

● THE CONCEPT OF RESPONSIBLE PARENTING AND THE EMERGING ISSUES



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Abstract

The parents are the natural protector of the rights of the child. The care, protection, and guidance of parents mark a lifelong impact on overall psychological development of the individual. Parents or other persons legally responsible for the child need to fulfill with care their rights and responsibility to provide direction and guidance to their children in the exercise child's rights. There is a need to consider appropriate ways of ensuring a balance between parental authority and the realization of the rights of the child. The present article explores the emerging dimensions of parental responsibilities. This article provides a description of international and national efforts taken to assure the responsible parenthood.

Key words

Jurisprudence, Law, Parent, Care

1. INTRODUCTION

The family justice system is progressively seeking to respond the changes in family life. The family structure has changed dramatically in the last few decades. Changes in women's roles, new reproductive technology, nuclear families, and the problems of child rearing have all contributed to these shifts. As the family structure has changed, so have family roles and relationships. These changes in family responsibilities and relationships result from and contribute to the family's newly redefined functions. Family life has become more complicated and stressful. Many families confront crises and problems on a regular basis, such as unemployment, violent crime, drug and alcohol abuse, marital and child abuse, and the stress caused by competing time demands. The growing mobility of modern families frequently leads in family members losing stability, a lack of social support systems and increased isolation¹. Along with changes in family structure, many of the functions performed by the family for its members have also altered. Historically, the family has provided its members with emotional, spiritual, economical, and educational support. In the global arena, the State now undertakes many of the functions that were formerly only undertaken by the family. For example, States have gotten more involved in education and in caring for our society's dependent members through public aid and social security. This devolution of family functions to

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¹See Barbara A. Babb, "An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective" 72 (3) INDIANA LAW REVIEW, 775-808 (1997).

the State has contributed to a new picture of the family, which must be reflected in current family law and policy making. The fields of marriage, divorce, family support, and parent-child interactions are undergoing a fundamental change in the legal systems of Western nations. Family legislations frequently started to take into account concerns with child abuse, juvenile delinquency, family violence, substance addiction, economics, and physical or mental health problems². Many modern States are attempting to direct family life through their welfare policies. There are significant variances in this effort ranging from the declared aims, to the measures taken and the actual resources invested.

2. EVOLUTION OF PARENTIG JURISPRUDENCE

Historically, at initial stages, the focus was on parental rights rather than parental duties. The proponents of proprietary theory of parenthood claim that a child is owned by his or her parents because parents give birth to the child and since children are considered to be the property of their parents, there are no obligations on the part of parents to raise their children³. The idea that children are the parents' belonging is supported by Aristotle. According to Aristotle, "*a child is a parent's possession since it is a bodily manifestation of that parent, much like a tooth or hair and parents love their child as being a part of themselves*"⁴. He believes that "*the relationship of children to parents is like a relation of men to god as to something good and superior; for they have conferred the greatest benefits, since they are the cause of their being and of their nourishment and education from their birth*"⁵. Contemporary philosopher Jan Narveson also believes in property account of children. In the Libertarian Idea, he holds that the lack of rationality on the part of children precludes them from being right-bearers⁶. The proponents of the labour theory also contended that as children are the product of their parents' labour and thus owned by them. During the middle of the 20th century, attention was turned from the physical roles of the parents to the psychological well-being of the child. Attachment theory, for instance, explains that a child's interactions with parents and family create a strong emotional and psychological bond between them. This family bonding and attachment is essential for a child's healthy emotional development and lack of such an attachment can give a severe and permanent psychological trauma to the child⁸.

