
VOICES UNHEARD: HOW FAMILY COURTS SHAPE THE LIVES OF CHILDREN

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ABSTRACT

This paper is based on the child rights and protection under the role of family court is focused. Family courts in India occupy a critical position in adjudicating disputes that directly impact the lives, welfare, and future of children. Conceived as specialized forums under the Family Courts Act, 1984, now the concept of nuclear family is emerged. With these change and also due to some other factors problem in family also increased. Today filing of family related cases are on a rise. Disharmony in the family life may upset the development of children. In fact they are worse affected by this conflict. Here an attempt had been made to analyse the family court its establishment, jurisdiction, procedure etc and the challenges faced by it in protecting the rights of children and some suggestions are also put forwarded for rectifying those challenges. This paper examines the extent to which family courts fulfil their mandate of protecting children's rights, with particular emphasis on the "best interests of the child" principle. It analyzes statutory provisions, judicial trends, procedural mechanisms, and institutional challenges. The study argues that while family courts have made notable progress in adopting a child-centric approach, systemic inefficiencies, lack of child participation, and infrastructural deficits continue to undermine their effectiveness. The paper concludes with recommendations for strengthening child-sensitive justice delivery in India.

Keywords: Family Courts, family, Child Rights, Judiciary, Constitution, Best Interests of the Child, Custody, Guardianship, India.

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“Safety and security don’t just happen; they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.” – Nelson Mandela, former president of South Africa

1. Introduction

Children are the most precious gift of God and represent the hope for the future. When they are nurtured with care-mentally, physically, and educationally, they grow into valuable assets for the nation. This segment of the population must be properly guided, motivated, skilled, and trained to contribute to a country’s rapid progress. Generally person under the age of 18 is considered as child. However in our country this may change from legislation to legislation depending upon the conditions. Though India ranks second most populous country in the world, it occupies first position in terms of population of the youngsters. As per estimates, the current population of India is 1,486,716,765. Among them 29.7% of population are under age 15, 64.9% of population are of the age group between 15 and 64 and 5.5% of population are of the age 65 and above³. There are different institutions² and mechanisms for protecting the rights of the children in India. Among them the Family Courts established under the Family Courts Act, 1984 plays a crucial role⁴.

Family also provides social identity and recognition to the child. Nuclear family, joint family/extended family, matrilineal family, patrilineal family etc are some of the popular forms of family. Break down of the joint family system results into the emergence of the nuclear family which definitely developed a sense of insecurity among the members. There is no one to guide/mediate the spouses which in effect results in disparity in their family life. The end of these disparities and disharmony among the members is the filing of litigations in family courts. It may be pertaining to divorce, custody, maintenance and guardianship of children, adoption etc. Children are most affected by these litigations; their mental and moral development, tender age and childhood are worse affected by these litigations. Recognizing this, the Indian legal system has developed specialized mechanisms to address family disputes with sensitivity and care. Family courts were established to ensure speedy settlement of disputes while prioritizing the welfare of children. However, the extent to which these courts effectively protect children’s rights remains a subject of debate.

³ <https://countrymeters.info/en/India> visited on 06-05-2026

⁴ The Family Courts Act, 1984

Children, due to their age and dependency, are often unable to assert their rights independently. Therefore, it becomes the responsibility of judicial institutions to act as guardians of their interests. This paper explores whether family courts in India adequately perform this role and how their functioning can be improved to better serve children.

1.1 Meaning of child:

As provided under Article 1 of Convention on the Rights of the Child, 1989⁵ (CRC), “A child means every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier.”

2. Legal Framework Governing Child Rights in Family Courts

2.1 The Family Courts Act, 1984

The Family Courts Act was enacted to establish courts dedicated to family-related disputes. Section 9 emphasizes conciliation and settlement, reflecting the legislature’s intent to minimize adversarial litigation. Importantly, the Act encourages courts to adopt procedures that are less formal and more child-friendly⁶.

2.1.1 Jurisdiction of Family Courts:

Family courts shall exercise the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force and can deal exclusively with the dissolution of marriage; declaration of the matrimonial status of any person; declaration of ownership of properties of the parties concerned; interim order of injunction arising out of marital relationships; declaration of the legitimacy of any person, or guardianship of a person, or the custody or access of any minor and suits for maintenance⁷.

2.2 Constitutional Provisions and legal mechanisms for protection of child rights in India

The Constitution of India provides a strong foundation for the protection of children. Article 21 guarantees the right to life and personal liberty, which has been expansively interpreted to

⁵ The Rights of the Child, 1989. Article 1.

