

Amelioration of Child Custody Laws in India: A Critical Study

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Abstract—Children are among the most susceptible groups in society and need extra protection through law. A child's right to be recognized as an independent entity, capable of holding their own legal rights, has been greatly refined from just being provided for. The development of child rights and custody in India is based on constitutional, personal, statutory, and legal precedent. As a result of the long-standing welfare principle, custody laws are designed to ensure the welfare or best interests of children rather than just the rights of parents. Courts have consistently stated that welfare principles should prevail over all other concerns when determining custody disputes. While there have been significant advances in legal custody issues, challenges remain with respect to continued legal disputes, inconsistent implementation of personal law, children having limited input into custody decisions and ongoing changes to family structure, all of which hinder effective custody systems. This document will review the current state of child rights and custody laws in India, examine how these laws are interpreted by courts to protect children, evaluate existing challenges to these laws, and present suggestions to improve child-centered justice. This study recommends that to provide custody decisions that promote the best interests of children in all aspects, a comprehensive rights-based approach must be adopted.

Index Terms—Child Rights, Child Custody, Welfare Principle, Best Interests of the Child, Family Law

I. Introduction

The future of all nations lies in their children and children are also exceptional because of their vulnerability (both physically, emotionally, intellectually and socially) and therefore child protection requires special care and protection from the State, family and society. The emergence of child rights as a recognized issue in modern human rights discourse highlights that children are not just the object of protection but independent bearers of legal rights. These rights include: the right to survive; to develop; to be protected; to participate; to receive education; to have access to health care; to be treated with dignity; and to have access to the courts for help in obtaining justice.¹

Increasingly, the recognition of child rights has been built upon shifting patterns of contemporary family structure, increases in divorce, migration and urbanization, and shifts in social relationships. Of all the issues that arise during parental separation, divorce, disputes relating to guardianship, or family disputes, determining who will have custody of children is one of the most sensitive legal issues. Custody disputes involve not only legal claims by parents but also involve a number of complicated emotional, psychological, and developmental issues that will affect the overall welfare of the child. As a result, it has become the goal

¹ . Geraldine Van Bueren, *The International Law on the Rights of the Child* 3 (Martinus Nijhoff Publishers, The Hague, 1998).

of modern custody laws to focus upon what is in the best interest of the child rather than competing claims by parents.²

The child rights in India are derived from the Constitution, legislation, judicial interpretation and international obligations. There is explicit recognition of the value of children's welfare in the Fundamental Rights and the Directive Principles of State Policy within the Constitution of India. The Articles 15(3), 21, 24, 39(e), 39(f), 45, and 47 create a constitutional structure for the protection of children from exploitation and for their healthy development together.³ The Judicial interpretation of the Constitution has brought to light that one of the components of the Constitution is the welfare and dignity of children as part of the overall governance provided for through the Constitution.

Custody Laws in India have a complex structure as there are multiple statutes, such as: The Guardians and Wards Act, 1890, The Hindu Minority and Guardianship Act, 1956, and Judge made laws that provide courts with power to make determinations of custody. Family Courts Act, 1984, has created a forum within the courts specifically for the purpose of resolving family law disputes, including custody determinations.⁴ Although the above statutory and judicial framework exists, custody determinations are typically multifaceted because of the various legal jurisdictions that need to co-exist and the requirement of balancing parental rights with the welfare of the child. An important milestone within the context of child rights is the ratification of the United Nations Convention on the Rights of the Child (1989). The Convention defines children as people with rights and states that the best interest of the child must be primary when deciding on matters affecting children. The government of India has begun implementing child rights into their national legal system and the decisions made by their courts due to India's acceptance of the Convention.

All custody decisions made in India have been based on the principle of welfare. In many cases that have come before the Supreme Court of India on this matter, the Court has made it clear that the child's welfare is more important than statutory rights of parents or statutory preferences or laws that apply to each parent as they affect their children. *See Gaurav Nagpal v. Sumedha Nagpal*.⁵ This type of interpretation by the courts have resulted in a movement away from determining custody based on parent's rights to a child focused approach that puts the physical, emotional, educational, and psychological interests of children first. Even though child rights have been somewhat recognized by both legislation and the courts, there continue to be many hurdles preventing child rights from being fully effective in the court action around custody. These include delay in the determinations, conflicting interpretations of personal laws, insufficient ability for

² . Jonathan Herring, *Family Law* 525 (Pearson Education, London, 9th edn., 2019).

