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CHILD CENTRIC JUSTICE IN FAMILY LAW: RIGHTS, REMEDIES, AND IMPLEMENTATION CHALLENGES

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ABSTRACT

The degree to which Indian family law operationalises the principle of child-centric justice is critically examined in this study. Although the legal system theoretically acknowledges the “best interests of the child” as the most important factor, its application is nonetheless unequal and mostly welfare-oriented rather than participative. The study outlines important doctrinal, procedural, institutional, and socio-cultural obstacles that prevent the realisation of a fully child-centric system through a doctrinal examination of statute provisions, court rulings, and institutional practices. It makes the case that the existing framework is nonetheless essentially adult-centric in practice despite its normative strength. In order to integrate children’s participatory rights with welfare-based safeguards, structural adjustments are proposed in the article’s conclusion.

1. INTRODUCTION

Family law jurisprudence has changed dramatically across jurisdictions as a result of the growing acknowledgment of children as autonomous, rights-bearing persons. The official adoption of the “best interests of the child” criteria as the primary factor in decisions pertaining to custody, guardianship, maintenance, and adoption in India reflects this change.² However, this standard’s meaningful application is not ensured by its simple articulation.³ The article’s main focus is the conflict between operational reality and normative commitments.

Indian family law still operates under a complicated web of socio-cultural norms, constitutional principles, and personal laws. Even while courts regularly apply the welfare concept, adult-centric viewpoints typically continue to dominate the adjudication process.⁴ Despite being given rhetorical priority, children seldom ever participate actively in court processes.⁵ This begs the crucial question of how much Indian family law is actually child-centric rather than welfare-oriented in a narrow and paternalistic sense.

This study examines this subject using a doctrinal and critical perspective. In addition to

analysing institutional practices, judicial trends, statutory frameworks, and procedural structures, it engages with the socio-cultural issues that influence how family conflicts turn out. The claim made is that, in spite of progressive court rulings, the Indian system is still fundamentally limited in its ability to provide child-centric justice.⁶

2. CONCEPTUAL FOUNDATIONS OF CHILD-CENTRIC JUSTICE

The concept of child-centric justice signifies a change in perspective from considering children as helpless objects of care to acknowledging them as distinct people with agency, dignity, and developing abilities. The welfare principle and participation rights are two interconnected pillars that support this conceptual framework.

The welfare concept places a strong focus on safety. Courts must give the child's physical health, mental stability, academic progress, and overall balance the top priority. This idea has historically been the cornerstone of Indian family law decisions, allowing judges to disregard strict legal guidelines in favour of equitable outcomes.⁷

A strictly welfare-focused strategy, however, runs the danger of paternalism. Judicial evaluations alone may not adequately represent children's life experiences, preferences, and goals. By acknowledging the significance of incorporating children's voices in decision-making processes, participatory rights aim to overcome this restriction.⁸ These rights are based on the knowledge that children, depending on their level of development, are capable of forming and expressing opinions that should be taken seriously.

The analysis in this study revolves around the conflict between involvement and well-being. Participation guarantees respect for autonomy, whilst welfare guarantees protection. Instead of favouring one over the other, a framework that is truly child-centric must balance both ideas.

3. DOCTRINAL FRAMEWORK AND LEGAL STRUCTURE

With various personal laws regulating various religious sects, Indian family law is characterised by doctrinal pluralism. The emphasis on the child's well-being as the most important factor unites all regimes notwithstanding their differences.⁹

Custody, guardianship, and adoption-related matters are governed by statutory frameworks such as the Guardians and Wards Act, the Hindu Minority and Guardianship Act, and the Juvenile Justice Act. Harmonising these legislations with constitutional values, especially the right to equality and dignity, has been made possible in large part by judicial interpretation. However, there is a fundamental lack of clarity in the doctrinal framework. Courts have a great

deal of discretion since the term “best interests of the child” is not clearly defined by statute.¹⁰ Context-sensitive adjudication is made possible by this flexibility, but it also adds unpredictability and inconsistency. Without a consistent framework for evaluation, various courts can give differing weight to things like emotional attachment, financial stability, or continuity of education.

This section makes the case that, in order to guarantee consistency and responsibility in decision-making, theological flexibility – while valuable – must be supplemented with organised direction.

