are dissected in this article. The article goes on to provide a multi-tiered strategy for dealing with the domestic violence conundrum in child custody proceedings. The judge presiding over the custody trial has an infinite amount of authority to decide what is best for the children, as is shown by past cases. From the trial court all the way through the appeal process, the judge retains his or her enormous power. The weight of custody decisions, the trial judge's supposed specialty in domestic relations law, and the mistaken belief that he or she can better evaluate credibility concerns specific to family law cases all seem to contribute to this overly broad authority. We seem to have arrived at a system where the trial judge's discretion in custody issues is equated with unfettered power to resolve the matter.

3. Custody of a Child -Its Legal Aspects

Problems with custody and visitation rights have arisen as a result of the epidemic of divorce in today's culture. Child custody is a major issue that must be addressed in the event of a divorce. A mother is essential, but a father is also necessary, as the old adage goes. Now we need to see whether this is supported by Indian law. Is it that the law assumes a child's best interests are best served by being with their mother? Can a woman possibly be the perfect role model for her kid at all times? When one or both parents want custody of the children, or when neither parent desires

custody at all, a custody battle may ensue. In some instances, the Supreme Court has ruled that a mother may still be granted custody, even if she is engaged in an unlawful occupation. When issues involve foreign courts and their rulings, complications ensue. Additionally, in cases when one spouse is facing criminal charges for the murder or abetment of murder of the other, the question of custody always arises. Because working moms may not have enough time to devote to their children, the courts have taken this into account when making custody determinations. If either parent has been married before, the courts will consider that fact while making a custody determination. After becoming tired of their parents' arguments, a kid may choose to cut off contact with one or both of them. Moreover, the parents' ego disputes pose a greater threat, since they unwittingly inflict damage on the kid.

Hindu Marriage Act Sec. 26, Special Marriage Act Sec. 38, The Guardians & Wards Act 1890, and Hindu Minority and Guardians Act 1956 Sec. 6 (a) are the relevant sections of legislation pertaining to custody. When it comes to child custody, Christians and Muslims have different rules. The Indian Divorce Act, which applies to all faiths in the nation, effectively resolves the concerns of child custody, even if Christian law does not explicitly address them. The Indian Divorce Act of 1869 addresses child custody issues. So long as a woman is not convicted of any wrongdoing, she is not to be deprived of her fundamental right to have custody of her children under Muslim law. "Child custody" refers to the legal guardianship of a minor in family law proceedings. The Court is regularly asked to decide on the subject of "child custody" in divorce or annulment procedures. Physical custody is often awarded to one parent while the other retains legal custody. Decisions made by family law courts are often based on what is best for the kid or children, rather than on the strongest arguments put out by either parent.

Modern Indian culture has seen a dramatic increase in the frequency of divorce. Maybe it's best for those who can't stand one other to just go their own ways and be happy. Yet, concerns over children's futures emerge. More focus from parents, the government, and society at large is necessary when deciding who gets to keep a kid. The child's wishes, in my opinion, should be carefully considered and given the highest priority. Physical custody may be granted to either parent—usually the mother—even if the kid always prefers to live with both parents and does not show any preference. The father is often regarded the natural guardian, and the mother is considered the next in line after him. According to the Hindu Minority and Guardians Act, 1956, the child's wishes should be respected and given first priority.

The parent who can show the court that they are financially stable, have good parenting abilities, and can keep the kid from experiencing undue hardship is usually the one awarded physical possession. Until the minor reaches the age of 18 or becomes legally emancipated, the legal custody of the minor is shared between the parents. Decisions about the child's education, profession, religious practices, medical treatments, marriage, etc., may be made by either parent with legal custody. One parent is mostly responsible for providing for a kid's home, educational requirements, food, and other basic necessities while they have physical possession of the child. The right to visitation remains with the noncustodial parent in the majority of instances. Having a rigid and unyielding norm may not be the best course of action for the kid, but these are only broad judicial assertions. Since fathers are unable to provide their young children the nurturing love and attention they need to develop normally, it is now commonly accepted that mothers should have primary custody of their children. Mothers are essential for their children's healthy psychological development since it is both necessary and acceptable.