³ The Constitution of India, arts. 15(3), 21, 24, 39(e), 39(f), 45 and 47.

⁴ The Guardians and Wards Act, 1890 (Act 8 of 1890); *The Hindu Minority and Guardianship Act*, 1956 (Act 32 of 1956); *The Family Courts Act*, 1984 (Act 66 of 1984).

⁵ (2009) 1 SCC 42.

children to participate in decisions affecting them, limited resources for psychological evaluations, and evolving nature of family dynamics have all impeded child custody decisions. All of these problems would benefit from a critical analysis of the current custody decision-making and process, and therefore this paper will conduct a critical assessment of the current legal framework concerning child rights and child custody in India.

This research reviews the statutory and constitutional framework, looks at the courts' interpretations of custody disputes, examines the effectiveness of the welfare principle, discusses current challenges, and provides recommendations for reform aimed at enhancing the child-focused justice system. The research concludes that significant progress has been made so far, but that additional reforms are needed in order to place the child's rights front and centre in custody disputes and family law jurisprudence.

II. Child Rights and Their International Legal Framework

The last century has seen a dramatic evolution of the idea of child rights. Historically, children were only seen as dependents of their parents or guardians with very little independent legal acknowledgement as rights holders. However, as modern legal systems continue to expand the definition of what a child is an individual, they are also increasingly recognising children as having specific rights and protections necessary for their survival, growth, ability to participate, and dignity. This evolution demonstrates the growing awareness of the need for special legal protection of children by virtue of their developmental issues and their vulnerability during their development. As an extension of human rights; child rights are becoming more recognised as an important part of both international law and domestic law.⁶

In contemporary discussions on child rights, there is an overarching theme that acknowledges children's entitlement to all of the basic human rights or fundamental human rights, but also to a range of additional protections that provide for their unique needs and vulnerabilities as children. These include the right to life, education, health, an identity, a family environment, protection from abuse and/or exploitation, involvement in decisions that affect them, and access to justice. The recognition of these rights serves to provide for the full and holistic [through the development of all aspects of the child] development of the child as well as to advance the welfare of the child in society.⁷

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⁶ Geraldine Van Bueren, *The International Law on the Rights of the Child* 11 (Martinus Nijhoff Publishers, The Hague, 1998).

⁷ . Michael Freeman, *A Commentary on the United Nations Convention on the Rights of the Child* 24 (Martinus Nijhoff Publishers, Leiden, 2007).

in decisions that affect them, and access to justice. The recognition of these rights serves to provide for the full and holistic [through the development of all aspects of the child] development of the child as well as to advance the welfare of the child in society.⁸ The first comprehensive instrument to articulate the right of children to protection, education, healthcare, and opportunities for development was the United Nations Declaration of the Rights of the Child (1959). The 1959 Declaration articulated ten principles with respect to children's welfare and emphasized the need for special protections and provisions for children. It recognized that children require legal and social safeguards both before and after birth and stressed that the best interests of the child should guide all actions concerning children. The Declaration significantly influenced subsequent developments in international child rights law.

UNCRC is the most significant international treaty in the area of child rights. It is generally accepted as the most comprehensive treaty relating to child rights; it has been nearly universally ratified by countries. India ratified the UNCRC in 1992, requiring it to bring its laws and policies into line with the UNCRC. The UNCRC has given children a legal status as rights holders, rather than welfare recipients. The UNCRC is based on four guiding principles that inform the protection of all child rights. The first of these guiding principles is the principle of non-discrimination; all child rights must be assured to every child without regard to any form of discrimination. The second principle is that the child's best interests must be a primary consideration in all actions concerning children. This principle is now the basis of custody and guardianship law in virtually all of the world. The third principle recognizes that all children have the inherent right to life, survival, and development. The fourth principle requires respect for the views of the child and provides for children's rights to participate in decisions concerning the lives of children, according to their age and maturity.⁹ Within custody laws, The Best Interests of the child is very significant as it dictates to the courts and administrative authorities that the interests of the child must be a principal consideration when making decisions affecting them. This principle is broader than just concern for a child's physical well-being and also includes emotional, educational, psychological, social, and moral interests. As such, custody decisions should focus on the holistic well-being of the child rather than on just the legal rights of parents.