However, even before that, two philosophers of the seventeenth and eighteenth century Jean Jacques Rousseau and John Locke entered into this debate and both supported the theory of parental obligations. John Locke plainly rejected the idea of children being owned by their parents. He emphasizes that every person is born equal and free so

²Ibid

³See Anne McGillivray, "Children's Rights, Paternal Power and Fiduciary Duty: From Roman law to the Supreme Court of Canada" 19(1) THE INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS 21-54 (2011)

⁴ARISTOTLE, NICOMACHEAN ETHICS (TRANSLATED BY W.D. ROSS) 141 (Batoche Books, Kitchener, 1999)

⁵Ibid

⁶Mark Vopat, "Contractarianism and Children" 17(1) PUBLIC AFFAIRES QUARTERLY 49-63 (2003)

⁷See Dara E. Purvis, "The Origin of Parental Rights: Labor, Intent and Fathers" 41 FLORIDA STATE UNIVERSITY LAW REVIEW 645-696 (2014)

⁸Ibid; see also Ferdinand Schoeman, "Rights of Children, Rights of Parents and the Moral Basis of the Family" 91 (1) THE UNIVERSITY OF CHICAGO PRESS JOURNAL 6-19 (1980)



"begetting of children makes them not slaves to their fathers". As per Locke's opinion "a child is free by his father's title, by his father's understanding, which is to govern him till he hath it of his own." Locke rejected the common perception of parental power as for him "parental power is nothing but that which parents have over their children to govern them, for the children's good, till they come to the use of reason"⁹. John Locke's assertion to responsible role of parents reflects in the following statement from his Second Treatise of Government: "Adam and Eve, and after them all parents were, by the law of nature, under an obligation to preserve, nourish, and educate the children they had begotten; not as their own workmanship, but the workmanship of their own maker, the Almighty, to whom they were to be accountable for them. This is that which puts the authority into the parents' hands to govern the minority of their children. God hath made it their business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good, as long as they should need to be under it."¹⁰

A child's mind, according to Locke, is like a white paper, empty of all characters, with a few intrinsic tendencies but mostly like wax, to be molded and fashioned as one pleases. Locke said that in order to build positive habits, early training must establish the parents' authority. Early on, the child should be taught to yield to logic. Parents should refrain from using harsh penalties, such as beatings, as well as manufactured rewards because they lead by example. Children should spend a lot of time with their parents, who should then observe their temperament and try to exploit the child's inherent need for freedom and play to make learning as similar to recreation as possible. According to Locke, courage must constantly be praised and cruelty must always be avoided. Increased familiarity should be maintained as the child matures so that the parent could find a friend in their grown up child. Locke's recommendations always aimed for insight and truthfulness as well as virtue, breeding, and a free liberal spirit¹¹.

On the other hand, Rousseau believed that kids are born with intrinsically positive innate tendencies. In addition to rejecting the notion of original sin, Rousseau also argued against socialization of children. He was one of the first to realize that children weren't just little adults, but rather had multiple developmental stages. Both epigenesis and reformation are incorporated into his thinking. According to him, a child is born with a set of fixed traits that make him unique, but the environment in which he grows plays a crucial role. As Rousseau invokes the mankind to "*love childhood; encourage its sports, its pleasures, its lovable instincts*", he also stood against child cruelty and noted that "*the years that ought to be bright and cheerful are passed in tears amid punishments, threats, and slavery. For his own good, the unhappy child is tortured; and the death thus summoned will seize on him unperceived amidst all this melancholy preparation. Who knows how many children die on account of the extravagant prudence of a father or of a teacher? Happy in escaping his cruelty, it gives them one advantage; they leave without*

⁹JOHN LOCKE, TWO TREATISES OF GOVERNMENT, Chapter XV, Para. 170 The Project Gutenberg eBook of Second Treatise Of Government, (2 February 2023). <https://www.gutenberg.org/eBook/7370>.

¹⁰JOHN LOCKE, TWO TREATISES OF GOVERNMENT, Chapter VI, Para. 56, The Project Gutenberg eBook of Second Treatise Of Government, (2 February 2023). <https://www.gutenberg.org/eBook/7370>.

