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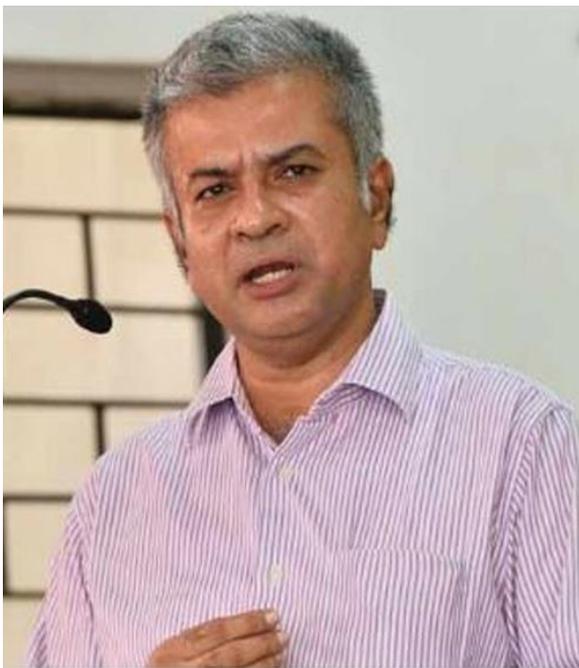
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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

ENSURING THE BEST INTEREST OF THE CHILD: LEGAL PRINCIPLES AND PRACTICES IN INDIA

AUTHORED BY - ANU SEN

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Abstract:

The welfare of the child stands as a paramount consideration within the Indian legal system, particularly in matters concerning custody and guardianship. This article explores the legal principles and practices aimed at safeguarding the best interest of the child in India. Through an analysis of landmark judicial decisions and evolving legal frameworks, it elucidates the multifaceted approach adopted by Indian courts in assessing and determining the best interest of the child. Factors such as emotional bonds, parental capacity, the child's preferences, and the overall environment are examined within the context of legal precedents. Furthermore, the article highlights the pivotal role played by family courts, judges, legal practitioners, and social workers in ensuring the effective implementation of these principles. It also addresses existing challenges and suggests strategies for strengthening legal frameworks and enhancing institutional capacities to better protect the welfare of children. Ultimately, the article underscores the significance of upholding the best interest of the child as a moral imperative that lies at the heart of India's legal system and societal ethos.

Key Words:

Custody; Welfare of Child; Parental capacity; Best Interest of Child; Legal Practices.

Introduction:

The child is uniquely recognized by law and by customs, for special attention. The law differentiates between adult and child in physical, psychological, and societal terms. Adults are presumed to be responsible for themselves and capable of deciding what is in their own interests. Therefore, the law is by and large designed to safeguard their right to order their personal affairs free of government intrusion. Children, on the other hand, are presumed to be dependent beings who are not fully competent to determine and safe guard their own interest. They are seen to be in need of direct, intimate, and continuous care by adults who are personally

committed to assume such responsibility. Thus, the state seeks to assure for each child membership in a family with at least one such adult whom the law designates “parent.”¹

Child placement laws are designed to ensure for all children an environment that adequately serves their needs. The degree of state intervention on the private ordering of the parent- child relationship ranges from a minimum -automatic assignment of a child by birth certificate to her biological parents to a maximum court ordered removal of a child from her “parents” because he/she is found to be “abused” or delinquent,” or the parents are found to be “unfit” parents. The traditional goal of such interventions is to serve “the Best Interest of Child”²

The principle of the Best Interests of the Child is a significant rule allied with children. It is a vital concept in the movement of protecting the rights of child all over the world and is applied mainly in the dominion of family rows such as custody, guardianship, maintenance, adoption of the child³and other related issues. The Best Interest Doctrine, unlike its predecessors, is egalitarian on its face. It codifies a preference for neither the father nor the mother. A child’s interest can still sometimes be a relevant factor in deciding custody disputes.⁴ The principle of the BIC means considering the child before a decision affecting a child’s life is made, the term is also identified as the wellbeing of a child.⁵ Today, the rule of Best Interest of Child has turn out to be a principle that is required to be followed by all organs of state and stakeholders even when the courts are not involved.⁶ The global theme of the Principle is that due emphasis should be given to the political, economic and social interests of the child each and every time when the laws, policies and decisions are made which directly or indirectly affect children.⁷

¹ Joseph, Goldstein., “*The Best Interest of The Child: The Least Detrimental Alternative*”, Simon and Scuster, 1996 p. 5.

