
BROKEN HOMES, BROKEN LAWS: A CRITICAL LOOK AT INDIA'S LEGAL SYSTEM IN ADDRESSING CHILD ABUSE IN CUSTODY DISPUTE

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LEGAL FRAMEWORK AND INSTITUTIONAL RESPONSES

When a parent or legal guardian has child custody, they are legally able to take care of a kid and make choices on their behalf. An essential part of family law is the division of property when parents split or divorce. This is because it establishes the living arrangements for the children, the distribution of daily care responsibilities, and the allocation of decision-making authority for the children's education, healthcare, and various other fundamental needs. Hindus are mostly regulated by the Hindu Minority and Guardianship Act, 1956¹; non-Hindus are mainly regulated by the Guardians and Wards Act, 1890²; and Muslims, Christians, and Parsis are mainly regulated by the particular laws that apply to them. In some cases, these statutes establish who is legally responsible for caring for a kid. Legally, one has the right and the duty to care and raise a kid if they have custody of that child. Having legal custody of a kid entails a great deal of responsibility, including teaching the child moral and spiritual values, caring for their physical health, ensuring they have access to enough nutrition, clothes, and shelter, and arranging for their transportation to and from school. In addition to providing a safe and stable living situation, the custodial parent or guardian has a responsibility to ensure the child's physical, mental, and emotional well-being. When one parent is legally responsible for a child's care, the other usually just has visitation rights. When deciding custody matters, the courts must keep the child's best interests and wellbeing in mind.

Physical custody occurs when one parent is the primary caretaker of a minor kid. Providing for a kid's basic needs, such as food, housing, clothes, supervision, etc., is an essential part of raising a child. Sole and joint physical custody are the two main categories. The difference between sole physical custody and joint physical custody is that the former involves one parent

¹ Legislative Department, Ministry of Law and Justice, Government of India. (2015). Juvenile Justice (Care and Protection of Children) Act, 2015.

² Legislative Department, Ministry of Law and Justice, Government of India. (1890). Guardians and Wards Act, 1890.

taking main responsibility for the child's physical well-being and upbringing, while the latter involves both parents sharing this role and the child spending time in both homes.

Legal custody occurs when one parent has the authority to make substantial choices about their child's development, including those regarding their education, healthcare, religion, and finances. Two other forms of legal custody are joint legal custody and exclusive legal custody. The difference between sole legal custody and joint legal custody is that in the former case, the child's best interests are considered by both parents when making important choices, whereas in the latter case, the child's best interests are considered by both parents when making decisions.

Both parents are actively engaged in making decisions about the child's legal and physical upbringing under a shared custody agreement. In a normal situation, the child's time spent with each parent is almost equal; nevertheless, the parents and the court decide on the exact timetable.

If the court finds that it is in the child's best interest, it may grant custody of a third party, like a grandmother, aunt, uncle, or other family. The court or the parents may work up a visitation plan that allows the non-custodial parent to spend time with the kid, even if they are not granted primary physical custody. When deciding on a custody agreement, courts primarily look at what's best for the kid. The child's maturity level, age, and the nature of the child's connection with each parent are all factors that the court must take into account.

Since custody agreements are personal and delicate for each family, there are a few more types of custody that few people are familiar with. The first kind of custody agreement is known as "open communication," and it encourages parents to talk to each other and work together for the best interests of their kid. A second option is for a mediator to assist the parents in negotiating a custody agreement outside of court. The third option is for the court to designate an parental coordinator to act as a mediator between the parents in circumstances where there is a great deal of disagreement.

1. FORMS OF CHILD CUSTODY AVAILABLE IN INDIA

Physical custody occurs when one parent has the kid for the majority of the time. It entails taking care of a kid on a daily basis, such as feeding them, housing them, clothing them, supervising them, etc. There are two kinds of physical custody: sole and joint. In a situation of sole physical custody, one parent is primarily responsible for the child's physical well-being

and upbringing, while in a joint physical custody arrangement, both parents are equally involved in these matters, and the child spends time at each home³.

When one parent has the legal authority to make important choices about their child's development, including those regarding healthcare, education, religion, and finances, it is called legal custody. Sole & joint legal custody are two more forms of child custody that may be granted. When one parent has sole legal custody, that person has complete authority over all significant life choices affecting the kid. On the other hand, when both parents have joint legal custody, they are able to confer with each other and make decisions together. The parents share legal and physical custody responsibilities under a shared custody agreement. The parents and the court decide on the exact schedule, although usually the kid spends about the same amount of time on each parent.

