CHILD RIGHTS JURISPRUDENCE: BALANCING PROTECTION AND AUTONOMY

Keerthana. M, Asiga Ganesh & Karuppiah. B, KMC College of Law

ABSTRACT

Child rights jurisprudence in India has traditionally emphasized protection, often prioritizing shielding children from harm over recognizing their agency. This paper argues that the evolution of child rights jurisprudence represents a fundamental shift in legal philosophy, from a Blackstonian paternalistic model to a synthesis of Will and Interest theories of rights. Traditionally, Indian law, reflecting a classic Hohfeldian structure of immunities and disabilities, has emphasized protection, viewing children as passive objects of state parens patriae. However, contemporary scholarship and the UNCRC challenge this, advocating for a model that recognizes children as right-holders with evolving legal personhood. This paper employs a jurisprudential lens to analyze the Indian legal framework, contrasting it with natural law foundations of inherent dignity and positivist statutory interpretations. It evaluates how theories of rights (Feinberg, Hart, Raz) provide a philosophical basis for balancing protection with progressive autonomy. The study concludes that a coherent child rights jurisprudence must embrace a hybrid model, transforming the child's legal status from a mere beneficiary of duties to an active participant in the Hohfeldian jural relationship.

1. **Introduction**

The discourse on child rights is inherently a jurisprudential one, grappling with the most fundamental questions of law: What is a right? Who can be a right-holder? And what is the legitimate limit of state and parental authority? This tension between protection and autonomy mirrors the classic philosophical debate between paternalism (justified by thinkers like Hobbes for maintaining order) and autonomy (championed by Mill as the paramount principle of liberty).

This tension is crystallized in the "will theory" and "interest theory" of rights. The will theory (or choice theory), associated with H.L.A. Hart, defines a right-holder by their capacity to exercise control over another's duty. This view traditionally marginalizes children, justifying a legal framework of protectionism and incapacity. In stark contrast, the interest theory, advanced by philosophers like Joseph Raz, holds that an entity possesses rights if it has interests that are sufficient grounds to impose duties on others. This theory robustly supports viewing children as holders of rights—to well-being, development, and dignity—even if they cannot yet claim them themselves. The journey of child rights jurisprudence is the story of moving from a purely will-theory-based exclusion to an interest-theory-based inclusion, while simultaneously constructing a legal bridge back towards a modified will theory through the principle of evolving capacity.

2. Literature Review

2.1 Stephen R. Arnott (2007) – "Autonomy, Standing, and Children's Rights", William Mitchell Law Review, Vol. 33, Issue 3

Arnott's examination of legal standing touches directly on the Hohfeldian incident of a right: the power to enforce a claim. His analysis reveals a jurisprudential gap where children possess claims (interest theory) but lack the legal power to vindicate them (will theory), placing them in a state of legal disability. His call for a graduated model of autonomy is, in essence, a proposal for a graduated grant of Hohfeldian powers. Arnott examines whether children truly possess enforceable rights and how legal systems can balance their protection with autonomy. Using a doctrinal and analytical approach, Arnott traces the historical development of children's rights from antiquity—when children were treated as property—through medieval, post-Reformation, and modern eras, culminating in international instruments like the UNCRC.

He explores autonomy as the central concept of children's rights and highlights the challenge of legal standing, where children often lack the capacity to bring claims independently. The paper identifies key difficulties, including the lack of a coherent political foundation for children's rights, the tension between shielding children and empowering them, and rigid age-based legal rules. Arnott concludes that children should be treated as developing citizens and calls for a graduated model of autonomy, reforms to give them greater participation in legal processes, and a framework that balances protection with empowerment.

2.2 A. Parsapoor, M. Bagher Parsapoor, N. Rezaei, F. Asghari (2014) – "Children's Autonomy in Medical Decision-Making in Iran", Iranian Journal of Pediatrics, Vol. 24, No. 6, pp. 696-702