Also, children's participation rights are an important aspect of modern child rights jurisprudence. Article 12 UNCRC provides that children who can form their own views have the right to express those views freely about matters that affect them and to have those views considered in accordance with their age and maturity.¹⁰ This provision marks a significant change towards recognizing children's active participation in legal or social processes. Courts are now giving greater weight to children's preferred outcomes during custody disputes when children have sufficient capacity to form an understanding and demonstrate maturity. Many countries'

⁸ . Geneva Declaration of the Rights of the Child, 1924

⁹ Id., art. 12

¹⁰ United Nations Convention on the Rights of the Child, 1989, art. 12.

courts have taken inspiration from international standards of child rights resulting in child centre approaches that place focus on the welfare, participation, and protection of the child. Comparative development in child law has seen a gradual shift from a rigid view of parental rights to one that is concerned with the interests of children and the rights of children. This change has had a substantial impact on the Indian legal framework for child custody and guardianship.

India has demonstrated its commitment to international child rights through various legislative and policy measures. The Indian Government has passed a number of laws in keeping with the United Nations Convention on the Rights of the Child (UNCRC) and has adopted a number of policies that seek to implement international standards. The Juvenile Justice (Care and Protection of Children) Act 2015, the Protection of Children from Sexual Offences Act 2012, and numerous child welfare schemes are examples of these laws and policies aimed at implementing international standards within India's domestic legal framework. The courts have also expressly relied upon the principles of the UNCRC when interpreting laws concerning the welfare of children and custody of children. Nevertheless, there are still significant obstacles to effectively implementing international child rights standards, including socio-economics, inadequate institutional infrastructure, lack of awareness, procedural delay, and the challenge of balancing parental rights with both the child's participation rights. Nonetheless, the development of an international legal framework for child rights has significantly improved the position of children within the law and has provided much needed guidance in reforming domestic laws. The concept of child rights has shifted from a welfare-based to a comprehensive rights-based framework. This new framework recognizes that children are individuals who are entitled to dignity, protection, participation, and development. The global instruments, especially the U.N. Convention on the Rights of the Child (UNCRC), have significantly changed how child welfare and custody are understood in our society today. The values that are prescribed in these documents still shape the legal framework in India, which is the normative reference point for adjudicating child custody disputes based on what is in the best interests of the child.

The Indian legal framework for the protection of children's rights and for regulating child custody is based upon a variety of laws and principles including: the Constitution of India, statutes, judicial pronouncements and international instruments. The purpose of the legal framework is to provide adequate care, protection and support for children as well as to balance the rights and obligations of the parents or guardian. The primary principle for purposes of determining custody is that the welfare and best interests of the child must take precedence over all other factors. Therefore, rather than making a decision regarding custody based upon parental rights alone, the courts will also take into account what the best course of action is in order to promote the overall well-being of the child.¹¹ In India, the Constitution serves as the basis for child welfare and

¹¹ (2009) 1 SCC 42.

protection. There is no express separate chapter on child rights, however, there are several provisions within the Constitution that provide a strong framework to protect the interests of children. For example, article 14 of the Constitution provides that all persons are entitled to equal protection of the laws, meaning that children are entitled to the same legal protections as all other persons. Article 15(3) states that the State shall provide special provisions for women and children, therefore the State must provide protective provisions for its most vulnerable members.

These provisions create the constitutional basis upon which various welfare legislations were enacted to benefit children.¹² The Constitution includes article 21, which provides a right to life and the jurisprudence surrounding that right has been interpreted to contain the right to live with dignity, education, health, development and protection from exploitation.

Thus, the well-being and development of children are therefore fundamental components of the constitutional framework. Articles 39(e) and 39(f), also found in the Directive Principles of State Policy, direct the State to protect children from exploitation and ensure that they are raised in an environment that allows them freedom and dignity. Further, article 45 directs the State provide nurture to and educate children in their infancy, thereby demonstrating the State's constitutional dedication to child welfare and protection.

