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Sunderland**

Jones, Penny (2021) Father's Rights In The 21st Century.
Sunderland Student Law Journal, 2. pp. 61-71. ISSN 2634 -193X

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Father's Rights

In The

21st Century

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Abstract

Today we can reflect back on the 20th and 21st century and conclude that they were worlds apart. However, there is one correlation which can be drawn from the recent history of the United Kingdom and that is an increase in equality and a change in the family structure. Equality for parents has been predominantly navigated by legislation thus, highlighting the importance of influences of the legislative process. The 20th Century had seen the implementation of the Children Act 1989, which aimed to 'put children at the centre of the court's decision making. Whereas in the 21st century, we have seen fathers' chain themselves to railings in order to bring change to the custody rights of fathers. However, with it being submitted that society still holds the view that 'women are the care givers within the family and fathers are the bread-winners', then poses a question: To what extent has the law adapted to reflect the view of a modern society: Fathers should have equal rights, compared to mothers when it comes to matters relating to that of their children.

Keywords

Fathers' Rights; Fathers4Justice; Children; Reform

It is evidenced that over the years ‘familial demographics in the United Kingdom have changed’.¹ According to statistics, the traditional nuclear family has decreased in popularity, whilst the ‘number of lone parent families has risen’.² Across the UK, out of the 2.85 million lone parent families, only 0.40 million are headed by fathers, whilst the majority (2.45 million) are headed by mothers.³ With that said, between 1999 and 2019, ‘the number of lone parent fathers has grown at a faster rate than lone parent mothers’, and the reasons for such argued.⁴ Although the dissolution of family units is said to be ‘private matters’, the complexity of the responsibilities of those involved, has resulted in judicial involvement being seen as necessary in some circumstances.⁵ For ‘the family is its own social security system and thus, the more the private family can look after its own, the less the state will have to do so’.⁶

Through various acts of Parliament and sources of law, it is clear that throughout the 20th Century, the court has always had regard to the child’s welfare. The case of *J v C* [19] made precedent that when deciding child custody cases, the child’s welfare is ‘paramount’, meaning the child’s welfare is what ‘will determine the course of action which is to be followed’.⁷ The Guardianship of Minors Act 1971 confirming this approach, legislated that the ‘child’s welfare was the first and paramount consideration’.⁸ This approach taken by the legislators and the judiciary has become known as the ‘paramountcy principle’, with the Children Act 1989

¹ Alan Brown, *What is the Family of Law? The Influence of the Nuclear Family* (1st ed, Hart Publishing 2019) 3.

² Office for National Statistics, ‘Families and households in the UK: 2018’ (ons.gov 7 August 2019) Figure 1 <www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2018> accessed 3 July 2020 and ² Office for National Statistics, ‘Families and households in the UK: 2019’ (ons.gov 15 November 2019) Figure 3 <[www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2019#:~:text=In%202019%2C%2014.9%25%20of%20the,parent%20families%20\(2.9%20million\).&text=However%2C%20from%201999%20to%202019,statistically%20significant%20\(Figure%203\)](http://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2019#:~:text=In%202019%2C%2014.9%25%20of%20the,parent%20families%20(2.9%20million).&text=However%2C%20from%201999%20to%202019,statistically%20significant%20(Figure%203))> accessed 23 June 2019.

³ *Ibid.*

⁴ *Ibid.* From the year of 1999 to the year 2019, the rate of lone parent families headed by mothers has increased by 13.4% where the rate of lone parent families headed by fathers has increased by 22%. It is submitted that the increase of fathers heading lone parent families is because they are more likely to have suffered a bereavement, compared to that of women. It is also submitted that another reason is as a consequence of the dissolution of their marriage. Sumi Rabindrakumar, ‘One in four: A profile of single parents in the UK’ (allcatsgrey.org, February 2018) 3 <<http://allcatsrgrey.org.uk/wp/download/children/One-in-four-a-profile-of-single-parents-in-the-UK.compressed-1.pdf>> accessed 5 July 2020.