Depending on the circumstances, the court may decide that the child would be best served by granting custody of a third party, like a grandmother, aunt, uncle, or other family. In most cases, the court or the parents will establish a timetable for when the non-custodial parent may see or spend time with their kid. The main consideration for courts when deciding on custody arrangements is what is best for the kid. The court must take into account the child's age, maturity level, and the nature of the child's connection with each parent. Because custody agreements are personal and delicate for each family, few individuals are familiar with the many other types of custody that exist. One option is "open communication custody," where both parents are urged to talk freely and work together for the best interests of their kid. As for the second option, a mediator may facilitate an out-of-court custody agreement between the parents. Thirdly, a parental coordinator might be appointed by the court to help parents communicate and resolve conflicts in high-conflict instances.

1. Custody Laws under the Hindu Marriage Act, 1955

In the event of a Hindu couple's divorce or separation, the Hindu Marriage Act, 1955 (HMA) specifies the legal requirements for child custody. The Act establishes clear standards for deciding on custody arrangements, with the child's wellbeing as the ultimate consideration. As mentioned before, the Hindu Marriage Act establishes two categories of custody: sole custody & joint custody⁴. During a divorce, the parties usually agree on a custody agreement under

³ IALM Academy. (n.d.). Forms of Child Custody Laws Available in India. IALM Academy Blog.

⁴ TutorialsPoint. (n.d.). Custody of Children - Section 26 of the Hindu Marriage Act, 1955. TutorialsPoint.

HMA. Nevertheless, there are circumstances in which the Act permits independent custody petitions:

- One parent may ask for primary or exclusive custody if the other parent is abusive or negligent to the kid.
- Sole custody might be requested by the other parent in the event that one parent consistently leaves the kid without support.
- It is possible to think about how a parent's new spouse could affect their child's life when the parent remarries.

The welfare of the child takes precedence above all other considerations when the court makes a custody determination. The wants of older children are more significant because of reasons such as their age, tastes, and emotional connection. Important factors include the parents' emotional and physical well-being, their financial security, and their capacity to provide a secure and caring home for the kid. One good aspect is having trusted caretakers, such as grandparents or extended relatives, available to help out. When it comes to a child's upbringing, the courts place a premium on preserving their cultural and educational traditions. The choice is heavily influenced by any indication of parent-child or other-parent-harm.

- **Specific Provisions of HMA:**

Section 6: Allows the court to use its discretion in determining child custody in light of the best interests of the kid.

Section 25: In situations of abuse, abandonment, or neglect, any parent might ask for custody.

Section 26: Allows the court to designate an advocate to look out for the best interests of the kid.

Section 27: Gives the court the authority to amend the custody agreement depending on new information.

Because of its positive effects on children's growth and development, the HMA advocates for shared custody arrangements wherever feasible. For peaceful and amicable resolution of custody issues, mediation is recommended⁵. Families with modest incomes may get legal

⁵ Legislative Department, Ministry of Law and Justice, Government of India. (2000). Juvenile Justice (Care and Protection of Children) Act, 2000.

assistance to guarantee they are fairly represented in court. Regardless of a custody agreement, both parents have an obligation to stay in touch and support their child's mental health.

The wellbeing of the child is given paramount importance in the HMA's framework for deciding child custody for Hindu marriages. Although the Act provides detailed recommendations, it is important to remember that every situation is different and must take into account all pertinent details. If you want to know what your rights are, how the legal system works, and what your best option is for your kid, you should see a family law attorney who specializes in Hindu Marriage Act cases.

2. Custody Laws under Special Marriage Act, 1954

Marriages between people of different faiths are recognized by law in India under the Special Marriage Act of 1954⁶. Despite the lack of direct language addressing the matter, Section 38 grants the court the authority to rule on and provide for the upkeep, education, and custody of young children in any actions governed by the Act.

Section 38: Interim orders pertaining to visitation and custody rights might be issued by the court throughout the proceedings. The final order might include provisions for education, maintenance, and custody. - Whenever feasible, the court should take the child's desires into account while deciding on a custody arrangement. - Upon request from either parent, the court has the authority to alter or remove its orders concerning schooling, support, and custody after the decree. - Under the provisions of the Special Marriage Act, the best interests of the child take precedence in all decisions about child custody.