4. RIGHTS & REMEDIAL MECHANISMS AND THEIR LIMITATIONS

4.1 Custody and Guardianship: Evaluating Competing Parental Claims

Courts must negotiate complicated interpersonal relationships and conflicting parental claims in custody and guardianship issues. Judges must evaluate intangible elements like emotional attachment, parenting style, and the child’s sense of security in addition to practical elements like living circumstances and income.¹¹

However, in reality, these complex factors are frequently reduced to adversarial claims by the adjudicatory process. Parents may accentuate their own advantage while drawing attention to the other person’s alleged flaws. This may skew the assessment procedure and divert attention from the child’s true requirements.

4.2 Maintenance: Financial Security and Procedural Delays

The purpose of maintenance provisions is to guarantee that children receive sufficient financial assistance. However, their efficacy is severely compromised by procedural delays.¹² Custodial parents are put in dangerous circumstances when interim maintenance, which is meant to provide urgent relief, is often delayed.

4.3 Adoption: Permanency Versus Procedural Complexity

The goal of adoption legislation is to give children secure, long-term family environments. However, the procedure is frequently prolonged by institutional inefficiencies, documentation requirements, and bureaucratic obstacles. The fundamental goal of guaranteeing the prompt rehabilitation of children in need of care is at odds with this delay.¹³

5. JUDICIAL AND PROCEDURAL CHALLENGES IN OPERATIONALISING CHILD-CENTRIC JUSTICE

5.1 Adversarial Litigation and Its Impact on Children

Parental discord is sometimes made worse by the adversarial structure of family law processes.

Proceedings are frequently dominated by accusations, counter- allegations, and strategic litigation, which makes the atmosphere extremely stressful for children. Despite their efforts to be child-focused, courts are limited by procedural frameworks that give precedence to contesting evidence.¹⁴

5.2 Delays and its Consequences for Child Welfare

In child-related issues, judicial delay is a substantive problem rather than just a procedural one. The emotional and developmental well-being of the child is impacted by the uncertainty and instability caused by protracted litigation. Even though they are meant to be temporary, interim solutions sometimes end up becoming permanent.¹⁵

5.3 Interim Orders and the Problem of Status Quo Bias

It is common for interim custody orders to develop into de facto final agreements. Children become used to these arrangements over time, so courts are hesitant to change them. This leads to a status quo bias, in which short-term choices have a disproportionate impact on long-term results.¹⁶

5.4 Indeterminacy in Applying the Best Interests Standard

The use of judicial intuition and subjective evaluation results from the lack of precise standards for defining “best interests”.¹⁷ Although flexibility is essential, too much discretion might lead to inconsistent and perhaps biased conclusions.

6. INSTITUTIONAL CHALLENGES WITHIN THE FAMILY JUSTICE SYSTEM

6.1 Structural Limitations of Family Courts

Family courts were intended to be specialised venues for conciliation. However, their operations are frequently hampered by excessive caseloads, poor infrastructure, and few resources. Conventional adversarial techniques often take the place of the desired informality.

6.2 Absence of Interdisciplinary Expertise

Child development, social work, and psychology must all contribute to the successful resolution of child-related issues. The court’s capacity to completely comprehend the child’s requirements is hampered by the lack of such knowledge.

6.3 Limited Institutionalisation of Child Participation

The involvement of children is still optional and irregular. Meaningful interaction is discouraged by the absence of organised processes and child-friendly settings.

6.4 Weak Enforcement Mechanisms

Enforcement is essential to the efficacy of court orders. The legitimacy of the system is damaged by non-compliance with custody and visitation orders as well as delays in

maintenance payments.

7. SOCIO-CULTURAL CONSTRAINTS SHAPING CHILD-CENTRIC JUSTICE

In India, socio-cultural elements have a big impact on how family law is decided. Legal concepts are mediated by social norms, cultural expectations, and community behaviours rather than functioning independently.

7.1 Gendered Assumptions in Parenting Roles

Judicial thinking is frequently influenced by traditional ideas of fatherhood and motherhood.¹⁸ Fathers are connected to financial security, whereas mothers are associated with providing care. The child's true wants and preferences might be overshadowed by these presumptions.

7.2 Stigma Associated with Divorce and Its Impact on Children

Parental behaviour and court decision-making are both impacted by the social stigma associated with divorce. Social pressure on children may have an indirect impact on custody decisions.

7.3 Influence of Extended Families

A major part of raising children is frequently played by extended relatives. This can help, but by adding more parties and conflicting interests, it might also make custody conflicts more difficult.

7.4 Cultural Barriers to Child Participation

Children may be prevented from voicing their opinions by cultural norms that place a premium on adult authority.¹⁹ Children may be unable to express their true preferences out of fear of confrontation or retaliation.