The Guardians and Wards Act 1890 is the primary statute regulating custody and guardianship in India. This Act covers all communities and provides a general legal framework for both determining custody disputes and appointing guardians. Under section 7, the court has authority to appoint a guardian whenever it finds that the appointment is necessary for the welfare of the minor. Section 17 also makes it clear that the courts must make welfare of the child as the top priority when making any decisions about guardianship or custody. In making a decision as to the most suitable custodial arrangement, the courts may consider various factors such as age, gender, religion, character of the proposed guardian, and the child's wishes.

The Hindu Minority and Guardianship Act 1956 is an extension of the Guardians and Wards Act with respect to Hindus. The Hindu Minority and Guardianship Act identifies the natural fathers of Hindu boys, and it provides for various issues that arise with respect to guardianship. According to section 6 of the Hindu Minority and Guardianship Act, the father of a boy is deemed to be his normal guardian, and then the mother. There are, however, no absolute rights granted to either parent by virtue of the Hindu Minority and Guardianship Act. According to section 13, the welfare of the child must always be the first priority of the courts in making a determination as to the qualification of a particular individual as a guardian. Thus, in determining the rights of parents, the welfare of the child takes precedence. The Family Courts Act, 1984 has

¹² *Id.*, art. 15(3).

also significantly influenced child custody adjudication. The Act established specialized Family Courts to promote conciliation and secure speedy settlement of disputes relating to marriage, family relationships, and child custody.¹³ Family courts are meant to use a non-adversarial approach so that they can provide a solution that is in the best interest of the child and family. Counselors, psychologists, and social welfare professionals assist the courts in determining the best needs of the children that are involved in custody disputes. The Juvenile Justice (Children in Need of Care and Protection) Act 2015 is another piece of law that forms a part of the child protection framework in India. While the Act primarily relates to children who have come into conflict with the law and children that are in need of care and protection, the Act demonstrates a larger commitment to ensure that children are safe and that all decisions relating to children are made based on their best interests. The Act emphasizes rehabilitation, protection, and care of the child and supports the rights-based approach to child welfare, and the rights of the child. Indian custody law has also been impacted by international obligations, and in particular, the United Nations Convention on the Rights of the Child, 1989. The Convention states that all member countries must always take into consideration the best interests of the child in all actions that are being taken with regards to children.¹⁴ Courts in India have often looked to the principles of the Convention as guidance when making decisions regarding laws that deal with child welfare and custody, as well as creating new forms of jurisprudence (i.e., child-centric jurisprudence) which reflects a combination of both international law and domestic law.

The main principle of welfare will serve as a basis for all decisions regarding custody. The courts have consistently found that regardless of a child's statutory right or personal law (which may govern how a child's parents want to raise them), the welfare of the child should take precedence. While each of these types of rights are important to protect, courts use a broad definition of welfare that includes more than just the physical well being of a child; they also consider the emotional security of the child, the educational opportunities available to the child, the psychological development of the child, the moral upbringing of the child and the general happiness of the child when determining custody. Additionally, because no two custody situations are exactly alike, the courts take a flexible approach when determining what is in the best interest of a child; therefore they will not only follow the legal rules strictly, but will also adjust the results according to the circumstances surrounding each case.

Thus, the laws governing child custody and the determination of child custody provide an ongoing effort to bring balance between the parents' rights, social realities, and the developmental needs of children.

¹³ The Family Courts Act, 1984 (Act 66 of 1984), s. 7.

¹⁴ United Nations Convention on the Rights of the Child, 1989, art. 3.

Accordingly, Indian law places the child at the centre of all custody determinations to ensure that the child will receive the necessary care, protection, and support needed to be able to develop into a responsible and healthy member of society.

