



# Handbook *on* Child Rights and the Law

*under the guidance of*  
**Juvenile Justice Committee, Supreme Court of India**



Centre for Research and Planning  
**Supreme Court of India**  
October, 2025

## **Acknowledgments**

We are indebted to Hon'ble the Chief Justice of India B.R. Gavai for his mentorship and encouragement to the Centre for Research and Planning. This handbook has been prepared under the guidance and direction of the Juvenile Justice Committee of the Supreme Court of India, chaired by Hon'ble Justice B.V. Nagarathna and comprising Hon'ble Justice J.B. Pardiwala. We are also grateful to Hon'ble Justice Joymalya Bagchi for providing the outline and direction that shaped this handbook. We particularly extend our sincere gratitude to Shekhar C. Munghate, Ld. Secretary General, Supreme Court of India, for the encouragement and administrative support which greatly facilitated the preparation of this handbook. We also acknowledge the valuable support of Himani Sarad, Secretary to the Juvenile Justice Committee, Supreme Court of India, and Ravi Shanti Bhushan, Deputy Registrar, Juvenile Justice Secretariat, Supreme Court of India. We are thankful to Ramakash G. Suriaprakash, Law Clerk to Hon'ble Justice B.V. Nagarathna, and to Anshuka Bhandari and Srishti Bharti, Law Clerks at CRP, for their valuable assistance in proof-reading the document. We also sincerely thank Dr. Mukesh Nasa, P.S. to Hon'ble Justice B.V. Nagarathna, for his support and coordination in facilitating these efforts. Finally, we acknowledge with appreciation the contributions of all those who engaged in constructive discussions and facilitated the finalization of this handbook.

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### **LIST OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Full Form</b>
<b>BNS</b>	Bharatiya Nyaya Sanhita, 2023
<b>CALPRA</b>	The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
<b>CARA</b>	Central Adoption Resource Authority
<b>CCI</b>	Child Care Institution
<b>CCL</b>	Child in Conflict with Law
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CNCP</b>	Child in Need of Care and Protection
<b>CPCR Act</b>	Commissions for Protection of Child Rights Act, 2005
<b>CRC</b>	Convention on the Rights of the Child
<b>CSAM</b>	Child Sexual Abuse Material
<b>CSEAM</b>	Child Sexual Exploitation and Abuse Material

<b>CWC</b>	Child Welfare Committee
<b>CWPO</b>	Child Welfare Police Officer
<b>DCPU</b>	District Child Protection Unit
<b>DLSA</b>	District Legal Services Authority
<b>DM</b>	District Magistrate
<b>DPSP</b>	Directive Principles of State Policy
<b>HAMA</b>	The Hindu Adoptions and Maintenance Act, 1956
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICDS</b>	Integrated Child Development Services
<b>ICP</b>	Individual Care Plan
<b>ILO</b>	International Labour Organization

<b>IT Act</b>	The Information Technology Act, 2000
<b>JJ Act</b>	The Juvenile Justice (Care and Protection of Children) Act, 2015
<b>JJB</b>	Juvenile Justice Board
<b>LSA Act</b>	The Legal Services Authorities Act, 1987
<b>LSI</b>	Legal Services Institution
<b>LSUC</b>	Legal Services Units for Children
<b>MASI</b>	Monitoring App for Seamless Inspection
<b>MHCA</b>	The Mental Healthcare Act, 2017
<b>MTP Act</b>	The Medical Termination of Pregnancy Act, 1971
<b>MWCD</b>	Ministry of Women and Child Development
<b>NALSA</b>	National Legal Services Authority
<b>NCPCR</b>	National Commission for Protection of Child Rights



<b>NCRB</b>	National Crime Records Bureau
<b>NR</b>	Nominated Representative
<b>NRI</b>	Non-Resident Indian
<b>OCI</b>	Overseas Citizen of India
<b>OPAC</b>	Optional Protocol on the Involvement of Children in Armed Conflict
<b>OPIC</b>	Optional Protocol on a Communications Procedure
<b>OPSC</b>	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
<b>PAP</b>	Prospective Adoptive Parent
<b>PIL</b>	Public Interest Litigation
<b>PLV</b>	Para-Legal Volunteer
<b>POCSO Act</b>	The Protection of Children from Sexual Offences Act, 2012
<b>RMP</b>	Registered Medical Practitioner

<b>RTE Act</b>	The Right of Children to Free and Compulsory Education Act, 2009
<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>SCPCR</b>	State Commission for Protection of Child Rights
<b>SCPS</b>	State Child Protection Society
<b>SDG</b>	Sustainable Development Goal
<b>SJPU</b>	Special Juvenile Police Unit
<b>SLSA</b>	State Legal Services Authority
<b>TLSC</b>	Taluk Legal Services Committee
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNICEF</b>	United Nations International Children's Emergency Fund

### **TABLE OF CASES**

<b>Cases</b>	<b>Citation</b>
A (Mother of X) v. State of Maharashtra	2024 INSC 371
ABC v. State (NCT of Delhi)	(2015) 10 SCC 1
A K Gopalan v. State of Madras	1950 SCC 228
A Nizamudhin v. Station House Officer	2017 SCC OnLine Ker 7324
Ajay Kumar v. State (NCT Delhi)	2022 SCC OnLine Del 3705
Ajeet Gurjar v. The State of Madhya Pradesh	2023 INSC 875
Anita Kushwaha v. Pushp Sudan	(2016) 8 SCC 509
Anjuman Ishaat-e-Taleem Trust v. State of Maharashtra	2025 INSC 1063
Anoop v. State of Kerala	2022 SCC OnLine Ker 2982
Aswini Jitendra Kable v. State of Maharashtra	2024:BHC-AS:28386-DB
Attorney General for India v. Satish	2021 INSC 762
Atul Mishra v. State of U.P	2022 SCC OnLine All 420
Avinash Mehrotra v. Union of India	(2009) 6 SCC 398
Bachpan Bachao Andolan v. Union of India	(2011) 5 SCC 1

Bachpan Bachao Andolan v. Union of India	(2017) 1 SCC 653
Bandhua Mukti Morcha v. Union of India	(1984) 3 SCC 161
Bandhua Mukti Morcha v. Union of India	(1997) 10 SCC 549
Barun Chandra Thakur v. Bholu	(2023) 12 SCC 401
Bhola Bhagat v. State of Bihar	(1997) 8 SCC 720
Bibin Babu Mathew v. State of Kerala	2025:KER:44013
Bijoy @ Guddu Das v. The State of West Bengal	2017 SCC OnLine Cal 417
Bikram Chatterjee v. State of West Bengal	2022 SCC OnLine Cal 2233
Bodhisattwa Gautam v. Subhra Chakraborty	(1996) 1 SCC 490
Chairman, Railway Board v. Chandrima Das	(2000) 2 SCC 465
Child in Conflict with Law v. State of Karnataka	2024 SCC OnLine SC 798
Court on its own motion v. State	CrI. Ref 1/2020
Court on its Own Motion v. State of NCT Delhi	2024 SCC OnLine SC 870
Debarati Nandee v. Ms. Tripti Gurha	2024:DHC:1287
Dharampal Satyapal Ltd. v. State of Assam	2017 SCC OnLine Gau 1196
Election Commission of India v. St. Mary's School	(2008) 2 SCC 390

Emperor v. Blanche Constant Cripps	1916 SCC OnLine Bom 5
Eric Rane v. State of Meghalaya	2023 SCC OnLine Megh 575
Federation of Obstetric and Gynecological Societies of India (FOGSI). v. Union of India	(2019) 6 SCC 283
Francis Coralie Mullin v. The Administrator, Union Territory of Delhi	(1981) 1 SCC 608
Gaurav Jain v. Union of India	(1997) 8 SCC 114
Ghisalal v. Dhapubai	(2011) 2 SCC 298
Guria Swayam Sevi Sansthan v. Union Of India	Writ Petition (Criminal) No. 43/2024
Gramophone Company of India Ltd. v. Birendra Bahadur Pandey	(1984) 2 SCC 534
Hardev Singh v. Harpreet Kaur	(2020) 19 SCC 504
High Court on its Own Motion v. State of Maharashtra	Suo Moto PIL No. 150 of 2015
Hiralal Mallick v. State of Bihar	(1977) 4 SCC 44
In Re: Right to Privacy of Adolescents	2025 INSC 778
Independent Thought v. Union of India	(2017) 10 SCC 800

Jabbar v. State	1965 SCC OnLine All 337
Jarnail Singh v. State of Haryana	(2013) 7 SCC 263
Jolly George Verghese v. The Bank Of Cochin	1980 SCR (2) 913
Just Rights For Children Alliance v. S Harish	2024 INSC 716
Lahari Sakhamuri v. Sobhan Kodali	2019 (7) SCC 311
Lajja Devi v. State of Delhi	2012 SCC OnLine Del 3937
Lakshmi Janardhan v. State of Karnataka	2023:KHC:43173
Lakshmikant Pandey v. Union of India,	(1984) 2 SCC 244
M. Vanaja v. M Sarla Devi (Dead)	(2020) 5 SCC 307
M.C. Mehta v. State of Tamil Nadu	(1996) 6 SCC 756
M.K. Ranjitsinh v. Union of India	2024 INSC 280
Maganbhai Ishwarbhai Patel v. Union of India	1969 SCR (3) 254
Maneka Gandhi v. Union of India	1978 SCR (2) 621
Manish Lenka v. Union of India	2022 SCC OnLine Del 4403
Mithuram v. State of Maharashtra	2024 SCC OnLine Bom 2660
Mohini Jain v. State of Karnataka	(1992) 3 SCC 666

Ms. Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi)	(2017) 15 SCC 133
N.D. Jayal v. Union of India	(2004) 9 SCC 362
Nardeep Singh Cheema @ Navdeep Singh Cheema v. State of Punjab	2022 SCC OnLine P&H 4179
National Commission for Protection of Child Rights (NCPCR) v. State of Jharkhand	Writ Petition (C) NO. 222/2020
National Commission for Protection of Child Rights v. Dr. Rajesh Kumar	(2020) 11 SCC 377
National Legal Services Authority v. Union of India	(2014) 5 SCC 438
Neelam Restorant v. State of UP	2012 SCC OnLine All 4484
Neetu Kukar v. Union of India	2020 SCC OnLine P&H 265
Nipun Saxena v. Union of India	2018 INSC 1192
Nivedita Jha v. State of Bihar	SLP (C) 24978 OF 2018
Olga Tellis v. Bombay Municipal Corporation	(1985) 3 SCC 545
Om Prakash @ Israel @ Raju @ Raju Das v. Union of India	2025 INSC 43
Palani Pandi v. Nil	CrI.R.C.(MD)No. 981 of 2025

Pappu v. State of Uttar Pradesh	2022 INSC 164
People's Union for Civil Liberties (PUCL) v. Union of India	Writ Petition (Civil) No. 196 of 2001
People's Union for Democratic Rights (PUDR) v. Union of India	(1982) 3 SCC 235
Philip Alfred Malvin v. Gonsalvis	1999 (1) KLT 292
Pinki v. State of Uttar Pradesh	2025 INSC 482
Prakash v. Arun Kumar Saini	2010:DHC:689
Pramati Educational and Cultural Trust v. Union of India	(2014) 8 SCC 1
Pranav Srinivasan v. Government of India	2022 SCC OnLine Mad 9148
Pratap Singh v. State of Jharkhand	(2005) 3 SCC 551
R. D. Upadhyay v. State of Andhra Pradesh.	2006 INSC 225
Rahul Kumar Yadav v. The State Of Bihar	2024 INSC 359
Rajesh Gambhir v. State (NCT of Delhi)	2025 SCC OnLine Del 5180
Rajive Raturi v. Union of India	(2018) 2 SCC 413
Rajkumar v. State through The Inspector of Police	2023:MHC:67



Rajnesh v. Neha	(2021) 2 SCC 324
Ramji Lalji Bairwa v. State of Rajasthan	2024 INSC 846
Ranjeet Kumar v. State of Himachal Pradesh	2023 SCC OnLine HP 1625
Ratan Kundu v. Abhijit Kundu	(2008) 9 SCC 413
Ravinder Kumar v. State of Haryana	2024 INSC 684
Re: Exploitation of Children in Orphanages in the State of Tamil Nadu	(2017) 4 SCR 625
Re: Problems and Miseries of Migrant Labourers	(2020) 9 SCR 1
Rishipal Singh Solanki v. State of Uttar Pradesh	(2021) 5 SCC 572
Rekha Sharma v. The Rajasthan High Court, Jodhpur	2024 INSC 615
Rohith Thammana Gowda v. State of Karnataka	(2022) 4 SCR 784
Rosy Jacob v. Jacob A. Chakramakkal	(1973) SCC 1 840
S Harish v. Inspector of Police	2024:MHC:226
S v. M (Centre for Child Law as Amicus Curiae)	[2007] ZACC 18
S. Varadarajan v. State of Madras	1965 SCR (1) 243
S.C. Narang v. State (NCT of Delhi)	2025 INSC 688

Saibaj Noormohammad v. State of Maharashtra	Special Leave Petition (Crl.) No. 13890/2024
Salil Bali v. Union of India	(2013) 7 SCC 705
Sampurna Behura v. Union of India	(2018) 4 SCC 433
Sankar Mukherjee v. Union of India	1990 Supp SCC 668
Saswati Mohury v. Union of India	2023 SCC OnLine Cal 6569
Satish v. State of Maharashtra	2021 SCC OnLine Bom 72
Sawan Ram v. Kala Wanti	1967 SCR (3) 687
Shabnam Hashmi v. Union of India	2014 INSC 111
Shazia Aman Khan v. State of Orissa	2024 INSC 163
Sheela Barse v. Union of India	(1986) SCC (3) 596
Shilpa Mittal v. State of NCT of Delhi	2020 INSC 25
Shreya Singhal v. Union of India	2015 INSC 257
Shri. Adelbert Marbaniang v. State of Meghalaya	2022 SCC OnLine Megh 410
Smt. Archana Patil v. State of Karnataka	2025 SCC OnLine Kar 17687

Society for Enlightenment and Voluntary Action v. Union of India	2024 INSC 790
Society for Un-aided Private Schools of Rajasthan v. Union of India	(2012) 6 SCC 1
Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore	1993 (3) SCC 217
State v. Hitesh	2025 SCC OnLine Del 962
State of Gujarat v. Bhupendra Kumar Jagjivandas	2001 SCC OnLine Guj 7
State of UP v. Sonu Kushwaha	2023 INSC 603
State of West Bengal v. Anwar Ali	1952 SCR 284
Suchita Srivastava v. Chandigarh Admn	(2009) 9 SCC 1
Suhas Chakma v. Union of India	2024 INSC 813
Sukanya Shantha v. Union of India	2024 INSC 753
Sukdeb Saha v. State of Andhra Pradesh	2025 INSC 893
Supriyo @ Supriya Chakraborty v. Union of India	2023 INSC 920
Thirumoorthy v. State Represented by The Inspector of Police	2024 INSC 247
Umesh Chandra v. State of Rajasthan	(1982) 2 SCC 202

Unnikrishnan J.P. v. State of Andhra Pradesh	(1993) 1 SCC 645
Vellore Citizens Welfare Forum v. Union of India	(1996) 5 SCC 647
Vijayakumar v. State	2025 SCC OnLine Mad 2380
Vimla Devi v. National Insurance Co. Ltd.	(2019) 2 SCC 186
Vinod Katara v. State of Uttar Pradesh	2022 SCR (9) 836
Vishaka v. State Of Rajasthan	(1997) 6 SCC 241
Vishal Jeet v. Union of India	1990 SCR (2) 861
Voluntary Health Association of Punjab v. Union of India	2013 (4) SCC 401
X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Another	2022 SCR (7) 686

## **EXECUTIVE SUMMARY**

The legal framework governing child rights in India is extensive yet fragmented, spread across constitutional provisions, international conventions, and a multitude of statutes. This handbook provides a definitive, consolidated analysis for legal professionals, navigating the significant evolution of this landscape, which has been driven by international commitments, constitutional mandates, and a progressive judiciary that has consistently expanded the frontiers of child rights, often filling legislative gaps.