3.1 The Constitutional Vision for Children

For the sake of the well-being and protection of children, the Indian Constitution provides a thorough moral and legal framework. Kids' rights and needs are all throughout the Constitution, even though they don't have their own special chapter. Constitutional provisions include the Preamble, which lays out the document's moral vision, the Fundamental Rights, which provide enforceable norms, and the prescriptive Principles of State Policy (DPSPs), which offer prescriptive standards. All of these clauses come together to create a comprehensive constitutional vision that is focused on children when seen through the lens of constitutional morality.

“We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief,

faith, and worship; Equal status and opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation”⁸ Constitutional interpretation is guided by the underlying ideals laid out in the Preamble. Children are especially in need of social, economic, and political justice since they are disproportionately affected by issues of poverty, caste, and lack of access. A child's growth is facilitated by liberty, which guarantees the freedom of thinking and instruction. Fraternity and dignity establish the requirement of treating every kid with respect and compassion, while equality dictates non-discrimination and equal treatment. The constitutional system for safeguarding children is based on these principles.

Article 14: Equality before law

"No person shall be denied equality before the law or the equal protection of the laws within the territory of India," reads Article 14, which deals with legal equality. Even kids may benefit from this essay. It ensures that all children, regardless of their family's socioeconomic status, are entitled to equal protection under the law and forbids any kind of discrimination. When working with disadvantaged youth, such as those who have been victims of abuse or trafficking or who are in dispute with the law, this idea takes on added importance.

Article 15(3): Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

"The State is authorized to make special provisions for women and children, notwithstanding anything contained in this article." The constitutionality of affirmative action and child protection laws is bolstered by this provision. It gives the state the authority to pass laws that focus on children, such as the Right to Education Act, the Juvenile Justice Act, and the POCSO Act. It recognizes the fragility of children and allows for treatments to be tailored to them.

Article 21: Defense of individual rights and freedoms

Except in accordance with the process as out by law, "no person shall be deprived of his life or personal liberty." Judicial interpretations of this article have expanded its scope to include several kid rights, including the right to an adequate place to live, food, clothing, medical care, and safety from abuse. It is the cornerstone of a dignified existence that acknowledges the child's best interest.

Article 39(e): Certain principles of policy to be followed by the State

"That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced to enter avocations unsuited to their age or strength," reads Article 39(e), outlining the principles of state policy. The State is directed to safeguard minors against exploitative and dangerous labor practices under this Directive Principle. Legislation outlawing the use of children in hazardous or exploitative jobs relies on this principle.

4. Legal Framework Governing Child Custody in India

When it comes to child custody, Indian law is a hybrid system that incorporates both religious norms and secular standards that are relevant to all populations. As a result of its heterogeneous legal structure and its attempts to accommodate religious practice inside the legal framework, India has a dual system.

Hindu Law

When it comes to matters of child custody, Hindus, Buddhists, Jains, and Sikhs are governed under the 1956 Hindu Minority and Guardianship Act. This statute emphasizes the requirements for natural guardianship with respect to the case's impact on the child's welfare. It is only fitting that the father of a legally recognized juvenile be named guardian, according to the HMGA. Although this appointment is not final, it may be revoked in the interest of the child's well-being. For children less than five years old, the mother is often entitled to custody under the Act's Section 6(a). Mothers are better able to meet the emotional and physical needs of their young children, according to this notion. Legal custody choices, however, are often made by the father unless there is compelling evidence that this would be

detrimental to the child's best interests. Typically, a mother should get custody of a child under the age of five, according to the court's ruling in the case of Chandar Praha v. Prem Nath Kapur.