⁵ Lady Justice Hale, ‘*What is a 21st Century Family*’ (supremecourt.uk, 1 July 2019) International Centre for Family Law, Policy and Practice 2019, 2 <www.supremecourt.uk/docs/speech-190701.pdf> accessed 5 July 2020; *Hayman v Hayman* [1929] AC 601 614.

⁶ *Ibid.*

⁷ *J v C* [1970] AC 688 710-711.

⁸ S 1.

recognising this principle, 'making it quite clear:⁹ "When a court determines any question with respect to...the upbringing of a child...the child's welfare shall be the court's paramount consideration."¹⁰ However, for fathers and others involved in the custody process, the paramountcy principle appears to have caused disappointment.

Pressure Groups, Campaigns, and the Power of the Law

Within the UK 'Fathers4Justice, a high-profile pressure group, has brought gender bias in residence and contact disputes very much to the forefront'.¹¹ By 2004, the United Kingdom had seen various campaigns conducted by Fathers4Justice.¹² The shadow cabinet at the time, recognised that as a 'consequence of the campaigns and protests conducted by Fathers4Justice, the climate had shifted and this needed to be reflected in law reform'.¹³ However, the extent to which they have been successful has said to have been 'limited'.¹⁴

One campaign which has played a part in progressing reform of the law in relation to fathers' rights and contact was the 'Equal Parenting' campaign, which is still currently being pursued.¹⁵ In 2004, it was submitted that there were 'no guidelines on how much time a non-resident parent should have with their children'.¹⁶ This is evident as seen in the case of *A v A* [1994], where it was stated that shared residency orders are at 'the discretion of the judge, on the special facts of the individual case'.¹⁷ The objective of the Equal Parenting Campaign is to

⁹ Helen Reece, 'The Paramountcy Principle: Consensus or Construct' (1996) 49/1 *Current Legal Problems* < <https://doi.org/10.1093/clp/49.1.267> > accessed 15 July 2020.

¹⁰ Children Act 1989 s 1(1) and Lady Justice Hale, '30 Years of the Children Act 1989' (Scarman Lecture, Law Commission 13 November 2019) 7 < <https://www.supremecourt.uk/docs/speech-191113.pdf> > accessed 10 July 2020.

¹¹ Nigel Lowe 'The Allocation of Parental Rights and Responsibilities – the Position in England and Wales' (2005) 39 *FLQ* 267, 285.

¹² Richard Collier, 'Fathers 4 Justice, law and the new politics of fatherhood' (2005) 511 *CFLQ* 511. Fathers 4 justice carried out a number of campaigns, for example: 'Two men threw packages of flour dyed purple at Tony Blair during prime minister's questions in May 2004, and a man dressed as Spiderman climbed the London Eye and staged an 18-hour protest that closed the attraction in September 2004. 'Profile: Fathers 4 Justice' (*BBC News*, 22 April 2008) < <http://news.bbc.co.uk/1/hi/uk/3653112.stm> > accessed 6 June 2020.

¹³ Collier (n 22).

¹⁴ *Ibid.*

¹⁵ Fathers4Justice, 'Our Campaigns' (*We Are Fathers4Justice*) < www.fathers-4-justice.org/our-campaign/our-campaigns/#equal-parenting > accessed 10 July 2020.

¹⁶ BBC 'Equal parenting rights rejected' (*BBC News*, 21 July 2004) < http://news.bbc.co.uk/1/hi/uk_politics/3912311.stm > accessed 10 July 2020.

¹⁷ [1994] 1 *FLR* 669.

campaign for the courts to 'presume that divorced parents are to 'have 50/50 spilt in relation to custody of their children', with the objective being their focus point since 2004.¹⁸

Family law became the topic of debate in the House of Commons, with the issue of shared parenting and Fathers4Justice being at the centre of the discussion.¹⁹ The impact of Fathers4Justice and their campaigns is demonstrated by the fact the House of Commons acknowledged the issues raised and called on the Government to review the operation of the family courts in general and their decision-making, in relation to fathers' access to children in the context of family breakdowns'.²⁰ Consequently, as the Bill proceeded through the relevant legislative stages, the 'shared parenting presumption was introduced to Parliament as clause 12'.²¹ However, the clause received criticism and it has been argued that the presumption could expose the child to a risk of being harmed.²²