The handbook is divided into seven parts:

- **Part I: The Definition of a Child:** Examines the legal definitions relating to childhood, including different age limits in various laws.
- **Part II: The International Legal Framework:** Explains how global standards, like the UN Convention on the Rights of the Child (UNCRC), are applied in India.
- **Part III: The Constitutional Vision for Child Rights:** Details the core protections for children found in the Indian Constitution.
- **Part IV: The Statutory Framework:** Provides a detailed review of key laws like the Juvenile Justice Act and the POCSO Act.
- **Part V: A Comparative Study:** Discusses the best practices of the other countries.
- **Part VI: The Administrative Framework and Access to Justice:** Outlines the government bodies and legal aid systems responsible for enforcing child rights.
- **Part VII: Contemporary Challenges:** Discusses current problems, including

gaps in the law, issues with implementation, and new threats like online safety.

### **Key Insights**

1. **International Law as a Foundational Source:** India's legal system incorporates international child rights conventions through both parliamentary legislation under Article 253 and through judicial interpretation. The Supreme Court has consistently used international norms - notably the UN Convention on the Rights of the Child (UNCRC) - to interpret and expand the scope of fundamental rights, particularly Article 21 (Right to Life).
2. **The Expansive Interpretation of Article 21:** The judiciary has transformed Article 21 from a right of mere survival into an enforceable "right to live with human dignity". This interpretation, guided by the Directive Principles, has created a set of positive rights for children, including the right to food, shelter, a healthy environment, and humane treatment, making the State accountable for a child's development.
3. **Constitutional Protection Against Exploitation:** The Constitution provides an absolute prohibition on child labour in hazardous industries under Article 24 and bans human trafficking and forced labour under Article 23. Landmark judicial interventions, most notably in *M.C. Mehta v. State of Tamil Nadu*<sup>1</sup>, have operationalized this mandate by establishing a comprehensive framework for rehabilitation linked directly to the child's right to education.
4. **The Right to Education as a Fundamental Right:** The right to education evolved from a non-enforceable directive to a judicially recognized

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<sup>1</sup> M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756.

fundamental right in *Unnikrishnan, J.P. v. State of A.P.*<sup>2</sup>, culminating in the 86th Amendment, which inserted Article 21A. This establishes a justiciable right to free and compulsory education for children aged 6-14, though its universal application faces challenges from judicial carve-outs for minority institutions.

5. **A Specialized Statutory Architecture for Protection:** India has constructed a legislative framework dedicated to child protection, featuring specialized, child-centric statutes such as *The Juvenile Justice (Care and Protection of Children) Act, 2015*, *The Protection of Children from Sexual Offences (POCSO) Act, 2012*, *The Prohibition of Child Marriage Act, 2006*, and *The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986*.
6. **Critical Role of Administrative and Justice Delivery Mechanisms:** The enforcement of child rights is supported by a dedicated framework, including statutory watchdogs like the National and State Commissions for Protection of Child Rights (NCPCR/SCPCR) and the Legal Services Authorities, which, through NALSA's schemes, provide proactive legal aid to ensure meaningful access to justice for all children.
7. **Ongoing Systemic Problems:** Despite having strong laws, children are not fully protected due to persistent issues. These include gaps in legislation, inconsistent court rulings, and major challenges in the functioning of the juvenile justice system. Many government welfare programs also work in isolation, failing to provide comprehensive care.
8. **New and Emerging Threats:** Modern society presents new risks that require urgent legal attention. The rapid growth of the internet has created new

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<sup>2</sup> *Unnikrishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645.

dangers for children, such as online exploitation, that the law has struggled to keep up with. Other important new areas include focusing on children's mental health and ensuring their voices are heard in decisions that affect them.

By bringing together international principles, constitutional law, domestic statutes, and administrative procedures, this handbook equips legal professionals with the knowledge needed to effectively protect and advance the rights of every child in India.



## **INTRODUCTION**

The legal framework governing child rights in India has undergone a substantial transformation. This evolution has been propelled by a confluence of international commitments, constitutional imperatives, and a dynamic and progressive judiciary. The Supreme Court of India has played a pivotal role in this change, consistently expanding the frontiers of child rights through purposive interpretation and judicial innovation, fundamentally altering the relationship between the child and the state.

### **Purpose of the Handbook**

The purpose of this handbook is to serve as an authoritative and practical guide for key stakeholders within the justice system - judges, judicial officers, public prosecutors, legal aid lawyers and common citizens. Recognizing the challenges legal professionals face in navigating this complex and fragmented landscape, this handbook undertakes a comprehensive, doctrinal study of the entire spectrum of child rights law to consolidate this knowledge and equip these professionals with a deep and nuanced understanding of the multi-layered legal framework.

The analysis covers foundational international conventions, constitutional provisions, specific statutory enactments, and landmark judicial pronouncements. While its primary focus remains the Indian legal and administrative framework, it also provides a comparative perspective to draw lessons from global best practices. The objective is to enable an adjudicative and legal practice that is not only procedurally sound but also imbued with sensitivity and constitutional clarity, promoting a more informed and consistent application of child rights law across the country.

The handbook is structured in seven parts, each addressing a critical dimension of child rights law:

**Part I: The Definition of a Child** delves into the foundational yet complex legal question of who constitutes a “child”, examining the starting and end points of childhood under both international and Indian law and the differing age limits across various statutes.

**Part II: The International Legal Framework and its Application in India** explores the key international conventions that shape global standards for child rights and analyzes the constitutional and judicial mechanisms through which these norms are absorbed into India’s domestic legal system.

**Part III: The Constitutional Vision for Child Rights** undertakes a comprehensive, annotated analysis of the protections guaranteed to children under the Indian Constitution, integrating relevant judgments with the provisions of Fundamental Rights, Directive Principles, and Fundamental Duties to present a holistic view of the constitutional mandate.

**Part IV: The Statutory Framework** provides a detailed examination of primary and peripheral legislation, analyzing key enactments including the Juvenile Justice Act, POCSO Act, laws on child labour, trafficking, adoption (with a focus on CARA guidelines), and digital safety under the IT Act.

**Part V: A Comparative Study** offers a critical analysis of established child rights frameworks in other jurisdictions, synthesizing lessons and identifying best practices that can inform the evolution of the Indian legal system.

**Part VI: The Administrative Framework and Access to Justice** maps the machinery of the state responsible for implementation, including the roles of statutory commissions, executive agencies; the role of judicial oversight and Juvenile Justice

Committees and the critical initiatives of the National Legal Services Authority (NALSA), such as its Child Friendly Legal Services Scheme.

**Part VII: Contemporary Challenges** discusses the main legal, administrative, and social problems that prevent the full protection of child rights and looks at existing flaws and new issues.

## **PART I: DEFINITION OF A CHILD**

*“...children are the future of the country and if they are not looked after,  
it is the future of the country that is at stake.”*

*-Sampurna Behura v. Union of India<sup>3</sup>*

In a civilised society, the importance of child welfare cannot be over-emphasised. After all, the future well-being of the nation depends on how its children grow and develop.<sup>4</sup> It is, therefore, essential to understand the legal landscape, both national and international, governing childhood in order to ensure that rights of children are effectively protected.

But, before examining the child protection framework, it is crucial to first engage with the meaning of the term “*child*”. At first glance, the definition may seem straightforward, but in reality, it is layered with complexities. This clarity is essential because a range of protective and welfare legislations come into effect only when a person is recognized as a child.

### **A: Defining Childhood**

#### **i. Starting Point of Childhood**

Determining the age at which certain rights are acquired, or protections are lost, is a challenging task. It requires balancing the agency of the child, the rights of parents, and the State’s obligation to safeguard vulnerable individuals.

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<sup>3</sup> Sampurna Behura v. Union of India, (2018) 4 SCC 433.

<sup>4</sup> Lakshmikant Pandey v. Union of India, (1984) 2 SCC 244.

Most rights granted under the International Law apply only after birth; yet the starting point of childhood remains a matter of debate, as it directly affects the rights of the unborn.

*a. International Position*

Article 1 of the Convention on the Rights of the Child (CRC), 1989 defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” The Convention therefore stipulates only an upper age limit, deliberately avoiding a stance on the beginning of childhood. This was intended to maintain consensus among States with differing views on abortion and other pre-birth related issues.<sup>5</sup>

Notably, the earlier Declaration of the Rights of the Child, 1959 had recognized that a child requires protection “*before* as well as after birth”. However, during drafting of the CRC, States disagreed on this aspect. A compromise was reached by recording in the *travaux préparatoires* that this statement should not prejudice the interpretation of Article 1.<sup>6</sup>

Consequently, the CRC leaves it to individual States to determine how the rights of the unborn are treated. As a result, several States chose to make declarations or reservations to clarify their distinct legislative approaches and policy perspectives on the rights of the unborn child.

For instance, the United Kingdom has declared that it “interprets the Convention as applicable only following a live birth.” On the contrary, Argentina has stated that

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<sup>5</sup> Rachel Hodgkin & Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (Fully rev. 3rd ed. 2007) (UNICEF).

<sup>6</sup> *Id.*

“Concerning Article 1 of the Convention, the Argentine Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of 18.”<sup>7</sup>

Thus, while international instruments like the CRC set a broad framework, the absence of consensus on the beginning of childhood has left room for States to adopt diverse interpretations. This flexibility has ensured wider acceptance of the Convention, but it has also resulted in varying protections for the unborn across jurisdictions.

#### *b. Indian Position*

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) in India mirrors the approach of the CRC, by defining a child as “*a person who has not completed eighteen years of age.*”<sup>8</sup>

While the statutory definition of ‘child’ in India aligns with the CRC, judicial interpretation has often gone further. Courts have, on several occasions, grappled with the question of whether the term “child” should also extend to the unborn, particularly when questions of rights and entitlements arise.

In *Pranav Srinivasan v. Government of India*,<sup>9</sup> the issue before Madras High Court was whether the petitioner, whose parents renounced Indian citizenship while he was still a foetus, can claim the right to resume Indian Citizenship under Section 8(2) of the Citizenship Act, 1955. The court held that a foetus of seven and a half months will acquire the status of a child for the purpose of determining the citizenship.

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<sup>7</sup> *Id.*

<sup>8</sup> *The Juvenile Justice (Care and Protection of Children) Act, 2015*, § 2(12), No. 2, Acts of Parliament, 2016 (India).

<sup>9</sup> *Pranav Srinivasan v. Government of India*, 2022 SCC OnLine Mad 9148.

Similarly, in *Prakash v. Arun Kumar Saini*,<sup>10</sup> Delhi High Court considered whether an unborn child of about seven months in the womb should be treated at par with a minor child for the purpose of compensation in a motor accident claim. It was held that the death of a foetus must be considered as the death of a child for the purpose of awarding compensation in motor-accident cases. The Court further referred to *Salmond on Jurisprudence*, noting that, “Though the dead possess no legal personality, it is otherwise with the unborn... A child in its mother’s womb is for many purposes regarded by legal fiction as already born.”

To reinforce this view further, it may be noted that the Allahabad High Court in *Jabbar v. State*<sup>11</sup> elaborated that an unborn child can be regarded as a living entity with a life of its own. Referring to the *Shorter Oxford English Dictionary*, the Court noted that the word “person” is defined both as “an individual human being” and as “the living body of a human being”. It reasoned that an unborn child in the advanced stages of pregnancy undeniably has a life and body, even if dependent on the mother, and therefore may be spoken of as a “person”. In this case, a key issue was whether the evidence, despite delays in lodging the FIR, reliably established the culpability of the appellants for assaulting a pregnant woman, resulting in the premature delivery and subsequent death of her seven-month-old baby. In the absence of any technical definition to the contrary, the Court preferred to adopt the ordinary meaning of the term, thereby including within it both a child already born and one still in the womb, provided its body is sufficiently developed to be recognized as a child.

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<sup>10</sup> *Prakash v. Arun Kumar Saini*, 2010:DHC:689.

<sup>11</sup> *Jabbar v. State*, 1965 SCC OnLine All 337.

These judicial pronouncements demonstrate that, while Indian legislation defines childhood in broad terms similar to CRC, the courts have expanded the concept to include the unborn in certain contexts. By recognizing the foetus as a child for purposes such as citizenship and compensation, the judiciary has highlighted the evolving and context-specific understanding of the term “child”.

## **ii. End of Childhood**

At the other end of the spectrum lies the question of when childhood ends. The CRC establishes 18 years as the upper limit, unless a State’s domestic law specifies an earlier age of majority. This standard provides a broad international benchmark, while still allowing some flexibility for national variations.

Article 24 of the *International Covenant on Civil and Political Rights (ICCPR)* guarantees protection to every child “as a minor”, but does not define the term. The Human Rights Committee, in General Comment No. 17 (1989), clarified that the determination of majority rests with each State, based on its social and cultural conditions.<sup>12</sup>

This flexibility, however, has resulted in considerable diversity across jurisdictions, with different ages prescribed for majority, marriage, employment, and criminal responsibility. Such variations, though reflective of local contexts, often create ambiguity and inconsistency in the recognition and protection of children’s rights.

To illustrate, two key statutes define terms central to the rights and legal status of young persons in India, differently. The Majority Act, 1875 provides that every person domiciled in India attains majority only upon completing 18 years of age, “*and not*

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<sup>12</sup> Rachel Hodgkin & Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (Fully rev. 3rd ed. 2007) (UNICEF).



*before*". In contrast, the JJ Act defines a "child" simply as any person who has not completed 18 years of age, without imposing such a restrictive qualification. The key difference is that the Majority Act, 1875 sets 18 years as the fixed age of attaining majority, whereas the JJ Act defines a "child" as anyone under 18 without treating the age as a strict threshold for legal capacity. Beyond these, other laws employ different thresholds for determining childhood or minority, depending on the subject matter. This diversity underscores the lack of a uniform yardstick across Indian law, which is illustrated more clearly in the table below:

S. No.	Statute	Relevant Provision	Prescribed Age
1	The Majority Act, 1875	Section 3	18 years
2	The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986	Section 2(ii)	Upto 14 years
3	The Prohibition of Child Marriage Act, 2006	Section 2(a)	Upto 18 years for female; Upto 21 years for male
4	The Right of Children to Free and Compulsory Education Act, 2009	Section 2(c)	From 6-14 years
5	The Protection of Children from Sexual Offences, 2012	Section 2(d)	Upto 18 years

6	The Juvenile Justice (Care and Protection Act), 2015	Section 2(12)	Upto 18 years
7	The Bharatiya Nyaya Sanhita, 2023	Section 2(3)	Upto 18 years

The Parliamentary Standing Committee on Labour, Textiles and Skill Development highlighted this issue.<sup>13</sup> It stated that:

*“The Committee note that under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, ‘child’ means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more. The amendment made to the Act in 2016 defines the child falling in the age group of (14-18) years. Under the Right of Children to Free and Compulsory Education Act, 2009, ‘child’ means a male or female child of the age of six to fourteen years. Under the Minimum Wages Act, 1948 vide its amendment in 1986 defined “child” as a person who has not completed his fourteenth year of age. Under the Juvenile Justice (Care and Protection of Children) Act, 2015, ‘child’ means a person who has not completed eighteen years of age. The term ‘adolescent’ is not defined in JJ Act, 2015. The*

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<sup>13</sup> Standing Comm. on Labour, Textiles & Skill Dev., 52nd Report, *National Policy on Child Labour—An assement* (Dec. 2023) (India).