- **Child Support Details as Per the Special Marriage Act:**

Joint Legal Custody: In a typical joint legal custody arrangement, both parents are involved in making decisions about the child's upbringing.

The actual custody arrangement is decided by the court based on what is best for the child's wellbeing. This may include:

One parent gets primary physical custody and the other has visiting privileges in a sole custody arrangement.

⁶ Merlyn Law Firm. (n.d.). Law of Child Custody. Merlyn Law Firm.

When parents have joint physical custody, they take turns taking care of their child's bodily needs and living with them for certain periods of time.

The court has the authority to impose maintenance payments on any parent in order to maintain the kid.

Regarding religious matters, the court has no business dictating how a kid is raised. The court may, however, take the parents' religious convictions into account when making decisions on visitation and custody.

Regardless of the parents' religious origins, the Special Marriage Act grants custody rights according to the child's wellbeing. The Special Marriage Act and the child custody rules of other faiths' personal laws may be different.

- **Limitations of the Special Marriage Act:**

There are no particulars about custody arrangements in Section 38, however it does provide broad recommendations.

Inconsistencies and differences in results might occur when the court makes custody judgments at its discretion. It is essential to seek the advice of an attorney who focuses in family law since child custody matters are quite complicated. In addition to looking out for your rights, they may also help you navigate the legal system and decide what's best for your kid. When deciding who gets custody of a kid, the court may consider reports written by psychologists and social workers who have expertise in child welfare. To lessen tension and reach a mutually agreeable resolution to a custody issue, mediation may be a helpful tool.

3. Custody Laws under the Guardianship and Wards Act, 1890

The appointment and authority of guardians for young children are governed by the Guardianship & Wards Act, 1890 (GWA), a major statute in India. Although it is not only about custody, it is a major factor in deciding who will take care of children when their parents can't or won't safeguard them⁷. The applicable provisions are explained in full here:

- **Categories of Legal Oversight:**

Specifically, the Act acknowledges two categories of guardians:

⁷ Legislative Department, Ministry of Law and Justice, Government of India. (1890). Guardians and Wards Act, 1890.

The person's physical and mental health, as well as their housing, schooling, and healthcare, are the responsibility of the guardian.

Protector of the property: In charge of the kid's possessions and money.

- **Guardian Appointment:**

Various methods for appointing guardians are provided for under the GWA:

In a will and other valid legal document, parents might name another person as their child's guardian.

When parents cannot be located, are deemed unsuitable, or have passed away, or when a custody battle arises between them, the court has the authority to choose a guardian.

For children without alternative choices, the government official known as the Collector may be designated as a guardian under certain circumstances.

- **Guardian Authority and Responsibilities:**

The Act specifies the responsibilities and authority of guardians, which include:

Guardians are legally obligated to take care of their ward's material and mental needs and have the authority to do so.

Guardians have a special obligation to educate their wards, raise them up in a religious environment, and instruct them in the ways of the world.

Guardians have a responsibility to act in the best interests of their wards and handle their property with care and diligence.

Financial Reporting: The court requires guardians to provide periodic financial reports detailing the assets of their ward.

- **Important Parts Regarding Custody:**

When discussing child custody, certain parts that comprise the GWA are very pertinent:

Section 7: The court may create interim custody arrangements and order the turning over of a juvenile under this clause.

Section 8: Under this provision, the court may designate an adult to act as a guardian for a child.

Section 10: In order to choose the guardian who will look out for the child's best interests, this section lays forth the criteria to use.

Section 17: In the event of a guardian's misbehavior or neglect, the court may remove them under this provision.

Section 25: Under this provision, a guardian may, with the court's consent or for certain reasons, remove a ward from the court's authority.

- **Things the GWA Can't Do:**

There are some limits and gaps in the GWA's framework for child custody:

Appointment of a guardian and administration of property are the principal concerns of the Act, rather than specific arrangements for custody. When it comes to custody determinations, personal laws may take precedence over the GWA. Judicial rulings may be inconsistent since the Act does not provide clear standards for deciding what is best for the kid.

In India, child custody arrangements are heavily influenced by the Guardianship and Wards Act, 1890. To guarantee equitable results for children, it is necessary to interpret it in conjunction with individual laws and changing societal standards, but it does provide a foundation. To safeguard the child's best interests and comprehend the particular application of the Act to your situation, it is essential to consult an attorney.