The study of Iranian law presents a fascinating clash of legal positivism (the state's positive law based on Shia Fiqh) and natural law arguments (inherent rights of the child derived from universal ethical principles like autonomy and beneficence). The ethical dilemmas described are jurisprudential conflicts between a command theory of legal authority (parental and religious decree) and a Dworkinian view of law's integrity, which requires principles like the 'best interest of the child' to trump rigid rules. This study explores children's and adolescents' autonomy in medical decision-making within the Iranian legal and ethical framework. Autonomy is identified as a core principle of modern medical ethics, emphasizing that patients should have the right to make informed decisions about their health while physicians are obligated to respect those choices. In Iran, according to Shi'a Fiqh, legal capacity begins at the age of Taklif—15 lunar years for boys and 9 for girls—unless mental immaturity is proven. Parents are recognized as natural guardians but may lose decision-making authority if their actions are negligent or against the child's best interests. The authors compare Iranian law with international approaches, including the UK's Gillick competence and similar doctrines in Canada, Australia, and Ireland, which recognize mature minors' ability to consent to treatment based on capacity rather than age alone. The paper adopts a doctrinal and comparative method, examining Islamic law, civil code provisions, and ethical principles such as autonomy, beneficence, and non-maleficence. Two real-world cases are presented: a 12-year-old girl with untreated diabetes due to parental refusal of care, and a father who resisted surgical treatment for a child with acute appendicitis. These cases illustrate the ethical dilemmas faced by physicians when parental authority conflicts with the child's right to timely medical intervention. Challenges include the low age of Taklif for girls, the absence of clear tools to

assess children's decision-making capacity, and the difficulty for physicians in balancing respect for parental rights with their duty to protect life. The paper recommends harmonizing the age of decision-making capacity for boys and girls, developing standardized guidelines for capacity assessment, and establishing ethics committees to guide physicians in resolving conflicts with parents. The overall message is that children's autonomy must be respected but carefully balanced with protective measures to ensure their best interest.

2.3 De Hoyos, C., Altamirano-Bustamante, N., & Altamirano-Bustamante, M. (2013). Children's Participation in Medical Decisions in Mexico. Boletín Médico del Hospital Infantil de México, Vol. 70, No. 3, pp. 249-254

This article analyzes the evolving role of children in medical decision-making, motivated by complex pediatric cases involving disorders of sexual differentiation. The authors situate their analysis within Mexico's constitutional reforms and the Law for the Protection of the Rights of Girls, Boys, and Adolescents (2000, amended 2010), highlighting the influence of the CRC. The paper stresses that medical treatment decisions cannot be based solely on clinical tests or parental consent but must include the informed participation of the child, adapted to their developmental level. Ethical dilemmas arise because children are often presumed incapable of making valid decisions; however, their dignity and intrinsic rights require that their voices be considered. Participation strengthens adherence to treatment, respects dignity, and aligns with the principle of progressive autonomy.

2.4 Paul Bou-Habib & Serena Olsaretti (2015) – "Autonomy and Children's Well-Being", Journal of Moral Philosophy, Vol. 12, Issue 4, pp. 433-455

Their work provides a crucial philosophical bridge. They challenge the Rawlsian social contract model, which struggles to account for non-autonomous members of society. By arguing for 'child-sensitive autonomy,' they are effectively advocating for a capabilities approach (akin to Nussbaum and Sen) within jurisprudence, where the goal of law is to develop the child's capabilities for future autonomous functioning, thus marrying interest theory's concern for welfare with will theory's end goal of agency. The literature on children's rights and autonomy has increasingly shifted from a protectionist framework to one that balances protection with respect for the developing capacities of children. Bou-Habib and Olsaretti argue that autonomy is not only a concern for future adults but also a value to be respected during childhood. They critique traditional Rawlsian justice as failing to capture what matters for

children's well-being. Drawing on Feinberg's "right to an open future" and Matthew Clayton's "independence view," they argue for a "child-sensitive autonomy" approach. Respecting children's autonomy imposes both negative duties (refraining from indoctrination) and positive duties (providing information and opportunities suited to their level of understanding). This framework complements international standards like the CRC, mandating progressive realization of children's participation rights.

3. Research Objectives

a) To examine the legal, constitutional, and statutory frameworks governing children's rights in India and other jurisdictions (UK, USA, Sweden, South Africa, Iran) with special focus on autonomy, participation, and protection.

b)To analyze ethical principles and jurisprudential theories such as Feinberg's "right to an open future," Clayton's "independence view," and Bou-Habib & Olsaretti's "child-sensitive autonomy," and evaluate their relevance to modern child rights discourse.

c) To assess the role of parents, guardians, and the state in making decisions on behalf of children, particularly in cases involving health care, education, and religious upbringing, and to determine appropriate thresholds for respecting children's developing decision-making capacity.

4. Analysis

4.1 Analysis of Legal and Constitutional Frameworks

The comparative analysis reveals a clear jurisprudential evolution from a purely paternalistic model to a synthesized will-interest model. India's framework, with legislation like the Juvenile Justice Act and the Protection of Children from Sexual Offences (POCSO) Act, remains predominantly positivist and protectionist. This system creates strong Hohfeldian duties on the state to act as parens patriae and provides children with immunities from certain legal liabilities, but it grants them few corresponding powers to assert their own rights. This legal structure is deeply rooted in the interest theory of rights, where the state acts as the primary duty-bearer to protect the child's interests. This is evident in landmark cases like Sheela Barse v. Union of India, where the Supreme Court established the right of a child to legal aid and protection from exploitation, and Bandhua Mukti Morcha v. Union of India, which linked the eradication of

child labor to the right to life under Article 21, thereby establishing protection as a fundamental prerequisite for a child's future development and autonomy.