¹¹Ibid

*regret a life which they know only from its darker side*¹².¹¹ The great German philosopher and enlightenment thinker Immanuel Kant also suggests that parents have obligations to their children because the parents have *brought a person into the world without his consent for which deed the parents incur an obligation to make the child content with his condition so far as they can*¹³.

John Stuart Mill was also a great supporter of parental responsibilities and child rights. Following statement is from Mill's *On Liberty* "one would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself, so jealous is opinion of the smallest interference of law with his absolute and exclusive control over them; more jealous than of almost any interference with his own freedom of action: so much less do the generality of mankind value liberty than power. Consider, for example, the case of education. Is it not almost a self-evident axiom, that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen? Yet who is there that is not afraid to recognize and assert this truth? Hardly anyone indeed will deny that it is one of the most sacred duties of the parents (or, as law and usage now stand, the father), after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself. But while this is unanimously declared to be the father's duty, scarcely anybody, in this country, will bear to hear of obliging him to perform it. Instead of his being required to make any exertion or sacrifice for securing education to the child, it is left to his choice to accept it or not when it is provided gratis. It still remains unrecognized, that to bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society; and that if the parent does not fulfill this obligation, the State ought to see it fulfilled, at the charge, as far as possible, of the parent."¹⁴

In International legal regime, the Declaration on the Rights of the Child 1924 adopted by League of Nations is perhaps the first document which confers the responsibility on adults for the well-being of children. This declaration consists of five basic principles. One of these principles requires that 'the child must be given the means requisite for its normal development, both materially and spiritually'. In 1959, General Assembly of United Nations adopted the Declaration on the Rights of the Child in an extended form¹⁵. The Preamble to Declaration clearly states about the need of children for special care and protection before as well as after birth. The Declaration states about the children's right to special protection for physical, mental and social development; the right to adequate nutrition, housing, and medical services; the right to understanding and love by parents and society; the right to recreational activities and free education; the right to protection against all forms of neglect, cruelty, and exploitation; the right to be brought up in a spirit of understanding, tolerance, friendship among people, and universal

¹²JEAN JACQUES ROUSSEAU, *EMILE OR CONCERNING EDUCATION* TRANSLATED BY ELEANOR WORTHINGTON 43(D.C. Heath & Company, Boston 1889)

¹³See LARA DENIS (ED.), *THE METAPHYSICS OF MORALS* (Cambridge University Press, Cambridge 2017)

¹⁴JOHN STUART MILL, *ON LIBERTY: THE SUBJECTION OF WOMEN* 186 (Henry Holt and Company, New York 1895).

¹⁵UN General Assembly, Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 UN GAOR Supp. (No. 16) at 19, UN Doc. A/4354 (20 November 1959).



brotherhood. The sixth principle of this declaration is most relevant to mention here that recognise the children's right to understanding and love by parents and society¹⁶. Article 24 of the International Covenant on Civil and Political Rights 1966 also provides for right of the child to have such measures of protection as are required by his status as a minor on the part of his family, society and the state.

The preamble of the United Nations Convention on the Rights of the Child 1989 recognize that the family, as the fundamental group of society and the natural environment for the growth and well being of all its member and particularly children, should be afforded the necessary protection and assistance so that it can fully assumed its responsibilities within the community. The child, for the full and harmonious development of his or her personality should grow up in a family environment, in an atmosphere of happiness, love and understanding¹⁷. As per Article 5 of the convention States parties shall respect the responsibilities, rights and duties of parents, extended family, legal guardians and other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. According to Article 7 the child shall have the right to know and care for by his or her parents. Article 18 requires that both parents shall have common responsibilities for the upbringing and development of the child and further emphasises that parents and legal guardians, have the primary responsibility for the upbringing and development of the child. Article 28 of the convention recognises the principle that parents are children's first educators and they are expected to provide appropriate direction and guidance to young children and provide an environment of reliable and affection relationships based on respect and understanding.

