

Parental Responsibilities and the Best Interests of Vulnerable Children in the United Kingdom

Wilson Diriwari¹

Abstract

This article aims to explore the concept of parental responsibilities in the United Kingdom. The analysis focuses on the best interests of vulnerable children in the exercise of parental responsibilities. In order to determine the extent to which vulnerable children are protected under the care of their parents and those who are legally authorised to exercise such responsibility, the article highlights possible shortcomings in the exercise of responsibilities towards this category of children who evidently need greater protection. The article aims to analyse the question of parental responsibilities from a legal and policy perspective in order to establish, in addition to the shortcomings on the side of the parents, the limitations of the existing legal and policy frameworks.

Key Words: Parental responsibilities, vulnerable children, Best Interests, Child rights, Law and Policy

Date of Submission: 06-05-2023

Date of Acceptance: 16-05-2023

I. Introduction

Parental responsibility is one of the most significant responsibilities recognised by law in the United Kingdom. The special emphasis on the concept evidences the complexity and sensitivity of the questions related to it. Law and policymakers in the United Kingdom have endeavoured to ascertain the protection of children in general and vulnerable children in particular while parental responsibilities are exercised. The exercise of parental responsibilities often raises the issue of child neglect and child rights violations. Such a situation demands more engagement and scrutiny from the authorities. The complexity of the matter often resides in the fact that parents perceive the exercise of their parental responsibilities as a natural duty. Amid the confusion and lack of understanding, parents perceive the involvement of the law and authorities in the exercise of their responsibilities as an invasion of their privacy. Therefore, they consider it inadequate to have their hands tied by the law while exercising their responsibilities that in most cases are regarded as a natural duty of biological parents. Hence this article aims to explore the concept of parental responsibility in the United Kingdom. The article examines the concept of the child's best interests in all actions undertaken as part of parental responsibilities. The article places greater emphasis on the case of vulnerable children under the care of those in charge of exercising parental responsibilities toward them.

II. The Concept of Parental Responsibility

Culture and Parenting

It is worth expanding the concept of a parent in the context of this analysis. For the purpose of clarification, it has been emphasised that schools and local authorities must be aware that parents may be recognised differently under education law, then under family law. Section 576 of the Education Act 1996 states that a 'parent', in relation to a child or young person, includes any person who is not a parent (from which can be inferred 'biological parent') but who has parental responsibility, or who has care of the child. The parenting attributes are the process, activity, and interaction regarding rearing and educating a child, which is undertaken by a parent or parental figure (Virasiri et al. 2011). Parenting from the cultural perspective in traditional societies is translated into what can be regarded as parental responsibility is an integral part of the duty of the parents to raise their children by providing the necessary and vital resources for the child's welfare and well-being. Hence in traditional societies, parents know what their natural or traditional responsibilities are. In

¹ PhD (Brunel University), London) L.L.M. (Lagos State University), L.L.B. (Obafemi Awolowo University), Solicitor (England and Wales). Lecturer in Law. The author accepts full responsibility for any errors or omissions in this paper and welcomes correspondence to wods234_ola@yahoo.com, wilson@wsolicitors.co.uk

modern societies, it is instead the cognition of the rights and responsibilities they have in relation to their children, and this can become particularly important when parents separate.

Although it is encapsulated in a legal framework, parental responsibility is seen as part of human nature. It could be regarded as instinctive. Bornstein and Lansford(2010) have rightly observed that culture helps to construct parents and parenting, and culture is maintained and transmitted by influencing parental cognitions that in turn are thought to shape parenting practices. The responsibility to care for their children does not need to be imposed on them. It is recognised and assumed naturally and effectively. The intervention of the law in the area of parenting to establish the concept of parental responsibility is justified by the necessity of asserting and protecting the child's best interest. For the purpose of clarification it is emphasised that parental responsibility is a term that means you have legal rights and duties relating to your children's upbringing. It doesn't mean you have a right to spend time with your children (if you don't live with them), but the other parent must include you when making important decisions about their lives.

From the Legal Perspective

In the United Kingdom, the Children Act 1989 provides the legislative framework for child protection in England. Key principles established by the Act include the paramount nature of the child's welfare. The expectations and requirements around duties of care to children in section 3(1) of the Children Act 1989, "parental responsibility" means all the rights, duties, powers, responsibilities, and authority which by law a parent of a child has in relation to the child and his property. Section 2 (1) of the Act states, 'Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.

