

Personal Laws and the Rights of Children in India: Balancing Culture with the Constitution

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Abstract

Child rights within the ambit of personal laws in India pose intricate legal and constitutional issues. India's diverse legal system, regulated by personal laws of various religious communities (Hindu law, Muslim law, Christian law and Parsi law), often mirrors traditional and cultural practices. But these do not always correspond with contemporary constitutional values, especially those found in Articles 14, 15 and 21 of the Constitution of India, which protect equality, non-discrimination, and the right to life and dignity. This article offers a critical analysis of the extent to which personal laws protect or violate children's rights in matters of custody, guardianship, adoption, maintenance, legitimacy and inheritance. The article employs a doctrinal and comparative method to examine inconsistencies, gaps and variations in various personal law regimes. It draws attention to the dilemma between upholding religious autonomy and giving primacy to the "best interests of the child" principle, which is enshrined in constitutional law and international human rights law, especially under the United Nations Convention on the Rights of the Child (UNCRC). The paper also assesses the judiciary's role in bringing personal laws in line with constitutional values through interpretative and landmark cases. Through analysis of gaps, inconsistencies and reforms, this article calls for a child-friendly legal approach that goes beyond the confines of personal laws, while accommodating cultural differences. It ends by stressing legislative and judicial reforms to ensure the application of constitutional morality and welfare of the child rather than discriminatory or archaic practices in personal laws.

Keywords: Child Rights, Personal Laws in India, Best Interests of the Child, Constitutional Mandates, Legal Pluralism.

1. Introduction

India has a unique legal system that combines statutory law and personal laws that are based on different religions, and regulate marriage, divorce, guardianship, custody, adoption, maintenance and inheritance. This diversity reflects India's commitment to upholding the country's cultural and religious pluralism. But from a child rights perspective, the functioning of personal laws is problematic. Children, as a vulnerable group, need to be protected irrespective of their religious identities. However, personal laws tend to emphasise community practices and traditional values at the expense of universally recognised child welfare principles. This results in a complex legal framework where children's rights may depend on their religious background.

India's child rights regime has witnessed significant developments over the years, shaped by constitutional directives, judicial interpretations and international treaties. However, personal laws remain the primary source of law for regulating the family life of children. Questions of guardianship in Hindu law, custody in Muslim law and the lack of a uniform framework for adoption across all communities are examples of inequality between children. Some personal laws include welfare-based provisions, but others are still entrenched in patriarchal or archaic practices that may not accord with modern notions of children's rights. Thus, there is a tension between legal pluralism and the need for uniformity in child protection.

The evolution of children as rights-holders, rather than property of their parents, is a landmark in contemporary legal practice. But the degree to which this is reflected in personal laws is variable. The inconsistency in protecting the rights of children calls for a reevaluation of the place of personal laws in the legal system. This article aims to examine this intersection, and whether India's child welfare agenda can be advanced in a pluralistic legal framework.

2. Constitutional Safeguards and Child's Welfare

India's Constitution offers comprehensive protection for child rights, both as enforceable fundamental rights and as principle in the Directive Principles of State Policy (DPSP). Articles 14 and 15 enshrine the principles of equality and non-discrimination, including on the basis of religion, race, caste, sex or place of birth. Article 15(3) explicitly authorises the State to make special provisions for women and children, acknowledging their need for special care. Article 21, which protects the right to life and personal liberty, has been interpreted broadly by the courts to encompass the right to life with dignity, right to education, health and safe environment - all of which are important for children.

Besides these, Articles 39(e) and 39(f) of the Directive Principles stress the need to ensure that children are not exploited and that they are provided with opportunities and facilities for their development. Article 45 also requires provision of pre-school education to young children. Taken together, these provisions establish the importance of child welfare as a constitutional principle. More significantly, the judiciary has continuously upheld the principle of "best interests of the child" as the cardinal principle in all child-related matters, bringing the Indian jurisprudence in line with international instruments such as the United Nations Convention on the Rights of the Child (UNCRC).

Despite the robust constitutional framework, implementation of these principles in personal laws is not uniform. Personal laws, which are based on religious principles, are often not subject to constitutional scrutiny unless tested in courts. This leads to a conflict between constitutional principles and personal law practices. Although courts have increasingly played a role in ensuring personal laws are not contrary to fundamental rights, the lack of a consistent legislative approach remains problematic. While the child welfare principle is well-accepted, its application under all personal laws is not consistent, thus requiring judicial intervention and legal reform.

3. Child Rights under Hindu, Muslim, Christian and Parsi Personal Laws

Children's rights under personal laws differ for different religious groups in India. Hindu law has a fairly well-established framework for the welfare of children, with laws such as the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956. These acts prioritise the welfare of the child in matters of custody and guardianship. Hindu law includes the recognition of the institution of adoption, enabling the full transfer of parental rights and obligations. But some aspects, like the preference for the father as a natural guardian, have been seen as reinforcing gender discrimination.