⁶ Section 9 of the Family Court Act, 1984

⁷ The Family Courts Act, 1984

include the right to dignity and development⁸. Articles 39(e) and (f) direct the State to ensure that children are protected against exploitation and are given opportunities to develop in a healthy manner⁹. It was introduced by the 86th Amendment Act of 2002. In order to implement article 21A, the Parliament has enacted The Right of Children to Free and Compulsory Education Act, 2009. Section 3 of the Act provides that “Every child of the age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education¹⁰. Some are legal mechanisms for protection of child rights in India: Right to Equality, Right to Education, Prohibition of Child Labour, Prohibition of Female Infanticide, Prohibition of Child Marriage, Protection of Juveniles, Prohibition of Sexual Abuse of Child, Prohibition of Child Trafficking etc.

2.3 Statutory Safeguards

Various statutes complement the role of family courts in protecting children:

The Indian legal system offers certain protections in recognition of children's vulnerability. Human rights documents, the Constitution, and general legislation do provide protection for children. The criminal offenses against children are consolidated in the Bharatiya Nyaya Sanhita. We have a number of specific laws, such as the Child and Adolescent Labour (Prohibition & Regulation) Act 1986, The Juvenile Justice (Care and Protection of Children) Act, 2000, The Right of Children to Free and Compulsory Education Act 2009, The Protection of Child Rights Act 2005, Prevention of Children from Sexual Offences Act (POCSO) 2012 and Prohibition of Child Marriage Act (PCM) 2006 to safeguard the rights of children. The Guardians and Wards Act, 1890, The Hindu Minority and Guardianship Act, 1956 The Protection of Children from Sexual Offences Act, 2012. These laws collectively reinforce the principle that the welfare of the child is paramount in all judicial determinations.

3. The “Best Interests of the Child” Principle

Children are one of the most vulnerable sections of our society. They need special care and protection and this is also not different in the case of our justice system. Building on international children's rights obligations, child-friendly justice introduces principles that

⁸ Article 21 of the Constitution of India

⁹ Article 39 of the Constitution of India

¹⁰ The Right of Children to Free and Compulsory Education Act, 2009. section 3

empower children to enforce their rights and encourages government, court, and law enforcement officials to develop policies that address children's precarious situation in the justice system. The cornerstone of child-related adjudication in India is the “best interests of the child” principle. This doctrine requires courts to prioritize the child’s welfare above all other considerations, including parental rights.

Indian courts have consistently upheld this principle in custody disputes, emphasizing factors such as emotional well-being, educational opportunities, and the child’s preferences (depending on age and maturity). However, the subjective nature of this principle often leads to inconsistent outcomes, as judges exercise broad discretion.

3.1 Convention on the Rights of the Child

Article 25 of Universal Declaration of Human Rights 1948 states that Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection¹¹.

Article 23 of International Covenant on Civil and Political Rights 1966 (ICCPR) provides that in the case of dissolution of family, provision shall be made for the necessary protection of children¹².

Article 24 of ICCPR prevents discrimination in the enjoyment of rights. Article 10 of International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) states that children and young persons should be protected from economic and social exploitation¹³.

International Labour Organisation (ILO) has drafted certain Conventions to prevent child labour. Minimum Age Convention 1973 states that minimum age allowed for employment of child shall not be less than the age of completion of compulsory schooling which is not less than 15 years¹⁴.

The Worst form of Child Labour Convention 1999 (ILO) acknowledges that elimination of worst forms of child labour is possible only by a comprehensive action. There should be free

¹¹ Article 25 of Universal Declaration of Human Rights 1948.

¹² Article 23 of International Covenant on Civil and Political Rights 1966.

¹³ Article 24 of International Covenant on Civil and Political Rights 1966.

¹⁴ International Labour Organisation

education, rehabilitation and social integration of the child free from such labour.

United Nations Convention on the Rights of the Child, 1989 and Child-friendly justice Member states of Convention on the Rights of the Child are obliged to follow the obligations of child friendly justice. The Convention on the Rights of the Child (CRC) 1989 applies to all human beings below the age of 18 years. Articles 1 to 40 of CRC explains rights of child in a comprehensively¹⁵. Article 3 of Convention says that “in all matters relating to child, the best interest of the child shall be the primary consideration. State, parents, legal guardian or other individual has a duty to protect the rights of child¹⁶.”

4. Role of Family Courts in Shaping Children’s Lives

4.1 Custody and Guardianship Decisions

The term ‘custody’ is not defined in any Indian family law, whether secular or religious. The term ‘guardian’ is defined by the Guardians and Wards Act, 1890 as a “person having the care of the person of a minor or of his property or of both his person and property¹⁷. Family courts play a decisive role in determining custody arrangements. These decisions can significantly impact a child’s upbringing, mental health, and social development. Courts often favor the parent who can provide a stable and nurturing environment¹⁸.