*Committee has also been given to understand that the Rashtriya Kishore Swasthya Karyakaram under the Ministry of Health & Family Welfare defines an adolescent as a person between 10-19 years. The Committee further noted that the employment of children in contravention of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 is a cognizable offence, whereas under the Juvenile Justice (Care and Protection of Children) Act, 2015, it is a non-cognizable offence. **The Committee desire that the discrepancies in the criteria for determination of age of child in the aforesaid Acts and other related Acts as well as the provisions of offence being cognizable/non-cognizable under CALPRA Act/JJ Act be examined with a view to ensuring that these do not lead to any ambiguity as well as delay in justice to the aggrieved children.***

The above discussion shows that the definition of 'child' is not a static or universally agreed concept. While international instruments like the CRC provide a broad framework, national legislations and judicial interpretations shape its contours. In India, although 18 years is generally accepted as the upper limit of childhood, recognition of the rights of the unborn child and multiple legislative definitions have created a complex mosaic. For effective child protection, it is imperative that laws move towards greater consistency and clarity, ensuring that no child, born or unborn, falls through the gaps of definitional ambiguity.

## **B: Chronological Age v. Mental Age**

Human beings differ not only in their circumstances but also in their cognitive development. This raises an important question: should the definition of a “child” also encompass *mental age*? The issue becomes particularly significant in cases where an individual, though biologically and chronologically above eighteen years, is mentally or intellectually equivalent to a child below that age.

In *Ms. Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi)*<sup>14</sup>, the Supreme Court examined this question in the context of the applicability of the POCSO Act. The Court held that extending the term “age” to include “mental age” would amount to rewriting the statute by introducing words not intended by the legislature. It cautioned that such an interpretation could lead to serious anomalies in the absence of clear statutory provisions or guidelines.

Thus, within the existing statutory framework, the term “child” is to be understood strictly with reference to chronological age, and not mental age. This ensures consistent and unambiguous application of the law.

## **C: Determination of Age under the JJ Act, 2015**

The child rights framework establishes a protective regime for children. Accordingly, once a person is found to be a child, a range of protective statutes comes into operation. Thus, determining the age of a person is a crucial and relevant factor.

Section 94 of the JJ Act provides for the *Presumption and determination of age*. It envisions the following situations:

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<sup>14</sup> Ms. Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi), (2017) 15 SCC 133.

*a. Presumption of Age*

Section 94(1) of the JJ Act first provides that when it is obvious from a person's appearance that they are a child, the CWC or JJB may record the estimated age and proceed with the inquiry without waiting for further confirmation.

*b. Determination of Age*

As per section 94(2), where there is reasonable doubt about whether the person is a child, the Committee or Board is required to undertake a formal process of age determination by seeking prescribed documentary or medical evidence.

*(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*

*(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*

*(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board*

The age recorded by the CWC or the JJB to be the age of a person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.<sup>15</sup> Section 94, thus, prescribes a structured hierarchy for age determination where the status of a child is in doubt. This scheme reflects the legislative intent to prioritise contemporaneous documentary records over inherently approximate medical estimates.

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<sup>15</sup> The Juvenile Justice (Care and Protection of Children) Act, § 94(3), No. 2, Acts of Parliament, 2015 (India).

The Supreme Court has consistently reinforced this evidentiary hierarchy. In *Umesh Chandra v. State of Rajasthan*,<sup>16</sup> the Court underscored the evidentiary value of school records and warned against replacing them with uncertain medical opinions, emphasising that age at the time of offence must be assessed through reliable documentary proof. In *Jarnail Singh v. State of Haryana*<sup>17</sup>, the Court extended the age determination procedure under Rule 12 of the erstwhile JJ Rules, 2007 (corresponding to Section 94 of the JJ Act, 2015) to cases involving child victims, holding that the same statutory preference for documents applies equally to victims under POCSO as to juveniles in conflict with law.

The Court in *Rishipal Singh Solanki v. State of Uttar Pradesh*<sup>18</sup> consolidated these principles by holding that ossification tests cannot form the sole basis for age determination and that any margin of error in medical opinion must operate in favour of the child. Most recently, in *Court on its Own Motion v. State of NCT of Delhi*,<sup>19</sup> the Court reaffirmed that bone ossification tests are only approximate and should be resorted to strictly as a last measure, further clarifying the evidentiary hierarchy under Section 94.

Scholarly commentary has also critiqued the approach to age determination. It has been argued<sup>20</sup> that while a relaxed evidentiary standard under Section 94 is justified when determining the juvenility of an accused since the benefit of doubt must protect children, it may not be appropriate in cases where the prosecution must prove the age of a victim as an ingredient of the offence. They highlight the tension between the rights of the accused and the protection of child victims, noting inconsistent

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<sup>16</sup> *Umesh Chandra v. State of Rajasthan*, (1982) 2 SCC 202, at para 17.

<sup>17</sup> *Jarnail Singh v State of Haryana*, (2013) 7 SCC 263, at paras 21-23.

<sup>18</sup> *Rishipal Singh Solanki v. State of Uttar Pradesh*, (2021) 5 SCC 57, at paras 28-32.

<sup>19</sup> *Court on Its Own Motion v. State of NCT Delhi*, (2024) SCC OnLine SC 870, at paras 35-38.

<sup>20</sup> Shivani Misra & Anup Surendranath, *A Case for Different Standards in Age Determination Proceedings*, 34 Nat'l L. Sch. India Rev. 1 (2022).

judicial applications. The authors caution that extending the same lenient evidentiary hierarchy to victims' age can compromise the accused's right to a fair trial, thereby calling for differentiated standards depending on the context.

Taken together, Section 94 and the Supreme Court's jurisprudence underscore that age determination is not a mechanical exercise but a matter central to child rights, where the State acts in its *parens patriae* capacity. It directly impacts whether a child receives the protective shield of juvenile justice or is exposed to the rigors of the regular criminal system.

## **PART II: INTERNATIONAL LAW AND ITS APPLICATION IN INDIA**

*“Real change, enduring change, happens one step at a time.”<sup>21</sup>*

*-Ruth Bader Ginsburg*

*(Former Associate Justice, Supreme Court of the United States)*

Over the past century, there has been a growing international recognition of the unique vulnerability of children as a class, a reality starkly exposed in the aftermath of the World Wars. This has led to the development of a protective framework for child rights, which has gained momentum as an integral part of the broader human rights movement.

This framework not only safeguards children but also affirms their individuality. Children are increasingly recognised as rights-bearing persons in their own capacity, not merely as extensions of their parents or as passive recipients of care. They are seen as “adults in training”,<sup>22</sup> entitled to exercise rights appropriate to their evolving capacities. In this sense, children possess the *right to have rights*<sup>23</sup>. The Constitutional Court of South Africa<sup>24</sup> underscored this principle in following words:

*“If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with*

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<sup>21</sup> California Comm’n on the Status of Women & Girls, *The Notorious RBG* (n.d.), <https://women.ca.gov/the-notorious-rbg/> (last visited Oct. 7, 2025).

<sup>22</sup> UNICEF, ‘*Convention on the Rights of Child*’ <https://www.unicef.org/child-rights-convention> (last visited Oct. 7, 2025).

<sup>23</sup> James D. Ingram, *What is “Right to Have Rights”? Three Images of the Image of Human Rights*, 102 Am. Pol. Sci. Rev. 605 (2008).

<sup>24</sup> *S v M* (Centre for Child Law as Amicus Curiae) [2007] ZACC 18.



*them...Individually and collectively all children have the right to express themselves as independent social beings, to have their own laughter as well as sorrow, to play, imagine and explore in their own way, to themselves get to understand their bodies, minds and emotions, and above all to learn as they grow how they should conduct themselves and make choices in the wide social and moral world of adulthood.”*

This articulation captures the essence of the modern understanding of child rights: children are not merely subjects of protection but active holders of rights who must be given space to grow, learn, and participate in decisions affecting their lives. The international child rights framework, therefore, seeks to strike a balance between safeguarding children’s vulnerabilities and nurturing their agency, ensuring that they are prepared to enter adulthood with dignity, autonomy, and a sense of responsibility.

### **Binding and Non-Binding Instruments: Treaties v. Declarations**

Before tracing the historical development of child rights, it is crucial to understand the different types of international instruments and their legal force. International law primarily distinguishes between binding **treaties** and non-binding **declarations**.

A **treaty**, also known as a Convention, Covenant, or Pact, is a formal, written agreement between states that functions like an international contract. For a treaty to become legally binding on a state, it must typically be **ratified**. Ratification is the formal act by which a state confirms its consent to be bound by the treaty, a process that often requires approval from its national legislature. Once ratified, a treaty creates legally enforceable obligations under the core principle of *pacta sunt*

*servanda* (“agreements must be kept”).<sup>25</sup> States are then required to ensure their domestic laws and policies conform to the treaty’s provisions.

In contrast, a **declaration** is a statement of principles or aspirations adopted by an international body like the UN General Assembly.<sup>26</sup> It is not open for ratification and does not, by itself, create legally binding commitments. Their power is primarily moral and political, setting a common standard or goal for the international community. The Universal Declaration of Human Rights is the most prominent example, established as a “common standard of achievement for all peoples and all nations”.<sup>27</sup>

However, the line can blur over time. The principles within a non-binding declaration can become legally binding when they serve as the foundation for future binding treaties. The Universal Declaration of Human Rights exemplifies this transformation perfectly. Initially adopted as a non-binding statement of principles and aspirations, the UDHR’s provisions were later codified into legally binding instruments—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966.<sup>28</sup>

This demonstrates how declarations can evolve from moral and political statements into enforceable legal obligations, transforming “soft law” into “hard law” that creates binding duties for ratifying states.

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<sup>25</sup> Vienna Convention on the Law of Treaties, 1969, United Nations, [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf), (last visited Sept. 3, 2025).

<sup>26</sup> United Nations Treaty Collection, *Glossary of key terms used in the UN Treaty Collection*, [https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1\\_en.xml](https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml), (last visited Sept. 3, 2025).

<sup>27</sup> United Nations, *Universal Declaration of Human Rights*, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (last visited Aug. 25, 2025)

<sup>28</sup> United Nations, *The Foundation of International Human Rights Law*, <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>, (last visited Sept. 3, 2025).

## **A: The International Legal Framework on Child Rights**

The foundation of modern child rights jurisprudence is built upon a series of international instruments that have established universal standards for the protection and well-being of children. India's engagement with this framework, through ratification and declarations, defines its legal obligations on the global stage and provides the benchmark against which its domestic laws and policies must be measured.

The global consensus on child rights did not emerge fully formed but evolved over the 20th century. As mentioned before, this evolution reflects a profound shift in legal and social philosophy, moving from a perspective of child welfare, where children were seen as passive objects of protection, to a modern rights-based framework that recognizes children as active subjects of international law, endowed with their own distinct set of inalienable rights. This portion traces this critical journey, from the earliest humanitarian declarations to the comprehensive, legally binding conventions that shape child rights law today.

### **i. The 1920s: The Genesis of Child Rights**

The genesis of international child rights law can be traced to the aftermath of World War I, a period that exposed the vulnerability of children to conflict and societal collapse.<sup>29</sup> In post-war Europe and North America, societies grappled with the plight of destitute children, war orphans, and refugee families. Against the backdrop of mass casualties, childhood also acquired symbolic importance as a representation of hope and renewal.

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<sup>29</sup> Save the Children, *Our History*, <https://www.savethechildren.org/us/about-us/why-save-the-children/history>, (last visited Sept. 9, 2025).

During this period, child welfare emerged as a significant transnational concern. To avoid the fragmentation of efforts by various advocacy groups, the Assembly and Council of the League of Nations established the **Child Welfare Committee (CWC)**. This body, functioning in a consultative capacity, advised the League and its member states on measures to strengthen child welfare. Between 1925 and 1936, the CWC played a central role in fostering international collaboration by bringing together experts engaged in child-related legislation.<sup>30</sup>

The Committee undertook studies on critical issues such as the minimum age of marriage for girls, juvenile delinquency, children in institutional care, migrant children, and children born out of wedlock. However, in 1937, the CWC was merged with the Traffic in Women Committee to form the Advisory Commission on Social Issues. This reorganization diluted the specific focus on childhood, subsuming it within a wider array of social concerns.<sup>31</sup>

Yet, despite this institutional shift, the momentum for recognizing children's rights continued. It was in this climate that the Geneva Declaration of the Rights of the Child (1924) emerged, marking the first international articulation of children's rights and laying the foundation for later instruments. The early instruments, while not legally binding, laid the moral and ethical groundwork for future conventions.

**ii. The Geneva Declaration of 1924:** Drafted by Eglantyne Jebb, founder of the Save the Children Fund, and adopted by the League of Nations, the Declaration of the Rights of the Child, commonly known as the "Declaration of Geneva", was the

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<sup>30</sup> Joëlle Droux, *A league of its own? The league of nations' child welfare committee (1919-1936) and International monitoring of child welfare policies*, in *The League of Nations' Work on Social Issues: Visions, Endeavours and Experiments* 89, 89-103 (Magaly Rodríguez García, Davide Rodogno & Liat Kozma eds., United Nations 2016).

<sup>31</sup> *Id.*

first international document to specifically recognize the unique status of children. It was a concise, five-point charter asserting that “mankind owes to the Child the best that it has to give”. Its core principles were<sup>32</sup>:

1. The child must be given the means requisite for its normal development, both materially and spiritually.
2. The hungry child must be fed, the sick child nursed, the backward child helped, the delinquent child reclaimed, and the orphan and waif sheltered and succored.
3. The child must be the first to receive relief in times of distress.
4. The child must be put in a position to earn a livelihood and be protected against every form of exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

## **ii. The 1940s-1950s: Building the Human Rights Foundation**

The post-World War II era saw the establishment of a universal framework for human rights, which included specific provisions for children and laid the groundwork for a more detailed declaration. The experiences of that conflict underscored the urgent necessity of developing international instruments to safeguard civilian populations, with particular attention to vulnerable groups such as children during times of armed conflict.<sup>33</sup>

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<sup>32</sup> Geneva Declaration of the Rights of the Child, <https://www.humanium.org/en/geneva-declaration> (last visited Aug. 3, 2025).

<sup>33</sup> Denise Plattner, *Protection of Children in International Humanitarian Law*, 24 Int'l Rev. Red Cross 375 (1984).

**a. Establishment of UNICEF (1946):** The United Nations General Assembly created the United Nations International Children's Emergency Fund (UNICEF) to provide emergency food, clothing, and healthcare to children in countries devastated by World War II. Though initially a temporary relief fund, it became a permanent part of the UN system in 1953, expanding its mission to address the long-term needs of children in developing countries. The positive contributions of UNICEF were acknowledged on the international stage as early as 1965, when it was awarded the Nobel Peace Prize.<sup>34</sup> Its creation signified a major institutional commitment by the international community to the welfare of children.

**b. The Universal Declaration of Human Rights (1948)<sup>35</sup>:** The UDHR, adopted by the United Nations after World War II, established a universal framework for human rights applicable to all "members of the human family". While not a child-specific instrument, it contained two articles of importance for children. Article 25(2) explicitly proclaimed that "Motherhood and childhood are entitled to special care and assistance" and that "All children, whether born in or out of wedlock, shall enjoy the same social protection". This was a revolutionary principle that sought to abolish the legal and social stigma attached to illegitimacy. Furthermore, Article 26 established the universal right to education, stating that it "shall be free, at least in the elementary and fundamental stages", and that "Elementary education shall be compulsory".

**c. The Declaration of the Rights of the Child (1959)<sup>36</sup>:** Building upon the foundations of the 1924 Declaration and the UDHR, the UN General Assembly

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<sup>34</sup> UNICEF, *For Every Child, Hope: UNICEF@70: 1946-2016*; (2016).

<sup>35</sup> G.A. Res. 217A (III), *Universal Declaration of Human Rights* (Dec. 10, 1948), UN, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Aug. 25, 2025).