² Joseph, Goldstein., “*The Best Interest of The Child: The Least Detrimental Alternative*,” Simon and Scuster, 1996 p. 5.

³ Parker, Stephen., “The Best Interests of the Child: Principles and Problems; The Best Interest of the Child; Reconciling Culture and Human Rights”, *International Journal of Law, Policy and the Family*, Vol. 8, Issue 1, p. 27, 1994.

⁴ Kyla Ebels-Duggan, Awarding Custody: Children’s Interests and the Father’s Rights Movement, *Public Affairs Quaterly*, Vol. 2, Number 4, October 2010.

⁵Supaat, Dina Imam, “The Best Interests of The Child: State Practice,” *International Journal of Business, Economics and Law*, Vol. 7, Issue 4 (Aug.) 2015.

⁶Supaat, Dina Imam, “The Best Interests of The Child: State Practice,” *International Journal of Business, Economics and Law*, Vol. 7, Issue 4 (Aug.) 2015.

⁷ Aron, Degol, and Shimelis, Dinku, “Notes on The Principle “*Best Interest of The Child*”: Meaning, History and Its Place Under Ethiopian Law, *Mizan Law Review*, Vol. 5 No.2, December 2011.

Historical evolution:

The 'Best Interest of Child' is the concept on which all the legislations related to the custody of child are being founded. The "best interest principle" is a legal concept that places the welfare and wellbeing of child as the paramount consideration in any decision or action concerning them. All the rows connected to grant of custody of minor children orbits around this principle only. In the matrimonial discordance, a conflict which always arises besides other disputes that is conflict relating to child custody i.e. with whom will the child reside.⁸ Its historical background can be traced back to various legal, philosophical, societal developments over time:

The notion of protecting children's interests can be found in ancient legal codes and religious texts. For example, Hammurabi's Code, one of the earliest known legal codes from ancient Mesopotamia, contained provisions regarding the care and protection of children.⁹

The English legal system, which heavily influenced many legal systems around the world, including India's, began to recognize the welfare of children as a primary concern in custody matters during the 19th century. Courts started to consider what arrangement would be in the best interests of the child when determining custody disputes.¹⁰

Until the nineteenth century, the legal system of most of the countries granted fathers property rights in their children and failed to grant mothers any right at all. Thus, fathers were almost always able to get the custody after divorce. For instance, in feudal Europe, the father had the supreme right to have custody of his children as the Childrens were considered to be part of his legacy.¹¹ In countries like Holland, the father was given this parental preference as he was believed to be capable of properly raising children.¹² Hence, during these periods, the father had a right to have custody of his children unless the wife proves that he is unfit.¹³In later part

⁸ Gund, Rabia, "Best Interest of Child' In Custody Legislations-A Dynamic Concept," *JETIR* July 2018, Volume 5, Issue 7 (www.jetir.com).

⁹ Hammurabi's Code, circa 1754 BC. The Louvre, Paris (One of the earliest and most complete written legal codes, issued by the Babylonian king Hammurabi. This ancient Mesopotamian text is a foundational piece that reflects early legal principles, including those concerning family law and the welfare of children. Although not explicitly formulated in terms of the "best interest of the child," it provides provisions that concern the safety and economic security of children, which can be viewed as an early form of considering children's welfare in legal decisions).

¹⁰ Irons, J., *The Child Custody Act of 1839: The Beginnings of the Doctrine of the Best Interests of the Child.* *The Legal History Review*, Vol. 62, No. 3, (1994).

¹¹ Melina, M.B. "Louisiana Family Law: The Visitation of the Non-custodian Parent", *Tulane Law Review*, Vol. 59, p. 489. (1985).

¹² Kidist Alemu (1997) *Post-divorce Decisions of Child Custody in Ethiopia in Light of the "Best Interest of the Child*, LLB thesis, AAU, Faculty of Law, (Unpublished), p. 6.

¹³ *Supra* note7. (Degol Aron and Dinku Shimelis, Notes on The Principle "Best Interest of The Child": Meaning,

of the 19th century, the “Tender Years Doctrine” displaced this practice. This view holds that children, especially young children under the age of 7 years, have special need of maternal nurture, and that mothers are naturally more suited to the task of raising young children than fathers are. So, children under the seven years of age should not be separated from their mothers. This was based on the premise that mothers are very important for younger children due to the special natural bond existing between the mother and the child and due to the fact that young children are often looked after by their mothers.¹⁴

This gender war over child custody has resulted in a political-economy deadlock that has likely contributed to the entrenchment of the best-interests standard.¹⁵ The practice stayed in effect for so many years and then it gave way to the currently most widespread practice of determining custody according to what is judged to be the best interest of the child.¹⁶ The welfare of the child began to take central stage in custody laws. The principle asserts that all decisions regarding children must primarily consider their best interests, focusing on their well-being rather than the rights of parents.

