
CHILD PROTECTION IN INDIA: LEGAL PROVISIONS VS. ADMINISTRATIVE PARALYSIS

Vishwas Sharma, Bennett University

ABSTRACT

National success depends heavily on adequate youth development and growth. After becoming an independent nation India implemented an extensive collection of laws which protect children and promote their advancement. Indian law through Chapters III and IV of the Constitution grants children these rights. The nation of India has joined the United Nations Convention on the Rights of the Child 1989 while it protects children through all its provisions without discrimination against any specific group. The four core principles upon which the convention stands include non-discrimination policies combined with allures to protect child interests and ensure survival and development along with granting children the right to express themselves. Three memos arise from the Convention and India has endorsed two protocol agreements. Legislation about children's rights is created through fundamental principles derived from both India's Constitution and the UNCRC. Presently, the laws such as the Indian Penal Code, 1860, the Juvenile Justice (Care and Protection of Children) Act, 2015, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2000, the Child Marriage Restraint Act, 1929 (Amended in 1979), the Child Labour (Prohibition and Regulation) Act, 1986, the Protection of Children from Sexual Offences Act, 2012, The Child Labour (Prohibition and Regulation) Amendment Bill, 2012, The Right of Children to Free and Compulsory Education Act, 2009, etc. address child rights and their protection in India.

Keywords: Child Rights, Convention on the Rights of the Child, and Juvenile Justice.

Introduction

The essence of culture and the progress of civilization are fundamentally linked to our duties toward the you

nger generation. This involves creating opportunities for each child to express their uniqueness and reach their maximum potential in physical, mental, ethical, and spiritual aspects.¹ The well-being of children is of utmost significance, as it has a direct impact on the overall health and development of the community as a whole. The growth and advancement of society are deeply dependent on the health and welfare of children. It can be argued that focusing on the well-being of children is crucial for not only national but also global communities. Kofi A. Annan, the former Secretary-General of the United Nations, highlighted that² “no trust is more sacred than the one the world places in children. Moreover, there is no duty more vital than ensuring their rights are safeguarded, their well-being is preserved, and their lives are free from fear and deprivation.”

The United Nations Convention on the Rights of the Child (UNCRC) of 1989 comprises fifty-four articles that specifically address the rights of children and outline how governments should collaborate to ensure these rights are granted to all children without discrimination. According to the convention, governments are obligated to meet the fundamental needs of children. The primary aim is to recognize that every child is entitled to basic rights. The convention establishes the following objectives:

- *Ensuring life, survival, and development*
- *Protection from violence, abuse, or neglect*
- *Access to education that enables children to reach their potential*
- *The right to be raised by or maintain a relationship with their parents*
- *The ability to express their views and be heard³*

¹ V.R. Krishna Iyer, *Jurisprudence of Juvenile Justice: A Preambular Perspective* (1994).

² Kofi A. Annan, Foreword to *The State of the World's Children 2000*, at (UNICEF 2000).

³ Save the Children, *United Nations Convention on the Rights of the Child*, SAVE THE CHILDREN, <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child> (last visited Apr. 14, 2025).

In 2000, two additional protocols were added. These are the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography, and the Optional Protocol to the CRC on the participation of Children in Armed warfare. The first protocol requires governments to ensure that children under eighteen are not authoritatively inducted into military forces. The second protocol urges states to bar child prostitution, pornography, and the sale of children into slavery. These protocols have been ratified by over 120 countries. Additionally, a third optional protocol was introduced in 2011, known as the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, which allows children whose rights have been violated to directly file complaints with the International Organization Committee on the Rights of the Child. India, home to one-fifth of the world's children, ratified the Convention on the Rights of the Child in 1992, establishing excellence in healthcare, education, and legal, civil, and social services. The enactment of the Education Bill and the Prohibition of Child Labour and Child Marriage Act demonstrates the Indian leadership's commitment to advocating for children's rights. Progress has been made in identifying and addressing child laws transgression and in directing essential services to marginalized groups. The National Commission for the Protection of Child Rights was established in India in March 2007, along with several State Commissions. Nonetheless, difficulties in implementing these rights persist. The widespread and deep-rooted issues of ill-treatment, gender intolerance, and caste bias in India cannot be overlooked. Additionally, recent global crises in fuel, food, and the economy may impact the country's social progress, hindering recent advancements in child survival and education.