Section 7 of the Act authorizes the court to appoint a guardian for the person or property or both of a minor, if it is satisfied that it is necessary for the ‘welfare of the minor’¹⁹. Section 17 lays down factors to be considered by the court when appointing guardians²⁰. Section 17(1) states that courts shall be guided by what the personal law of the minor provides and what, in the circumstances of the case, appears to be for the ‘welfare of the minor’²¹. Section 17(2) clarifies that in determining what is for the welfare of the minor, courts shall consider the age, sex and religion of the minor; the character and capacity of the proposed guardian and how closely related the proposed guardian is to the minor; the wishes, if any, of the deceased parents; and any existing or previous relation of the proposed guardian with the person or property of

¹⁵ United Nations Conventions Articles 1-40.

¹⁶ United Nations Convention, Article 3.

¹⁷ Guardians and Wards Act, 1890, s. 4(2) (Act 8 of 1890)

¹⁸ The Guardians and Wards Act, 1890

¹⁹ Guardians and Wards Act, 1890, s. 7 (Act 8 of 1890)

²⁰ Guardians and Wards Act, 1890, s. 17 (Act 8 of 1890)

²¹ Guardians and Wards Act, 1890, s. 17(1) (Act 8 of 1890)

the minor²². Section 17(3) states that if the minor is old enough to form an intelligent opinion, the court 'may' consider his/her preference²³. Even if the substantive law applied to a certain case is the personal law of the parties, the procedural law applicable is what is laid down in the Guardians and Wards Act, 1890²⁴.

4.2 Maintenance and Financial Security

Ensuring financial support through maintenance orders is another crucial function. Adequate maintenance is essential for securing children's access to education, healthcare, and overall well-being²⁵.

4.3 Mediation and Conciliation

Family courts promote alternative dispute resolution mechanisms such as mediation. These processes can reduce conflict and create more cooperative parenting arrangements, which benefit children²⁶.

4.4 Protection from Abuse and Neglect

In cases involving domestic violence or abuse, family courts act as protective bodies, ensuring that children are shielded from harmful environments. National Commission for Protection of Child Rights Section 3 of the Protection of Child Rights Act, 2005 provides for the constitution of National Commission for Protection of Child Rights²⁷ and section 17 of the Act provides for the constitution of State Commission for Protection of Child Rights²⁸. Offences against child under

4.4.1 The Bharatiya Nyaya Sanhita, 2023 (BNS)

The Bharatiya Nyaya Sanhita, 2023 (BNS) that repealed Indian Penal Code specifies the offences against children²⁹. Section 91 of (BNS) punishes acts performed with the intention of preventing a child from being born alive or causing its death after birth. Section 92 of BNS

²² Guardians and Wards Act, 1890, s. 17(2) (Act 8 of 1890)

²³ Guardians and Wards Act, 1890, s. 17(3) (Act 8 of 1890)

²⁴ Guardians and Wards Act, 1890, s. 6 (Act 8 of 1890)

²⁵ Sec 125 of Cr.PC.

²⁶ The family Courts Act. 1984 section 5 & 6.

²⁷ The Protection of Child Rights Act, 2005. Section 3.

²⁸ The Protection of Child Rights Act, 2005. Section 17

²⁹ Chapter V of Bharatiya Nyaya Sanhita 2023

penalises the offence of causing death of quick unborn child by act amounting to culpable homicide³⁰.

4.5 Adoption of a child

Hindu Adoptions and Maintenance Act, 1956 governs the adoption among Hindus in India. Section 6 of the Act explains the requisites of a valid adoption³¹. Sections 7 and 8 deals with the capacity of a male Hindu and female Hindu to take in adoption respectively. Adoption of a child shall ensure the best interests of the child. Adoption can be made only on the informed consent of parents, relatives or legal guardians³². If the child cannot be placed in a foster or an adoptive family or cannot be cared for in the child's country of origin, inter-country adoption may be considered subject to legal norms and procedure. Authorities shall rule out any kind of exploitation inter-country adoption and ensure the safety of child.

5. Challenges in Protecting Children's Rights

The main objective of the establishment of family court in India is for the speedy disposal of family cases but unfortunately this very objective is defeated since it is burdened with lot of pending cases. This is one of the important challenges faced by the family courts Act, 1984.

5.1 Lack of Child Participation

Despite the emphasis on child welfare, children's voices are often absent in proceedings. Courts may hesitate to involve children directly, fearing psychological harm, but this can result in decisions that do not fully reflect their needs or preferences.

5.2 Procedural Delays

Family courts were intended to provide speedy justice, yet delays remain a persistent issue. Prolonged litigation can exacerbate the emotional distress experienced by children. Mental health and confidence level of the children are badly affected by the overcrowded court atmosphere.

³⁰ Chapter V of Bharatiya Nyaya Sanhita 2023 Sections 91-99.

³¹ Hindu Adoptions and Maintenance Act, 1956. Section 6.

³² Hindu Adoptions and Maintenance Act, 1956. Section 7 & 8.