The 20th century was recorded as an era of extraordinary change for children, and among those changes, the convention on the Rights of the child holds perhaps the greatest potential. The angularly powerful and wide-ranging legal instrument promotes and protects the full spectrum of human rights for children.¹⁷ The Convention, which entered into force in 1990, reflects a watershed in the way our world looks at children. The work of a few decades has overturned traditions that date back millennia: children have been transformed in the realm of justice from powerless charges into human being with the legal rights of their own; from ‘object’ to ‘subject’ of the law; from chattel to personhood.¹⁸

History and Its Place Under Ethiopian Law, *Mizan Law Review*, Vol. 5 No.2, December 2011.)

¹⁴ Lenore J. Weitzman, “The Divorce Revolution: The Unexpected Social and Economic Consequences for Women” Macmillan Publishing Group, P. 219, 1987.

¹⁵ Elizabeth S. Scott and Robert E. Emery, Gender Politics and Child Custody: The Puzzling Persistence of The Best-Interests Standard, *Law and Contemporary Problems*, 2014, Vol. 77, No. 1, Child-Custody Decision making pp. 69-108. (2014). (www.jstore.org).

¹⁶ Kyla Ebels-Duggan, “Awarding Custody: Children’s Interests and the Father’s Rights Movement,” *Public Affairs Quarterly*, Vol. 2, Number 4, October 2010.

¹⁷ Pramilla Pandit Barooah, *Handbook on child, with Historical Background*, Concept Publishing Company, 1999. P. 216.

¹⁸ Pramilla Pandit Barooah, *Handbook on child, with Historical Background*, Concept Publishing Company, 1999. P. 216.

Codification of Best Interest Principle:

Child protection is a surprisingly understudied area of the welfare state, given the power that is vested in the decision-makers in a very difficult and highly sensitive area of intrusive state interventions into individuals' private spheres.¹⁹

This principle was first expressly incorporated in the 1924 Geneva Declaration on the Rights of the Child and the 1959 United Nations (UN) Declaration on the Rights of the Child respectively.²⁰ The first systematic effort in the course of identifying the rights of the child came in 1924 when, the Geneva Declaration of the Rights of the Child was adopted by the League of Nations. In the context of the Declaration, the rights of children were primarily seen as measures to be taken against slavery, child labour, child trafficking and prostitution of children. The Declaration significantly reflected the concerns of children's rights that were grossly violated during World War I and its aftermath. The Declaration emphasized children's substantial needs and declared that the children must have the necessary resources for their formal development. This included food, nursing, shelter, due care and concern for the handicapped and physical and emotional support for the orphans.²¹ The Geneva Declaration of the Rights of the Child was based on the principle that "mankind owes to the child the best it has to give". This principle was embodied in its preamble. Which reads as follows:

"By the present declaration of the rights of the child, men and women of all nations, recognizing that mankind owes to the child the best that it has to give, declare and accept as their duty ..."

This clearly underlines our duties towards children, and it entitles them for the best that mankind can give. This implies that the interest of the child should be given primary consideration in all actions involving children.²²

This stage was further carried by the United Nations 1959 Declaration of the Rights of the Child. The 1959 Declaration on the Rights of child particularly emphasized on the need for special safeguards and care of the child. The third paragraph of the preamble of the declaration states that:

¹⁹ Burns, K., Pösö, T. & Skivenes, M. "Child welfare removals by the state: A cross-country analysis of decision-making systems." New York: Oxford University Press, (2017).

²⁰ The preamble of the Geneva Declaration of the Rights of the Child adopted on 26 September 1924 (League of Nations) and the preamble of the Declaration of the Rights of the Child adopted by the UN General Assembly Res. 1386 (XIV) of 10th of December, 1959.

²¹ Articles 1, 2 and 3 of the Geneva Declaration of the Rights of the Child of 1924.

²² Degol Aron and Dinku Shimelis, Notes on The Principle "*Best Interest of The Child*": Meaning, History and Its Place Under Ethiopian Law, *Mizan Law Review*, Vol. 5 No.2, December 2011.

“The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”²³

Principle 2 of the Declaration expressly recognizes the principle of the best interest of the child which provides that: “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, *the best interest of the child* shall be the paramount considerations.”²⁴ The principle of the best interest of the child is also embodied under Principle 7 of the Declaration which states that “best interests of the child shall be the guiding principle of those responsible for his education and guidance ...”.