Constitutional Provisions Concerning Children's Rights

The Indian Constitution ensures specific rights for children, detailed in Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). These are outlined as follows:

Part III:

Article 14: Both Indian voters and children are entitled to equal treatment under the law and should receive equal legal protection without discrimination.

Article 15(3): While the constitution prohibits discrimination, it does not prevent the state from implementing special measures for the benefit of children.

Article 21: No person shall be deprived of life or personal freedom except through legal procedures. Individuals are entitled to adequate food, shelter, clothing, etc., and life should not be reduced to mere survival.

Article 21A: The State is required to provide free and compulsory education to all children aged six to 14 years, as determined by law.

Article 23: Trafficking in human beings and forced labour, including beggary, is prohibited.

Article 24: Employment of children under 14 years in factories, mines, or any hazardous work is forbidden.

Part IV:

Article 39 (f): The state is responsible for ensuring that children have access to opportunities and resources that allow them to grow in a healthy environment, with freedom and dignity. It must also protect the childhood and youth of children from exploitation and unethical or material neglect.⁴

Article 41: The state is required to provide educational opportunities and facilities, in line with its economic capacity and development.

Article 44: The state should make every effort to establish a uniform Civil Code for all citizens, which includes a consistent code for child adoption.

Article 45: The state should strive to offer free and compulsory education to children until they reach the age of fourteen.

Article 46: The state has a duty to promote the economic interests of the weaker sections of society, with special attention to children within these groups.

Article 47: The state is tasked with improving nutrition levels, living standards, and public health, including that of children.

Article 51(c): The state must respect international laws and treaties to the fullest extent

⁴ India Const. art. 39(f).

possible, including the CRC and its optional protocols.

Article 51(k): Every citizen of India who is a parent or guardian is responsible for providing educational opportunities to their child or ward between the ages of six and fourteen.

Article 243G: This article calls for the institutionalization of child care by assigning programs related to Woman and Child Development to Panchayats (Item twenty-five of Schedule 11).⁵

Indian Penal Code 1860.

Different sections of the Indian Penal Code give protective measures regarding children's rights according to various provisions. Some of these sections are:

Under S.83 the penal system refuses to hold children accountable for their actions when they exceed seven but have not reached twelve years old. The insufficient maturity of the child prevents him from understanding the nature of his actions. Because of his lacking maturity regarding understanding of his actions' consequences this offender cannot be held responsible for what he did.

Section 292 and 293 of the law allows for criminal punishment against persons who sell or distribute obscene materials such as books or drawings or paintings etc. A ban on selling or distributing obscene elements including books and magazines and drawings and paintings exists under Section 292. 292. The criminal process applies to anyone who affirms to sell or provide temporary access to such materials for individuals under twenty years of age. A person who offers exposure of an obscene object to someone under age twenty faces a severe punishment under the terms of Section 292. People who try to distribute or sell such material will receive enhanced punishment.

The law makes it punishable to assist someone under 18 years old with committing suicide through Section 305. punishable under this law.

S.317: Desertion of a child or exposure for that purpose by any of the parents or any is unlawful for any person who looks after or cares for such children to receive punishment in court. Many

⁵ India Const. art. 243(g).

different forms of child abduction fall under the purview of punishable offenses according to section S.361.

The offense of kidnapping or maiming children specifically aimed at begging constitutes a criminal punishable offense according to S.363A under this provision. This law sets penalties against persons who lead young female minors younger than eighteen years to perform any acts resulting in illicit sexual interaction. A punishment exists for anyone who forces or seduces a woman to enter into unlawful sex with someone else under this section.

Guardians and Wards Act 1890

The Act exists above all guardian-related laws established in previous legislations. It is treated as a This standard legislation operates for all Muslims Parsis Christians and Jews even though these groups do not allow their personal laws to allow full adoption The laws provide guardian rights instead of adoption rights to families. Under the terms of this Act the guardianship component serves as the sole focus on the person and possessions of the minor. When assigning or naming guardians for minors the judicial authority follows several important factors The court must analyse the particular case conditions to determine the best outcome for the minor child in accordance with law. A court should select guardians based on the laws that apply to the minor concerned. All potential factors become relevant points for court consideration during court proceedings the child's welfare stands as the primary aspect for court decisions.⁶

Immoral Traffic (Prevention) Act (Amended in 1986), 1956

The Act specifically addresses individuals who seek to get children for prostitution by procurement methods or attempts at procurement. Purchase of children by anyone for prostitution results in punishment under the 1956 Act along with discovery of children in brothels (in which case) it creates a legal presumption of child detention for prostitution purposes. A court will assume a child's detention to be done for this purpose under the law. This is coupled with punishment for responsible parties. them. The provisions under this law establish arrangements to protect children who are rescued.