<sup>36</sup> G.A. Res. 1386 (XIV), *Declaration of the Rights of the Child*, 14 U.N. GAOR Supp. No. 16, at 19, U.N. Doc. A/4354 (Nov. 20, 1959), reprinted in Univ. of Minn. Hum. Rts. Libr., <https://hrlibrary.umn.edu/instree/k1drc.h> (last visited Oct. 7, 2025).

adopted a more detailed, ten-principle Declaration in 1959. The 1959 Declaration began the transition from a purely welfarist model to one that provided specific entitlements for children, setting the stage for a legally binding treaty in future. It introduced principles that would later become cornerstones of the CRC, such as the mandate that “The best interests of the child shall be the guiding principle” (Principle 7) and the need for “special safeguards and care, including appropriate legal protection, before as well as after birth”. It also articulated the right to a name and nationality (Principle 3), the right to grow up in the care of parents in an atmosphere of affection (Principle 6), and protection against all forms of neglect, cruelty, and exploitation (Principle 9).

However, the 1959 Declaration was not legally binding, and there was no mechanism to compel Member States to implement its principles in practice. Moreover, its approach was still rooted in a welfare-based perspective, treating children primarily as dependents or future investments. It did not recognize their autonomy. As a result, the child continued to be viewed largely as an object of concern rather than as a rights-bearing individual entitled to self-determination.<sup>37</sup>

Well before the adoption of the 1959 Declaration, however, the Constitution of India had already incorporated the essence of its ten principles, along with those contained in the Universal Declaration of Human Rights. Notably, India reaffirmed its commitment by subscribing to the Declaration and taking steps to secure these rights for children. This commitment was reflected in the Third Five-Year Plan (1961–66), which placed greater emphasis on intersectoral coordination of services for children. The Plan sought to integrate health, education, and welfare measures, while also acknowledging, for the first time, that children are human beings with

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<sup>37</sup> Savita Bakhry, *Children in India and their Rights* (Nat'l Hum. Rts. Comm'n, India 2006).

distinct needs requiring special attention.<sup>38</sup>

### iii. The 1960s: The Era of Covenants

This decade was marked by the creation of legally binding treaties that translated the aspirational goals of the UDHR into enforceable rights, including specific protections for children.

**a. The International Covenant on Civil and Political Rights (ICCPR), 1966:** The ICCPR is one of the human rights treaties, which was adopted by the UN General Assembly on 16 December, 1966 and came into force on 23 March, 1976. It was ratified by India on 10 April, 1979. ICCPR contains specific provisions that afford protection to children<sup>39</sup> :

- **Article 24:** This is the primary child-specific article in the ICCPR. It establishes that every child has the right, without discrimination, to “such measures of protection as are required by his status as a minor, on the part of his family, society and the State”. This general protection clause is supplemented by specific rights: the right to be registered immediately after birth, the right to a name, and the right to acquire a nationality.
- **Protections in the Justice System:** The ICCPR provides critical safeguards for children who come into contact with the criminal justice system.
  - **Article 6(5)** explicitly prohibits the imposition of the death penalty for crimes committed by persons below eighteen years of age.
  - **Article 10(2)(b)** mandates that accused juvenile persons shall be separated

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<sup>38</sup> *Id.*

<sup>39</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited Aug. 25, 2025).



from adults and brought as speedily as possible for adjudication.

- **Article 10(3)** further requires that the penitentiary system for juvenile offenders shall involve segregation from adults and treatment “appropriate to their age and legal status”.
- **Article 14(4)** stipulates that criminal procedure for juveniles shall take account of their age and the “desirability of promoting their rehabilitation”.

**b. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966:** The ICESCR focuses on the material and social well-being of individuals. It was adopted on 16 December, 1966 and came into force on 03 January, 1976. India ratified the ICESCR on April 10, 1979. While the Covenant protects rights for all, it contains crucial provisions that form the bedrock of socio-economic protections for children.

- **Article 10 (Protection of the Family, Mothers, and Children)<sup>40</sup>:** This is the core child-protective article in the ICESCR. It mandates that:
  - The “widest possible protection and assistance” should be accorded to the family, particularly while it is responsible for the care and education of dependent children.
  - “Special measures of protection and assistance” must be taken on behalf of all children and young persons without any discrimination.
  - Children must be protected from “economic and social exploitation”.
  - Employment of children in work that is “harmful to their morals or health or dangerous to life” should be punishable by law.

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<sup>40</sup> International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last visited Aug. 25, 2025).

- States must set age limits below which paid child labour is prohibited and punishable.
- **Other Key Protections for Children<sup>41</sup>:**
  - **Right to an Adequate Standard of Living (Article 11):** This article recognizes the right of everyone, including children, to an adequate standard of living, which encompasses adequate food, clothing, and housing. This provides the basis for state obligations regarding child nutrition and shelter.
  - **Right to Health (Article 12):** The Covenant recognizes the right to the “highest attainable standard of physical and mental health.” For children, this includes state measures for “the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child”.
  - **Right to Education (Article 13):** This article is fundamental for child development. It requires states to recognize the right of everyone to education and mandates that “primary education shall be compulsory and available free to all”.

#### **iv. The 1970s: Addressing Labour and Discrimination**

International law in this period began to address specific areas of vulnerability and discrimination affecting children. It acknowledged that their well-being could not be secured through general human rights guarantees alone, but required tailored protections. This growing recognition marked a shift towards treating children as a distinct category within international law, deserving of focused attention and safeguards.

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<sup>41</sup> *Id.*

**a. ILO Convention No. 138 (Minimum Age Convention, 1973):** This convention requires ratifying states to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work. The minimum age should not be less than the age of completion of compulsory schooling, which in India's case is 14 years.<sup>42</sup>

**b. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979:** CEDAW, often described as the international bill of rights for women, is a crucial instrument for protecting the rights of the girl child. India ratified CEDAW on July 9, 1993. The Convention's significance lies in its "life-cycle" approach, recognizing that discrimination against women often begins in girlhood and that ensuring women's rights requires protecting girls' rights from birth.<sup>43</sup>

- **Applicability to Girls:** CEDAW's comprehensive definition of "discrimination against women" in Article 1 applies to any distinction, exclusion, or restriction made on the basis of sex, which impairs the enjoyment of human rights. This definition is inherently applicable to girls.
- **Key Articles:** Several articles are particularly vital for safeguarding the rights of the girl child<sup>44</sup>:
  - **Article 5** requires States Parties to take all appropriate measures to modify social and cultural patterns of conduct to eliminate prejudices and practices based on stereotyped roles for men and women. This directly targets the root causes of gender inequality that affect girls' development and

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<sup>42</sup> *The Child Labour (Prohibition and Regulation) Act, 1986*, § 3(1), No. 61, 1986 (India).

<sup>43</sup> Dubravka Šimonović, *Convention on the elimination of all forms of discrimination against women: Introductory Note*, Audiovisual Library of Int'l Law (Dec 18, 1979), <https://legal.un.org/avl/ha/cedaw/cedaw.html> (last visited Aug. 25, 2025).

<sup>44</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/sites/default/files/cedaw.pdf> (last visited Aug. 25, 2025).

opportunities.

- **Article 10** mandates the elimination of discrimination against women in the field of education to ensure equal rights. This includes access to the same curricula, elimination of stereotyped concepts in textbooks, and measures to reduce female student drop-out rates.
- **Article 16(2)** is of paramount importance as it explicitly states that “The betrothal and the marriage of a child shall have no legal effect”, and requires states to take all necessary action, including legislation, to specify a minimum age for marriage and make registration of marriages compulsory. This provides a direct international legal basis for combating child marriage.

#### **v. The 1980s: The UN Convention on the Rights of the Child (UNCRC)**

The cornerstone instrument in this domain is the United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989. The Convention finds its roots in various foundational United Nations human rights documents, such as the Charter, the Universal Declaration of Human Rights and the International Covenants, and conceptualises these universally accepted principles into child specific norms. It builds on the ten principles of the 1959 Declaration of the Rights of the Child and develops them into 54 Articles. Of these, 41 Articles are devoted specifically to children’s rights, encompassing nearly every dimension of a child’s life.

The Convention represents a paradigm shift, reconceptualizing children as autonomous holders of rights rather than passive recipients of protection. It “is the most complete statement of children’s rights ever produced and is the most

widely-ratified international human rights treaty in history.”<sup>45</sup> The Government of India ratified the Convention on December 11, 1992. Furthermore, to oversee the implementation of children's rights, the CRC established the *Committee on the Rights of the Child*, an international body of independent experts. The Committee works to promote awareness and understanding of the treaty's principles and provisions, while also reviewing how effectively states are fulfilling their obligations.<sup>46</sup>

The jurisprudential core of the UNCRC is anchored in four guiding principles that are intended to inform the interpretation and implementation of all other rights<sup>47</sup>:

- **Non-discrimination (Article 2):** This principle mandates that State Parties respect and ensure the rights set forth in the Convention for each child within their jurisdiction without discrimination of any kind, irrespective of the child's or their parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. It establishes the universality and indivisibility of child rights.
- **Best Interests of the Child (Article 3):** This principle requires 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. It serves as a procedural and substantive rule, guiding decision-making in all spheres affecting children.
- **Right to Life, Survival, and Development (Article 6):** This article

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<sup>45</sup>UNICEF UK, <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/> (last visited Oct 8, 2025).

<sup>46</sup> Dr. Savita Bakhry, *Children in India and their Rights*, Nat'l Hum. Rts. Comm'n (2006) <https://nhrc.nic.in/sites/default/files/ChildrenRights.pdf>.

<sup>47</sup> UN Comm. on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 12 (2003).

recognizes the inherent right to life of every child and imposes a positive obligation on State Parties to ensure, to the maximum extent possible, the survival and development of the child. Development is understood holistically, encompassing the physical, mental, spiritual, moral, psychological, and social dimensions.

- **Respect for the Views of the Child (Participation) (Article 12):** This principle guarantees the right of every child who is capable of forming his or her own views to express those views freely in all matters affecting them, with the views of the child being given due weight in accordance with their age and maturity. This right transforms the child from a passive subject to an active participant in decisions concerning their life.

The Convention's detailed provisions cover the responsibilities of the state and the role of the family, and in general reinforce rights and responsibilities set out in other human rights instruments while adapting their application to the particular circumstances of children.

- **Regarding the role of the family,**<sup>48</sup> the Convention provides the right of every child not to be separated from their parents against their will, except when necessary for their well-being (Article 9). Parents have the primary responsibility for a child's upbringing, with states providing "appropriate assistance" (Article 18). Children are also guaranteed the right to a name and nationality from birth (Article 7).
- **Some of the key responsibilities of the state include**<sup>49</sup>:

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<sup>48</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last visited Aug. 25, 2025).

<sup>49</sup> *Id.*

- States shall protect children from all forms of physical or mental violence, injury, abuse, and neglect, including sexual exploitation (Article 19).
- States will provide parentless children with suitable alternative care (Article 20).
- Disabled children shall have the right to special treatment, education, and care (Article 23).
- States will ensure the right of the child to the enjoyment of the highest attainable standard of health (Article 24).
- States shall facilitate the reunification of families by permitting travel into or out of their territories (Article 10).
- States shall protect children from economic exploitation and from work that may interfere with their education or be harmful to their health or well-being (Article 32).
- **A number of provisions relate to the application to children of the State legal and penal system<sup>50</sup>:**
  - Capital punishment or life imprisonment shall not be imposed for crimes committed before the age of 18 (Article 37(a)).
  - Children in detention shall be separated from adults, and they shall not be tortured or suffer cruel or degrading treatment (Article 37(b) and (c)).
  - Children involved in infringements of the penal law shall be treated in a way that promotes their sense of dignity and aims at reintegration into society (Article 40).

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<sup>50</sup> *Id.*

- **Some other highlights from the Convention<sup>51</sup>:**

- Primary education shall be free and compulsory. Discipline in schools shall respect the child's dignity. Education should prepare the child for life in a spirit of understanding, peace, and tolerance (Articles 28 and 29).
- Children shall be afforded time for rest, play, and equal opportunities for cultural and artistic activities (Article 31).
- All efforts shall be made to eliminate the abduction and trafficking of children (Article 35).
- No child under 15 shall take any part in hostilities (Article 38).
- Children of minority and indigenous populations shall freely enjoy their own culture, religion, and language (Article 30).

## **vi. The 1990s: Tackling the Worst Forms of Child Labour**

The global community focused on eliminating the most dangerous and exploitative forms of child labour. Attention was given to practices that deprived children of their childhood, hindered their education, and exposed them to harm.

### **a. ILO Convention No. 182 (Worst Forms of Child Labour Convention, 1999):**

This is the first universally ratified ILO convention in history, signifying a global consensus on the urgency of its mandate.<sup>52</sup> It requires states to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. These forms are defined as:

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<sup>51</sup> *Id.*

<sup>52</sup> ILO Conventions on Child Labour, INT'L LABOUR ORG., <https://www.ilo.org/international-programme-elimination-child-labour-ipecc/what-child-labour/ilo-conventions-child-labour> (last visited Aug. 20, 2025).



- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and forced or compulsory labour, including forced recruitment for use in armed conflict.
- The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances.
- The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs.
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children (hazardous work).

## **vii. The 2000s and Beyond: Strengthening Protection and Procedure**

Human rights treaties are frequently supplemented by “Optional Protocols”, which may establish specific procedures for implementing the treaty or focus on a related substantive issue. These Protocols are independent treaties in themselves and are available for signature, accession, or ratification by states that are already party to the main treaty.<sup>53</sup>

### **3.7.1 Optional Protocols to the UNCRC (2000):** Two key protocols were adopted.

- **Optional Protocol on the Involvement of Children in Armed Conflict (OPAC)<sup>54</sup>:** This protocol raises the age for direct participation in hostilities to 18 and prohibits compulsory recruitment for anyone under 18. India ratified OPAC on November 30, 2005. This ratification obligates India to take all feasible

<sup>53</sup> *What Is an Optional Protocol?*, U.N. Entity for Gender Equality & the Empowerment of Women, <https://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm> (last visited Aug. 25, 2025).

<sup>54</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, May 25, 2000, 2173 U.N.T.S. 227, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children> (last visited Aug. 25, 2025).

measures to prevent the recruitment and use of children by armed groups and to ensure its national armed forces do not deploy persons under 18 for direct participation in hostilities.

- **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC)<sup>55</sup>:** This protocol requires states to criminalize and prohibit the sale of children, child prostitution, and child pornography. India ratified OPSC on August 16, 2005. This signals a strong legal commitment to combatting these severe forms of child exploitation through domestic penal law.

**3.7.2 Optional Protocol on a Communications Procedure (OPIC), 2012<sup>56</sup>:** This protocol establishes a mechanism allowing children, their representatives, or others to submit complaints directly to the UN Committee on the Rights of the Child regarding violations of their rights under the UNCRC or the first two protocols, provided domestic remedies have been exhausted. India has neither signed nor ratified this protocol.<sup>57</sup>

India's acceptance of the substantive norms in OPAC and OPSC demonstrates a willingness to align its domestic legal framework with international standards on what constitutes child exploitation and abuse. However, its non-ratification of OPIC, the procedural protocol, indicates a reluctance to subject its domestic implementation of these rights to international scrutiny and individual complaint mechanisms. This selective engagement reinforces India's legal tradition, where international law is

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<sup>55</sup> *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, Jan. 18, 2002, 2171 U.N.T.S. 227, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> (last visited Aug. 25, 2025).

<sup>56</sup> *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, Dec. 19, 2011, 1752 U.N.T.S. 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications> (last visited Aug. 25, 2025).

<sup>57</sup> *OPIC - OPTIONAL PROTOCOL ON A COMMUNICATIONS PROCEDURE*, <https://opic.childrightsconnect.org/ratification-status/> (last visited Aug. 25, 2025).

incorporated on the state's own terms. It positions the Indian judiciary as the sole arbiter for children seeking redress for rights violations, precluding any recourse to an international quasi-judicial body.

## **B: The Application of International Law in India**

The principles and obligations outlined in international treaties do not automatically become enforceable law within India. A specific constitutional and jurisprudential pathway exists for their absorption into the domestic legal system. This section explains this process, highlighting the doctrine of dualism, the pivotal role of Parliament under Article 253, and the increasingly significant function of the judiciary in interpreting and applying international norms.