III. Judicial Approach Towards Child Custody and Welfare Principle

In India, the judiciary has had a significant impact in shaping child custody law, through both the interpretation of laws established by Parliament and the development of practical applications of these and other laws through creativity and innovation. Both Supreme Court and the High Courts have consistently indicated that the welfare of the child is the most important factor to consider in all custody disputes. In the case of *Rosy Jacob & Ors. Vs. Jacob A. Chakramakkal*,¹⁵ this approach demonstrates a movement away from a parent-centric model to a child-centred model for determining custody based primarily on legal rights or parental claims of guardianship, and moving towards a focus on the overall well-being of the child when considering custody arrangements.

In India, the welfare principle is a cornerstone of law related to custody issues. Courts have held that no statute or parent can supersede the welfare of the child; thus, there are no instances whereby parental rights can be exercised if it is contrary to the best interests of the child. Welfare can be defined broadly as including a child's physical comfort, emotional security, educational opportunities, moral upbringing, psychological growth, and social well-being. The purpose is not only to meet the needs of both parents involved in a dispute but also to facilitate the children's overall growth and development through custody arrangements.¹⁶

Another significant decision is *Nil Ratan Kundu v. Abhijit Kundu*¹⁷. The Supreme Court reiterated that custody matters are not solely based on legal/technical reasons but must involve an overall evaluation of statutory factors that affect the child's well-being. In considering what is in the best interest of a child, the Court noted that things such as happiness, safety, emotional attachment, and the child's future prospects must be taken into account when making any decision regarding custody. Therefore, the judgment ruling of the Supreme Court indicates a broad understanding of how custody should be determined and the flexibility and child-centred approach that the courts take in custody matters.

In the case of *Mausami Moitra Ganguli v. Jayant Ganguli*,¹⁸ the Supreme Court stated that the issue of custody involves an element of human relationships/emotional elements that cannot be determined solely by the strict application of legal standards. The Court held that the welfare of the child is of utmost importance and that the totality of the circumstances must be considered when making a custody decision. The case is a

¹⁵ (1982) SCC 1276.

¹⁶ Jonathan Herring, *Family Law* 565 (Pearson Education, London, 9th edn., 2019).

¹⁷ (2008) 9 SCC 413.

¹⁸ (2008) 7 SCC 673.

reminder that the courts must be sensitive to/individuate assessments of children when making custody decisions.

In the case of *Roxann Sharma v. Arun Sharma*, the Supreme Court also addressed the issue of custody for very young children.¹⁹ The Court stated that in many instances, especially for infants and very young children, the mother's care is vital for the proper emotional and psychological development of a child. The Courts have made it clear that while they're considering such requests, their priority is the interest of the child, not who will get the child in custody.

There's been more awareness about children having rights to family relationships with both of the parents lately in custody cases. In *Yashita Sahu v. State of Rajasthan*²⁰, also, the courts have made it very clear that when one parent is granted visitation, the visitation should be designed to support a positive emotional experience for the child, and to also keep the bond between the child and that parent intact. This judgment reflects a modern understanding that child well-being encompasses far more than physical custody, but also includes ensuring that both parents have an opportunity to be involved in their child's life. The Supreme Court further strengthened this approach in *Lahari Sakhamuri v. Sobhan Kodali*²¹. The Courts also reiterated that the determination of custody in a custody dispute should be primarily based on the best interest of the child, and that neither parent has an absolute right to custody of the child. Their judgment also focused on the need for the court to take into consideration the need for children to have stability, emotional security and a continued receipt of an uninterrupted education while making the determination as to custodian. A significant trend seen in Indian custody law is the increasing acceptance of children having the ability to express their views and choices in custody cases. The courts are beginning to listen to children when they have the maturity and understanding of the custody process necessary to provide their parent with information to assist in making a better determination regarding custody of the child. While Children's views are not necessarily binding, they are an important consideration when determining what is best for each child. This supports Article 12 of the United Nations Convention on the Rights of the Child, which allows children to express their opinions about matters that affect them. Family structures are evolving, as recognized by judicial decisions. Issues regarding custody often arise from divorce, remarriage, moving to another country, single parenting and shared parenting. In all of these instances, judges have become increasingly flexible in how they respond to the realities of these situations; they have developed different solutions for children based on individual cases. The welfare principle allows judges to modify the law to fit the changing nature of society's family structure, and therefore continue to protect children.

However, even with the progressive nature of judicial decisions, there are still many challenges faced when making a custody decision. The welfare principle has a discretionary nature that may lead to different

¹⁹ (2015) 8 SCC 318.