⁶ Guardians and Wards Act, § 17, No. 8 of 1890 (India).

Protection of Children from Sexual Offences Act, 2012

The purpose of this Act is to sentence people who sexually victimize children below 18 years old. This legislation applies to subject children who have not reached the age of 18. The legislation establishes particular mechanisms for conducting trials with specific guidelines for operation. The victim's name remains undisclosed because he is a child while the court proceedings for this case will be recorded by cameras. The court makes use of camera recordings during trials with a provision that forbids placing the defendant in front of the child victim. Children serving as crime victims must not face direct exposure to their assailants when legal examinations or cross-examinations take place. The legislation outlines penetrative and nonpenetrative sexual assault abuse along with sexual harassment actions and creates specific conditions that elevate sexual abuse offenses. The offense qualifies as aggravated under defined conditions of sexual assault even when it includes sexual harassment and pornography. The legislation defines two distinct conditions that heighten offenses to aggravated sexual abuse. These include abuse of mentally challenged children and offenses carried out by those who hold authority or trust toward the child. The abuse takes place when someone exercise authority over a child enters into any relationship with them including family members. police officer, teacher, or doctor. People who activate the sexual market for children face legal consequences under the provision regarding abetment. The same law designates abetment as a punishable offense for all cases under its Act. The Act prescribes stringent The punishment scheme of the law climbs higher as offenses become more severe up to the maximum of rigorous imprisonment for life. imprisonment for life, and fine. The protection measures implement standards that reflect the highest international child safety requirements. The sexual offences must be reported under provisions of the Act by law. This casts a legal duty upon A person carrying information regarding child sexual abuse must make a report when such failure results in punishment. The punishment includes potential imprisonment lasting six months with an option of monetary fine.

The police have an immediate obligation to inform the Child Welfare Committee through a timely report following notification of child abuse cases. The police must alert the Child Welfare Committee through a 24-hour time limit after learning about the incident. The Child Welfare Committee needs to initiate safety measures after receiving notification from the police according to the report. safety and security of the child. The prescribed legislation arranges for medical diagnostic testing under specific conditions. The examination procedures

should be developed to minimize the emotional burden on the child. The examination is The child needs presence of their trusted parent or person while medical examinations take place. the case of female child, by a female doctor.

The Right of Children to Free and Compulsory Education Act of 2009

According to the Right of Children to Free and Compulsory Education Act of 2009 a child becomes a male or female between six and fourteen years old.⁷ The scope of 'Capitation fee' which represents all forms of donations or payments or contributions excluding the set school fees.⁸ As per this law the fee established by the educational institution remains the only acceptable cost. Kids who belong to such disadvantaged areas have special rights under this act.⁹ A child coming from any disadvantaged group according to the law includes those belonging to Scheduled Castes and Scheduled Tribes along with socially and educationally backward classes and other specified communities of disadvantageous background. A child belongs to an educationally backward class when coupled with socially and culturally or any other disadvantaged group through social or cultural or economic or geographical or linguistic or gender-related factors identified by the appropriate Government through a notification.⁹ Each approved group will be designated based on defined economic conditions along with geographical locations and linguistic characters and gender distinctions and other factors that authorities have authorized. By means of official notifications from appropriate Government the law defines a child belonging to weaker section to be a child whose parents respectively receive income below the defined amount.¹⁰ The child belongs to any of the mentioned groups along with their guardian when their household's annual earnings fall below state-defined financial boundaries. The required categories for each regional board are set through governmental notifications made by appropriate authorities.

Juvenile Justice (Care and Protection of Children) Act 2015

The Juvenile Justice (Care and Protection of Children) Act 2015 began operating on 15th January 2016 to replace the Juvenile Justice (Care and Protection of Children) Act 2000. On 15th January 2016 the Juvenile Justice (Care and Protection of Children) Act became operational while it eliminated the Juvenile Justice (Care and Protection of Children) Act from

⁷ Right of Children to Free and Compulsory Education Act, § 2(c), No. 35 of 2009 (India).

⁸ *Ibid.* § 2(f).

⁹ *Ibid.* § 2(d).

¹⁰ *Ibid.* § 2(e).