4. Children from Sexual Offences (POCSO) Act, 2012

The Indian judicial system views children alike both victims and perpetrators. Constitution of India¹, Juvenile Justice (Care and Protection of Children) Act, 2015², and Protection of Children from Sexual Offences (POCSO) Act, 2012³ are the primary statutes that shape India's system of child protection law⁸.

Numerous laws and regulations in India are put in place to safeguard children, who are considered victims, and make sure they are secure. All people, including children, have basic rights that are guaranteed and protected by the Indian Constitution. Care, protection, and rehabilitation of children in need, as well as juvenile offenders, are addressed in the Juvenile Justice (Care and Protection of Children) Act, 2015, a thorough piece of law. The Act creates a

⁸ Legislative Department, Ministry of Law and Justice, Government of India. (2012). Protection of Children from Sexual Offences (POCSO) Act, 2012.

distinct system of juvenile justice for youth who have run afoul of the law, and it contains measures to help them get back on their feet and rejoin society.

For the purpose of protecting minors from sexual assault and ensuring that those responsible face swift punishment, the POCSO Act of 2012 was enacted. All individuals under the legal age of eighteen are considered children for the purposes of this statute, which encompasses a wide range of crimes, including sexual harassment, sexual assault, as pornography involving minors. In addition to designating special public prosecutors and creating dedicated courts, the Act establishes mechanisms to deal with sexual offenses perpetrated against minors.

Also, the Juvenile Justice (Care and Protection of Children) Act, 2015 governs juvenile offenders in India. Any individual who has not yet turned eighteen is considered a juvenile under the Act, which also establishes a distinct juvenile justice system to handle crimes perpetrated by minors. In addition to creating dedicated juvenile justice boards & child welfare committees to manage matters involving juveniles, the Act contains measures for the diversion, rehabilitation, & reintegration of juvenile offenders.

There is a legal structure in place, but being a victim or an offender as a youngster in India is still very difficult. Children in India are especially at risk because of a number of socioeconomic issues, including widespread poverty, widespread illiteracy, and inadequate healthcare and educational opportunities. Lack of sufficient protection and assistance for children is also caused by gaps in the execution of policies and regulations meant to safeguard them.

Considering the unique measures put in place, such as the reverse burden on proof, this article will examine the legal structure that deals with juvenile offenders and victims. Concerning the effects on other people's rights, it examines these unique provisions.

2. LEGAL FRAMEWORK TO AID PROTECTION OF CHILDREN IN INDIA

When it comes to protecting children who have been victims of crime, India has adopted a number of measures. The Constitution of India, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences (POCSO) Act, 2012 provide the legislative framework for the protection of children in India. India has implemented many legislative measures to safeguard children who have been victims:

1. Protection under the Constitution of India

Several sections of the Indian Constitution guarantee the safety of children. All people,

regardless of age, are entitled to the same basic liberties and protections outlined in the Constitution⁹. A child's right to an adequate education, health care, and freedom from abuse is guaranteed by the Constitution as well.

2. Juvenile Justice (Care and Protection of Children) Act, 2015

Care, protection, & rehabilitation for children in need, as well as juvenile offenders, are addressed under the Juvenile Justice Act, 2015. For youths who find themselves in legal trouble, the Act creates a distinct juvenile justice system and lays out plans to facilitate their rehabilitation and eventual reintegration into mainstream society.

3. Protection of Children from Sexual Offences (POCSO) Act, 2012

To prevent sexual assaults on minors and to guarantee that those responsible face swift punishment, the POCSO Act of 2012 was enacted. It encompasses a range of crimes, including sexual harassment, sexual assault, which pornography involving minors, and defines a child as any anyone under the age of eighteen.

4. Child-friendly procedures

In order to safeguard children who may become victims, the Indian judicial system has implemented child-friendly protocols. The POCSO Act mandates the creation if a child welfare committee to supervise the rehabilitative process and the appointment if a protection officer to guarantee the kid's safety and well-being. Victims who are minors have the right to a safe and pleasant environment in which to have their statements taken, according to the Act.

5. Public education initiatives

Several awareness efforts have been initiated by the Indian government to inform parents and children of their rights & the safeguards that are in place to ensure their safety. The end goal of these initiatives is to make it easier for abused children and their families to come forward and get the help they need.