²⁰ (2020) 3 SCC 67.

²¹ (2019) 7 SCC 311.

decisions being made based on this one principle. Each Judge may weigh different factors differently in a custody decision and therefore affect the outcome of custody cases in different ways. Protracted litigation can have a negative impact on children, therefore there needs to be a method for children and their families that is efficient and supportive of the child's best interests.²²

There are many ways that the system of law regarding custody of children, but the courts have played an important role in this area through landmark case law which has shifted the focus of determining child custody from being an area where the focus is on the rights of the competing parents to one where the focus is solely on the best interest of the child by applying a major principle about the child's well-being stated in *Express Jury*. The foundation of child custody laws now focus on the well-being of the child as the key factor in determining the best arrangement for a child rather than a contest between parents and their rights to a child.

In India, the courts have continued to demonstrate a commitment to the welfare and the legal rights of children by ensuring that in every custody dispute the best interests of the child will be the governing legal principle as a way of enhancing the legal rights framework for resolving disputes over custody of children and enhancing the development of modern family law jurisprudence. Today, a child's legal rights are being protected through ever increasing legal protections afforded to children by law around the world and through the custodian use of the principle of the best interests of a child as it relates to custody disputes.

Contrary to the tremendous progress made in custody laws and child welfare in the last several years through legislative and judicial action, there continues to be numerous ongoing problems involving the protection of the rights of children and child welfare in custody proceedings. Even though the welfare principle is of primary concern and focus for all courts, there are still significant barriers prohibiting obstacles to the fulfilment of the welfare goals of each child in a custody dispute. Increased family breakdowns, changes in family structures, a large increase in the number of families engaged in custody disputes and procedural restrictions have created barriers and difficulties in determining the child's welfare. Therefore, it is important to evaluate these existing challenges to determine if the current legal structure for custody cases adequately protects the interests and legal rights of children.

The delay in the court process for custody disputes can be one of the biggest challenges to those involved in a dispute. Custody disputes sometimes take a long time to settle. During this time, children often experience a great deal of stress and uncertainty due to the extended period of time they remain in limbo about their future. The stress and uncertainty caused by delays can also negatively impact a child's education, social relationships, psychological development, and lead to increased conflict between parents. Since childhood is a period of critical development, an extended custody dispute may negatively impact a child's emotional stability and overall sense of security.²³ A further challenge is the existence of multiple sets of personal laws

²² Geraldine Van Bueren, *The International Law on the Rights of the Child* 147 (Martinus Nijhoff Publishers, The Hague, 1998).

²³ Jonathan Herring, *Family Law* 573 (Pearson Education, London, 9th edn., 2019).

within India that govern family relationships. Each of the religious communities has its own set of laws governing guardianship, custody, and family matters. While all courts are to apply the legislative priority of the welfare of a child, the differences among the different sets of personal laws may lead to discrepancies and inconsistencies in the final decision on custody.²⁴ Many people feel that a more uniform child-centred approach will be in the best interests of children regardless of the parents' religion. Another issue in custody decisions is that children have limited avenues to participate in custody cases. Many courts are starting to consider the wishes and desires of mature children when making a decision about how to resolve a custody or access dispute. However, at the same time, there is no consistency in the manner in which children are allowed to participate in custody proceedings. In many cases, there are opportunities for children to express their opinions and concerns about custody access arrangements; therefore, this factor limits children's ability to assert their rights as provided for in the United Nations Convention; and ultimately, limit the opportunity for the court to understand the perspective of the child.

Parental alienation is another major problem that arises in current day custody disputes. In high conflict separations and divorces, one partner may use their influence over their child to alienate them from another parent which can damage parental relationships and impede the child's emotional development. Such behaviour can create anxiety, hostility, and confusion for children; it can also hinder judicial attempts to establish custody arrangements that genuinely benefit the child.²⁵ Notably, Indian custody jurisprudence has increasingly acknowledged the negative impact of parental alienation; however, there remain few effective mechanisms for addressing this issue.