This step for the recognition and enunciation of human rights of children was carried forward by the Convention of the Rights of the Child, 1989. The United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, played a significant role in promoting the best interest principle on a global scale. The “best interest principle” is a fundamental concept within the United Nations convention on the Rights of the Child (CRC). The UNCRC has been accepted by most countries: however, crime, suppression and unjust decisions continue to exist in and impact the lives of many children: all in the name of child’s best interests.²⁵

This principle, outlined in Article 3 of CRC, states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interest of the child shall be a primary consideration. This principle underscores the importance of prioritizing the well-being and rights of children in all decisions and actions that affect them. It requires that authorities consider what is best for the child in terms of their physical, emotional, and social development, as well as their safety and protection from harm.

It is supported and complemented by several other key principles that help to ensure the

²³ Declaration of the Rights of the Child (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (<https://www.childlineindia.org/>).

²⁴ Principle 2 of Declaration of the Rights of the Child (1959).

²⁵ Grindheim et al. In the Best Interests of the Child: From the Century of the Child to the Century of Sustainability, [Childhood Cultures in Transformation: 30 Years of the UN Convention on the Rights of the Child in Action towards Sustainability](#), 2021, pp. 13-36.

comprehensive protection and development of children. Here are the primary principles that are closely involved in supporting the best interests of the child:

Non-Discrimination: The CRC mandates that all rights apply to all children without exception. It is the state's obligation to protect each child from any form of discrimination and to take positive action to promote their rights. This principle ensures that no child is treated unfavourably on any grounds including race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status.²⁶

Right to life, Survival and Development: This principle asserts that every child has the inherent right to life and that the state has an obligation to ensure the child's survival and development. This principle is crucial for interpreting the best interests of the child, as it encompasses a broad range of elements that contribute to a child's full development (physical, mental, spiritual, moral, psychological, and social).²⁷

Admiration for the Opinions of the Child: This provides that children who are capable of forming their own views have the right to express those views freely in all matters affecting them, commensurate with their age and maturity. This principle is essential in implementing the best interests of the child, as it ensures that the child's perspectives are considered and given due weight in any decision making that affects them.²⁸

These principles are interrelated and each plays a vital role in ensuring that the best interests of the child are considered in a holistic manner across different situations and contexts. They collectively help define how children's rights are to be handled, ensuring that children are treated as individuals with their own rights and that they receive the protection, care, and encouragement necessary for their proper development.

Legal Frame work of Best Interest Principle in India:

The "best interest" principle is a legal standard used to determine what serves the best interests of a child or other individuals who are unable to make decisions for themselves. This principle is influenced by international conventions like the United Nations Convention on the Rights of the Child (UNCRC), which India ratified in 1992, and is ingrained in various Indian laws, such as the Juvenile Justice (Care and Protection of Children) Act, 2015, The Guardian and Wards Act, The Hindu Minority and Guardianship Act.

²⁶ Article 2 CRC.

²⁷ Article 6 CRC.

²⁸ Article 12 CRC.

The best Interest Principle is central to all policies, laws, and judicial decisions affecting children in India. Stemming from the global recognition of children's rights, best interest Principle ensures that any action concerning a child considers what will best serve his or her emotional, physical, educational, and social needs. The principle of the "Best Interest of the Child" is a fundamental concept in legal frameworks worldwide, including India, particularly when it comes to matters involving children such as custody, adoption, education, and protection from abuse and exploitation. In India, this principle is anchored in various legal statutes and judicial decisions. Here are the key aspects of how this principle is applied in Indian law:

- 1. The Juvenile Justice (Care and Protection of Children) Act, 2015:** This Act is one of the primary legal frameworks emphasizing the best interest of the child. It provides for the care, protection,²⁹ development, treatment, social reintegration³⁰, and handling of children through various measures ensuring their needs are met and rights upheld.
- 2. The Guardian and Wards Act, 1890:** The Guardian and Wards Act is a vital legal framework that governs matters pertaining to guardianship and the welfare of minors in India. The Act aims to protect the best interests of minors who are unable to take care of themselves. Within this Act, the principle of the best interest of the child is paramount. Let's delve into the provisions of the Guardian and Wards Act related to the best interest principle:
 - **Appointment of Guardian:** Section 7 of the Guardian and Wards Act, 1890, empowers the court to appoint a guardian for a minor. When making such appointments, the primary consideration is the welfare and best interests of the minor.³¹
 - **Factors Considered:** The Act outlines the factors that the court should consider when appointing a guardian. These include the age, sex, and religion of the minor, as well as the minor's wishes (if they are old enough to express them). However, the overarching consideration remains the welfare of the minor.³²

²⁹ Section 31 JJA 2015.