In contrast, the UK's Gillick competence doctrine and South Africa's Children's Act represent a significant jurisprudential shift. They incorporate a functional assessment of capacity, moving away from rigid, age-based legal rules. This approach effectively grants children Hohfeldian powers (such as the power to consent to medical treatment or to be heard in legal proceedings) that are contingent on their maturity rather than a fixed age. This shift is a crucial step towards operationalizing the will theory of rights within a protective, interest-theory framework. The Iranian system, based on the age of Taklif, presents a unique case of religious positivism clashing with the universal natural law principles of child development, illustrating the tension between fixed legal rules and the dynamic, rights-based approach. The analysis of Mexican law shows the influence of the CRC, which emphasizes that medical decisions must include the child's informed participation, adapted to their developmental level, rather than being based solely on parental consent. This approach recognizes the child's inherent dignity and rights, moving beyond a purely paternalistic model.

4.2 Analysis of Ethical and Jurisprudential Theories

The examined ethical theories provide an essential philosophical foundation for modern child rights jurisprudence. Feinberg's "right to an open future" functions as a natural law principle that limits paternalistic authority, ensuring that present decisions do not foreclose a child's future autonomy (a core will theory concern). This principle is vital in cases like Prakash v. State of Karnataka, where the court explicitly applied this concept to protect a girl's interest in a life of open possibilities by prohibiting early and forced marriage. Clayton's "independence view" provides a robust jurisprudential argument against comprehensive indoctrination, aligning with Millian principles of anti-paternalism. This view asserts that children have a right to develop their own beliefs and values, free from coercive influence.

Bou-Habib & Olsaretti's "child-sensitive autonomy" offers the most practical synthesis, resolving the Hart-Raz debate by arguing that the degree of autonomy afforded should be proportional to developmental capacity. This creates a sliding scale where interest theory protections dominate early childhood and gradually cede ground to will theory exercises of agency in adolescence. This synthesis acknowledges that while a child's interests must be protected, their developing capacity for independent decision-making must also be respected.

It provides a flexible framework for legal systems to adapt to the individual child's maturity rather than relying on a rigid age-based threshold.

4.3 Analysis of the Role of Parents, Guardians, and the State

The roles of parents and the state are defined by a dynamic interplay of authority and legitimacy, rooted in Hohfeldian relationships. Parental authority is not absolute but is a bundle of powers and duties granted to serve the child's interests (Raz's interest theory). The state's parens patriae role is the ultimate backstop, justified by Dworkinian soft paternalism when parental authority fails or harms the child's interests (as seen in medical neglect cases from Iran). The Gaurav Jain v. Union of India case is a prime example, where the court guaranteed children of marginalized backgrounds dignity and education. This framing positions the state as a facilitator whose duty is to create the conditions under which Razian interests are fulfilled, thereby enabling them to develop the capacities for future autonomous citizenship. The appropriate threshold for respecting a child's capacity is not chronological age but a functional test of understanding, appreciation, reasoning, and voluntary choice. This is a direct application of the Gillick standard that juridically recognizes the transition from a passive rights-beneficiary to an active rights-holder, thereby making the law more responsive to the realities of child development.

5. Findings

5.1 Legal and Constitutional Frameworks

The comparative analysis reveals a clear jurisprudential evolution from a purely paternalistic model to a synthesized will-interest model. India's framework (Juvenile Justice Act, POCSO, Article 21A) remains predominantly positivist and protectionist, creating strong Hohfeldian duties on the state and immunities for children but granting them few powers. In contrast, the UK's Gillick competence doctrine and South Africa's Children's Act represent a significant jurisprudential shift. They incorporate a functional assessment of capacity, effectively granting children Hohfeldian powers (to consent, to be heard) that are contingent on maturity rather than a fixed age, thereby operationalizing the will theory within a protective (interest-theory) framework. Iran's system, based on Taklif, presents a unique case of religious positivism clashing with universal natural law principles of child development.