### **i. The Dualist State Doctrine and Article 253 of the Constitution**

India's legal system is characterized by a dualist approach to international law. This doctrine posits that international law and domestic law are two separate and distinct legal orders.<sup>58</sup> Consequently, for an international treaty to be ratified by the executive to have legal effect and be enforceable by domestic courts, it must be explicitly incorporated into the domestic legal framework through legislation enacted by Parliament.

The primary constitutional mechanism for this incorporation is **Article 253** of the Constitution of India. It states:

*“Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing*

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<sup>58</sup> Gramophone Company of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534.

*any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”*

The significance of Article 253 is twofold:

1. **It affirms the dualist doctrine:** It makes clear that parliamentary action is the designated route for treaty implementation.
2. **It grants overriding legislative power:** The non-obstante clause (“Notwithstanding anything...”) gives Parliament the authority to legislate on any subject, including those on the State List, if such legislation is necessary to fulfill an international obligation. This ensures that India’s federal structure does not impede its ability to comply with its international commitments. The Supreme Court affirmed this principle in cases like *Maganbhai Ishwarbhai Patel v. Union of India*<sup>59</sup>, observing that the making of a treaty is an executive act, but if the treaty or agreement requires an alteration to municipal law, its provisions cannot be enforced by a municipal court unless they are incorporated into domestic law through parliamentary legislation.

## **ii. The Supreme Court’s Jurisprudence**

While Parliament holds the formal power of incorporation, the Supreme Court has carved out a dynamic role for international law in its jurisprudence. The Court’s approach has evolved significantly since independence. The Court has used international law as a persuasive source to interpret domestic law.<sup>60</sup>

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<sup>59</sup> *Maganbhai Ishwarbhai Patel v. Union of India*, 1969 SCR (3) 254.

<sup>60</sup> Prabhash Ranjan, *How India has Approached Customary International Law*, THE INDIAN EXPRESS (last visited Aug. 19, 2025), <https://indianexpress.com/article/opinion/columns/how-india-has-approached-customary-international-law-7716742/>.

This has led to the development of key judicial doctrines<sup>61</sup>:

- **Filling Legislative Gaps:** The most significant development has been the Court's willingness to use international conventions to fill lacunae in domestic law. The established principle is that in the absence of any contrary domestic legislation, the provisions of international conventions to which India is a party can be read into the fundamental rights guaranteed by the Constitution, particularly Article 21. This allows the judiciary to enforce international norms even without specific parliamentary enactment.
- **Harmonious Construction:** The courts have consistently held that while domestic law will prevail in a direct conflict with international law, they must, wherever possible, adopt an interpretation that is in harmony with India's international obligations. This principle of harmonious construction seeks to avoid placing the state in breach of its treaty commitments.

The transformative impact of international law on India's domestic jurisprudence is evident in how the Supreme Court has applied conventions like CEDAW and the ICCPR to expand fundamental rights, as seen in these landmark cases:

- ***Vishaka v. State Of Rajasthan (1997)***<sup>62</sup>: This case stands as the quintessential example of judicial activism serving as a conduit for international law. The Court was confronted with the pervasive problem of sexual harassment of women at the workplace, an issue for which there was no specific domestic legislation. In this legislative void, the Court turned directly to international law. It noted that the provisions of the UNCRC and CEDAW are significant for interpreting the

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<sup>61</sup> Vayuna Gupta, *Using International Law in Domestic Indian Courts*, Vol. 54, International Law and Politics, 1077, (2022) <https://www.nyujilp.org/wp-content/uploads/2022/10/Gupta.pdf>.

<sup>62</sup> *Vishaka v. State Of Rajasthan*, (1997) 6 SCC 241.

constitutional guarantees of gender equality and the right to work with human dignity. The Court explicitly stated that in the absence of domestic law, it was necessary to rely on international conventions and norms to formulate effective measures. Consequently, the Court laid down a set of binding and enforceable guidelines, known as the “Vishaka Guidelines”, which were to be treated as law until Parliament enacted a suitable statute. By creatively interpreting Article 21, the Court effectively bypassed the legislative inertia that had left a critical human rights issue unaddressed. This eventually led to the enactment of the PoSH Act, 2013.

- **Jolly George Verghese v. The Bank Of Cochin<sup>63</sup>:** In this case, Justice Krishna lyer clarified that while international covenants do not become part of municipal law automatically upon ratification, they must inform the interpretation of domestic law. The court held that, in the event of any ambiguity, “the national rule is to be interpreted in accordance with the State’s international obligations”, effectively using the international norm to ensure that the application of domestic law is fair, just, and reasonable.
- **Other Precedents:**
  - In ***Chairman, Railway Board v. Chandrima Das (2000)***<sup>64</sup>, the Supreme Court read fundamental rights in consonance with the UDHR and CEDAW to extend the protection of Article 21 to a non-citizen who was a victim of rape.
  - In ***National Legal Services Authority v. Union of India (2014)***<sup>65</sup>, the Court referred extensively to the UDHR, ICCPR, and the Yogyakarta Principles to

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<sup>63</sup> Jolly George Verghese v. The Bank Of Cochin, 1980 SCR (2) 913.

<sup>64</sup> Chairman, Railway Board v. Chandrima Das, 2000 (2) SCC 465.

<sup>65</sup> National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

recognize transgender persons as a “third gender” and to affirm their fundamental rights.

This approach is not limited to treaties. The Court has also held that customary international law, unless contrary to domestic law, is deemed to be incorporated into India’s domestic legal regime, as seen in *Vellore Citizens Welfare Forum v. Union of India*.<sup>66</sup> More recently, in *M.K. Ranjitsinh v. Union of India*,<sup>67</sup> the Court recognized the “right to be free from the adverse effects of climate change” as a fundamental right, drawing heavily on India’s obligations under international instruments like the United Nations Framework Convention on Climate Change (UNFCCC) to interpret and expand the scope of Article 21.

This judicial approach ensures that the state’s international commitments are not treated as mere policy directives but are integrated into the domestic legal framework. The Court’s expansive interpretation of Article 21 of the Constitution, often initiated through Public Interest Litigation (PIL), has been the primary mechanism to enforce these international principles, thereby ensuring that fundamental rights are interpreted in line with evolving global standards.

### **iii. Using International Law in Domestic Dispute Resolution**

The judiciary’s active engagement with international law has created a clear and practical pathway for its use in domestic dispute resolution, in the realm of child rights. This approach is not about supplanting domestic law but enriching and informing it with global standards. Several key mechanisms have been instrumental in this process:

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<sup>66</sup> *Vellore Citizens Welfare Forum v. Union of India*, 1996 (5) SCC 647.

<sup>67</sup> *M.K. Ranjitsinh v. Union of India*, 2024 INSC 280.

- **International Law as an Interpretive Tool:** In situations where a domestic statute is ambiguous, silent, or open to multiple interpretations, courts can turn to ratified international conventions to clarify legislative intent. This interpretive function is particularly crucial in a rapidly changing world. As new challenges to child rights emerge, such as online exploitation or the complexities of surrogacy, international conventions provide a principled framework for judges to interpret existing laws or identify gaps where new legislation is needed. It prevents domestic law from becoming static and ensures it remains dynamic and responsive to global standards of child protection. For example, when interpreting provisions of the JJ Act courts have used UNCRC principles to guide decisions on matters ranging from the age of juvenility to the standards of care in observation homes.<sup>68</sup>
- **Informing and Substantiating Constitutional Rights:** The fundamental rights enshrined in the Indian Constitution, such as the Right to Life and Personal Liberty under Article 21, are broadly worded. International principles have been crucial in giving these rights concrete meaning for children. The UNCRC's core principle of the "best interests of the child" has been judicially read into Article 21, transforming it from a right of mere survival into a right to a dignified life encompassing development, health, and protection.<sup>69</sup> This infusion of international principles is a powerful example of 'transformative constitutionalism', where the Constitution is read as a living instrument for social justice. For children, who lack a political voice, this judicial activism is vital. The Supreme Court has drawn upon these standards to set guidelines for inter-country adoption<sup>70</sup> and to ensure the rights of marginalized children,

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<sup>68</sup> Salil Bali v. Union of India, (2013) 7 SCC 705.

<sup>69</sup> Laxmi Kant Pandey v. Union of India, AIR 1984 SC 469.

<sup>70</sup> *Id.*



demonstrating how the ‘best interests’ principle can be invoked to protect the most vulnerable.<sup>71</sup>

- **Public Interest Litigation (PIL) as a Tool for Enforcement:** Public Interest Litigation (PIL) under Articles 32 and 226 of the Constitution has filled this gap, becoming the primary vehicle for addressing systemic failures in the protection of child rights. This mechanism allows the judiciary to move beyond individual grievances and address structural problems affecting large groups of children. In doing so, the courts sometimes take on a quasi-legislative or administrative role, not only identifying rights violations but also creating detailed schemes and appointing committees to monitor their implementation, thereby ensuring that judicial pronouncements translate into tangible change on the ground.<sup>72</sup>
- **Ensuring Executive Accountability:** When the Government of India ratifies an international treaty, it makes a commitment on the world stage. The judiciary, through its interpretive role, ensures this commitment translates into domestic action. This mechanism effectively creates a form of public law estoppel: by ratifying a treaty, the executive makes a promise to the international community and its own citizens. The judiciary then holds the government to this promise, ensuring that ratification is not a mere diplomatic formality but a commitment that has real domestic consequences. This prevents a situation where the government speaks the language of rights on the international stage but fails to act on them at home, as seen in landmark cases where the court has issued directives on child labour based on India’s commitments to the UNCRC and ILO conventions.<sup>73</sup>

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<sup>71</sup> Gaurav Jain v. Union of India, (1997) 8 SCC 114.

<sup>72</sup> Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1.

<sup>73</sup> M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756.

In essence, the Indian judiciary has acted as a vital bridge, connecting the norms of international child rights law with the realities of domestic legal practice. Through the strategic use of constitutional interpretation and procedural innovations like PIL, the courts have carved out a space for international law to influence policy, guide statutory interpretation, and ensure that the state's commitments to its children are not merely aspirational but are made tangible and enforceable. This dynamic jurisprudence provides a robust framework for any practitioner seeking to advance child rights within the Indian legal system.

### **Key International and Regional Instruments**

The following tables provide a consolidated overview of the key international and regional legal instruments relating to the rights of the child. They indicate the year in which each instrument was formulated, along with the institution or body responsible for its development. This framework allows for a clearer understanding of the progressive evolution of child rights at both the global and regional levels.

#### **a. International Legal Instruments**

<b>Sl. No.</b>	<b>International Legal Instruments</b>	<b>Year</b>	<b>Institutions</b>	<b>Core Obligation for State Parties</b>	<b>India's Status</b>
1.	Geneva Declaration of the Rights of the Child	1924	League of Nations	First international declaration on the rights of the child. The Declaration articulated that all people owe children the right to: means for their development; special needs in times of need, priority for relief; economic	Supported (non-binding, declaratory)

				freedom and protection from exploitation; and an upbringing that instils social consciousness and duty.	
2.	Declaration of the Rights of the Child	1959	United Nations	The Declaration recognises among other rights, children's right to education, play, a supportive environment and healthcare.	Accepted (non-binding, declaratory)
3.	ILO Convention No. 138 (Minimum Age Convention, 1973)	1973	International Labour Organization	Set a minimum age for employment not less than the age of completion of compulsory schooling.	Ratified in 2017
4.	Declaration on the Protection of Women and Children in Emergency and Armed Conflict	1974	United Nations	Concerned about the vulnerability of women and children in emergency and conflict situations, the General Assembly calls on Member states to observe the Declaration which prohibits attacks against or imprisonment of civilian women and children, and upholds the sanctity of the women and children during armed conflict.	Supported (non-binding, declaratory)
5.	The Convention on Civil Aspects of International Child Abuse (Hague Convention)	1980	Hague Conference on Private International Law	Protects children from international abduction by a parent.	Not a party

6.	UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)	1985	United Nations	The Beijing Rules detail the principles of a justice system that promotes the best interests of the child, including education and social services and proportional treatment for child detainees.	Accepted
7.	Convention on the Rights of the Child	1989	United Nations	Ensure all rights to children under 18 without discrimination.	Ratified but made a declaration on the progressive implementation of socio-economic rights, subject to available resources
8.	Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption	1993	Hague Conference on Private International Law	The Hague Convention protects children and their families against the risks of illegal, irregular, premature or ill-prepared inter-country adoptions. The core aim is to prevent child trafficking, abduction, and exploitation during intercountry adoption, creating a framework for cooperation between countries and ensuring consistent procedures and standards.	Not a party
9.	ILO Convention No. 182 (Worst Forms of Child	1999	International Labour Organiz	The Convention calls for the immediate prohibition and elimination of any form of work	Ratified in 2017

	Labour Convention, 1999)		ation	that is likely to harm the health, safety or morals of children. UNICEF has been working with the ILO since 1996 to promote the ratification of international labour standards and policies concerning child labour.	
10.	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts	2000	United Nations	Prohibit compulsory recruitment and direct participation in hostilities of persons under 18.	Ratified without reservations
11.	Optional Protocol to the Convention on the Rights of the Child on a communications procedure	2012	United Nations	Allow children/representatives to submit complaints to the UN Committee on the Rights of the Child	Not Ratified
12.	Optional Protocol to the convention on the Rights of the Child on the sale of children, child prostitution and child pornography	2000	United Nations	Prohibit and criminalize the sale of children, child prostitution, and child pornography.	Ratified without reservations

## **b. Regional Legal Instruments**

<b>SI No.</b>	<b>Regional Legal Instruments</b>	<b>Year</b>	<b>Institution</b>
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1.	The European Convention on the Recognition and Enforcement of Decisions in matters of Custody of Children and Restoration of the Custody of Children	1980	Council of Europe
2.	The Inter-American Convention on Conflict of Laws concerning the Adoption of Minors	1984	Organization of American States
3.	The Inter-American Convention on the International Return of Children	1989	Organization of American States
4.	African Charter on the Rights and Welfare of Children	1990	Organisation of African Unity
5.	Cape Town Annotated Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa	1997	United Nations International Children's Emergency Fund
6.	Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia	2002	South Asian Association for Regional Cooperation
7.	Convention on Preventing and Combating Trafficking in Women and children for Prostitution	2002	South Asian Association for Regional Cooperation
8.	Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	2007	Council of Europe

### **PART III: THE CONSTITUTIONAL VISION FOR CHILD RIGHTS**

*“The Indian Constitution is first and foremost a social document.”<sup>74</sup>*

*-Granville Austin*

The Constitution of India is not merely a charter of governance. It is a social document that embodies the aspirations of a nation striving for a new order based on justice, liberty, equality, and fraternity. The Preamble, the soul of the Constitution, lays down these foundational promises.

The constitutional vision for children is a direct expression of these promises, reflecting the framers’ understanding that the future of the republic is inextricably linked to the well-being, development, and empowerment of its youngest citizens. In case of *Sampurna Behura v. Union of India*,<sup>75</sup> it was observed that “children are the future of the country and if they are not looked after, it is the future of the country that is at stake.”

The law grants special protection to children due to their unique vulnerability and development needs. This necessitates a distinct framework of rights and protections that go beyond the general rights guaranteed to all persons. This framework is not concentrated in a single chapter but is woven throughout the constitutional fabric, spanning Fundamental Rights (Part III), Directive Principles of State Policy (Part IV), and Fundamental Duties (Part IV-A). This shows great anxiety on part of Constitution makers in securing the interest and welfare of children.<sup>76</sup>

This part undertakes a comprehensive analysis of this constitutional vision. It

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<sup>74</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, p.50 (1966), <https://www.bbau.ac.in/Docs/FoundationCourse/TM/MPDC405/GRANVILLECONSTITU.pdf>.

<sup>75</sup> *Sampurna Behura v. Union of India*, (2018) 4 SCC 433.