To exemplify, a study concluded that if legislation was to provide for a strict split in relation to children having contact with their parents, they may feel trapped and unable to object to contact.²³ With children often having good reason for objecting, it is submitted that this in turn may cause psychological problems for the child.²⁴ The problem of emotional and Psychological harm in relation to the presumption that both parents are entitled to have custody of their child 50% of the time has been recognised by the judiciary, as illustrated by the case of *N (a child) [2009]*.²⁵ The case had seen the Judge refuse to give an order regarding the child.²⁶ This was as a consequence of the behaviour of the parents and the impact it was having on the child. The child was experiencing emotional distress, due to the parents thinking they had a *right* to have a certain amount of time with the subject child.²⁷

¹⁸ Ally Fogg, 'Fathers4Justice: the solution lies in our families, not our family courts' *The Guardian* (Thu 4 Jul 2013); Fathers4Justice, 'Our Blueprint' (We Are Fathers4Justice) < www.fathers-4-justice.org/our-campaign/our-10-point-blueprint-for-family-law/> accessed 10 July 2020. `

¹⁹ Shared Parenting Rights and The Family Courts HC Bill (2013-14).

²⁰ *Ibid.*

²¹ A Newnham, *Family Law* (Ruth Lamont ed 1st edn, OUP 2018) 350.

²² Liz Trinder, 'Shared Residence: A Review of Recent Research Evidence' (2010) 22 CFLQ 475.

²³ Jane Fortin, Joan Hunt and Lesley Scanlan 'Taking a longer view of contact: The perspectives of young adults who experienced parental separation in their youth' (University of Sussex Law School 2012) 1- 11.

²⁴ Newnham (n 32) 360-367.

²⁵ EWHC 1807 (Fam).

²⁶ *Ibid* 149.

²⁷ *Ibid* 195, 213-232.

In addition, the presumption of 50/50 shared parenting has the potential to cause issues logistically.²⁸ For instance, if one parent moves a considerable distance from the other, in cases where a 50/50 shared parenting order has been granted, the child is likely to suffer from exhaustion from travelling.²⁹ In such instances, the presumption would be impractical.³⁰ The view that 50/50 shared parenting may not be appropriate has even been supported by *Families Need Fathers*, another campaign group centred around fathers being involved in their child's life.³¹ Families Need Fathers further submitted that it is not the quantity of time within which fathers need with their children, but the quality of it.³² With the issues that could potentially arise through incorporating the presumption, a petition to prevent it from passing was formed.³³

Consequently, Baroness Butler-Sloss, a senior judge and President of the Family Division, successfully amended the Children Act of 1989.³⁴ Parliament agreed that shared parenting should not be split 50/50 between the resident and non-resident parent and it was stressed that such ought to be legislated.³⁵ Thus, the Children and Families Act 2014 successfully amended the Children Act 1989, stating that 'there is no presumption of equal division.'³⁶ However, the issue did not cease to be addressed by the Acts. The Children and Families Act 2014 instated in the Children Act 1989, that it ought to be 'presumed that involvement of *that* parent in the life of the child concerned will further the child's welfare', unless the contrary is proven.³⁷ In addition, it was further legislated via the implementation of the Children and Families Act that 'involvement' means 'involvement of some kind, either direct or indirect, but not any particular division of a child's time'.³⁸ Thus, it is evident that 'the law and courts

²⁸ Newnham (n 32) 367.

²⁹ Cherry Harding, 'What has further research and experience taught us about the effects of shared parenting?' [2020] FamL 72.

³⁰ Ibid.

³¹ Families Need Fathers, 'Shared Parenting' (fnf.org, 11 January 2019) < <https://fnf.org.uk/information/shared-parenting-link/shared-parenting> > accessed 11 July 2020.

³² Joan Hunt and Others, 'Shared Parenting: The Law, the Evidence and Guidance from Families Need Fathers' [2009] FamL 831, 834.

³³ HL Deb 2 July 2013, vol 746, col 1188 -1189.

³⁴ Newnham (n 32) 350.