In contrast, Muslim personal law remains largely unfixed and based on religious scriptures and customs. Guardianship (wilayat) and custody (hizanat) principles differentiate between legal guardianship and physical custody, with mothers often having custody rights for children under a certain age, while fathers retain guardianship rights. Although these concepts seek to balance parental responsibilities, they may not necessarily prioritise the best interests of the child, especially when inflexible age-based criteria trump individual welfare. Furthermore, the lack of an institutional framework for adoption under Muslim law impairs efforts to find permanent homes for orphaned and abandoned children.

Christian and Parsi personal laws also have some shortcomings in dealing with child rights. The Indian Divorce Act, 1869, and the Parsi Marriage and Divorce Act, 1936, include provisions on custody and maintenance but these are more procedural and less detailed in terms of child welfare. Adoption for Christians and Parsis is not covered under personal law but falls under secular laws, such as the Juvenile Justice (Care and Protection of Children) Act, 2015, which are applicable across all communities. This approach results in a patchy recognition of children's rights.

In sum, although personal laws offer a framework for family law, their ability to ensure children's rights is not consistent. The inconsistencies between different systems of personal laws underline the need for reform and harmonisation to ensure the rights of children, regardless of their faith, are safeguarded.

4. Conflict between Tradition and Constitutional Morality

The interaction between personal laws and constitutional values raises the issue of a clash between tradition and constitutional morality. Personal laws are entrenched in religious and cultural practices, which form an essential part of community life. But these practices can sometimes endure practices that conflict with modern principles of equality, dignity and the best interests of the child. For example, gender-based guardianship laws, adoption barriers and distinctions between legitimate and illegitimate children exemplify the persistence of traditional practices that may not be in harmony with constitutional principles.

Constitutional morality, as विकसित by the judiciary, places a premium on fundamental rights and the importance of upholding principles like equality, non-discrimination and human dignity. Courts are frequently confronted with the task of harmonising personal laws with these principles. This includes weighing the freedom of religion against the need to safeguard vulnerable people, such as children. The difficulty is striking a balance between the freedom of religious groups and the rights of individuals.

This issue is also evident in the discussion of the uniform civil code. While advocates believe that a uniform code will eradicate discrimination and provide equality to all, critics fear that it would undermine diversity and religious liberty. But in the case of child rights, the case for uniformity becomes stronger, as children should not be afforded different rights on the basis of their faith. The tension between tradition and constitutional morality therefore highlights the need for a balance between diversity and child welfare.

5. A Judicial Perspective: Reconciling Personal Laws and Child Rights

Indian courts have been instrumental in harmonising personal laws and constitutional obligations. Through interpretative innovations and transformative case law, courts have consistently stressed the primacy of the child's interest. For example, in matters of custody, the courts have departed from a literal interpretation of personal law and favoured the welfare of the child. This shift is part of a larger move towards constitutional over customary priorities.

The courts have also challenged gender discrimination and inequality within personal laws. By invoking fundamental rights, courts have attempted to reinterpret or invalidate sections that contradict equality and dignity. This has helped to progressively modernise personal laws in accordance with modern justice principles. The adoption of international treaties, especially the UNCRC, has reinforced this trend.

But relying solely on judicial intervention is not enough for reform. While courts can deal with individual cases, systemic reform demands legislative reform. Additionally, the piecemeal approach of the judiciary can result in inconsistency. Nonetheless, the judiciary plays a critical role in amending personal laws to conform to child rights. It can drive change and prevent rights abuses.

6. Conclusion

The reform in the field of personal laws and child rights is imperative. A child-centric legal framework requires the best interests and welfare of the child to be given priority over other considerations, such as religious and cultural considerations. This involves a thorough examination of personal laws to weed out any provisions that are contrary to constitutional and international norms.

This could be achieved by progressively harmonising personal laws through amendments that take into account the welfare of the child. This will enable cultural differences to be maintained while protecting the rights of all children. Enhancing secular legislation, like the Juvenile Justice Act and extending its ambit to areas that fall within the purview of personal laws, can also aid in this process.

Sensitisation and awareness are also key to change. Laws, policy and community leaders must collaborate to raise awareness about a child rights approach to personal law. Sensitisation and awareness-raising can help change traditional practices and promote a culture of children's rights.

The aim is to establish a legal framework where all children, irrespective of their faith, are treated as human beings with inherent rights and worth. This can be achieved by striking the right balance between tradition and the Constitution. By prioritising the child in legal conversations, India can create a fairer and more equal system that aligns with its aspirations to ensure the rights of children.

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