2000. 2000. The system complies with two core principles including the Principle of presumption of innocence. Principle of dignity and worth, Principle of participation, Principle of best interest, Principle The provisions of family responsibility join with safety measures alongside positive steps and non-stigmatizing semantics and non-waiver of rights and equality and privacy and confidentiality as well as institutionalization as a measure of last resort and repatriation and restoration. The National Act implements stigmatizing semantics and non-waiver of rights as principles along with equality and fair, Principle of right to privacy and secretness, Principle of institutionalization as a measure of last resort, Principle of repatriation and restoration and the Juvenile Justice System follows multiple principles including fresh start which deletes all history records of juveniles except when necessary. All cases in the Juvenile Justice system require special conditions before records can be eliminated.

Commissions for the Protection of Child Rights Act, 2005

Recent National and International activities toward child rights protection along with growing concerns about violations have demonstrated the necessity of a National Commission for Child Rights Protection. Numerous social science organizations and non-governmental bodies have expressed the necessity to create a National Commission for Protection of Child Rights. social scientists and non-governmental organizations. The Government initiated establishment of this organization by making the decision. up the National Commission for Protection of Child Rights and for better protection of their rights The prosecution process for children and child right violations should receive speedy trials according to the law. The States The States receive authorization to establish State-Level Commission for Protection of Child Rights within their territories. respective states. The United Nations General Assembly Summit welcomed India as a participating member in its 1990 session. The Declaration on Survival Protection and Development of children gained adoption through a document titled 1990 which came into effect during that year.

Prohibition of Child Marriage Act, 2006

According to this act child marriages become illegal after citizens reach their age minimums which stand at 21 years for men and 18 years for women. attained by them. All religious groups in India fall under its scope. The basic objective of the Prohibition According to the Prohibition of Child Marriage Act, 2006 the purpose is to stop child marriages before attaining specified age requirements. The Act implements its provisions regarding child marriage and its related

and supporting matters.

Child Labour (Prohibition and Regulation) Act, 1986

This legislation creates mandatory work conditions for child employees and bans their participation in defined types of employment. children in certain kinds of employments. The Act disallows child employment in occupations and processes compiled in Part A and Part B of the Schedule. A58 and Part B59 as listed in the Schedule¹¹ serve as criteria for court interpretation according to Section 16. The Court works diligently to find legal interpretations that protect statute objectives. The Court needs to read the legislation to protect and reach the core intention behind its creation. Any narrow or technical interpretation of Strict interpretation of these provisions would go against the target which the lawmaker set for this legislation. A court should maintain awareness of the legislative policy's aims when handling this case. When interpreting the Act for this specific scenario the Court should consider and follow the legislative policy. The Act also provides Through Official Gazette notification the Central Government possesses the power to establish an Advisory Committee.¹² The Child Labour Technical Advisory serves as an Advisory Committee under Central Government supervision according to provisions of the Act. The schedule requires addition approvals through the Advisory Committee according to Section 17 of the Act. The committee will include two elements: a Chairman and additional members not exceeding ten in total who receive their appointment through decision of the Central Government.

The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act functionally saves pregnant women from health risks and protects their physical strength while preserving their existence. The parliament approved the Termination of Pregnancy Act in 1971. Certain regulations defined abortions as legal under this law. The Medical Termination of Pregnancy Act 1971 functions to benefit pregnant mothers. The Medical Termination of Pregnancy Act provides protection to both mothers and unborn children. The legislation established that medical termination would be more suitable than allowing a person to suffer. When the Act enables maternal womb termination for a fetus who may experience severe disabilities after birth the procedure is permissible. The fetus would experience disabilities as well as health problems if it managed

¹¹ Child Labour (Prohibition and Regulation) Act, § 3, No. 61 of 1986 (India).

¹² Child Labour (Prohibition and Regulation) Act, § 5(i), No. 61 of 1986 (India).

to survive birth. The Act provides multiple provisions that sometimes misused. A woman needs the right to abortion for practical control of her body functions. reproductive process. A major number of abortions in Indian society takes place because of unexplained causes. Neither the wellness of the woman, nor reproductive right but the sex of the unborn child. Abortions Health facilities carry out these tests to eliminate girls (sex-determination test) which remains illegal This practice constitutes unlawful conduct according to the law sanctioned by both parents and doctors who carry it out.