In addition to the effects of parental alienation, there is also concern about the psychological impact of custody disputes on children. Children involved in prolonged legal disputes experience stress, insecurity, guilt, and emotional trauma; in addition, children exposed to parental hostility may suffer significant decreases in their self-esteem, academic achievement and social development. Family courts use counsellors or psychologists to help children through custody disputes; however, availability and quality of psychological support services for children can vary significantly between jurisdictions.²⁶ In future custody cases, it is likely that there will be an increasing need for the greater integration of psychological expertise into custody proceedings.

There are also significant practical challenges associated with enforcement of visitation rights. Even when a court grants visitation rights to a non-custodial parent, there is no guarantee that the custodial parent will comply with the order. Disputes between the parents can lead to obstruction of visitation rights, and can affect the ability of the child to develop a meaningful relationship with both parents. There must be sufficient

²⁴ Paras Diwan, *Family Law* 413 (Allahabad Law Agency, Faridabad, 11th edn., 2018).

²⁵ Richard A. Gardner, *The Parental Alienation Syndrome* 18 (Creative Therapeutics, Cresskill, New Jersey, 1998).

²⁶ Geraldine Van Bueren, *The International Law on the Rights of the Child* 155 (Martinus Nijhoff Publishers, The Hague, 1998).

enforcement mechanisms in place to appropriately safeguard the best interests of children and ensure that parental rights are upheld.

The increase in difficulty regarding the legality and policy of shared parenting has produced difficulties both legally and through policy. Many existing custodial arrangements often result in one parent being given primary custody and the other only given the right to visit with the child. Consequently, advocates for contemporary children's rights are increasingly voicing their concerns that children tend to do better when both parents can interact with them after the parents are no longer living together. As a result, there is also the growing recognition that factors affecting placement arrangements under the shared parenting model include the degree of cooperation between parents, the distance between the two parents, and the child's individual needs, therefore requiring considerable amounts of discussion to develop a successful shared parenting arrangement.

In addition to the above, socio-economic disparities have also been cited as an obstacle in determining custody of the children. Custody cases often use financial factors to determine access to legal representation, child care, and school. Therefore, courts must take into consideration that in making the custody determination, it is their obligation to ensure that the children don't become disadvantaged as a result of being from a low economic status. The welfare principle states that when making custody decisions, the overall well-being of the child rather than solely the financial means of the parents should be considered, however, the practical aspects of either parent's finances continue to have a substantial impact on the outcome of custody cases.

The increased occurrence of cross-border custody disputes can be attributed in large part to globalisation, migration and international marriages. Typically, cross-border custody disputes arise when there are conflicts regarding jurisdiction, the rights of the parent and whether the child will be returned to either of the parents. Because of the absence of established laws governing international child abduction and cross-border custody disputes the legal process concerning these disputes becomes significantly more problematic for the courts in India.²⁷

Additionally, the new forms of families are bringing about challenges in custody laws, as there are now more single-parent, blended, cohabiting, and transnational families for the courts to deal with, compared to traditional family structures. The courts will have to continuously adapt custody laws to keep pace with changing societal conditions, whilst remaining focused on the welfare of children.

The Indian courts have increasingly demonstrated a commitment to child-centric justice, and the welfare principle has been established as a flexible and adaptable tool for addressing a variety of circumstances. Nevertheless, the effective protection of the rights of children will require not only progressive judgments

²⁷ (2017) 8 SCC 454.

from the courts, but also institutional reform, specialised support services, and increased awareness of the needs and perspectives of children.

IV. Conclusions and Recommendations

In conclusion, child rights and custody laws are an important part of family law and the body of law regarding child welfare in India. The legal system and laws regarding child custody have changed significantly from the earlier parent-focused model to a model that focuses on child welfare, as well as a model that gives children their own independent legal right to have custody decisions made in their best interest. The Constitution of India provides guarantees of the rights of children, more than 50 statutes regarding children have been passed by the Parliament of India, and there are numerous international commitments to protect the interests and well-being of children, all of which affirm the commitment of the Indian people and their government to protect their children. The study shows that the principle of welfare of child has been established as the basis for the Indian law relating to custody. This has been reinforced again and again by the courts, who have stressed that parent's rights, personal law and statutory claims must always give way to the best interests of the child. The Indian judiciary has, through landmark decisions, developed a child-centred approach to custody, giving primacy to emotional security, educational development and psychological well-being and custody stability and a child's overall welfare over competing claims of parents.