³⁵ UK Parliament 'The Children and Families Bill (2013-14), 3rd reading: House of Lords' (5 February, 2014) < <https://publications.parliament.uk/pa/ld201314/ldhansrd/text/140205-0001.htm#14020581000654> > accessed 10 July 2020.

³⁶ The Children Act 1989 s 1(2B).

³⁷ Children Act 1989 s 1(2A).

³⁸ Children Act 1989 s 1(2B).

are unbiased towards fathers and indeed mothers however, the emphasis is very much placed on the child', with the child's safety being at the centre, adhering to the 'paramourty principle'.³⁹

Upon reflection, '*individualism* has been the principal catalyst for legal change'.⁴⁰ This has been demonstrated by the campaign group Fathers4Justice, where they have campaigned for the law to take the view that parenting ought to be shared 50/50.⁴¹ Although the shared parenting presumption was not exactly reflected in the legislation, which came as a result of Parliamentary debates sparked from the campaigns, recent legislation amended the law to better reflect societies change in gender roles within the family. However, it has been made clear, that throughout the case law⁴² and primary legislation⁴³, the reasoning behind the decisions which have been made is primarily centred around the child's welfare and not that of father's or indeed mother's rights.⁴⁴

The result of fathers campaigning groups, such as Fathers4Justice, has assisted in the progression of the law since 1997.⁴⁵ This is evident throughout case law and the discussions which surrounded the relevant Bills through Parliament. However, there is one view which has predominantly remained consistent, and that is the view that the law courts' show 'bias towards fathers', which has been condemned.⁴⁶

Men: A Prisoner of Their Own Crime?

³⁹ See, Chloe Smith, 'No anti-father bias in family courts, research finds' *The Law Society Gazette* (2 June 2015) < www.lawgazette.co.uk/law/no-anti-father-bias-in-family-courts-research-finds/5049142.article> accessed 12 June 2020; and Ministry of Justice and Department for Education, *The Government Response to the Family Justice Review: A System with Children and Families at its Heart* (Cm 8273, February 2012) 61; and Annika Newnham, *Private Child Law* in Ruth Lamont (ed), *Family Law* (1st edn, OUP 2018) 360-368.

⁴⁰ Nigel Lowe and Gillian Douglas, *Bromley's Family Law* (11th edn, OUP 2015) 307-308.

⁴¹ Fathers4Justice, 'Our Blueprint' (We Are Fathers4Justice) < www.fathers-4-justice.org/our-campaign/our-10-point-blueprint-for-family-law/> accessed 10 July 2020.

⁴² The case of *J v C* [1970] AC 688 710-71, reinstated the view that the child's welfare is 'paramount' when deciding the outcome of a case.

⁴³ *The Children and Families Act 2014* s 1(2B).

⁴⁴ Lady Justice Hale, '30 Years of the Children Act 1989' (Scarman Lecture, Law Commission 13 November 2019) p 7-8 < <https://www.supremecourt.uk/docs/speech-191113.pdf>> accessed 10 July 2020.

⁴⁵ Richard Collier, 'Rethinking Fathers' Rights' (2009) 45 UKFL 45.

⁴⁶ Chloe Smith, 'No anti-father bias in family courts, research finds' (*The Law Society Gazette*, 2 June 2015) < www.lawgazette.co.uk/law/no-anti-father-bias-in-family-courts-research-finds/5049142.article> accessed 12 June 2020.

With '1.37 million defendants prosecuted in the latest year', what does the law allow in respect of contact, when a father has committed a serious offence, and does the law make sufficient provision for the needs of fathers?⁴⁷ In 2019, the Children Act 1989 came under intense scrutiny in the House of Commons, when Louise Haigh, the Labour MP for Heeley (Sheffield), recommended that the Act be amended, so as to 'remove the *parental right* of any man who has fathered a child through rape'.⁴⁸ The current position is that the Act, as well as the Family Procedural Rules 2010 allows those who are and are not registered as the biological father of the subject child, to be party to proceedings, and may allow the child to have contact with that person.⁴⁹ Thus, the Act facilitates fathers, who have committed criminal offences to exert 'certain rights', even if they have committed a serious criminal offence and the subject child is 'under a care order'.⁵⁰