In regard to Section 20 of the Children's Act 1989, it is emphasised that the local authority does not have parental responsibility only the parent or those carers with parental responsibility can make decisions for the child. It transpires from the letter and the spirit of this provision that parenting is a natural duty therefore the constructed concept of parental responsibility is perceived as an integral part of parenting. While parenting remains a natural duty, the element of parental responsibility attached to it must not only be regarded as a social construction, but it must also be viewed as a duty imposed by lawmakers. Thus, it is indicated that the fact that all mothers and most fathers have legal rights and responsibilities as a parent is known as 'parental responsibility'. A person having parental responsibility will have the most important role of providing a home for the child and protecting and maintaining the child. Parental responsibility also involves disciplining the child, choosing and providing for the child's education, agreeing to the child's medical treatment, naming the child and agreeing to any change of name, and looking after the child's property. Parents must ensure that their child is supported financially, whether they have parental responsibility or not. The argument is that parental responsibility is a social construction imposed by law. It could be reinforced by the fact that the court can also make an order under section 4(3) of the Children Act 1989 to terminate parental responsibility that has been acquired (except where parental responsibility was acquired through marriage of the father or second female parent to the child's mother).

Given the fact that parental responsibility refers to the rights, duties, powers, and responsibilities that most parents have in respect of their children, it is understood that in the process of parenting, they must be aware of these principles. Parenting, therefore, must take the principles of parental responsibilities into consideration in order to guarantee the best interests of the child. The concept of parental responsibility per se is apprehended from the legal perspective a concept devised by the UK parliament. In asserting the involvement of authorities in the protection of the child in the UK it is admitted that whilst it is parents and carers who have primary care for their children, local authorities, working with partner organisations and agencies, have specific duties to safeguard and promote the welfare of all children in their area (HM Government 2018). Indeed section 17 of the Children Act 1989 puts a duty on the local authority to provide services to children in need in their area, regardless of where they are found. Where necessary, a court can grant a care order under section 31(1)(a) of the 1989 Act which places a child in the care of a designated local authority. Parental responsibility will be shared between the parents of the child and the local authority. Section 47 of the same Act requires local authorities to undertake enquiries if they believe a child has suffered or is likely to suffer significant harm. These provisions set out the authorities' duty regarding all children.

III. The Concept of the Best Interests and Vulnerable Child

The Best Interests of the Child

The concept of the best interests of the child has been established in most legal provisions. Article 3 of the United Nations Convention on the Rights of the Child 1989 (CRC) provides '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 interests of the child shall be a primary consideration'. The concept of the best interest of the child has been enshrined in most national laws upon the

domestication of CRC at national levels. This international Instrument has been signed and ratified by many countries across the globe in their endeavour to comply with international standards regarding child rights protection and promotion. The question of the best interest of the child has always preoccupied nations in the international arena. Since the nineteen fifties, the debate has started and over the years international legal instruments perceived as workable legal frameworks for the purpose of guaranteeing the best interests of the child have emerged.

The United Nations Declaration of the Rights of the Child (1959), Principle 2, 'In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.'

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 5(b), on the exercise of parental responsibility, and Article 16(1)(d) in relation to marriage and family responsibility.

The United Nations Convention on the Rights of Persons with Disabilities (2006), Article 7(2), requires that in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (1980), Article 10(1)(b), refers to the 'welfare of the child' in the decision-making process.

African Charter on the Rights and Welfare of the Child (1990), Article 4(1), 'the best interests of the child shall be the primary consideration' in all actions 'by any person,' so parents are included.

Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), Article 1(a), 'to ensure that intercountry adoptions take place in the best interests of the child.'

European Convention on the Exercise of Children's Rights (1996), Article 2(1) states that the 'object of the present Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights. Having all these instruments in place especially those pertaining to the European continent, the United Kingdom as a signatory to most of them has always placed greater emphasis on the situation of vulnerable children in the context of parental responsibility. In the materialisation of the legal endeavour to ascertain the best interest of the child there have been court cases both at international and national levels. The international level is essentially characterised by case laws decided by the Court of Justice of the European Union and at the national level by UK courts (Leonardo, (2022)).

Upon exploring the various frameworks, the law seems to indicate that parents should be using their legal position only to further the interests of their children. The official legal position can certainly be questioned. First, it would be impossible for parents to exercise all their rights in such a way as to promote the welfare of the child. That would be exhausting and unreasonable: a parent is entitled to some 'me time'! But even if a parent were utterly self-sacrificial and child-focused in every decision, there are issues where it is simply impossible to know what decision will promote the child's welfare (Herring 2022).