The Constitution of India provides the basis for child protection through Articles 14, 15(3), 21, 39(e) & 39(f) and 45. The myriad of statutes authorised by the legislature and the Parliament for child protection such as The Guardians & Wards Act, 1890; The Hindu Minority and Guardianship Act, 1956; The Family Courts Act, 1984 and The Juvenile Justice (Care and Protection of Children) Act, 2015, collectively seek to protect the welfare of children and to regulate custody arrangements. Internationally, the United Nations Convention on the Rights of the Child has taken a major role in the development of a rights-based approach toward children.

Nevertheless, many significant challenges impede on the ability of the courts to effectively protect child rights during custody proceedings. Delays in litigation, personal law conflicts, limited child participation, lack of enforceability in custody, parental alienation and changing family structures all complicate the process of determining custody of children.

In conclusion, there has been considerable progress made by India at all levels of Government through recognising and protecting children's rights pertaining to custody. However, ongoing legislative, judicial and institutional reform are still required to ensure that all custody orders made by Courts conduct themselves in a manner that promotes the welfare of children. Creating a child-centred approach to custody laws and making them rights-based will not only strengthen family law jurisprudence, but it will also aid in meeting the overall goal of ensuring every child has Justice, Dignity, protection and development.

V. Recommendations

Establishment Of A Uniform Child Centric Custody Law Framework.

The current Child Law Framework is primarily based on Personal Laws and Statutory Provisions which may create differences or defects between custodial outcomes. Create a uniform law that provides children's welfare and best interest as the paramount consideration for all child custody determinations by directing that Children have the same rights regardless of Religion, Sex or Personal Laws.²⁸

Expeditious Disposal of Custody Disputes:

Case resolution should be accomplished in a timely manner to avoid emotional distress, uncertainty and psychological harm to children caused by lengthy litigations. Family Courts can help resolve disputes in a more time-effective manner through fast-tracked processes.

Increasing Opportunities for Children to Participate:

Children of sufficient maturity should have sufficient opportunity to express their views in custody proceedings. The court is to give due regard to the child's own opinion in reference to the child's age, maturity, and capacity to understand while taking care that the child will not be subjected to inappropriate emotional stress.²⁹

Promotion of Shared Parenting Arrangements:

In the case *Lahari Sakhamuri v. Sobhan Kodali*,³⁰ Shared parenting and joint custody models should be encouraged where circumstances permit. Such arrangements may promote balanced emotional development and enable children to maintain meaningful relationships with both parents following separation or divorce

Expansion of Counselling and Mediation Services:

Family Courts should strengthen counselling, mediation, and psychological support mechanisms. Professional assistance can help reduce parental conflict and facilitate arrangements that better serve the welfare of children.

Specialized Training for Judicial Officers:

Judges, counsellors, and child welfare professionals dealing with custody matters should receive specialized training in child psychology, child development, family dynamics, and international child rights standards.

Addressing Parental Alienation:

²⁸ Paras Diwan, *Family Law* (11th edn., Allahabad Law Agency 2018).

²⁹ 3United Nations Convention on the Rights of the Child, 1989, art. 12.

³⁰ *Lahari Sakhamuri v. Sobhan Kodali*, (2019) 7 SCC 311.

Legal and institutional measures should be developed to identify and address parental alienation. Courts must ensure that children are protected from attempts to manipulate or influence their perceptions of either parent.

Greater Integration of International Standards:

Indian courts and legislators should continue to draw guidance from the United Nations Convention on the Rights of the Child and other international instruments while interpreting and reforming custody laws.³¹

Strengthening Child Welfare Infrastructure:

Greater investment should be made in child welfare services, family counselling centres, psychological assessment facilities, and child protection mechanisms to support informed and child-sensitive custody determinations.³²

³¹ United Nations Convention on the Rights of the Child, 1989.

³² Asha Bajpai, '*Child Rights in India: Law, Policy and Practice*' (2017) 59 Journal of the Indian Law Institute 123.