Discussions on POCSO's impact on child safety are the primary subject of this article. legal protections afforded to accused individuals. An all-encompassing piece of law, the Protection of minors against Sexual Offences (POCSO) Act, 2012 guarantees swift justice for cases involving sexual offenses committed against minors. The Indian Parliament passed the Act to

⁹ HAQCRC. (n.d.). Constitution of India. HAQCRC.

establish a system for the rehabilitation and reintegration of abused and exploited children and to safeguard them from sexual abuse and exploitation.

Among the many sexual offenses that the POCSO Act, 2012 seeks to outlaw are those that involve minors, such as sexual assault, harassment, and pornography. In order to address instances of sexual offenses against children in a child-friendly manner, the Act acknowledges the fragility of children and the necessity to safeguard them. Sexual harassment, sex assault, & pornography involving minors are all crimes included under the Act, which defines children as anybody under the age of 18.⁸ Additionally, the Act designates special public prosecutors and sets up specialized courts to deal with instances of sexual offenses against minors. The Act mandates that trials for sexual offenses against minors must be concluded within one year, acknowledging the urgency of these instances and the necessity for swift justice.

Rehabilitating and reintegrating children who have been victims of sexual offenses is another aspect of the POCSO Act, 2012. The Act establishes a child welfare committee to supervise the kid's rehabilitation and reintegration into society and allows for the appointment of a protection officer to guarantee the child's safety and well-being.

To guarantee the safety, well-being, & rehabilitation of children who have been victims of sexual offenses, the POCSO Act, 2012 sought to provide a thorough legislative framework for this purpose. The Act seeks to establish a child-friendly framework for dealing with instances of sexual offenses against children, acknowledging the fragility and need of children's protection.

Under Indian law, the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) addresses juvenile offenders. Instead of punishing juvenile offenders, the JJ Act emphasizes the need of providing them with care, protection, & rehabilitation services. The Act guarantees the protection of children's rights and interests and establishes a court system that is child-friendly. A juvenile in conflict with the law is defined by the JJ Act as an individual who commits an infraction while being under the age of eighteen. In contrast to the adult criminal justice system¹⁰, the Act establishes a distinct juvenile justice system. The goal of the juvenile justice system is to help the youth get back on their feet and rejoin society. Services such as counselling, community work, and job training are all part of the system.

¹⁰ Legislative Department, Ministry of Law and Justice, Government of India. (2015). Juvenile Justice (Care and Protection of Children) Act, 2015.

5. the Juvenile Justice (Care and Protection of Children) Act, 2021

The adoption of a child is considered final if a civil court issues an adoption order, according to the Juvenile Justice (Care and Protection of Children) Act, 2015. The Bill states that district magistrates (including extra district magistrates) will be authorized to issue such adoption orders, rather than the court. There are three levels of adolescent criminal offenses defined under the 2015 Act: heinous, severe, and petty. Crimes carrying sentences of three to seven years in jail are considered serious. Offenses for which the minimum penalty is either not specified or is less than seven years in prison and the maximum penalty is over seven years in prison are now considered severe offenses according to the bill.

- **Key Issues and Analysis**

The law establishes an everlasting bond between a kid and their adoptive parents via the adoption procedure. Thus, one may wonder whether it is reasonable to give the district magistrate, rather than a civil court, the authority to issue adoption orders.

The number of adoption cases ongoing in various courts reached 629 in July 2018. With the new authority to issue adoption orders, the district magistrate may speed up the adoption process, according to the bill. The question of whether the current backlog warrants transferring responsibility to a district magistrate should be considered.

It was pointed out by the Standing Committee of Human Resource Development (2015) that several states lacked the necessary legislative entities under the Act. Only 17 of the 35 states and union territories have all the necessary institutions and organizations in place under the Act in every district as of 2019.

The Central Adoption Resource Authority (CARA) failed to provide children who were deemed legally free for adoption with timely recommendations, as pointed out by the Madhya Pradesh High Court in 2017. It was suggested that CARA's Steering Committee should have the authority to oversee and probe the organization's actions.

- **HIGHLIGHTS OF THE BILL**

To be considered a juvenile, one must be under the age of eighteen. Kids who are in trouble with the law or who need protection are the focus of the Juvenile Justice (Care and Protection of Children) Act, 2015.[1] The Hague Convention the Protection of Children and Cooperation

in respect on Inter-country Adoption (1993)¹¹, the United Nations Convention the Rights of the Child, and other relevant international agreements are all met by the Act, which India has signed as a signatory. Because a signatory, India must do what's needed to preserve children's rights in areas including adoption, protection and care, and juvenile justice.