<sup>76</sup> *Laxmikant Pandey v. Union of India*, (1984) 2 SCC 244.

navigates from the foundational principles of equality and special protection under Articles 14 and 15(3), through the expansive right to life, dignity, and holistic development guaranteed by Article 21, to the specific, substantive rights related to education (Article 21A) and protection from exploitation (Articles 23 and 24). It further examines the role of the Directive Principles, particularly Articles 39, 45, and 47, as the “conscience of the Constitution”, guiding state policy and judicial interpretation. Finally, it considers the duty imposed on parents and guardians by Article 51A.

### **A: Foundational Principles of Equality and Special Protection**

The principle of equality is the bedrock of the Indian constitutional framework. However, the framers were acutely aware that formal equality, or treating everyone the same, would perpetuate existing inequalities. For a group as uniquely situated as children, a more nuanced approach was required - one that balanced the prohibition against discrimination with a positive mandate for special protection. This section examines the foundational provisions of Articles 14 and 15(3), which together create a robust legal basis for child-centric laws and policies.

#### **i. Equality under Article 14: Recognizing Children as a Special Class**

Article 14 of the Constitution guarantees that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.<sup>77</sup> This provision contains two distinct and complementary concepts that are critical to understanding child rights.

The judiciary has operationalized this principle through the “reasonable classification” test. In the landmark case of *State of West Bengal v. Anwar Ali Sarkar*

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<sup>77</sup> INDIA CONST. art. 14.



(1952)<sup>78</sup>, the Supreme Court held that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. For a classification to be valid, it must be founded on an intelligible differentia (a discernible difference) that distinguishes persons or things that are grouped together from others left out of the group, and this differentia must have a rational relation to the object sought to be achieved by the statute in question.

Children, by reason of their physical and mental immaturity, clearly form a distinct class. Legislation that provides for special procedures for children in conflict with the law (Juvenile Justice Act), prohibits their employment in certain industries (Child Labour Act), or mandates their education (Right to Education Act) is therefore not a violation of Article 14 but a fulfillment of its mandate for equal protection.

The constitutional vision for children is thus fundamentally rooted in substantive, not formal, equality. The inclusion of “equal protection of the laws” is the primary source of the State’s power and obligation to act affirmatively in favour of children. This means that laws providing special protections for children are not a departure from the principle of equality but are, in fact, essential for its actualization. Article 14 itself validates and mandates this special treatment, which is then given more concrete form in other constitutional provisions.

## **ii. Article 15(3): The Constitutional Sanction for Protective Discrimination**

While Article 14 provides the general principle of equality, Article 15 gives it a specific application. Article 15(1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, or place of birth. However,

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<sup>78</sup> State of West Bengal v. Anwar Ali 1952 SCR 284.

recognizing the need for affirmative action, the framers included Article 15(3), which states: “Nothing in this article shall prevent the State from making any special provision for women and children”.<sup>79</sup>

It is crucial to understand that Article 15(3) is not an exception to the rule of non-discrimination laid down in Article 15(1). As the Supreme Court has clarified, Article 15 is a particular application of the general right of equality provided for in Article 14.<sup>80</sup> Therefore, Article 15(3) should be read as an emphatic declaration that enables the State to take positive measures to remedy the historical and structural disadvantages faced by women and children, thereby achieving the substantive equality envisioned in Article 14.

The Supreme Court’s decision in *Gaurav Jain v. Union of India* (1997)<sup>81</sup> exemplifies this. The case concerned the rights of children of sex workers. The petitioner had asked for separate schools and hostels for these children. The Court rejected this plea, stating that such segregation would not be in the interest of the children or society at large. Instead, it invoked Article 15(3) to issue directions for their care, protection, and rehabilitation, emphasizing their right to be integrated into the mainstream of social life without stigma. This judgment represents a crucial move towards a vision of empowerment and social integration, aligning Article 15(3) with the core principles of dignity and equal opportunity.

Similarly, the courts have also intervened to safeguard the rights of children whose parents belong to other vulnerable groups, such as incarcerated persons. The arrest

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<sup>79</sup> INDIA CONST. art. 15(3).

<sup>80</sup> *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

<sup>81</sup> *Id.*

or imprisonment of parents can have a grave and lasting impact on children.<sup>82</sup> For children residing in prison with their mothers, the Supreme Court in *R.D. Upadhyay v. State of Andhra Pradesh*<sup>83</sup> issued comprehensive guidelines to ensure these children are not considered undertrial prisoners or convicts. The Court directed that such children must be provided basic amenities including food, shelter, healthcare, education, and regular visitation rights as a matter of entitlement.

While judicial attention has largely focused on children residing inside prisons, there remains a limited data and policy regarding children outside prison whose parents are arrested.<sup>84</sup> Existing research suggests that these children often suffer from financial insecurity, disrupted education, and adverse physical and mental health outcomes. Importantly, in case<sup>85</sup> addressing caste-based prison segregation, courts have reiterated that the “separate but equal” doctrine has no place in Indian constitutional law. Legal commentary<sup>86</sup> thus maintain that both children living inside prisons and those outside, separated from their incarcerated parents, are entitled to non-discrimination, dignity, and state support for their holistic development.

## **B: The Right to Life, Dignity, and Holistic Development (Article 21)**

Article 21 of the Constitution stands as the bulwark of individual liberty and the fountainhead from which a multitude of child rights have been judicially derived. Its transformation from a negative restraint on the state to a positive source of

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<sup>82</sup> Prayas, A Field Action Project of Tata Institute of Social Sciences (Centre for Criminology and Justice, School of Social Work), *Policies and Programmes for Children of Prisoners in India A Policy Document* (Sept. 30, 2021) [https://tiss.ac.in/uploads/files/Policies\\_and\\_Programmes\\_for\\_Children\\_of\\_Prisoners\\_-\\_A\\_Policy\\_Document.pdf](https://tiss.ac.in/uploads/files/Policies_and_Programmes_for_Children_of_Prisoners_-_A_Policy_Document.pdf).

<sup>83</sup> *R.D. Upadhyay v. State of Andhra Pradesh*, 2006 INSC 225.

<sup>84</sup> Neelam Sukhramani and Shivangi Gupta, *Children of Incarcerated Parents*, INDIAN PEDIATRICS (Oct. 8, 2025) <https://indianpediatrics.net/mar2020/mar-199-203.htm>.

<sup>85</sup> *Sukanya Shantha v. Union of India*, 2024 INSC 753.

<sup>86</sup> Neelam Sukhramani and Shivangi Gupta, *Children of Incarcerated Parents*, INDIAN PEDIATRICS (Oct. 8, 2025) <https://indianpediatrics.net/mar2020/mar-199-203.htm>.

fundamental entitlements represents one of the most significant achievements of Indian constitutional jurisprudence.

### **i. Expansive Horizon of Article 21: From Negative Liberty to Positive Entitlements**

Article 21 declares: “No person shall be deprived of his life or personal liberty except according to procedure established by law”.<sup>87</sup> In its early years, the Supreme Court, in *A.K. Gopalan v. State of Madras* (1950),<sup>88</sup> adopted a narrow and literal interpretation. It held that “procedure established by law” meant any procedure prescribed by a validly enacted law, regardless of its fairness or reasonableness. This interpretation offered minimal protection against legislative encroachment on personal liberty.

The paradigm shifted with the landmark judgment in *Maneka Gandhi v. Union of India* (1978).<sup>89</sup> The Court overruled its earlier position and held that the procedure contemplated by Article 21 must be “right and just and fair” and not “arbitrary, fanciful or oppressive”. By linking Article 21 with Articles 14 (equality) and 19 (freedoms), the Court established that any law depriving a person of life or liberty must not only be procedurally valid but also substantively reasonable. This transformative interpretation converted Article 21 from a mere shield against arbitrary executive action into a powerful sword against unjust laws.

### **ii. Reading Child Rights into a Life with Dignity**

Following the *Maneka Gandhi* decision, the Supreme Court started interpreting the word “life” in Article 21 not as mere animal existence or physical survival, but as the

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<sup>87</sup> INDIA CONST. art. 21

<sup>88</sup> *A.K. Gopalan v. State of Madras*, 1950 SCC 228.

<sup>89</sup> *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

right to live with human dignity.<sup>90</sup> This expansive reading became the constitutional bedrock for a vast array of socio-economic rights, particularly for children. By linking dignity to the fulfillment of basic needs, the Court created a set of enforceable rights, which were otherwise located in the non-justiciable Directive Principles. This filled a constitutional vacuum, making the State accountable for child welfare not merely as a matter of policy but as a fundamental constitutional obligation.

Several specific rights crucial for children have been derived from this expanded understanding of Article 21, with a combined reading of Directive Principles of State Policy, as follows:

#### ***a. Right to Food and Nutrition***

The right to life under Article 21 has been interpreted to include the right to food and nutrition. In *People's Union for Civil Liberties (PUCL) v. Union of India*,<sup>91</sup> popularly known as the “right to food” case, the Supreme Court explicitly linked the right to food to the right to life. The Court converted government food and nutrition schemes into legal entitlements, holding the state accountable for starvation deaths.<sup>92</sup> This case was instrumental in universalizing the Mid-Day Meal Scheme in schools and strengthening the Integrated Child Development Services (ICDS), which provides nutrition to preschool children and pregnant/lactating mothers, thereby directly enforcing a child’s right to nutrition as a facet of Article 21. The Court often uses Article 47, a Directive Principle mandating the State to raise nutrition levels, as an

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<sup>90</sup> Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, 1981 (1) SCC 608.

<sup>91</sup> People's Union for Civil Liberties (PUCL) v. Union of India, Writ Petition (Civil) No.196 of 2001.

<sup>92</sup> Birchfield, Lauren, and Jessica Corsi, *The Right to Life Is the Right to Food: People's Union for Civil Liberties v. Union of India*, Vol 17, Issue 3, Human Rights Brief, Page 15-18, (2010), <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1128&context=hrbrief>; .

interpretive tool to give substance to the right to life.<sup>93</sup>

### **b. Right to Shelter and a Healthy Environment**

The judiciary has recognized that a dignified life is impossible without adequate shelter. In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Court held that the right to livelihood is an essential component of the right to life, as the eviction of a person from their pavement dwelling could lead to the deprivation of their livelihood and, consequently, their life.<sup>94</sup> This has direct relevance for the millions of children living in slums and informal settlements.

### **c. Rights of Children in Detention**

The protective ambit of Article 21 extends to children who come into conflict with the law. In the landmark case of *Sheela Barse v. Union of India* (1986),<sup>95</sup> the Supreme Court took strong exception to the practice of detaining children in adult jails. The Court deprecated this practice as a violation of Article 21 and Article 39(f) of the Constitution. It issued a series of directives mandating the establishment of separate juvenile courts, the segregation of children from adult offenders, and the creation of a justice system focused on the care, protection, and rehabilitation of children. This judgment laid the foundation for a modern, humane juvenile justice system in India, ensuring that children are treated with dignity and not as criminals.

### **d. Right to Identity and Family**

The right to a dignified life also encompasses the right to a safe family environment and protection from exploitation. In *Laxmikant Pandey v. Union of India* (1984),<sup>96</sup> the

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<sup>93</sup> *Legal Action*, RIGHT TO FOOD CAMPAIGN (Sept 8, 2025) <https://www.righttofoodcampaign.in/legal-action>.

<sup>94</sup> *Olga Tellis v. Bombay Municipal Corporation*, (1985) (3) SCC 545.

<sup>95</sup> *Sheela Barse v. Union of India*, (1986) 3 SCC 596.

<sup>96</sup> *Laxmi Kant Pandey v. Union of India*, (1984) 2 SCC 244.

Supreme Court addressed the issue of child trafficking under the guise of inter-country adoptions. Faced with a legal vacuum, the Court, invoking its duty to protect the fundamental rights of children, laid down an exhaustive set of procedural safeguards and norms to regulate the process. The judgment established that the “welfare of the child is the paramount consideration” in any adoption. By doing so, the Court implicitly linked a child’s right to be protected from abuse, maltreatment, and exploitation to their fundamental right to a dignified life under Article 21.

### **C: The Constitutional Mandate for Education**

Education is universally recognized as a key instrument for liberation and empowerment. The Indian Constitution reflects this understanding through a journey of legal evolution that has seen the right to education transform from a non-enforceable policy directive into a justiciable, fundamental right, creating a comprehensive framework of responsibility shared between the state, parents, and educational institutions.

#### **i. Evolution of the Right to Education: From Directive to Fundamental Right**

Jean Drèze and Amartya Sen, in their book *An Uncertain Glory: India and its Contradictions*<sup>97</sup>, have aptly highlighted the significance of basic education as follows: “*In a society, particularly the modern world, where so much depends on the written medium, being illiterate is like being imprisoned, and school education opens a door through which people can escape incarceration.*”

The original constitutional scheme placed the responsibility for education within the

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<sup>97</sup> Jean Drèze and Amartya Sen, *An Uncertain Glory: India and its Contradictions*, Princeton University Press, Pg. 107, (2013)  
<https://dokumen.pub/an-uncertain-glory-india-and-its-contradictions-course-booknbSPED-9781400848775.html>.

Directive Principles of State Policy. Article 45, as it initially stood, directed the State to “endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.<sup>98</sup> As a DPSP, this was a laudable goal but lacked legal enforceability, and the ten-year deadline passed without its fulfillment.

The judiciary stepped in to fill this gap through creative interpretation of Article 21. In the landmark case of *Mohini Jain v. State of Karnataka* (1992),<sup>99</sup> the Supreme Court was faced with the issue of private medical colleges charging exorbitant “capitation fees”. The Court, for the first time, held that the right to education is a fundamental right under Article 21, and available to citizens ‘at all levels’. Thus, this fundamental right was available to all without any age restriction. The court further reasoned that the right to life and human dignity cannot be assured without it, and that charging capitation fees makes education inaccessible, thereby violating Article 14 (equality) and Article 21.

This interpretation was affirmed but qualified in the subsequent case of *Unnikrishnan J.P. v. State of Andhra Pradesh* (1993).<sup>100</sup> A larger Constitution Bench confirmed that the right to education is implicit in the right to life and dignity. However, it held that this fundamental right is guaranteed only for children up to the age of 14 years. For education beyond this age, the right is subject to the limits of the State’s economic capacity and development, as mentioned in Article 41. The Court explicitly used the content and parameters of the original Article 45 (a DPSP) to define the scope of the fundamental right under Article 21, demonstrating a harmonious construction of the two parts of the Constitution. These two judgments effectively created a fundamental

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<sup>98</sup> INDIA CONST. art. 45.

<sup>99</sup> *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666.

<sup>100</sup> *Unnikrishnan J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645.



right to education through judicial pronouncement, placing a constitutional obligation on the State that could no longer be ignored.

## **ii. Article 21A: A Fundamental Right Realized**

The judicial mandate in *Mohini Jain* and *Unnikrishnan* created a powerful constitutional imperative that culminated in direct legislative action. In 2002, Parliament passed the Constitution (Eighty-sixth Amendment) Act, which introduced Article 21A into the Fundamental Rights. Article 21A states: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”.<sup>101</sup>

To operationalize this mandate, Parliament enacted The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which came into effect on April 1, 2010. The RTE Act provides the legislative framework for the implementation of Article 21A and defines its key terms. ‘Free’ education means that no child shall be liable to pay any fee or charge that may prevent them from pursuing and completing elementary education.<sup>102</sup> “Compulsory education casts a legal obligation on the government to ensure admission, attendance, and completion of elementary education for every child in the 6-14 age group.

The Act also lays down norms and standards for schools, including infrastructure, pupil-teacher ratios, and a curriculum that is child-centric and ensures the all-round development of the child.<sup>103</sup> It prohibits practices like capitation fees, screening procedures for admission, and physical punishment or mental harassment.<sup>104</sup>

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<sup>101</sup> INDIA CONST. art. 21A.