Indian courts have begun to prioritize the child's best interests, recognizing a "welfare antecedent" above rigid parental rights guaranteed by law. It would seem that this has sparked a shift in court priorities away from acknowledging conventional gender roles and toward prioritizing the child's entire development, safety, and welfare. The emotional connection between the kid and parent, the parents' financial stability, and the child's surroundings are all factors that courts evaluate when making a custody determination. Baddi Reddi Bulliraju v. Kedam Surya Rao established that even a father's supreme right as a natural guardian should be limited to the minor's welfare.

When deciding on a parent's custody rights, the courts maintain a degree of flexibility and carefully consider whether the kid would be best cared for by the biological parent at any given moment. The wellbeing of the kid should always take precedence, according to several rulings from India's highest court. It is the child's emotional and psychological needs, not abstract legal principles that should inform custody determinations, according to India's highest court. Without compelling grounds to the contrary, the mother is often granted custody of any children less than five years old, as the Supreme Court reaffirmed in the case of Roxann Sharma v. Arun Sharma.

Joint custody is an innovative idea in Hindu law that has just lately begun to take root in India's major cities. The child's legal rights, including custody and care, are divided between the parents under this arrangement. Despite the fact that the HMGA does not explicitly codify such agreements, courts have increasingly relied on and favored them due to societal shifts in the modern era. The Supreme Court ruled in the case of Githa Hariharan v. Reserve Bank of India that a father does not have absolute rights when the phrase "natural guardian" is used. It is in the best interest of the kid to appoint a mother as guardian, as the child's wellbeing would take precedence.

Christian and Parsi Law

In the event of a child custody dispute in India, the parties involved are often Christians or Parsis (under). The well-being of the child is the overarching goal of both laws. According to these guidelines, the courts have a lot of leeway to decide on child custody. The courts have shifted away from an idealized view of gender roles and toward a philosophy that prioritizes the best interests of the child above rigid adherence to any rigid views of gender roles, even when it comes to conventional father custody preferences.

For Christian marriages, maintenance, and child custody battles, the Indian Divorce Act of 1869 is the law. The Act gives courts wide latitude to make custody decisions that are in the child's best interests and allows any parent to petition the court for such an order. While Indian courts have always sided with dads in such cases, they have recently come to acknowledge that children are best placed with their mothers, particularly when doing so meets their emotional and developmental requirements. Judgment in George Pousenam v. Maria Sudhamani, which upheld a father's petition for paternal custody and concluded that the child's happiness and stability would be best served by staying with the mother, is a good example of this kind of thinking in action. The growth of the court's knowledge of child psychology is on display in this case.

Parsi Law

The Parsi Marriage and Divorce Act, 1936 regulates marriage, divorce, and child custody for the Parsi community. This Act, similar to Christian law, places an emphasis on the well-being of the child while making decisions about custody. In each instance, the courts were granted authority to make a decision based on the child's welfare and the specific circumstances. Courts of law have been seen to be moving in the directions mentioned before, even when personal laws may have historically favored father custody. The kid, who is usually given preference for motherhood when deciding who gets custody, benefits from this arrangement. No matter the circumstances, the well-being of the child must always take precedence, as the Supreme Court emphasized in the case of Revanasiddappa v. Mallikarjun. This case is representative of a larger trend in Indian law, whereby judges are starting to prioritize the best interests of children above that of their parents when deciding how to divide up child care responsibilities.

When making custody decisions, Indian courts gave more weight to the child's best interests than to the parents' legal protections, even in instances involving Christians and Parsis. The interests of the child should take precedence over rigid legal notions of custody rights, as the Supreme Court has often emphasized.

The 1890 Guardians and Wards Act, which established secular law's protection of children's best interests

In light of this dramatic change in strategy, the "best interest of the child" premise has become a beacon for the Indian court as it attempts to resolve child custody battles. Therefore, the concept would be based on the need to safeguard the child's welfare and general well-being, even if it would put technical interpretations of personal law under pressure. In modern times, the focus of court rulings has shifted from parental rights to the best interests of the child, with an emphasis on the kid's emotional, psychological, and physical development.