According to United Nations Guidelines on Juvenile Delinquency 1990 (Riyadh Guidelines), parents and family can also contribute in prevention of juvenile delinquency as it is thought that by engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes. Riyadh guidelines require efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood. Measures should be taken and programme developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationship, sensitizing parents to the problem of children and young persons and encouraging their involvement in family and community-based activities.

In western countries, parents are responsible for not only the wellbeing of their children but also are liable for children's behavior and activities that result into harming others. In UK, for example, enforcing parental responsibility for juvenile offences has been a major trait of youth crime control since the 19th century. A parent could be ordered by the court to take proper care and exercise proper control over the child. If the terms of the above sort are not followed, a fine could be imposed on the parent¹⁸. The Anti-social Behavior

¹⁶Ibid

¹⁷See the preamble of Convention on the Rights of the Child 1989, Para 5, 6, 7.

¹⁸The United Kingdom Criminal Justice Act, 1991, s. 58 repealed by Powers of Criminal Courts (Sentencing) Act, 2000 c. 6, s. 165

Act 2003 upholds the legal presumption that parents of children who commit crimes have not taken responsibility for their actions and can be forced to do so through the issuance of court orders and monetary fines¹⁹. Parental compensation orders can also be issued against a parent of the child to pay a specified amount to the person who is affected by the taking of the property or its loss or damage caused by the child²⁰. Parents can be convicted of offences specifically designed to protect children and any general offence against the child. A parent who is liable to maintain a child is deemed to have neglected the child if the parent has failed to provide adequate food, clothing, medical aid or lodging for the child, or if unable to provide the same, he or she has failed to take steps to procure it. The duty to maintain a child including liability for child support payments is covered under the Child Support Act 1991. Besides, the parents of every child of compulsory school age have a legal duty to cause his or her child to receive efficient full-time education.

Similarly, in Australia, an important conceptual shift was brought by the Australian Commonwealth Family Law Reform Act 1995 which replaced the concept of 'parental rights' with that of 'parental responsibility'. The shift underscored that parenting is a matter of responsibility rather than entitlements. Parental responsibility legislation, like that of other Western legal jurisdictions, is being promoted and implemented in Australia as well. Parents are deemed responsible for their children at all times, and if they fail to supervise and care for their children's welfare then they are likely to be sanctioned under such laws²¹. Taking a step ahead, Northern Territory of Australia, holds parents responsible for the costs of detaining their child in a juvenile detention centre if they are unable to convince the court that they were adequately supervising and controlling their child²². In three Canadian jurisdictions (Manitoba, British Columbia, Ontario) legislation governing parental responsibility has been enacted allowing victims of juvenile crime to obtain damages from parents whose children are involved in wilfully stealing, damaging, or destroying property.

3.NEED AND JUSTIFICATIONS OF RESPONSIBLE PARENTING

A child is better protected in the safe environment of the family under parental support and care. The civil rights of the child begin within the family. The family has an important role to play as to the right of the child to be registered with a name, to a nationality, to know as far as possible his or her parentage, and to preserve his or her identity. Socialization and acquisition of values are developed within the family for freedom of expression and association, for privacy and discipline, and for the child not being subject to cruel, inhuman or degrading treatment or punishment, including neglect, corporal punishment, and sexual or verbal abuse. The family is an essential agent for creating awareness and preservation of human rights, and respect for human values, cultural identity and heritage, and other civilizations. There is a need to consider

¹⁹Barry Goldson and Janet Jamieson, "Youth Crime, the 'Parenting Deficit' and State Intervention: A Contextual Critique" 2 (82) YOUTH JUSTICE 284-310 (2002)

²⁰The United Kingdom Crime and Disorder Act, 1998, s. 13A(3)

²¹Nancy White, Martha Augoustions, et.al., "Parental responsibility for the illicit acts of their children: Effects of age, type and severity of offence" 59 (1) AUSTRALIAN JOURNAL OF PSYCHOLOGY 43-50 (2007)

²²Youth Justice Act, 2005(NT), s. 133(1)



appropriate ways of ensuring a balance between parental authority and the realization of the rights of the child²³.