Allowing a man to be party to family proceedings where he is considered to be relevant, is recognised as his 'right'.⁵¹ This is said to protect fathers, who may not necessarily be registered on the child's birth certificate.⁵² However, as evidenced by the case of Sammy Woodhouse the Children Act 1989 can be viewed as adversely impacting the wellbeing of the child and other parties, which over the years has been seen to have taken precedence over the rights of fathers.⁵³

In the case of Sammy Woodhouse, Arshid Hussain, who was party to the case of *Regina v Qurban Ali, Basharat Hussain, Arshid Hussain* [2017], had his appeal against his conviction for sexual offences dismissed and remained imprisoned.⁵⁴ Whilst committing sexual offences, Arshid Hussain had fathered a child with one of his victims, Sammy Woodhouse. Due to the trauma she experienced, Sammy Woodhouse and the local authority wanted to place the

⁴⁷ Office of National Statistics, 'Criminal Justice Statistics quarterly, England and Wales, July 2018 to June 2019' (14 November 2019) Ministry of Justice
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/846386/criminal-justice-statistics-quarterly-june-2019.pdf> accessed 2 July 2020.

⁴⁸ HC Deb 10 April 2019, vol 658, col 343.

⁴⁹ The Children Act 1989, s.4; Family Procedural Rules 2010, pt 12J.

⁵⁰ For example, the right to 'reasonable contact'; The Children Act 1989, s.34. See also, Department of Education, 'The Children Act 1989 guidance and regulations' (2015) Vol 2: care planning, placement and case review, 45
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/441643/Children_Act_Guidance_2015.pdf> accessed 2 July 2020.

⁵¹ The Children Act 1989 s 4; ECHR art 8.

⁵² Nigel Lowe and Gillian Douglas, *Bromley's Family Law* (11th edn, OUP 2015) 307-312.

⁵³ HC Deb 10 April 2019, vol 658, col 343.

⁵⁴ *Regina v Qurban Ali, Basharat Hussain* [2017] EWCA Crim 1211 para [1-47], [62].

child under a care order.⁵⁵ An application for the order was made, with Arshid Hussain having been notified and told he could 'seek contact with the child', with the Children Act 1989 omitting to prevent him from doing so.⁵⁶ This decision unsettled groups in society, as the fear was that, allowing fathers to have contact and be party to proceedings would cause unnecessary trauma to those involved, mainly the child.⁵⁷

The government heard Louise Haigh's recommendation and subsequently interjected, defending the rights of fathers, stating that the proposed reform would undermine the convicted rapist's 'right to a family life'.⁵⁸ It was further stated that the FPR⁵⁹ acts as a safeguard, giving the judiciary the jurisdiction to decide when it is appropriate to prevent fathers having contact, if they pose a risk to the child. The case of *Local Authority v XYZ* [2019] exemplifies this.⁶⁰

In the case of *Local Authority v XYZ*, the father of the subject child had murdered the child's mother, whilst the child was present.⁶¹ The child was then subject to care proceedings, of which the father was an automatic respondent as a consequence of the Family Procedure Rules 2010, to which the Children Act of 1989 is subservient to.⁶² However, the local authority acted to remove the father as a party to the proceedings, and prevent him from having contact with the child.⁶³ This was in the interest of the child's wellbeing, as if the father was present to proceedings and proceeded to communicate with the child, psychological and emotional harm may have been caused.⁶⁴ The potential detriment to the child was such that

⁵⁵ HC Deb 10 April 2019, vol 658, col 343.

⁵⁶ Andrew Norfolk, 'Rotherham rape victim reveals new care scandal; Mother demands change in law after council gave abuser chance to meet her son' (*The Times*, 28 November 2018) <www.thetimes.co.uk/article/rotherham-council-invited-paedophile-to-see-his-victim-s-child-jntcgdv3t> accessed 06 July 2020 and Helen Pidd, 'MPs call for change of law on rapist fathers after Rotherham case' (*The Guardian* 28 November 2018) <www.theguardian.com/society/2018/nov/28/mps-call-for-change-of-law-on-rapist-fathers-after-rotherham-case> accessed 6 July 2020.