Hindu, Muslim, and Christian personal laws, as well as those of other faiths in India, have traditionally paid less attention to the specifics of child welfare and more attention to the rights of fathers or followed culturally recognized standards. As the importance of children's rights and welfare is becoming increasingly acknowledged, there has been a gradual change from a focus on strict legal formalities to a more flexible approach that prioritizes the child's wellbeing.

This movement gathered steam in the latter half of the twentieth century, thanks in part to India's ratification of international accords like the UN Convention on the Rights of the Child (UNCRC) in 1992. According to the UNCRC, the first concern should always be the well-being of the child in any matter involving children, regardless of whether it's a public or private social welfare organization, a court of law, or a legislative body (Article 3 of the UNCRC). Because of the growing emphasis on children in Indian family law issues, international standards have now permeated Indian jurisprudence.

Based on a substantial body of custody cases, Indian courts have established the "best interests" concept, which gives judicial support to prioritizing the well-being of the child above parental rights. The flexibility of Indian courts to apply both personal and secular laws is supported by the fact that they often overturn personal law provisions when doing so would be seen as harmful to the child's best interests.

4.1 Child custody decisions in the shadow of domestic violence in India

When claims of domestic abuse emerge in a marriage dispute in India, child custody becomes an extremely hotly debated subject. Judicial decision-making is fraught with difficulty because it must strike a balance between the best interests of the child and those of the victim, who is often the mother. When domestic abuse is involved, the "best interests of the child," the notion that is meant to be prioritized under custody legislation, becomes more problematic. The Guardian and Wards Act of 1890 and the Protection of Women from Domestic Violence Act of 2005 are examples of legislation that lead India's legal system in its efforts to balance parental rights with the best interests of children. However, when these laws are put into practice, they show substantial institutional barriers. When deciding cases of domestic abuse, the courts must take into account more than only the victim's safety, mental health, and the impact of trauma. The law recognizes the need of considering abuse while making judgments, yet varied court interpretations undermine the protective goals of the legislation. Because of the presumption in Indian law and court interpretations that women are the primary caretakers, especially for small children, males sometimes find themselves at a disadvantage in custody issues.

Physical abuse is a common occurrence for children who witness domestic violence. Victims and witnesses of domestic abuse are at high risk for developing long-term physical and mental health problems. To add insult to injury, research suggests that kids who see their parents fight are more prone to behave violently in their own relationships. It might be especially difficult for parents who have endured abuse to figure out how to protect their children. The physical and mental harm inflicted upon victims of domestic violence by their abusers has a cumulative effect that may be devastating to their health. The main victims of this kind of abuse aren't the only ones who feel its effects; youngsters who see it firsthand also suffer severe repercussions. Children may have short-term and long-term effects

as a result of seeing domestic violence. This highlights how important it is to teach kids about good relationships and setting boundaries in order to protect them from harmful settings. It is important to get help and think about safe ways to leave a dangerous situation if you or a loved one is experiencing domestic abuse.

5. Conclusion

We can conclude that child custody rules in India represent the fine line between parents' rights, the best interests of the kid, and cultural norms and expectations. The Indian legal system has been gradually shifting toward welfare-first, child-centric approach that values ownership less and less over the years, thanks to its statute provisions and constitutional principles. However, family and criminal courts must work together more closely due to the growing correlation between domestic abuse and cruelty and other criminal offenses. Civil processes alone will not be enough to protect children; criminal protections and social assistance mechanisms are also necessary. While family courts work to heal broken relationships, they also have a responsibility to protect children from harm while cases are pending. When making restraining or protective orders, criminal courts also have to think into the psychological aspects of custody. In order to fully implement the Constitutional Vision for Children, India has to provide family counselors with the proper training, implement systems to quickly dispose of cases, and increase mediation services. Every kid deserves to grow up in an environment free from the trauma of war and violence, and the Indian judicial system can only deliver on its promise if these disparate initiatives work together.

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