Family and parents are the most influential factors in a person's life. Early childhood Experience affects a person's whole life in different ways. The overall psychological, moral, ethical, and social development of a person is highly affected by his or her upbringing and family atmosphere. Parents should raise their children with the child's best interests in mind. Parental rights are determined by a parent's ability to provide their child with the ideal environment for development. Children have many important interests that are related to their parents. A child who is having responsible parents can develop into an autonomous person capable of pursuing and enjoying intimate healthy relationships. The psychological and emotional health of the children can thrive fully only if they receive the kind, attentive, and concentrated care from their parents. Responsible parenting may also help the child develop the capacity to produce and pursue worthwhile goals in life. Lack of such care and attention may have a very negative impact on a child's growth and future prospects. A child may not be able to acquire the benefits of more responsible parenting if parents are not making personal contributions to the child's well-being.

"The Family has the prime responsibility for the nurturing and protection of children from infancy to adolescence. Introduction of children to the culture, values, and norms of their society begins in the family. For the fully and harmonious development of their personality, children should grow up in a family environment, in an atmosphere of happiness, love, and understanding. Accordingly, all institutions of society should respect and support the efforts of parents and other caregivers to nurture and care for children in a family environment."²⁴ Active and positive participation of parents during early childhood and adolescence is most important for the child development goals. As noted by United Nations Committee on the Rights of the Child (UNCRC) "factors known to promote the resilience and healthy development of adolescents include strong relationships with and support from the key adults in their lives, opportunities for participation and decision-making, safe and healthy local environment and respect for individuality."²⁵

An analysis of the evolving standards and practice within the United Nations human rights regime reveals the existence of a clear international normative consensus, built around the recognition of the family as a fundamental social unit and the centre of various educational, nurturing and caring functions they perform towards their members. This makes families relevant actors in relation to promoting the enjoyment of the basic human rights of their members, including the rights to an adequate standard of living, notwithstanding the primary obligations that pertain to state in this regard. From this perspective, the recognition of the family as a social institution in international

²³UN Committee on the Rights of the Child, Report adopted by the Committee at its 130th meeting, on 28 January 1994, CRC/C/24 (8 March 1994) Annex V, P. no. 63.

²⁴UN Secretary General, Plan of action for implementing the world declaration on the survival, protecting and development of children in 1990s- Report of the Secretary General, UN Doc A/45/625 (October 18, 1990), para18.

²⁵UN Committee on the Rights of the Child, General comment no. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20 (6 December 2016) Para 17

human rights law concurs with and elaborates upon the recognition of the role of families in poverty eradication and sustainable development²⁶.

International human rights law protects children from being discriminated against within the family on the basis of gender, disability, family status or any grounds. Children should be recognized as rights holders. In addition, family responsibilities should be discharged equally for boys and girls, especially in relation to access to education, feeding and health care²⁷. Furthermore, States should ensure that children with disabilities enjoy equal rights in relation to family life, included preventing their "concealment, abandonment, neglect and segregation." Children born of de facto unions or out of wedlock should also enjoy equal rights in relation to those born from married couples, including the rights to be registered and to have a name. The Committee on the Rights of the Child has called for States to protect children from discrimination based on their own or their parents or legal guardian's sexual orientation or gender identify²⁸.

The UNCRC also observed that parents and other primary caregivers have a vital role to play under the Convention on the Rights of the Child. Under normal circumstances; a young child's parents play a crucial role in the achievement of their rights, along with other members of family, extended family or community, including legal guardians, as appropriate. This is fully recognized within the Convention (especially article 5), along with the obligation on state parties to provide assistance, including quality childcare services (especially article 18). The preamble to the Convention refers to the family as "the fundamental and particularly children". The committee recognizes that "family" here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistence with children's rights and best interest²⁹.