³⁰ Section 39 JJA, 2015.

³¹ Section 7, GWA, 1980: 1) where the Court is satisfied that it is for the welfare of a minor that an order should be made-- (a) appointing a guardian of his person or property, or both, or (b) declaring a person to be such a guardian, the Court may make an order accordingly. (2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court. (3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

³² Section 17, GWA, 1980.

- **Discretionary Powers of the Court:** Section 19 grants discretionary powers to the court regarding the appointment of guardians. The court has the authority to make decisions based on what it deems best for the welfare of the minor.³³
 - **Duty of the Guardian:** Section 19(1) specifies that the guardian appointed by the court must take care of the person and property of the minor. This duty is to be discharged in the best interests of the minor.
 - **Change of Guardian:** Section 39, allows the court to change the guardian if it is satisfied that such a change is in the best interest of the minor. This could be due to various reasons such as the incapacity or unsuitability of the existing guardian.
 - **Educational and Moral Welfare:** Section 25 emphasizes the importance of providing for the education and moral upbringing of the minor. Any decision regarding the minor's education should be made in accordance with their best interests.
 - **Preference of the Minor:** Though not explicitly mentioned in the Act, the preference of the minor, especially if they are of a suitable age and understanding, is often considered by the court when determining their best interests.
3. **The Hindu Minority and Guardianship Act, 1956:** The Hindu Minority and Guardianship Act, 1956 (HMGA) is an Act in India that was enacted to amend and codify certain parts of the law relating to minority and guardianship among Hindus. One of the key principles underlying this Act is the welfare of the minor child, which is considered the paramount consideration in any decision regarding guardianship. Key provisions regarding the Best Interest of the child under HMGA are:
- **Natural Guardians:** Under the HMGA, the natural guardians of a Hindu minor, in the case of a boy or an unmarried girl, are primarily the father and after him, the mother. However, the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. This reflects the principle that the welfare of very young children is best served when they are under the care of the mother.³⁴
 - This is the most critical section when it comes to the best interests of the child. Which states that: In the appointment or declaration of any person as guardian of

³⁴ Section 6, HMGA.

a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.³⁵

- No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.³⁶

This section explicitly establishes that the child's welfare supersedes all other considerations, including the rights of the natural guardian. Courts interpreting this provision consistently prioritize the child's physical, emotional, educational, and social needs when making decisions about guardianship.

4. The Protection of Children from Sexual Offences (POCSO) Act, 2012:

Under the POCSO Act, the best interest of the child is a key consideration during judicial processes involving child victims of sexual offences. This includes considerations for the child's safety, privacy, and feelings of Security.

Judicial Interpretation:

Indian courts have played a significant role in defining and expanding the notion of the child's best interest. In custody battles, for instance, courts frequently examine multiple facets such as the child's emotional, educational, social, and physical needs, and the parent's ability to fulfil those needs, rather than adhering strictly to the parent's gender or financial capacity. This holistic approach ensures that the judiciary acts as a safeguard for the child's welfare, often appointing welfare officers or seeking expert psychological inputs to better understand the child's needs and preference. The principle of best interest ensures that all judicial decisions pertaining to a child prioritize the child's overall welfare above everything else. Several landmark cases in Indian jurisprudence have elucidated this concept, offering a nuanced understanding that guides courts across the nation. Below, we discuss key cases that have shaped the legal landscape regarding the best interest of the child.

The guiding principle in Indian family law, particularly in custody disputes, is that the child's welfare is of the utmost importance. The Supreme Court and various High Courts in India have consistently interpreted this through various judgments, considering a multitude of factors that contribute to a child's welfare. These include emotional ties, the financial stability of the

³⁵ Section 13(1) HMGA.