<sup>102</sup> NIC, *Right to Education*, Ministry of Education, GoI (Sept. 8, 2025) <http://dsel.education.gov.in/en/rte>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

The Supreme Court has continued to expand the meaning of this right. In *Avinash Mehrotra v. Union of India* (2009),<sup>105</sup> underscored this in the following words:

*“26. Then as now, we recognize education’s “transcendental importance” in the lives of individuals and in the very survival of our Constitution and Republic. In the years since the inclusion of Article 21A, we have clarified that the right to education attaches to the individual as an inalienable human right. We have traced the broad scope of this right in **R. D. Upadhyay v. State of A.P.**, AIR 2006 SC 1946, holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education. In **Election Commission of India v. St. Mary’s School** (2008) 2 SCC 390, we refused to allow the State to take teachers from the classroom to work in polling places. While the democratic State has a mandate to conduct elections, the mundane demands of instruction superseded the State’s need to staff polling places. Indeed, the democratic State may never reach its greatest potential without a citizenry sufficiently educated to understand civil rights and social duties, **Bandhua Mukti Morcha v. Union of India**, (1997) 10 SCC 549. These conclusions all follow from our opinion in **Unni Krishnan**. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.”*

This case arose from a fire incident in a school, wherein the Court interpreted Article

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<sup>105</sup> *Avinash Mehrotra v. Union of India*, (2009) 6 SCC 398.

21A to include the right to receive education in a safe and secure environment. It held that the State's duty cannot be discharged by providing unsafe schools and that a "quality school certainly should pose no threat to a child's safety". This judgment broadened the concept of 'quality' education beyond pedagogy to encompass the physical safety and security of children.

### **iii. The Interplay with Private and Minority Institutions**

The universal mandate of Article 21A has created constitutional friction with the rights of private educational institutions to practice their occupation (Article 19(1)(g)) and the rights of religious and linguistic minorities to establish and administer their own institutions (Article 30(1)).

In *Society for Un-aided Private Schools of Rajasthan v. Union of India* (2012),<sup>106</sup> the Supreme Court upheld the constitutional validity of Section 12(1)(c) of the RTE Act. This provision mandates that all recognised schools, even if unaided, shall reserve 25% of their entry-level seats for children from weaker sections and disadvantaged groups. However, the court clarified that this will not be applicable to unaided minority schools, as it infringes upon the fundamental right guaranteed under Article 30 of the Constitution. The Court held that the RTE Act is "child-centric and not institution-centric" and that the State can impose such reasonable restrictions on the right to occupation in the public interest to fulfill its constitutional obligation under Article 21A.

However, in *Pramati Educational and Cultural Trust v. Union of India* (2014),<sup>107</sup> a larger Constitution Bench carved out a significant exception. It held that the RTE Act could not be applied to minority educational institutions, whether aided or unaided.

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<sup>106</sup> *Society for Un-aided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1.

<sup>107</sup> *Pramati Educational and Cultural Trust v. Union of India*, (2014) 8 SCC 1.

The Court reasoned that forcing such institutions to comply with the Act, including the 25% quota, would abrogate their fundamental right under Article 30(1) to establish and administer educational institutions of their choice, as it could alter their minority character. However, a two-judge bench of the Supreme Court emphasized the need to revisit the sweeping nature of the *Pramati* exemption.<sup>108</sup>

#### **iv. Directive Principles: Articles 45 and 51A(k)**

The 86th Amendment created a comprehensive and interlocking framework for education by simultaneously modifying other constitutional provisions. The original Article 45 was substituted with a new directive: “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.<sup>109</sup> This new mandate is crucial as it addresses the critical 0-6 age group, which is not covered by the fundamental right in Article 21A. It recognizes the importance of early childhood care and pre-school education for a child’s holistic development and for preparing them for formal schooling.

Concurrently, the amendment added a new clause, Article 51A(k), to the list of Fundamental Duties. This clause imposes a duty on every parent or guardian “to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years”.<sup>110</sup> This provision is significant as it creates a triangular framework of responsibility. The right to education is no longer solely the State’s obligation; it is a shared responsibility between the State (which must provide the means under Article 21A), the parent (who has a duty to ensure the child avails these opportunities under Article 51A(k)), and the educational institutions themselves.

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<sup>108</sup> *Anjuman Ishaat-e-Taleem Trust v. State of Maharashtra*, 2025 INSC 1063.

<sup>109</sup> INDIA CONST. art. 45.

<sup>110</sup> INDIA CONST. art. 51A(k).

## **D: The Constitutional Shield Against Exploitation**

The Constitution of India provides robust safeguards to protect children from all forms of exploitation. Recognizing that economic necessity and social vulnerability make children susceptible to abuse, the framers included specific fundamental rights in Articles 23 and 24 to combat human trafficking, forced labour, and child labour. These provisions are not mere prohibitions but impose a positive duty on the State to eradicate these evils.

### **i. Article 23: Prohibition of Human Trafficking and Forced Labour**

Article 23(1) of the Constitution provides a comprehensive ban on exploitation, stating that “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”.<sup>111</sup> This fundamental right is unique in its horizontal application, meaning it is available not only against the State but also against private individuals.

Children are especially vulnerable to this heinous crime, and Article 23 serves as the primary constitutional safeguard against it. The Supreme Court has given an expansive interpretation to the term “forced labour”. In *People’s Union for Democratic Rights (PUDR) v. Union of India* (1982),<sup>112</sup> the Court held that the word ‘force’ has a very wide meaning and includes not just physical or legal force, but also compulsion arising from hunger and poverty. The Court ruled that payment of wages that are less than the statutory minimum wage amounts to “forced labour” under Article 23. This interpretation is of immense significance for children, who are often paid exploitative wages. The judgment established that any form of forced labour,

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<sup>111</sup> INDIA CONST. art. 23(1).

<sup>112</sup> *People’s Union for Democratic Rights (PUDR) v. Union of India*, (1982) 3 SCC 235.

paid or unpaid, is a violation of human dignity and is prohibited by the Constitution.

Furthermore, the judiciary has taken a proactive role in giving effect to this provision. In *Vishal Jeet v. Union of India* (1990),<sup>113</sup> the Supreme Court addressed the issue of child prostitution. Recognizing it as a socio-economic problem requiring a humanistic approach, the Court issued a series of wide-ranging directions to the central and state governments. These included setting up advisory committees to suggest measures for eradication, establishing rehabilitative homes for rescued children, and ensuring speedy action by law enforcement agencies. The judgment followed a preventive and rehabilitative approach rather than a purely punitive one, treating the victims with compassion while calling for the eradication of the systems that perpetuate their exploitation.

Recently, the Supreme Court in *Guria Swayam Sevi Sansthan v. Union Of India*<sup>114</sup> recommended that the Union Ministry of Home Affairs establish a common, dedicated portal to trace kidnapped or trafficked children. The Court emphasized that such cases often span multiple States and Union Territories, making coordination a major challenge. A centralized portal, managed by a designated officer, would facilitate more effective tracking, recovery, and restoration of children to their families. This recommendation underscores the judiciary's recognition of the need for systemic and technology-driven solutions to strengthen child protection mechanisms.

## **ii. Article 24: The Absolute Prohibition on Child Labour**

While Article 23 provides a general prohibition against forced labour, Article 24 offers a specific and absolute protection for children. It states: "No child below the age of

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<sup>113</sup> *Vishal Jeet v. Union of India*, 1990 SCR (2) 861.

<sup>114</sup> *Guria Swayam Sevi Sansthan v. Union Of India*, Writ Petition (Criminal) No. 43/2024 (Order dated Sept. 24, 2025).

fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”. This is an absolute prohibition, admitting no exceptions or justifications based on economic necessity or parental consent.

The judiciary has played a critical role in defining the scope of “hazardous employment”. In the *PUDR* case,<sup>115</sup> the Supreme Court held that construction work is a hazardous occupation and that the employment of children below 14 in this sector is a clear violation of Article 24.<sup>54</sup> This was a significant expansion, as construction work was not explicitly listed as hazardous in the schedule of the then-existing child labour legislation.

The most comprehensive judicial intervention in this domain came in the case of *M.C. Mehta v. State of Tamil Nadu* (1996).<sup>116</sup> This PIL was filed to address the widespread employment of children in the hazardous matchstick and firecracker industries in Sivakasi, Tamil Nadu. The Supreme Court, faced with the State’s failure to enforce the constitutional ban, went beyond merely reiterating the prohibition. The Court recognized that the root cause of child labour is poverty and that a simple ban would be ineffective without addressing the economic compulsions of the families. Therefore, it devised a multi-pronged strategy that fundamentally linked the prohibition of child labour with the right to education and the economic security of the family.

The key directives of the Court included:

1. The creation of a Child Labour Rehabilitation Welfare Fund at the district level.
2. A mandate that an employer found to be employing a child in a hazardous

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<sup>115</sup> *Id.*

<sup>116</sup> *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.

industry must pay a penalty of Rs. 20,000 per child, which would be deposited into this fund.

3. A directive to the State to provide employment to an adult member of the family of the rescued child. If the State was unable to provide such employment, it was required to contribute Rs. 5,000 to the fund for each child.
4. The interest generated from this fund was to be used to support the child's education.
5. For children working in non-hazardous occupations, the Court directed that their working hours be limited to no more than six hours a day and that they must be provided with at least two hours of education each day, the cost of which was to be borne by the employer.

This judgment is a powerful example of the judiciary stepping into a legislative and executive role to give practical effect to a constitutional right. It transformed Article 24 from a simple negative command ("thou shalt not employ") into a comprehensive blueprint for action, creating a financial disincentive for employers and a support system for families, thereby directly connecting the prohibition on labour with the positive right to education.

### **E: The Directive Principles as the Constitution's Conscience**

The Directive Principles of State Policy (DPSP), contained in Part IV of the Constitution, represent the socio-economic goals that the Indian state is meant to strive for. While these principles are not directly enforceable in a court of law, the Constitution declares them to be "fundamental in the governance of the country", making it the duty of the State to apply them in making laws.<sup>117</sup> For children, these

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<sup>117</sup> INDIA CONST. art. 37.



directives serve as the Constitution's conscience, outlining a vision for their holistic development, health, and protection, which the judiciary has often used as a powerful interpretive tool to give substance to their fundamental rights.

#### **i. The Guiding Philosophy: Articles 39(e), 39(f), and 47**

Among the Directive Principles, several are explicitly focused on the welfare of children. Article 39 contains the most crucial directives in this regard:

- **Article 39(e)** directs the State to ensure “that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”.<sup>118</sup> This clause recognizes the vulnerability of children and the danger of their exploitation due to economic hardship.
- **Article 39(f)**, which was expanded and strengthened by the 42nd Amendment in 1976, is even more comprehensive. It directs the State to ensure “that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”.<sup>119</sup> This provision encapsulates a holistic vision for child development, encompassing physical, mental, and moral well-being.

Complementing these is **Article 47**, which places a primary duty on the State to “regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties”.<sup>120</sup> Given that children are the most vulnerable to malnutrition and poor health, this directive is of paramount importance for child survival and development. It forms the constitutional basis for

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<sup>118</sup> INDIA CONST. art. 39(e).

<sup>119</sup> INDIA CONST. art. 39(f)

<sup>120</sup> INDIA CONST. art. 47

major national health and nutrition programs, such as the Integrated Child Development Services (ICDS) and the Mid-Day Meal Scheme.

## **F: Conclusion - A Dynamic and Evolving Jurisprudence**

The Constitution of India, through its rights, duties, and directives, articulates a profound and progressive vision for its children. This vision is not static but has been dynamically shaped and expanded over seven decades, primarily through the interpretive lens of the judiciary. The interplay of Articles 14, 15(3), 21, 21A, 23, 24, 39, 45, 47, and 51A has created a comprehensive constitutional framework that recognizes the child as a unique legal person with a distinct set of rights essential for their survival, development, protection, and participation.

The cornerstone of this framework is the principle of substantive equality.<sup>121</sup> The Constitution moves beyond the notion of formal equality to empower the State, through provisions like Article 15(3), to make special provisions that address the inherent vulnerabilities of childhood. The judiciary has used this foundation to uphold laws and policies aimed at protecting children and social integration.

The most significant catalyst in the evolution of child rights has been the expansive interpretation of Article 21. By reading the “right to life” as a “right to live with human dignity”, the Supreme Court has transformed this single article into a Magna Carta for children. It has served as the constitutional source for a plethora of rights—to food, health, shelter, a clean environment, and, most critically, the right to education and holistic development. The Court’s use of the Directive Principles as a guide to interpret Fundamental Rights has been a masterstroke of judicial creativity, making the State’s socio-economic duties towards children legally enforceable.

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<sup>121</sup> Sandra Fredman, *Substantive Equality Revisited*, Vol. 14 Issue 3, International Journal of Constitutional Law, (2016), <https://academic.oup.com/icon/article/14/3/712/2404476?login=false>

This judicial role has directly spurred legislative action, most notably the 86th Amendment, which enshrined the right to education as a fundamental right in Article 21A. In the realm of protection, the judiciary has given teeth to the prohibitions against exploitation in Articles 23 and 24. Through landmark judgments in cases of child labour, trafficking, and juvenile justice, the courts have not just interpreted the law but have often stepped in to create detailed, enforceable mechanisms to ensure that constitutional guarantees are translated into reality. Judgments like *M.C. Mehta* and *Vishal Jeet* stand as testaments to the Court's role as a proactive guardian of child rights.

In conclusion, the constitutional vision for children in India is one of the most comprehensive and forward-looking in the world. It is characterized by a deep commitment to substantive equality, the inviolability of human dignity, and the imperative of holistic development. The judiciary, through its dynamic and purposive interpretation, has been the principal architect and enforcer of this vision. However, the full realization of this constitutional promise remains an ongoing project. It demands the continued and concerted efforts of all three branches of government, in partnership with civil society and the citizenry, to ensure that every child in India can enjoy a childhood of freedom, dignity, and opportunity.

The jurisprudential developments discussed in the preceding section are summarized in the table below. The table is intended to serve as a clear and convenient reference, outlining the key judgments and their contributions to the understanding of child rights.

## Landmark Judgments and their Contribution to Child Rights Jurisprudence

Case Name	Constitutional Article(s)	Key Principle/Holding	Significance for Child Rights
<i>State of West Bengal v. Anwar Ali Sarkar</i> (1952) <sup>122</sup>	Art. 14	Struck down arbitrary state power, establishing the “reasonable classification” test for equality.	Laid the groundwork for recognizing children as a distinct class deserving of special, non-arbitrary legal protection.
<i>PUDR v. Union of India</i> (1982) <sup>123</sup>	Art. 21, 23, 24	Non-payment of minimum wage constitutes ‘forced labour’; construction work is ‘hazardous employment’ for children.	Expanded the scope of protection against exploitation and established state accountability for private contractors.
<i>Bandhua Mukti Morcha v. UOI</i>	Art. 21, 23	Right to life includes the right to live with	Strengthened protections for

<sup>122</sup> State of West Bengal v. Anwar Ali, 1952 SCR 284.

<sup>123</sup> People’s Union for Democratic Rights (PUDR) v. Union of India, (1982) 3 SCC 235.

(1984) <sup>124</sup>		human dignity, free from exploitation, and is enforceable against private actors.	bonded labourers, including children, and affirmed the judiciary's role in enforcement.
<i>Laxmikant Pandey v. UOI</i> (1984) <sup>125</sup>	Art. 21, 24, 39	Laid down stringent safeguards for inter-country adoptions to prevent child trafficking and exploitation.	Established the "best interest of the child" as the paramount principle in adoption, creating a protective legal framework.
<i>Sheela Barse v. Union of India</i> (1986) <sup>126</sup>	Art. 21, 39(f)	Deprecated the detention of children in adult jails and mandated a specialized, humane juvenile justice system.	Foundational judgment for reforming juvenile justice and ensuring children are not treated as adult criminals.
<i>Vishal Jeet v.</i>	Art. 21, 23,	Issued extensive	Landmark PIL that

<sup>124</sup> Bandhua Mukti Morcha v. Union of India, 1984 (3) SCC 161.

<sup>125</sup> Laxmi Kant Pandey v. Union of India, (1984) 2 SCC 244.

<sup>126</sup> Sheela Barse v. Union of India, (1986) 3 SCC 596.