The Vulnerable Child

The Children and Family Act 2014 is one of the key statutes in protecting and promoting children's rights and welfare in the United Kingdom. A landmark and wide-ranging Act designed to fully reform services for vulnerable children by giving them greater protection (paying special attention to those with additional needs) and helping parents and the family. As indicated, the Act is the act that includes several new measures to protect the welfare of children, including changes to the law to give children in care the choice to stay with their foster families until they turn 21, a new legal-duty on schools to support children at school with medical conditions better.

The United Kingdom has shown that the case of vulnerable children is paramount in the endeavour to protect all children in the country. It is noted that since 2017 the Children Commissioner has published the annual childhood vulnerability framework. The framework attempts to measure the number of vulnerable children in England by mapping the full range of difficulties a child might be living with, from physical or mental illness to going hungry; being homeless or excluded from school; being at risk of neglect; or living with parents with health problems (Children's Commissioner 2023). The case of vulnerable children is indisputably a question that needs the increasing involvement of the authorities and the setting of workable legal frameworks to guarantee continuous protection. It should be admitted all children are vulnerable in nature. Hence the argument that there must be a category of children that must be designated as vulnerable could be metaphoric. Indeed, all children are vulnerable because they do not have the safe strength and resilience as adults. Based on this sole argument it could be argued that designating a category of children as vulnerable is a tautology. The idea of vulnerability in this context relates to those children apart from the fact of being children who are naturally weaker than adults are in physically. Mental, and social situations that render them weaker than normal children. It is evident that they are not fit to be regarded as normal children. Those children are to draw more

attention from the law and the authorities. In terms of their best interests, there are valid reasons and justifications to place greater emphasis on its protection.

Childhood is arguably the most vulnerable period of human life. Children are highly dependent on others to satisfy their basic needs, and this makes them particularly vulnerable (Bagattini (2019)). However, there are categories of children who are classified by law as vulnerable. It is therefore not a vulnerability inherent to their status as children but the exceptional, mental, physical, social, or economic situation that underpins the vulnerability. Hence in the context of this paper, vulnerable children and young people include those who are assessed as being in need under section 17 of the Children Act 1989, (including children and young people who have a child-in-need plan or a child protection plan) and children who are looked after by the local authority. Vulnerable children in the United Kingdom range from children living with mental, and physical illnesses children going hungry, children being homeless, children being excluded from school, children being at risk of neglect or children living with parents with health problems. Children in one or more of these categories might find themselves under parental responsibility. In that context, the question of parental responsibility has its full meaning and purpose because it goes beyond the simple question of parenting. There is a justification for the fact that those involved in the exercise of parental responsibilities must be under the scrutiny of the law. This is not to purport that other children who are not deemed vulnerable should not have increased legal protection. As indicated before, legal protection has always been a paramount question for law and policymakers in the United Kingdom. However, the point being made herein is that vulnerable children require extra attention and care. Hence the concept of parental responsibility for those children has more relevance.

IV. The limitations

Shortcomings from parents

The justification of parental responsibilities under statute solely rests on the idea of the welfare of the child. It is a fact that parents are inherently in charge of ensuring the welfare of their children. This is a natural process, and it is a universal value shared among human beings. Limiting what parents can do in the process of their child's upbringing appears to undermine their inherent and natural parenting rights. Parents are aware of the 'duty of care' owed to their children. There should have perhaps never been a need for the involvement of the state in the parenting process. However, various social challenges compel the state and local authorities to invade what is deemed private and internal affairs of the family cell. The explanatory factors reside in the fact that parents often fail to assume their duties either through acts or omissions detrimental to their children. In any modern and civilised society, the rule of law demands that the state intervenes where human beings could be in danger or where they face adverse activities to their existence. The situation of vulnerable children is regarded as a more sensitive case. Apart from the situation of child abuse that is common in households in the United Kingdom, failure in assuming parental responsibilities has led to prominent cases in the last two decades in the United Kingdom. In early 2000 the case of Victoria Climbié shocked the nation. The Victoria Climbié Inquiry (2003) provides an account of one of the most prominent cases of child abuse in the United Kingdom. It gives a brief account of the evidence received by the Inquiry about Victoria's background. It also looks at the way she was treated by people who were supposed to have assumed responsibility for her welfare while she was in the United Kingdom. This inquiry chaired by Lord Laming was Presented to Parliament by the Secretary of State for Health and the Secretary of State for the Home Department by the Command of Her Majesty. The case of Victoria Climbié evidences the failure of those who had parental responsibility to assume their role in accordance with the law and human values.