³⁶ Section 13(2) HMGA.

guardians, the moral integrity and conduct of the parents, the child's own preferences (depending on their age and maturity), and the overall environment that each parent can provide. In *Rosy Jacob v. Jacob A. Chakramakkal*³⁷, the Supreme Court held that in custody disputes, the welfare of the child is of paramount consideration and must be determined based on the child's actual needs. In the case of *Githa Hariharan v. Reserve Bank of India & anr.*,³⁸ also the court highlighted the importance of the welfare principle in deciding custody battles, emphasizing that the paramount consideration should be the welfare of the child rather than the gender of the parent. Similarly, in *Chander Haas v. Smt. Sheela Devi*³⁹ The court held that the best interest of the child should not be equated with the mere desire of the parent to have custody but should be based on the child's actual needs and circumstances. The Allahabad High Court emphasized that the welfare of the child is the paramount consideration in custody disputes. The court examined several factors, including the child's current living environment, the ability of each parent to provide for the child's needs, the emotional bond between the child and each parent, and the child's own preferences, if they are old enough to express them. Again, in *Shyam Sunder Kohli v. Sushma Kohli*⁴⁰ the court emphasized that the welfare and happiness of the child should override the legal rights and preferences of the parents in custody disputes in the case of *Nil Ratan Kundu v. Abhijit Kundu*⁴¹ The Supreme Court emphasized the principle of non-discrimination based on gender in custody matters and reiterated the importance of the child's welfare as the paramount consideration. In addition to parent preference the court take other factors also in consideration as in *Surinder Kaur Sandhu v. Harbax Singh Sandhu*⁴² The Supreme Court held that in custody matters, the court should consider the child's age, gender, and other relevant factors to ensure the child's welfare and happiness. *Mausami Moitra Ganguli v. Jayant Ganguli*⁴³, The Supreme Court elaborated on factors such as the emotional bonds between the child and each parent, the parents' character, the child's material needs, and the stability of the home environment.

Wishes of child if the child is also taken into consideration by the court if the child is old enough to give preferences free from any type of influence. As in *Dhanwanti Joshi v. Madhav*

³⁷ (1973)1 SCC 840.

³⁸ (1999) AIR 1999 SC 114.

³⁹ AIR 2002 All 48

⁴⁰ (2006) 5 SCC 385.

⁴¹ (2008) 9 SCC 413.

⁴² (1984) 3 SCC 698.

⁴³ (2008) 7 SCC 673.

*Unde*⁴⁴ the court emphasized the importance of considering the child's wishes in custody matters, provided the child is of an age where they can express an independent opinion. *Samar Ghosh v. Jaya Ghosh*⁴⁵ The Supreme Court, in this case, reiterated the principle that while deciding custody matters, the welfare of the child should be the paramount consideration, and the child's wishes, if expressed, should be taken into account, provided they are free from any influence or pressure. *Nil Ratan Kundu v. Abhijit Kundu*⁴⁶. In this case, the Supreme Court emphasized the importance of considering the wishes of a child when determining custody, particularly if the child is old enough to have a reasonable understanding of the situation. *Deepa Gupta v. Rajiv Gupta*⁴⁷. This case emphasized that the preference of a child is an important factor to be considered in custody disputes, but it is not the sole determining factor. The court must also assess the overall welfare of the child as in *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*⁴⁸. This case emphasized the importance of the child's welfare as the paramount consideration in custody matters, even if it means departing from customary legal principles. *Ruchi Majoo v. Sanjeev Majoo*⁴⁹ The court reiterated that the best interest of the child should be the guiding principle in custody matters, and decisions should be made with a focus on the child's overall well-being and happiness. *Sheoli Hati v. Somnath Das*⁵⁰ In this case, the court highlighted the importance of emotional attachments and the psychological health of the child, asserting that the child's ability to receive love and affection from the parent plays a crucial role in their upbringing. *Jyoti Kumari v. Naveen Kumar*⁵¹ In this case, the Supreme Court emphasized that in custody cases, the paramount consideration is the welfare of the child, and it must supersede all other considerations.

These cases underscore that Indian courts evaluate a comprehensive set of factors to determine what serves the best interests of the child. These include, but are not limited to, the child's physical and emotional security, their educational needs, the ability of the parent to provide for these needs, the existing bond between the child and each parent, and the overall stability that each parent can offer. The Indian judiciary's approach to determining the "best interest of the child" is dynamic and considers a wide range of factors. While these case laws set important

⁴⁴ (1998) 1 SCC 112

⁴⁵ (2007) 4 SCC 511.

⁴⁶ (2008) 9 SCC 413.

⁴⁷ (2013) 4 SCC 230.

⁴⁸ (1999) 7 SCC 675

⁴⁹ (2011) 6 SCC 479.

⁵⁰ AIR 2019 SC 4156.

⁵¹ (2022) 11 SCC 286.

precedents, each custody case is unique, and courts must precisely analyse the specific circumstances before making any decision decisions.