8. CRITICAL EVALUATION: **STRUCTURAL LIMITS OF THE CURRENT FRAMEWORK**

Despite its normative commitment to child care, the Indian family law system is nonetheless structurally limited, as the previous research shows. Participatory rights are frequently marginalised by the pre-dominance of welfare-based thinking, leading to an adult-centric paradigm.²⁰

This mismatch is reinforced by institutional constraints, procedural inefficiencies, and socio-cultural factors. The issue is made worse by the lack of organized protections for children's involvement. As a result, the system is unable to establish a justice paradigm that is

really child-centric.

9. RECOMMENDATIONS FOR REFORM AND FUTURE DIRECTIONS

9.1 Legal Reforms: Structuring Judicial Discretion

To determine what is in the “best interests of the child”, statutory rules must be introduced. While maintaining judicial freedom, such rules ought to include suggestive criteria.²¹

9.2 Procedural Reforms: Embedding Child Participation

It is necessary for procedural frameworks to institutionalise child participation through established processes, such as the use of trained facilitators and child- friendly interview methods.²²

9.3 Institutional Reforms: Strengthening Capacity and Coordination

Improved facilities, fewer cases, and the incorporation of multidisciplinary knowledge are all necessary for family courts. There has to be more coordination between child welfare organisations and courts.

9.4 Enforcement Reforms: Bridging the Implementation Gap

For judicial orders to be followed, effective enforcement procedures are necessary. Monitoring systems and time-bound processes have to be implemented.

9.5 Technological Integration: Role of AI and Digital Systems

There are new opportunities to increase efficiency and transparency when digital technologies and artificial intelligence are combined.²³ AI can help with compliance monitoring, case management, and delay detection. Virtual platforms can make it easier for children to participate in less scary environments. But in order to avoid prejudice and preserve privacy, measures must be put in place.

10. CONCLUSION:

TOWARDS A TRULY CHILD-CENTRIC FRAMEWORK

A significant normative concern to the well-being of children is reflected in the development of Indian family law. However, child-centric justice is still not fully realised in practice. The acknowledgment of children as independent actors in the legal process is restricted by the predominance of welfare-based reasoning as well as institutional and procedural limitations. A rights-based framework that incorporates participation and welfare must replace the adult-centric approach in order to bring about a significant change. This entails not just legislative reform but also socio-cultural transformation and institutional strengthening. The promise of child-centric justice can only be fully realised with such an all-encompassing strategy.

¹ Second Semester (Final Year) LL.M. (Family Law) Student, Amity University. ² Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42; Guardians and Wards Act, 1890, s. 17; United Nations Convention on the Rights of the Child, 1989.

³ Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413; Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318.

⁴ Id.

⁵ United Nation Convention on the Rights of the Child, 1989, art. 12; Sheoli Hati v. Somnath Das, (2019) 7 SCC 490.

⁶ Vivek Singh v. Romani Singh, (2017) 3 SCC 231.

⁷ Rosy Jacob v. Jacob A. Chakramakkal, (1973) 1 SCC 840; Elizabeth Dinshaw v. Arvand Dinshaw, (1987) 1 SCC 42.

⁸ United Nation Convention on the Rights of the Child, 1989, arts. 3 & 12; Jonathan Herring, Modern Family Law.

⁹ Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228; ABC v. State (NCT of Delhi), (2015) 10 SCC 1.

¹⁰ Mausami Moitra Ganguli v. Jayant Ganguli, (2008) 7 SCC 673.

¹¹ Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479; Vivek Singh v. Romani Singh, (2017) 3 SCC 231.

¹² Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353.

¹³ Juvenile Justice (Care and Protection of Children) Act, 2015; Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244.

¹⁴ Family Courts Act, 1984; K.A. Abdul Jaleel v. T.A. Shahida, (2003) 4 SCC 166.

¹⁵ Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81; Shilpa Aggarwal v. Aviral Mittal, (2010) 1 SCC 591.

¹⁶ Id.

¹⁷ Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413.

¹⁸ Flavia Agnes, Law and Gender Inequality; Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.

¹⁹ United Nations Convention on the Rights of the Child, 1989, art. 12.

²⁰ Upendra Baxi, Law and Social Transformation; Amartya Sen, Development as Freedom.

²¹ Law Commission of India, Reports on Family Law Reforms.

²² United Nations Convention on the Rights of the Child, 1989, art. 12.

²³ NITI Aayog, "AI for Governance in India".