⁵⁷ Andrew Norfolk, 'Rotherham rape victim reveals new care scandal' *The Times* (London, 28 November 2018) <www.thetimes.co.uk/article/rotherham-council-invited-paedophile-to-see-his-victim-s-child-jntcgdv3t> accessed 06 July 2020.

⁵⁸ ECHR, art.8 and HC Deb 10 April 2019, vol 658, col 343-344.

⁵⁹ 2010, 12J.

⁶⁰ EWHC 2166 (Fam).

⁶¹ *Ibid* [13].

⁶² The Family Procedure Rules 2010, SI 2010/2955.

⁶³ *Local Authority v XYZ* (Restriction on Father's Role in Proceedings) [2019] EWHC 2166 (Fam) [7].

⁶⁴ *Ibid* 57-61.

the child's 'right to a private life, including such correspondence' overridden the fathers 'right to a private life', and 'right to a fair trial'.⁶⁵

That said, lawyers have argued that the courts 'implementation of the procedural rules has been patchy, as seen in the case of Sammy Woodhouse'.⁶⁶ The argument for rejecting Louise Haigh's reform proposal was heard by the House of Commons.⁶⁷ In response, Louise Haigh suggested an alternative; that 'fathers should instead have to apply for an s.8 order' to obtain contact with that child or be party to proceedings.⁶⁸ Doing so would only allow fathers with criminal convictions of rape, to obtain contact through a Child Arrangements Order, which is currently governed by the Children Act 1989.⁶⁹ The proposed recommendation was not implemented, as Louise Haigh's Private Members' bill; 'The Parental Rights (Rapists) and Family Courts Bill' did not proceed onto the second reading.⁷⁰

Lucy Reed, a barrister, submitted 'the calls for reform are broad', and argued that Parliament would have to consider many factors to determine whether reforming the current legislation would be suitable and compatible with the European Commission on Human Rights (ECHR).⁷¹ However, with the Children Act being focused on the welfare of the child, rather than of the mother or the father, Lucy Reed argues that 'any draft legislation would likely be controversial and would require a shake-up of the Family Court system, which is unrealistic'.⁷²

It is clear that a father's criminal activity does not completely prevent them from having contact with the child or being party to proceedings.⁷³ However, the extent to which they have is limited, as evidenced by case law and legislation.⁷⁴ Although there are safeguards in

⁶⁵ ECHR art.8 and *Local Authority v XYZ* [2019] EWHC 2166 (Fam) 54-58.

⁶⁶ HC Deb 5 February 2019, vol 654, col 150.

⁶⁷ HC Deb 10 April 2019, vol 658, col 344.

⁶⁸ *Ibid.*

⁶⁹ As amended by the Children and Families Act 2014.

⁷⁰ UK Parliament 'Parental Rights (Rapists) and Family Courts Bill 2017-19 (19 September 2020) <<https://services.parliament.uk/bills/2017-19/parentalrightsrapistsandfamilycourts.html> > accessed 8 July 2020.

⁷¹ Lucy Reed (Barrister), 'The Sammy Woodhouse Story and Associated Campaigns – An Update' (*The Transparency Project* 1 December 2018) <www.transparencyproject.org.uk/the-sammy-woodhouse-story-and-associated-campaigns-an-update/ > accessed 8 July 2019.

⁷² Lucy Reed (Barrister), 'The Sammy Woodhouse Story and Associated Campaigns – An Update' (*The Transparency Project* 1 December 2018) <www.transparencyproject.org.uk/the-sammy-woodhouse-story-and-associated-campaigns-an-update/ > accessed 8 July 2019.

⁷³ As evidenced by the Children Act 1989 s 4 where the court is to notify those who are relevant to the proceedings of the subject child.

⁷⁴ The Family Procedural Rules 2010, part 12J gives the judiciary the jurisdiction to decide whether the father should be removed from being party to proceedings. In the case of *Local Authority v XYZ* [2019] EWHC 2166

place, society is clearly divided in relation to whether the father should have contact or even be permitted to be party to proceedings, when crimes are of a serious nature like that of rape.⁷⁵ That said, the law again is consistent as the child's welfare is paramount and will be at the forefront of the courts mind during proceedings.⁷⁶ Thus, the law could be said to be reflective of father's rights, as well as societies views but this extent is limited due to the child's welfare being paramount.