Parental rights, powers and parental authority come along with corresponding duties, liabilities and obligations. As noted by Supreme Court of India parental rights cannot be exercised, availed of, demanded or granted without the corresponding duties, responsibilities and obligations per se in respect of the person or property of the minor child³⁰. According to Samuel Pufendorf parental authority over children imposes on parents a care for their children. "Parents' authority over children is established when they acknowledge them, feed them and undertake to shape them into good members of

²⁶UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the United Nations High Commissioner for Human Rights and Secretary-General: Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, A/HRC/31/37 (15 January 2016)

²⁷Ibid, Para. 41

²⁸Ibid, Para. 42

²⁹UN Committee on the Rights of the Child, General comment no.7 (2005): Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev.1 (20 September, 2006) Para 15

³⁰Nirali Mehta v. Surendrakumar Surana, AIR 2013 Bom 123



human society³¹." In Pufendorf's view "nature lays the obligation of raising children on the parents. The parents also undertook the laborious and expensive task of bringing them up and making them fit members of human society, and have given them the means to lead comfortable and prosperous lives. The duty of parents consists principally of properly supporting their children, of forming body and mind by an appropriate and intelligent upbringing, so that they become decent and useful members of human and civil society, honest, intelligent and of good character. They should also put them in the way of a suitable and honest occupation, and establish and advance their fortune so far as means and opportunity allow³². The duty of children, on the other hand, is to honour their parents, that is, to show respect for them not only by outward signs but much more in their own inner valuation of them, as authors of their life and of so many other benefits; to obey them; to take care of them, so far as they can, especially in need or old age; to do nothing of great importance without their advice and authority; and finally to bear patiently with any fretfulness or faults they find in them.³³

John Locke also asserts that "the power that parents have over their children arises from that duty which is incumbent on them, to take care of their offspring during the imperfect state of childhood. To inform the mind, and govern the actions of their yet ignorant nonage, till reason shall take its place and ease them of that trouble, is what the children want, and the parents are bound to.³⁴ " He further observed that "though the obligation on the parents to bring up their children and the obligation on children to honour their parents contain all the power, on the one hand, and submission on the other, which are proper to this relation, yet there is another power ordinarily in the father, whereby he has a tie on the obedience of his children.³⁵"

4. RESPONSIBLE PARENTIN IN INDIA: ISSUES AND CHALLENGES

Unlike in Western countries, particularly the United Kingdom, Australia, and Canada, parenting in India is more of a social issue than a legal one. There are no specific legal provisions or legislation that govern the child-parent relationship or outline parents' duties and responsibilities in particular. Adult offspring in India, on the other hand, have filial responsibility and are legally obligated to provide for their parents' basic needs and care for their parents under the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The parental responsibility regarding their minor children is yet to be codified in the Indian legal system, as State intervention in family matters is very minimal in India. In the United Kingdom, Australia, and Canada, the law can intervene in family matters to protect a child even without the involvement of a family member or anyone else. But, in India, the parent-child relationship and child rearing are considered personal and private family matters, and the law generally comes into play when someone seeks a legal remedy in a court of law. For example, the issue of child

³¹SAMUEL PUFENDORF ON THE DUTY OF MAN AND CITIZEN ACCORDING TO NATURAL LAW ed. by JAMES TULLY 124 (Cambridge University Press, Cambridge, 1991)

³²Ibid, p. 127

³³Ibid, p. 128

³⁴Supra note 9, Chapter VI, Para. 58.

³⁵Ibid, Para 72,

maintenance arises only when there is a matrimonial dispute between the child's parents or when the parents are getting separated or divorced. Parents in India do not owe a legal obligation regarding the health, development, food, shelter or education of their children. It is mostly left to the discretion and decision of parents as to how to treat their own children.