5.3 Inadequate Infrastructure

Many family courts lack child-friendly facilities, trained counselors, and support staff. This undermines their ability to create a supportive environment for children.

5.4 Judicial Discretion and Inconsistency

The broad discretion granted to judges can lead to inconsistent interpretations of the “best interests” principle, resulting in unpredictability in outcomes.

6. Judicial Trends and Case Law

Indian judiciary has played a proactive role in emphasizing child welfare. Courts have repeatedly held that custody decisions must prioritize the child’s happiness and development over legal technicalities. In India, the judiciary protects the Constitution and fundamental rights. The recent decision of the Supreme Court that the mere viewing, possession and storage of material depicting minors engaged in sexual activity constitutes an offence under section 15 of the Prevention of Children from Sexual Offences Act is considered as a landmark judgement in child rights.

1. Gaurav Nagpal v. Sumedha Nagpal

The Supreme Court held that in custody matters, the welfare of the child is the paramount consideration, overriding all statutory provisions and parental rights. The Court clarified that “welfare” must be interpreted in the widest sense, including moral, ethical, emotional, and physical well-being. It rejected a purely legalistic approach and emphasized a holistic evaluation of the child’s best interests³³.

2. Roxann Sharma v. Arun Sharma

The Court reiterated that custody of a minor child, especially below five years, should ordinarily be with the mother, unless compelling reasons exist otherwise. It emphasized the importance of maternal care in early childhood development and held that interim custody decisions must also align with the child’s welfare, not merely procedural considerations³⁴.

³³ (2009) 1 SCC 42

³⁴ (2015) 8 SCC 318

3. Nil Ratan Kundu v. Abhijit Kundu

This case stressed that the character, conduct, and capacity of the parent are crucial in determining custody. The Court denied custody to the father due to concerns about his conduct and environment, reinforcing that financial superiority alone does not guarantee custody. The child's safety, emotional stability, and ethical upbringing were prioritized³⁵.

4. Mausami Moitra Ganguli v. Jayant Ganguli

The Supreme Court held that custody decisions must ensure the child's long-term welfare and stability, rather than short-term convenience. The Court emphasized that children should not be treated as "property" or "objects" of dispute between parents and highlighted the importance of continuity in upbringing, education, and social environment.

These cases reinforce that custody decisions must prioritize the child's well-being over legal rights of parents. In several landmark judgments, the Supreme Court has underscored that children are not mere subjects of litigation but individuals with rights. The judiciary has also encouraged the use of psychological assessments and expert opinions in custody cases³⁶.

5. Maniben Maganbhai Bhariya V District Development Officer

Supreme Court has held that right to health is a part of right to life under article 21 of the Constitution. In Maniben Maganbhai Bhariya vs District Development Officer, the apex court held that right to nutrition and healthcare constitutes the most basic and fundamental right of children. Reproductive health of the mother and the health of the infant child are closely related³⁷.

7. Need for Reforms

7.1 Child-Centric Procedures

There is a need to institutionalize procedures that actively involve children in decision-making, ensuring their voices are heard in a safe and appropriate manner.

³⁵ (2008) 9 SCC 413

³⁶ (2008) 7 SCC 673

³⁷ Civil Appeal No 3153 of 2022

7.2 Strengthening Mediation Mechanisms

Enhanced mediation frameworks can reduce adversarial conflicts and promote cooperative parenting.

7.3 Capacity Building

Judges, lawyers, and court staff should receive specialized training in child psychology and child rights.

7.4 Infrastructure Development

Family courts must be equipped with child-friendly spaces, counseling services, and support systems.

7.5 Time-Bound Proceedings

Introducing strict timelines for resolving child-related disputes can minimize prolonged uncertainty.

8. Conclusion

From the above discussions we can conclude that family court is having a tremendous role in protecting the rights of children. Yet there are certain matters which need to be improved and rectified. For tackling the problem of delay counselling should be made as expeditiously as possible and amendment to this effect needs to be made in the concerned statute. Family courts in India play a pivotal role in shaping the lives of children caught in familial disputes. While the legal framework strongly emphasizes child welfare, practical challenges hinder the realization of these ideals. The absence of child participation, procedural inefficiencies, and infrastructural limitations continue to affect outcomes. A country's human resources determine its level of development. Every society's prosperity depends on the protection of children and young people. In India, the judiciary protects the Constitution and fundamental rights. In view of all the above mentioned constitutional provisions, legal mechanisms and the remarkable judgments of judiciary one could conclude that there are variety of constitutional, regulatory and administrative steps to protect child rights.

To truly serve as guardians of children's rights, family courts must evolve into more child-

centric institutions that prioritize not only legal justice but also emotional and psychological well-being. By adopting reforms that enhance participation, efficiency, and sensitivity, family courts can better fulfil their mandate and ensure that the voices of children are not only heard but meaningfully acted upon.

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