Challenges and Strategies:

Despite the overarching emphasis on the best interest of the child, challenges persist within the Indian legal system. Some are mentioned as:

1. **Application of Best Interest Principle:** The first and foremost challenge in practice is the difficulties related to the application of the principle of the best interests of the child. I will emphasise the two that seem to be the most important. The first one is the difficulty of assessment of what is in the best interests of the child. The concept of the best interests of the child is child specific. Therefore, as stated in General Comment No. 14, its content “must be determined on a case-by-case basis”. What is in the best interests of one child may not be in the best interests of another child in a similar situation. The second difficulty is connected with the goal to strike a balance between different interests. What is in the best interests of one child often competes with the interests of other persons, for instance parents, and more importantly, with what is in the best interests of another child or other children – siblings, for instance⁵²
2. **Resource Constraints:** Insufficient resources, including staffing, infrastructure, and funding, within every legal system including Indian legal system hinder the effective implementation of laws and policies aimed at protecting the best interest of the child.⁵³
3. **Complex Legal Procedures:** Lengthy and complex legal procedures often result in delayed outcomes, causing additional stress and uncertainty for children and their families involved in legal proceedings.
4. **Cultural Dynamics:** Deep-rooted cultural norms and social attitudes may occasionally conflict with legal principles, posing challenges in certifying that decisions truly reflect the best interest of the child, especially in cases involving traditional family structures or practices.⁵⁴
5. **Access to Justice:** Socio-economic disparities and geographical barriers limit access to justice for marginalized communities, making it difficult for children from these

⁵²The best interests of the child – A dialogue between theory and practice. Edited by Milka Sormunen © Council of Europe, March 2016 Printed at the Council of Europe.

⁵³ UNICEF, "Budgeting for Children's Rights: Monitoring Public Spending on Children," UNICEF Budget Briefs, 2020. This brief discusses the impact of budgetary constraints on child-related services and advocates for increased allocations to ensure the protection of child rights.

⁵⁴ Chopra, Raj. "Cultural Factors in Legal Decisions," *Law Today Journal*, Vol. 34, Issue 3, 2018, pp. 45-50.

backgrounds to assert their rights and have their best interests adequately represented in legal proceedings.⁵⁵

6. Interdisciplinary Collaboration: Limited collaboration and coordination between different sectors, such as law enforcement, social services, healthcare, and education, impede holistic approaches to addressing the complex needs of children involved in legal matters.⁵⁶

Strategies:

To address these challenges, some steps are necessary to be taken:

1. Policymakers, legal professionals, and civil society organizations must work collaboratively to strengthen legal frameworks, and promote awareness about children's rights.
2. Invest in training programs and capacity-building initiatives for judges, lawyers, social workers, and other stakeholders involved in child-related legal proceedings to enhance their understanding of child rights and best interest principles.⁵⁷
3. Streamline legal procedures and develop child-friendly approaches within the judicial system to expedite case processing and minimize the negative impact of prolonged litigation on children and families.⁵⁸
4. Promote cultural sensitivity training for legal professionals to ensure that decisions align with the best interest of the child while respecting diverse cultural backgrounds and traditions.⁵⁹
5. Foster greater collaboration and information-sharing between relevant government agencies, NGOs, and community-based organizations to facilitate coordinated responses and comprehensive support for children involved in legal matters.

⁵⁵ Human Rights Watch, "Barriers to Justice: Equal Access to the Courts in India," 2021. (A report detailing the barriers faced by underprivileged communities in accessing legal services in India).

⁵⁶ Patel, Sunita, and Michael Thomson. "Interdisciplinary Approaches to Child Custody Evaluations," *Child and Adolescent Mental Health Journal*, Vol. 15, No. 2, 2020, pp. 112-117.

⁵⁷ National Judicial Academy, "Training Programs on Child Rights," 2021. Describes training initiatives provided to legal professionals on children's rights and welfare.

⁵⁸ Ministry of Law and Justice, Government of India. "Reforms in Judicial Procedures for Expedited Resolution," 2022.

⁵⁹ Agarwal, Priya. "Integrating Cultural Sensitivity into Judicial Practice," *Law Review*, Vol. 41, 2019, pp. 203-210.

6. Launch public awareness campaigns to educate communities about children's rights, legal protections, and avenues for seeking assistance in cases where the best interest of the child may be at risk.⁶⁰
7. Conduct research and evaluation studies to assess the effectiveness of existing legal frameworks and identify areas for improvement in promoting the best interest of the child within the legal system.⁶¹

By addressing these challenges and implementing targeted strategies, policymakers, legal professionals, and civil society stakeholders can work together to strengthen the legal framework for ensuring the best interest of the child and uphold children's rights as enshrined in national and international laws.