According to Indian law, it is largely the State's duty to defend children's rights, welfare, health, and development. Parents play a very small part in ensuring their children's legal safety, and they are not held liable in court for the general wellbeing of the child. However, parents are obligated to look after their children and are expected to do so. In India, general common law, including the Constitution, human rights laws, and criminal law, all address the issue of child protection. There aren't many specific clauses that address child safety within the family or give parents direct responsibility for the welfare of the child. The Indian Constitution holds the State accountable for the welfare of children. Furthermore, making parents accountable for their minor children's acts and transgressions is a western legal trend that the Indian legal system has yet to formally adopt. However, some Indian legislation reflects the tendency towards parental responsibility. In terms of civil liability, parents are often not held accountable in tort proceedings since the parent-child relationship does not establish vicarious liability. However, in circumstances of accidents caused by minors, parents may be held accountable to pay compensation. Parents may also be required to participate in youth justice system, especially in the cases of juvenile delinquency.

In the case of *Nirali Mehta v. Surendrakumar Surana*³⁶ the Bombay High Court tried to explain parental duties and responsibilities in context of India with the help of Children's Act 1989 of UK. The Court noted that "the prerequisite and qualifications for applying for any custody or access to a child, even by a parent, in UK is upon the premise of 'responsibility' and not 'right'. Hence such an applicant must show and offer parental responsibility if he desires to have any contract with the child. Parental responsibility is explained in Section 3 of the Children's Act 1989 in the UK." The Court further observed that "it is imperative to note that none is granted legal 'rights' over the person of any child under any law. Similarly, the law in the UK has not granted any 'rights' over any child. The expression 'parental responsibility' under Section 3(1) of the Children's Act 1989 cited above embraces within itself any right alongside the duties, powers and responsibilities that the position of such person entails. Hence a person who, as the father of the child in this case, shirks his duties and responsibilities would have no corresponding rights over the child." The guardianship rights were also explained by the Court with reference of UK legislation as "for any person other than the parents of the child, the guardianship would be considered only in their absence. There 'rights' are similar for such guardians under Section 3(2) of the Children's Act cited above. These rights cannot be exercised, availed of, demanded or granted without the corresponding duties, responsibilities and obligations per se in respect of the person or property of the minor child. Such would be the duties only of his own guardian - the father, and in his absence, the mother.

As observed by Law Commission of India, "with rapid social and economic change, conjugal and familial relationships are becoming more complex and so are the



conditions of their dissolution. As these social changes that affect family life escalate, we need to update the laws governing the family relationships, during and after the marriage. At present, our legal framework for custody is based on the assumption that custody can be vested with either one of the contesting parties and suitability is determined in a comparative manner. But, just as the basis for dissolving marriage has shifted over time, from fault based divorce to mutual consent divorce, we need to think about custody differently and provide for a broader framework within which divorcing parents and children can decide what custodial arrangement works best for them.³⁷ⁱⁱ

The Commission rightly observed that "father is still deemed the natural guardian under both religious and secular family laws, while the mother is not. Further, in our society, equality in conjugal and family life is still a distant dream. A large number of women continue to disproportionately bear the burden of housework and childcare, even when they have a paid employment outside the home. Thus, when during the subsistence of marriage, there is no equality in parental and care giving responsibilities, then on what ground can one claim equality in parental rights over children after the dissolution of the marriage? Our Constitution and the legal framework direct the state to pursue substantive equality. Substantive equality recognizes the difference in the socio-economic position of the sexes within the home and outside of it, and aspires to achieve equality of results. We therefore reject the position of the father's rights groups on shared parenting based on the rhetoric of equal rights over children."³⁸ⁱⁱ

As noted by the Supreme Court in the case of *Yashita Shahu v. State of Rajasthan*³⁹ "the child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigation between two spouses, our experience shows that more often than not, the parents who otherwise love their child present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child." The court further noted that love and affection of both parents is a child's human right, "a child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every re-union may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to a parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must

³⁷Law Commission of India, Report No. 257 "Reforms in Guardianship and Custody Laws in India" p. no. 32, Para 3.3.1 (May 2015).