Overall, the last 50 years has 'seen the law respect individual autonomy in adult decision making by both men and women'.⁷⁷ Individuals and campaign groups have expressed their opinion of why the law should change in respect of father's rights. Men are evidently wishing to become more involved in the parenting of their children and are of the opinion that the law should adapt to reflect their rights. Their views on the subject have been brought to the attention of the media and consequently, they have also been the subject of debates within the Houses of Parliament.⁷⁸ However, as evidenced by the failing of the Children and Families Bill⁷⁹ to pass through Parliament on its first attempt resulting from comments made throughout parliamentary debates and the *obiter* of case law, the family unit is complex and there are many factors which ought to be considered if changes to the current law were to be made.⁸⁰ Yet, there is one consistency within the law and the legislative process, being the child's welfare. It is evident that the law has held and will continue to hold the rights and the

(Fam) [54-58], the judiciary deemed it in the child's best interests to remove the father from being party to the proceedings.

⁷⁵ Louise Haigh, 'Rapist fathers should not have rights over their victims' children', *The Guardian* (29 November 2018) <<https://www.theguardian.com/commentisfree/2018/nov/29/rapist-father-victim-children-sammy-woodhouse-rotherham-child-abuse>> accessed 13 July 2020.

⁷⁶ *Local Authority v XYZ* [2019] EWHC 2166 (Fam) [12], [29]-[34], [50]-[54]; *X (Children) Re* [2018] EWCA 451 (Fam).

⁷⁷ Lady Justice Hale, 'What is a 21st Century Family' (1 July 2019) International Centre for Family Law, Policy and Practice 2019 p 12 < www.supremecourt.uk/docs/speech-190701.pdf > accessed 5 July 2020.

⁷⁸ 'Profile: Fathers 4 Justice' *BBC News* (22 April 2008) <<http://news.bbc.co.uk/1/hi/uk/3653112.stm> > accessed 6 June 2020; HL Deb 2 July 2013, Vol 746, Col 1188 -1189; HC Deb 10 April 2019, vol 658, col 344; Helen Pidd, 'MPs call for change of law on rapist fathers after Rotherham case' *The Guardian* (28 November 2018) < www.theguardian.com/society/2018/nov/28/mps-call-for-change-of-law-on-rapist-fathers-after-rotherham-case > accessed 6 July 2020.

⁷⁹ The Children and Families Bill (2013-14) (n 47).

⁸⁰ See, *J v C* [1970 AC 688 [710]-[711]; *X (Children) Re* [2018] EWCA 451 (Fam); HL Deb 2 July 2013, Vol 746, Col 1188 -1189; HC Deb 10 April 2019, vol 658, col 344; *Local Authority v XYZ* [2019] EWHC 2166 (Fam) [50]-[54] and, Lucy Reed (Barrister), 'The Sammy Woodhouse Story and Associated Campaigns – An Update' (The Transparency Project 1 December 2018) <www.transparencyproject.org.uk/the-sammy-woodhouse-story-and-associated-campaigns-an-update/ > accessed 8 July 2019.

welfare of a child over that of a parent.⁸¹ Yet, the nature of the English Legal System and the Rule of Law will continue to facilitate the opportunity for individuals, groups, MP's and thus, society as a whole, to reform and change the law. The Family Court recognises the importance of its' involvement in respect of where a child should live and who the child should have contact with.⁸² Thus, in light of any discrepancies that may arise from laws and precedent made, democracy demands for such to be governed by the people and change as society does.⁸³

⁸¹ Lady Hale, '30 Years of the Children Act 1989' (Scarman Lecture, Law Commission 13 November 2019) p 7-8 <www.supremecourt.uk/docs/speech-191113.pdf > accessed 10 July 2020.

⁸² Lady Hale, '30 Years of the Children Act 1989' (Scarman Lecture, Law Commission 13 November 2019) p 7-11 <<https://www.supremecourt.uk/docs/speech-191113.pdf>> accessed 10 July 2020.

⁸³ Tom Bingham, '*Rule of Law*' (2nd edn, Penguin Books 2011) 6.