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6. Conclusion:

A Jurisprudential Synthesis for the 21st Century Child

The central research question of this paper was to determine how legal, ethical, and policy frameworks can balance the protection of children with the recognition of their evolving autonomy. The findings confirm that this balance is not a static line but a dynamic, capacity-sensitive process. More profoundly, the analysis reveals that the evolution of child rights jurisprudence represents a fundamental philosophical shift from a paternalistic model, rooted in a narrow will theory of rights, to a hybrid synthesised model that reconciles Joseph Raz's

interest theory with a graduated pathway towards H.L.A. Hart's will theory.

This jurisprudential reconciliation is vividly illustrated in the progression of case law across jurisdictions:

a) The Limits of Protectionist Jurisprudence and the Foundation of Rights: Indian jurisprudence has begun its move from a welfare-centric to a rights-based model, yet it remains anchored in a protective, interest-theory framework. In Sheela Barse v. Union of India, the Supreme Court took a pivotal step by recognizing children as rights-holders, not merely objects of concern. This case represents the initial positivization of a natural law principle—inherent human dignity—into Indian law. Similarly, Bandhua Mukti Morcha v. Union of India affirmed that eradicating child labour links to Article 21, establishing that protection is not an end in itself but a necessary condition for creating the opportunities required for development and the future exercise of autonomy.

b) The Recognition of Progressive Autonomy: The landmark UK case of Gillick v. West Norfolk & Wisbech Area Health Authority is the quintessential judicial expression of the will-interest synthesis. The House of Lords held that a minor demonstrating sufficient understanding and intelligence can consent to medical treatment. This decision effectively granted children a Hohfeldian power, moving them from a state of disability to one of agency based on functional competence, not arbitrary age. This principle, though applied cautiously in India, finds resonance in Laxmi Kant Pandey v. Union of India, where the Court stressed that adoption decisions must prioritize the child's best interests (interest theory) while considering the child's own voice (incipient will theory).

c) The Enabling Role of the State as a Duty-Bearer: The state's role is not merely to protect but to enable, a concept grounded in its positive obligations under the interest theory. In Gaurav Jain v. Union of India, the Court guaranteed children of marginalized backgrounds dignity, education, and social integration. This framing positions the state as a facilitator whose duty is to create the conditions under which Razian interests are fulfilled, thereby enabling children to develop the capacities necessary for future autonomous citizenship.

d) Reinforcement by International Law as Positivized Natural Law: The UNCRC, particularly Articles 12 and 13, mandates that children capable of forming views must be heard. This international instrument serves as a powerful source of natural law principles that pressure

domestic positivist systems to evolve. M.C. Mehta v. State of Tamil Nadu, which addressed child labour, exemplifies the Indian judiciary's proactive use of constitutional mandates to align state action with these broader philosophical obligations, weaving international norms into the domestic legal fabric.

e) Acknowledging Structural Barriers to Autonomy: Meaningful autonomy cannot exist without the fulfillment of basic socio-economic rights. This is a core tenet of the interest theory, which argues that rights exist to protect fundamental interests. People's Union for Civil Liberties v. Union of India on the Right to Food highlights this intrinsic link. Poverty, malnutrition, and lack of education are not just social issues; they are jurisprudential barriers that prevent children from ever developing the capacity necessary to exercise will theory rights, permanently trapping them in a state of dependency.

f) The Forward-Looking Jurisprudential Agenda: The most recent cases point the way forward. Prakash v. State of Karnataka is a seminal judgment that explicitly harmonizes protection with autonomy. By emphasizing that early and forced marriages violate girl children's rights, the Court applied Feinberg's "right to an open future," protecting the girl's interest in a life of open possibilities and preserving her future capacity to choose. This decision embodies the synthesized model in action: using state power (protection) to guarantee a future of autonomous choice (autonomy).

In conclusion, balancing protection and autonomy is not a zero-sum game but a necessary jurisprudential dialogue. The protectionist model, while necessary, is insufficient on its own as it risks perpetuating a Hohfeldian state of disability. The pure autonomy model is unrealistic for the dependent child. The most defensible and coherent approach, as evidenced by global trends and philosophical reasoning, is the hybrid synthesised model. This framework mandates robust state protection of the child's Razian interests (safety, health, education) to actively build the child's capacity, while simultaneously creating a graduated scale of Hohfeldian powers (to consent, to be heard, to participate) that respect the child's evolving will and agency. The study, therefore, calls for a conscious recalibration of child rights jurisprudence in India and beyond. It must be guided by the principle that children are present-day right-holders whose interests demand protection and future-autonomous citizens whose capacities demand cultivation. By adopting a functional, capacity-based approach inspired by Gillick, informed by international standards, and grounded in a sophisticated synthesis of jurisprudential theory, the law can

finally fulfill its ultimate purpose: to safeguard the child of today while empowering the adult of tomorrow.

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