Conclusion:

In the realm of family law, particularly in matters concerning the custody and welfare of children, the principle of the "best interest of the child" stands as the guiding light within the Indian legal system. Through a series of landmark judicial decisions and evolving legal frameworks, Indian courts have consistently upheld this principle, recognizing that the welfare and well-being of the child must take precedence above all else.

From the seminal case of *Gaurav Nagpal v. Sumedha Nagpal* to the more recent decisions like *Jyoti Kumari v. Naveen Kumar*, the judiciary has laid down a comprehensive framework for assessing and determining the best interest of the child. These cases have established a multifaceted approach, taking into account various factors such as the emotional bonds between the child and each parent, the child's own preferences (if they are of sufficient age and maturity), the financial stability of the guardians, the moral integrity of the parents, and the overall environment conducive to the child's growth and development.

Moreover, Indian courts have recognized the evolving nature of familial relationships and societal norms, adapting legal interpretations to reflect contemporary realities. This adaptability ensures that the principle of the best interest of the child remains relevant and responsive to changing circumstances.

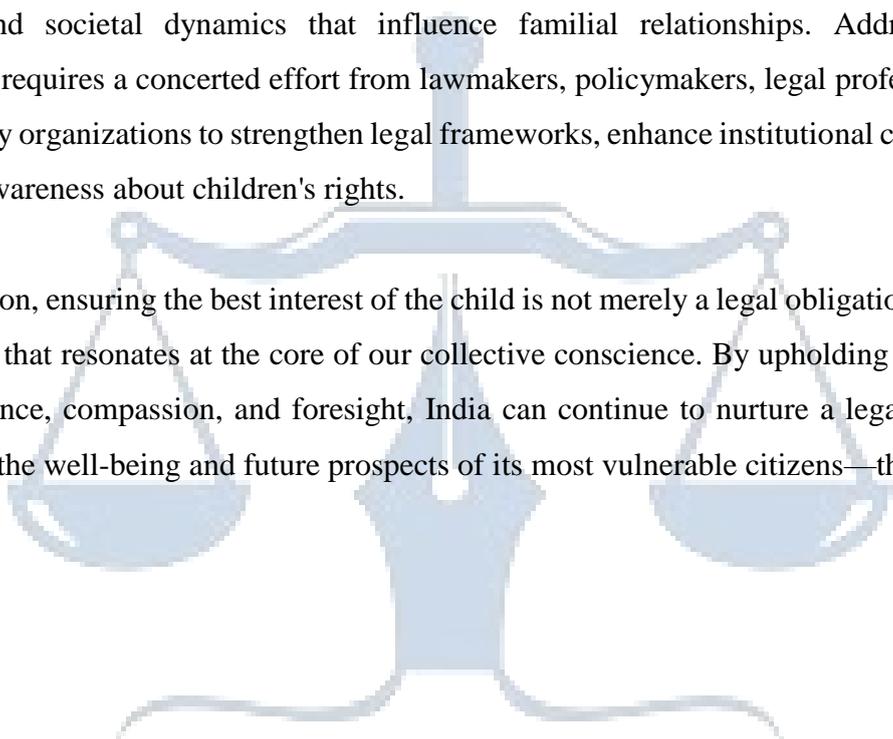
⁶⁰ Kumar, Anil. "Effectiveness of Public Awareness Campaigns on Child Rights," *Journal of Social Policy*, Vol. 50, No. 1, 2021, pp. 80-98

⁶¹ Institute of Child Rights and Welfare, "Evaluating Child Welfare Policies: A Review of Current Research," 2022.

While legal principles provide a solid foundation, the effective implementation of these principles relies heavily on the practices within the legal system. Family courts, judges, lawyers, and social workers play crucial roles in safeguarding the best interest of the child. Through thorough assessments, evidence-based decision-making, and child-centered approaches, these stakeholders contribute to ensuring that the welfare of the child remains the paramount consideration in all custody and guardianship matters.

However, challenges persist, ranging from resource constraints within the legal system to cultural and societal dynamics that influence familial relationships. Addressing these challenges requires a concerted effort from lawmakers, policymakers, legal professionals, and civil society organizations to strengthen legal frameworks, enhance institutional capacities, and promote awareness about children's rights.

In conclusion, ensuring the best interest of the child is not merely a legal obligation but a moral imperative that resonates at the core of our collective conscience. By upholding this principle with diligence, compassion, and foresight, India can continue to nurture a legal system that prioritizes the well-being and future prospects of its most vulnerable citizens—the children.



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