Forced Labour obstacle

It is common knowledge that involuntary work is becoming a bigger problem in our culture. Despite the fact that laws have been passed to stop this, the intended outcomes have not been obtained. For nearly thirty years, Articles 23 and 24—which are meant to address this threat—were unable to adequately regulate bonded employment. However, following 1982, particularly as a result of the Asid worker's case,¹³ to counter this threat, these articles have been employed as powerful weapons. Article 23(1) declares that all forms of forced work and human trafficking are illegal, and that breaking this law carries consequences. The People's Union for Democratic Rights (PUDR) Fact-Finding Team was the first to draw attention to these appalling working conditions for the employees. According to the research, "almost all the major laws were been broke by the contractors in the centre of the Indian capital, right in front of the Union Government."¹⁴

The Apex Court ruled in *Sanjit Roy vs. State of Rajasthan*,¹⁵ that minimum wages must be provided to employees even while they are working for famine relief. Even though the State maintained that it was only helping those who were impacted and that if the judges used the Asiad labourers case to highlight that Article 23 was intended to end the evil practice of forced labour and that if the State was forced to pay the minimum wages, it may limit its ability to aid those affected by the famine. *Bandhua Mukti Morcha vs. Union of India*¹⁶ is another significant case that illustrates the court's stance on bonded labour.

¹³ People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

¹⁴ People's Union for Democratic Rights, *The Other Face of Asiad* 82, PUDR Report, Oct. 1982, at 4.

¹⁵ AIR 1983 SC 328.

¹⁶ AIR 1984 SC 802.

Sexual abuse, victimization and Trafficking

The Court ruled in *Vishaljeet v. Union of India*,¹⁷ that all State Governments must order their law enforcement agencies to take prompt, effective action against child trafficking and to establish an advisory committee of specialists from all sectors to offer recommendations on how to end child prostitution, care for and rehabilitate rescued girls, establish rehabilitation facilities, and investigate the presence of devdasi and jogin customs in their own states.

A landmark ruling on the rights of prostitutes' children was rendered in *Gaurav Jain v. Union of India*.¹⁸ In order to improve, safeguard, and rehabilitate the children of prostitutes, the petitioner filed a Public Interest Litigation asking the Union of India for the proper guidelines. In The Mumbai High Court established a committee in *Jayesh Thakkar vs. State of Maharashtra and Internet Users Association of India (Intervenors)*¹⁹ that established a number of limitations on cyber cafes to ensure a sufficient level of oversight and control to shield children from being exposed to pornographic websites on the internet in cyber cafes. To ensure that kids might safely access and use the internet for communication, education, entertainment, and information, the Committee suggested creating child-friendly or child-safe cyber zones.

Judicial responsibility

These days, human rights take precedence over all other human concerns both domestically and globally. Unfortunately, there is a lot that could be done to improve its adherence. Given the legislature's and the executive branch's increasing disregard for human rights, the mere existence of humanity is under danger. Significant human rights abuses occur directly in front of the authorities. This crime is sometimes perpetuated by the State itself. In these situations, the judiciary's role in defending children's human rights becomes vital and significant. The Indian judiciary has been successful in restoring people's human rights. But in addressing these problems, even the judiciary has occasionally fallen short.

Conclusion

The health and well-being of the child have an impact on the community as a whole. Since children will be the leaders of tomorrow, improving them benefits the community as a whole.

¹⁷ AIR 1990 SC 1412, Cr. LJ 1469, (1990) 3 SCC 318.

¹⁸ AIR 1997 SC 3021, 1997 AIR SCW 3055, (1997) 8 SCC 114.

¹⁹ Suo Motu Writ Pet. No. 1611 of 2001 (Mumbai H.C.).

Milton correctly noted that "a child shows the man as morning shows the day." It is evident that a neglected and a youngster who experiences abuse will never grow up to be a decent and responsible adult. Perhaps as a result of poverty and ignorance, child abuse and violations of children's rights have become more prevalent in recent decades. National policies pertaining to children's welfare must be flexible, adapt to shifting circumstances, and assist in foreseeing potential repercussions of societal shifts. Additionally, the national policy should consider the requirements of children with normal development as well as those with various disabilities, including mental, physical, and social ones, and should also keep resources in place to support their social integration. Facilities must be made available to delinquent, impoverished, neglected, and abandoned children as well as those from economically disadvantaged families so they can overcome their challenges and grow up to be decent citizens.

However, the number of these cases is startlingly rising every day. As a result, it has been felt that judicial involvement is required; yet, this intervention is insufficient to address the urgent need to curb child exploitation. Additionally, it has been noted from numerous rulings in decided cases that the judiciary frequently imposes a lighter sentence in relation to the seriousness of the offences committed by the offender when imposing punishment for crimes against children, particularly sexual offences.