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 is now pending in the Rajya Sabha after being presented in the Lok Sabha on March 15, 2021.³ Changes to the Juvenile Justice (Care and Protection of Children) Act, 2015 are made by this bill. The adoption cases have been significantly delayed in the courts, according to the Statement for Objects and Reasons provided by the 2021 Bill. Additionally, it clarifies that adoption matters are not contentious and may be resolved following a structured procedure.³ In August 2018, a bill that makes it possible for district judges to order adoptions was presented in Lok Sabha. The 16th Lok Sabha was dissolved, nevertheless, and the Bill expired.

Offenders under the age of 18 who commit crimes classified as "heinous" under the 2015 Act face a minimum sentence of seven years in prison under the Indian Penal Code or any other applicable law, "serious" offences carry a sentence of between three and seven years in prison, and "petty" offences carry a sentence of less than three years in prison.¹ In 2020, the highest court in the land noted that the statute does not address crimes with minimum sentences on shorter than seven years or with maximum sentences exceeding seven years in prison without a minimum term. According to the court's ruling, these offenses should be considered severe.⁵ This order is also sought to be implemented by the Bill.

- **Key Features**

- **Adoption:** Once a child has been accepted by potential adoptive parents, the adoption agency is required by law to apply to a civil court for an adoption order. The court's adoption order officially transfers legal custody of the kid to the adopted parents. The district magistrate (and any additional district magistrates appointed under the bill) will be responsible for carrying out these functions and issuing these orders in lieu of the court.
- **Appeals:** Under the new law, within 30 days following a district magistrate's adoption order, anybody who feels wronged by the decision may take their case to the Divisional Commissioner for a review. Within four weeks after the appeal is filed, the matter should

¹¹ iPleaders. (n.d.). Legal Framework for Inter-Country Adoption

be resolved. If a Child Welfare Committee determines that an individual does not qualify as a child in need of protection and care, the decision cannot be appealed under the provisions of the Act. This clause is repealed in the Bill.

- Serious offences: If a minor is facing severe charges, the Juvenile Justice Board is required by law to investigate the allegations. Offenses punishable by a jail sentence of between three and seven years are considered serious. Offenses for which the minimum penalty is either not specified and is less over seven years in prison and the maximum penalty is over seven years in prison are now considered severe offenses according to the bill.
- Designated Court: The Children's Court, which is similar to a Sessions Court, will hear cases involving offenses against children that carry a sentence of more than seven years in prison, as provided for in the Act. A Judicial Magistrate will preside over trials for lesser offenses that carry sentences of fewer than seven years in jail. The Children's Court will now have jurisdiction over all cases involving violations of the Act, according to the revised bill.
- Offences against children: A violation of the Act, which carries a jail term of three to seven years, is defined as an offense that is both cognizable (i.e., subject to arrest without a warrant) and non-bailable. These crimes will no longer be punishable by recognition or bail, according to the new law.

Welfare Committees for Children (CWCs): Under the terms of the Act, each state is required to establish a Child Welfare Council (CWC) to oversee the care and protection of children in need. It specifies how members of CWC are to be chosen for appointments. Members must meet certain requirements, such as being (i) employed by an organization that deals with children's health, education, and welfare for a minimum of seven years, and (ii) a licensed professional having a degree in fields such as social work, law, child psychology, or psychiatry. The Bill expands the list of those who cannot join the CWC by adding certain requirements. I a history of human rights and child rights abuses, or (ii) involvement with the administration of a district-wide child care facility¹².

¹² iPleaders. (n.d.). Powers and Functions of Child Welfare Committee. iPleaders Blog. Retrieved from <https://blog.ipleaders.in/powers-and-functions-of-child-welfare-committee/>

CASES

- **Gita Hariharan vs. Reserve Bank of India (1999):**

This historic decision by India's highest court upheld the validity of appointing a mother as a child's natural guardian and rejected the idea that a father's rights should automatically take precedence over those of a mother¹³. A mother's role as natural guardian, particularly in custody disputes, was defined by this ruling, which acknowledged the mother's authority to act as her child's legal guardian.

- **Ruchi Majoo vs. Sanjeev Majoo (2011):**

The highest court in the land reiterated that a parent's or guardian's best interests must take precedence in any custody dispute¹⁴. The court emphasized that parental rights should not take precedence over the best interests of the kid when deciding who gets to live with whom.