Shortcoming of the laws

The involvement of the law in the process of parenting translated by parental responsibility has led to what is often denounced as the carceral logic of parental responsibility in the child support system. The example of the child support system is emphasised because this is an area where several cases of discomfort and disapproval of parents and guardians have led to court cases and academic discourses. It is observed that parental responsibility in the child support system was reinforced not only by legislation codifying punitive enforcement mechanisms but also by organizational-level factors and cultural norms around responsibility and parenthood, which supported harsh interpersonal interactions and punitive experiences for those involved in the system. Court officials wielded the carceral logic of parental responsibility to punish or threaten to punish noncustodial parents primarily through incarceration (Battle 2022). Such a state of affairs has often led parents or those who have been granted parental responsibility to defect. Leaving thereby the child worst off. The law has not always played a significant role in substituting natural processes. This said it must be admitted that natural processes underpinned by natural factors have their own merits. From that standpoint, the substitution of natural processes with socially constructed values has not always functioned efficiently. Systems established by society or humans have often failed due to flaws from their inception.

The high-profile case of Victoria Climbié is a testimonial of the failure of the whole system of child protection and the law. Having presented it as a lack of good practice, The Laming Report (2009) has revealed the failure of various services by stating that the case of Victoria Climbié is deeply disturbing in that during the days and months following her initial contact with Ealing Housing Department's Homeless Persons' Unit, the little girl was known to no less than two further housing authorities, four social services departments, two child protection teams of the Metropolitan Police Service (MPS), a specialist centre managed by the NSPCC, and she was admitted to two different hospitals because of suspected deliberate harm. The dreadful reality was that these services knew little or nothing more about Victoria at the end of the process than they did when she was first referred to Ealing Social Services by the Homeless Persons' Unit in April 1999. The final irony was that Haringey Social Services formally closed Victoria's case on the very day she died. The extent of the failure to protect Victoria was lamentable. Tragically, it required nothing more than basic good practice being put into operation. This never happened. Considering such failure, it could be asserted that the involvement of the law and the authorities in parenting has not proven effective to a great extent. However, the recommendation made by the Laming Report heralded a better future for children in terms of protection in the care of their parents or under parental responsibility. The report made 108 recommendations to law and policymakers. It is worth noting that the services were in denial of their responsibility in failing the girl. Indeed, through The Victoria Climbié Inquiry report published in January 2003, Lord Laming was particularly concerned about the low priority given to child protection by the agencies involved with Victoria and strongly criticised people in senior positions who denied their own responsibility.

The law's shortcomings demonstrate that a natural duty is being encapsulated in a legal framework. Although the law must regulate society and guarantee the rights of the citizen, there are often contradictory effects that undermine the social stability expected through legislation. The increasing involvement of the law and authorities in designing parenting methods and parental responsibilities per se has unveiled the limitations of the laws.

V. Conclusion

In all actions concerning the child, his or her best interests are said to be paramount. From that perspective, it seems, that law and policymakers have the propensity to substitute the natural duty of care owed to children by parents. Parental responsibilities are a social construction. Attempts or endeavours to substitute natural values with socially constructed values have often led to contextual paradoxes and even disarray. While the best interest of the child applies to all children in the United Kingdom, it is admitted that the principle becomes more significant for vulnerable children in the process of parenting and parental responsibilities is however argued that the intervention of the law and authorities can be justified to a greater extent in the case of vulnerable children who undoubtedly need more attention and extra care due to their disadvantaged situation or condition.

References

- [1]. Bagattini (2019) 'Children's well-being and vulnerability', *Children's Well-Being and Vulnerability* 13(3) p212, 215
- [2]. B.P. Battle, (2022) The carceral logic of parental responsibility, *Journal of Marriage and Family*
- [3]. Bornstein MH, Lansford JE. (2010) Parenting. In: Bornstein MH, editor. *The Handbook of Cross-cultural Developmental Science*. New York: Taylor & Francis; pp. 259–277.
- [4]. Children's Commissioner, *Vulnerable Children*. Available at <<https://www.childrenscommissioner.gov.uk/vulnerable-children/>> accessed 1 May 2023
- [5]. HM Government (2018) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*. Available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf> accessed 22 April 2023.
- [6]. J Herring (2022) 'Vulnerability and Children's Rights, *International Journal for the Semiotic Law*
- [7]. L Leonardo, (2022) The best interests of the child in the case law of the Court of Justice of the European Union, *Maastricht Journal of European and Comparative Law* 29(5)
- [8]. S Viorasiri et al, (2011) Parenting: What are the critical attributes? *Journal of Medical Association of Thailand*, 94(9):1109-16
- [9]. THE INQUIRY VICTORIA CLIMBIÉ (2003) Available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273183/5730.pdf> accessed 26 April 2023