³⁸Ibid, p. no. 31-32, Para 3.2.4

³⁹(2020) 3 SCC 67

while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.⁴⁰

Parents in India are not even legally responsible to educate their children. Parents or guardians have moral obligation under Section 10 of the RTE Act to enroll their children or wards in school and make sure they do not lose their right to an elementary education. According to the clarification issued by the government of India on the provisions of RTE Act, the Act covers a range of population from different backgrounds, for instance, child labour, children living in ecologically depleted areas where they have to fetch fuel, water, and fodder as well as perform other household chores, children living in extremely impoverished slum communities and uprooted urban dwellings, children from families who work as scavengers and other such stigmatised professions, children of itinerant or seasonal labourers who lead mobile and transient lifestyles like construction workers, road workers, and employees on large construction sites, etc. The obligation of the relevant local government and government to provide free and mandatory elementary education in a neighbourhood school should also be taken into consideration when reading this provision. The purpose of this provision is not to compel parents who do not choose to participate in free and compulsory education to enrol their children in the local school⁴¹.

5. CONCLUSION AND SUGGESTIONS

It is clear that the family has a crucial part to play in ensuring that a child has the right to be registered with a name, to a nationality, to know as much as possible about his or her parentage, and to maintain their identity. Within the family, a child develops socialisation and acquires values related to freedom of expression and association, privacy and discipline, and the avoidance of cruel, inhuman, or degrading treatment or punishment, such as neglect, corporal punishment, sexual or verbal abuse. The family is a crucial force in promoting respect for human values, cultural identity, and other cultures, as well as human rights awareness and preservation. There is a need in the legal and societal framework of India to consider appropriate ways of ensuring a balance between parental authority and the realization of the rights of the child.

In last few decades, the jurisprudence of parenting has emerged as branch of both developmental jurisprudence as well as therapeutic jurisprudence. In India, there is an unavoidable need to address the ever evolving challenges of family and parenting issues. Parenting in India needs to be brought up within the periphery of law as for now the parenting is regarded more of a social matter than legal one. Family relations and parenting matters must be dealt with as per the norms and standards settled by international treaties and conventions. As a nation we are lagging far behind in terms of parenting laws.

There is a need of parental responsibility laws and policies in India to ensure that the best interests of children are met. Children must have the benefit of both of their parents who are having a meaningful involvement in their lives. These laws also needed to

⁴⁰Ibid

⁴¹Ibid



protect children from physical or psychological harm and from being subject to, or exposed to abuse, neglect or family violence. Through appropriate parenting legislation it can be assured that children receive adequate and proper parenting to help them achieve their full potential. The parents are required to fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children. Parents in India must be made legally responsible for child welfare as without the active involvement of family and parents the protection of child rights is not possible. Parents must take prime responsibility regarding children's needs of food, nutrition, health, housing and education.

It is also needed to support parents who are raising their children in challenging situations to develop their parenting abilities and raise more reliable, well-behaved kids who will require less expensive supervision and intervention in the future. Adults who feel worried, punished, and alienated are less likely to be good parents than those who have social and practical support. The results of criminological study highlight the potential value of strengthening-the-family initiatives in the fight against youth criminality⁴². Since family, societal and contextual factors are commonly linked to juvenile offending, youth crime prevention strategies and programmes need to avoid a restricted focus on the crime. So, juvenile criminal behaviour should be seen less as a specific violation of the law and more in the context of the family's inability to teach appropriate behaviour.

⁴²See Raymond Arthur, "Punishing Parents for the Crimes of their Children" 44 (3) THE HOWARD JOURNAL 23-353 (2005)