- **Dhanwanti Joshi vs. Madhav Unde (1998)**

The Supreme Court established criteria for determining parental rights in situations involving the foreign kidnapping of a child in this decision¹⁵. It is critical to resolve these matters quickly in order to safeguard the rights of the kid, the court said, and the child's safety & best interests must take precedence.

- Nil Ratan Kundu & Anr. vs. Abhijit Kundu (2008):
- The highest court in the land ruled that paternity should not be presumed when a kid is extremely little. A case-by-case evaluation should be used to determine child custody, the court stressed, and the kid's welfare was reaffirmed¹⁶.

- **A Case of Parental Alienation:**

A parent sought child custody in this instance after his ex-wife allegedly began to emotionally distance herself from him by disparaging him in public and limiting his contact with their kid. To ascertain the level of parental alienation & the optimal custody arrangement of the child's

¹³ Ms. Githa Hariharan & Anr vs Reserve Bank Of India & Anr on 17 February, 1999, Volume Source (1999).

¹⁴ National Commission for Women. (n.d.). Ruchi Majoo vs. Sanjeev Majoo. Retrieved from <https://ncwapps.nic.in/PDFFiles/ImpCaseLawsRuchiMajoo.pdf>

¹⁵ Smt. Githa Hariharan vs. Reserve Bank Of India & Others, Volume Source (1999). Retrieved from <https://main.sci.gov.in/jonew/judis/13699.pdf>

¹⁶ Nil Ratan Kundu & Anr vs Abhijit Kundu on 8 August, 2008, Volume Source (2008). Retrieved from <https://indiankanoon.org/doc/687286/>

welfare, the court stepped in and mandated a psychiatric evaluation of the parents as well as the kid.

- **Violence in the Home and Child Custody:**

The father was accused of domestic abuse by the mother, who sought a divorce and custody of her children. The court ordered the father to have supervised visitation while the mother was given interim custody pending the investigation of the charges. The child's well-being and safety were factors in the ultimate custody determination.

- **Child Custody Conflict on a Global Scale:**

A woman from India living in the United States sought custody of her kid after the father abducted him and brought him back to India against her will. Questions of jurisdiction & international treaties were at the heart of this case's complicated legal concerns. It was up to the courts to decide which country's laws should be implemented and which custody arrangement would be best for the kid.

Subjects: Custody and Remarriage

A man claimed custody of his kid from a prior marriage after remarrying after a divorce. Because she didn't think the father's new wife could be a good parent, the mother was against the arrangement. Prior to rendering a custody determination, the court took into account the stability in the two houses as well as the child's connection with each parent.

- **Case of the Child's Choice:**

The court took the child's wishes into account while deciding on a custody battle. But the court also looked at whether the kid was being guided by a parent or whether it was really what was best for the kid. We gave the child's selection a lot of weight based on their age, maturity, and logic.

Collaboration on Child Custody:

After divorcing, the parents decided to share child custody. Disagreements emerged, however, about who would have decision-making and visiting rights as part of the custody arrangement's execution. The court stepped in to make sure the parents followed the arrangement and put the child's needs first.

Prisons and Substance Abuse:

The child's custody was requested by a parent who had a history of drug misuse. Concerned about the child's welfare, the other parent voiced their opposition. The court placed a high priority on the child's safety and ordered drug testing and rehabilitation programs as prerequisites for considering custody.

- **Ignorance and Care**

One parent was accused of neglect during a custody struggle. There was evidence that the youngster was left alone and without the necessary care on many occasions. Prior to making a custody determination, the court assigned an attorney to advocate for the child's best interests and carried out an exhaustive inquiry.

- **Exceptional Needs Case for a Child:**

A custody battle arose between parents over a kid with special needs. The capacity of each parent to provide the child with specialized care, support assistance, and educational opportunities was assessed by the court. The special needs and best interests of the kid were the primary considerations in the custody agreement.

- **Disposal and Transfer:**

After a divorce, a custody battle arose because one spouse wanted to take the kid with them to a different city or even another country¹⁷. The reasons for moving, how it would affect the child's connection with the parent who stayed behind, and how feasible it would be to keep in touch were all factors considered by the court. In the end, the goal of the custody determination was to keep both parents engaged while causing the kid as little disturbance as possible.

¹⁷ Viswanath, S. (2019). Custody of children in India. India Filings. Retrieved from <https://www.indiafilings.com/learn/custody-of-children-in-india/>