<i>Union of India</i> (1990) <sup>127</sup>	39	directions to states to eradicate child prostitution and establish rehabilitative homes.	addressed the commercial sexual exploitation of children as a violation of fundamental rights.
<i>Mohini Jain v. State of Karnataka</i> (1992) <sup>128</sup>	Art. 21, 41, 45	Right to education is essential for the right to life with dignity; charging capitation fees is unconstitutional.	First major judicial step in elevating the right to education to a fundamental right.
<i>Unnikrishnan J.P. v. State of A.P.</i> (1993) <sup>129</sup>	Art. 21, 41, 45	Confirmed the right to free and compulsory education under Art. 21 for children up to 14 years.	Cemented the judicial creation of the right to education, directly leading to the 86th Constitutional Amendment.
<i>M.C. Mehta v.</i>	Art. 21, 24,	Mandated a	Transformed the

<sup>127</sup> Vishal Jeet v. Union of India, 1990 SCR (2) 861.

<sup>128</sup> Gaurav Jain v. Union of India, (1997) 8 SCC 114.

<sup>129</sup> Unnikrishnan J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645.

<i>State of Tamil Nadu (1996)</i> <sup>130</sup>	39, 45	comprehensive scheme for the rescue and rehabilitation of child labourers, creating a welfare fund.	prohibition on child labour into a positive mandate for education and rehabilitation.
<i>PUCL v. Union of India (2007)</i> <sup>131</sup>	Art. 21, 47	Interpreted the right to life to include the right to food, making government food schemes a legal entitlement.	Crucial for child nutrition, leading to universalization of Mid-Day Meal Scheme and strengthening ICDS.
<i>Avinash Mehrotra v. Union of India (2009)</i> <sup>132</sup>	Art. 21, 21A	The fundamental right to education includes the right to a safe and secure school environment.	Expanded the concept of 'quality' in education to encompass physical safety and state responsibility for it.

<sup>130</sup> M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756.

<sup>131</sup> PUCL v. Union of India, Writ Petition (Civil) No.196 of 2001.

<sup>132</sup> Avinash Mehrotra v. Union of India, (2009) 6 SCC 398.

#### **PART IV: THE STATUTORY FRAMEWORK FOR CHILD PROTECTION**

*“It is obvious that in a civilised society the importance of child welfare cannot be over-emphasised, because the welfare of the entire community, its growth and development, depends on the health and well-being of its children. Children are a ‘supremely important national asset’ and the future well-being of the nation depends on how its children grow and develop.”<sup>133</sup>*

*— Hon’ble Justice P.N. Bhagwati  
(Former Judge, Supreme Court of India)*

Flowing from the constitutional mandates and international commitments, India has enacted a robust and specialized body of statutory law dedicated to the protection of children. This framework has evolved from relying on general provisions within the Indian Penal Code to create highly specific, child-centric legislative instruments that address protection, justice, care, and family life.

For clarity, this statutory framework will be presented in a tabular form below, organized across different branches of law such as criminal law and family law legislation. The tables will also reflect how judicial interpretation has enriched and advanced the jurisprudence under these provisions. For ease of reference, only select judgments of particular significance will be highlighted, with the aim of illustrating the practical application and evolving understanding of these statutory provisions.

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<sup>133</sup> Laxmi Kant Pandey v. Union of India, (1984) 2 SCC 244.



## A: Criminal Laws- Provisions and Judgments

Section(s)	Provision Summary	Nature of Protection	Supreme Court Judgments
<p align="center"><b>The Protection of Children from Sexual Offences (POCSO) Act, 2012</b></p> <p><i>“The purpose of POCSO Act is to treat the minors as a class by itself and treat them separately so that no offence is committed against them as regards sexual assault, sexual harassment and sexual abuse. The sanguine purpose is to safeguard the interest and well being of the children at every stage of judicial proceeding. It provides for a child friendly procedure.”<sup>134</sup></i></p>			
Sec. 3 & 4	Penetrative Sexual Assault	Rigorous imprisonment from 10 years to life, and fine.	<p><b><i>Independent Thought v. Union of India</i><sup>135</sup></b></p> <p><i>While IPC defines ‘rape’ under section 375, POCSO defines ‘penetrative sexual assault’ under section 3.</i></p> <p><i>There is no real or material difference between the definition of rape in the terms of Section 375 of the IPC and penetrative sexual assault in the terms of Section 3 of the POCSO Act. The only difference is that the definition of</i></p>

<sup>134</sup> Ms. Eera v. State (NCT of Delhi), (2017) 15 SCC 133.

<sup>135</sup> Independent Thought v. Union of India, (2017) 10 SCC 800.

			<p><i>rape is somewhat more elaborate and has two exceptions but the sum and substance of the two definitions is more or less the same and the punishment (under Section 376(1) of the IPC) for being found guilty of committing the offence of rape is the same as for penetrative sexual assault.</i></p>
Sec. 5 & 6	Aggravated Penetrative Sexual Assault	Rigorous imprisonment from 20 years to life, or death penalty, and fine.	<p><b><i>State of UP v Sonu Kushwaha</i></b><sup>136</sup></p> <p><i>The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence... When a penal provision uses the phraseology “shall not be</i></p>

<sup>136</sup> State of UP v Sonu Kushwaha, 2023 INSC 603.

			<i>less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser.</i>
Sec. 7 & 8	Sexual Assault	Rigorous imprisonment from 3 to 5 years, and fine.	<b>Attorney General for India v. Satish:</b> <sup>137</sup> : Supreme Court held that “skin-to-skin” contact is not a prerequisite for an act to be considered sexual assault. The Court clarified that the most important ingredient is “sexual intent”, not the nature of the physical contact, thereby ensuring a purposive interpretation of the Act to protect children.
Sec. 11 & 12	Sexual Harassment	Imprisonment up to 3 years or fine, or both.	<b>Mithuram v. State of Maharashtra:</b> <sup>138</sup> The court held that the acts of the accused, including repeatedly following the girl despite her clear disinterest, insisting on speaking with her, and boasting that she would

<sup>137</sup> Attorney General for India v. Satish, (2021) 4 SCC 712.

<sup>138</sup> Mithuram v. State of Maharashtra, 2024 SCC OnLine Bom 2660.

			eventually accept his love, constituted an offence under section 11.
Sec. 19	Mandatory Reporting	Imposes a legal duty on all persons to report a POCSO offence.	<p><b><i>X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi &amp; Another<sup>139</sup> :</i></b></p> <p>When a minor seeks medical termination of pregnancy arising from consensual sexual activity, a Registered Medical Practitioner (RMP) is bound under Section 19(1) of the POCSO Act to report the offence to the authorities. This mandatory reporting requirement often deters adolescents and their guardians, who may wish to avoid criminal proceedings. As a result, they are faced with two difficult choices: approach an RMP and risk legal entanglement, or turn to unqualified practitioners for termination. If disclosure of the minor's identity is insisted upon in such reports, it may</p>

<sup>139</sup> X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Another, (2022) 7 SCR 686.

			<p>further discourage minors from accessing safe medical care under the MTP Act. Therefore, the court harmoniously construed POCSO with the MTP Act, holding that for the purpose of a legal abortion, a doctor is not required to disclose the minor's identity in the mandatory report on the request of minor and the guardian of minor.</p>
Sec. 29	Presumption of Culpable Mental State.	Shifts the burden of proof to the accused in a prosecution.	<p><b><i>Pappu v. State of Uttar Pradesh</i><sup>140</sup> :</b></p> <p>The Supreme Court affirmed that the presumption under Section 29 of the POCSO Act comes into operation only after the prosecution has successfully established the foundational facts of the offences alleged against the accused. Once the prosecution proves the basic elements of the crime through evidence, the burden shifts to the accused to rebut the presumption and prove that they did not commit the offence.</p>

<sup>140</sup> Pappu v. State of Uttar Pradesh, 2022 INSC 164.

### The Juvenile Justice (Care and Protection of Children) Act, 2015

*The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals...The first objective, therefore, is the promotion of the wellbeing of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded...*<sup>141</sup>

Sec. 2(14)	Defines “child in need of care and protection” (CNCP).	Defines categories of vulnerable children requiring state care.	<b><i>Re: Exploitation of Children in Orphanages in the State of Tamil Nadu</i></b> <sup>142</sup> : The Supreme Court held that the definition of a “child in need of care and protection” under Section 2(14) must be given a broad and purposeful interpretation. It ruled that the list of categories in the section is illustrative, not exhaustive. Consequently, the benefits of the Act must be extended to all children requiring state protection, including those not explicitly mentioned, such as victims of sexual abuse under the POCSO Act and victims of child trafficking.
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<sup>141</sup> Vinod Katara v. State of Uttar Pradesh, (2022) 9 SCR 836.

<sup>142</sup> Re: Exploitation of Children in Orphanages in the State of Tamil Nadu, (2017) 4 SCR 625.

Sec. 15	Preliminary Assessment for Heinous Offences	Mandates the JJB to assess the child's mental/physical capacity, ability to understand consequences, and circumstances of the alleged offence.	<b><i>Barun Chandra Thakur v. Master Bholu</i><sup>143</sup></b> :  The court laid down detailed guidelines, stating the assessment must be a meticulous examination of the child's psychosocial maturity, not just cognitive ability, with the help of experts.
Sec. 18	Orders based on Preliminary Assessment	Empowers the JJB, post-assessment, to either try the child within the juvenile system or transfer the case to the	<b><i>Shilpa Mittal v. State of NCT of Delhi</i><sup>144</sup></b> : The court clarified that offences with a maximum sentence of more than 7 years but no minimum sentence are to be treated as "serious offences", not "heinous offences". The ruling addressed a legislative gap, preventing children aged 16-18 in such cases from being subjected to a preliminary assessment for trial as an

<sup>143</sup> Barun Chandra Thakur v. Master Bholu, (2022) SCC OnLine SC 870.

<sup>144</sup> Shilpa Mittal v. State of NCT of Delhi, 2020 INSC 25.

		Children's Court for trial as an adult.	adult until Parliament amends the Act.
Sec 68 (Central Adoption Reso ution Authority)	Establishes CARA as the statutory, central authority to regulate, monitor, and enforce guidelines on adoption, including inter-country adoptions.	Ensures due process, licensed agency involvement, and safeguards against exploitation or trafficking.	<p><b><i>Shabnam Hashmi v. Union of India:</i></b><sup>145</sup></p> <p>The Juvenile Justice Act is a secular law. The purpose of the Act is to protect children who are in conflict with law or required rehabilitation. The provisions governing adoption also focused on such children.</p> <p>Juvenile Justice Act is an enabling legislation that allows prospective parents to adopt a child by following the procedure laid down under the Act, Rules, and CARA guidelines. It does not impose a mandatory obligation but leaves individuals free to adopt under its framework or to follow their personal laws. Thus, the Juvenile Justice Act does not affect adoptions carried out under Hindu Adoption and Maintenance Act, 1956.</p>

<sup>145</sup> Shabnam Hashmi v. Union of India, 2014 INSC 111.



Sec. 75	Punishment for Cruelty to Child.	Imprisonment up to 3 years and a fine of ₹1 lakh. For severe cases, imprisonment from 3 to 10 years and a fine of ₹5 lakhs.	<b>S.C. Narang v. State (NCT of Delhi)</b> <sup>146</sup> : The Court clarified the reading of Section 75 as goes “Whoever, having the actual charge of, or control over, a child” to only apply to one having actual charge of the victim child or control over the victim child, not including the applicability for moral responsibility as in this case had been levied upon the Chairman of the Managing Committee of a school where one of the classmates had sexually assaulted a 4 year old.
Sec. 76	Employment of Child for Begging.	Imprisonment up to five years and fine of one lakh rupees.  In case child is amputated or maimed,	<b>High Court on its Own Motion v. State of Maharashtra:</b> <sup>147</sup>  Children begging on the street can fall in the category of Child in need of Care and Protection, and the State government is duty-bound to take appropriate steps within the legal framework.

<sup>146</sup> S.C. Narang v. State (NCT of Delhi), 2025 INSC 688.

<sup>147</sup> High Court on its Own Motion v. State of Maharashtra, Suo Moto PIL No. 150 of 2015 (Bombay High Court, Order dated March 15, 2016).

		<p>rigorous imprisonment from 7 years to 10 years and five lakh rupees fine</p>	
Section 77	<p>Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child.</p>	<p>Rigorous Imprisonment up to seven years and fine up to one lakh rupees</p>	<p><b><i>Bibin Babu Mathew v. State of Kerala</i></b><sup>148</sup></p> <p>Mere seizure of an illegal substance from accused will not be sufficient to attract section 77, unless there is positive evidence to show that the accused intended to sell such substances to children at school or other places.</p>
Section 78	<p>Using a child for vending, peddling, carrying, supplying or smuggling any</p>	<p>Rigorous Imprisonment up to seven years and fine up to one lakh rupees</p>	<p><b><i>Bachpan Bachao Andolan v. Union of India</i></b><sup>149</sup></p> <p>The court took note of the fact that children are being encouraged to become drug peddlers, once a child is addicted to drugs. Being cognizant of this vulnerability, Parliament has</p>

<sup>148</sup> Bibin Babu Mathew v. State of Kerala, 2025:KER:44013.

<sup>149</sup> Bachpan Bachao Andolan v. Union of India, (2017) 1 SCC 653.

	intoxicating liquor, narcotic drug or psychotropic substance		defined Child in Need of Care and Protection broadly enough to include such children involved in peddling as they are at serious risk of abuse and exploitation.
Section 79	Exploitation of a child employee	Rigorous Imprisonment up to seven years and fine up to one lakh rupees	<b>A. Nizamudhin v. Station House Officer:</b> <sup>150</sup>  Section 79 of the Act does not prohibit child employment per se. What it prohibits is employing a child in bondage, withholding their earnings, or diverting those earnings for the benefit of another.
<p style="text-align: center;"><b>The Immoral Traffic (Prevention) Act, 1956</b></p> <p><i>“This Act aims at suppressing the evils of prostitution in women and girls and achieving a public purpose viz. to rescue the fallen women and girls and to stamp out the evils of prostitution and also to provide an opportunity to these fallen victims so that they could become decent members of the society.”</i><sup>151</sup></p>			
Sec. 5 & 6	Procuring, inducing, or	Protects children and	<b>Gaurav Jain v. Union of India</b> <sup>152</sup> :  The court directed the State to

<sup>150</sup> A. Nizamudhin v. Station House Officer, 2017 SCC OnLine Ker 7324.

<sup>151</sup> Vishal Jeet v. Union of India, (1990) 3 SCC 318.

<sup>152</sup> Gaurav Jain v. Union of India, (1997) 8 SCC 114.

	detaining a person for prostitution.	adults from being trafficked for sexual exploitation.	formulate schemes for the education and rehabilitation of children of prostitutes to prevent their induction into inter-generational sex work.
<p style="text-align: center;"><b>Indian Penal Code, 1860 and Bharatiya Nyaya Sanhita, 2023</b></p> <p><i>“...offenses against women and children have been consolidated into a single chapter and given precedence over all other offenses.”<sup>153</sup></i></p>			
Sec. 20, 21 BNS/ Section 82, 83 IPC	Act of a child under seven / between 7-12.	Establishes absolute and conditional criminal incapacity.	<b><i>Hiralal Mallick v. State of Bihar</i><sup>154</sup></b> :The Court dealt with the case of a 12-year-old appellant convicted under Section 326/34 IPC, where the child, though responsible only for superficial injuries during a joint attack with his brothers, was found to have shared their common intent. It was held that while Section 82 grants absolute immunity below 7 years, Section 83 only creates a rebuttable presumption for those aged 7–12, which was not proved here. The conviction was upheld, though the appellant’s age

<sup>153</sup> ‘*Handbook on the Bharatiya Nyaya Sanhita, 2023*’ Bureau of Police Research and Development, Ministry of Home Affairs (2025).

<sup>154</sup> *Hiralal Mallick v. State of Bihar*, (1977) 4 SCC 44.

			<p>was treated as a mitigating factor in sentencing, highlighting the limits of <i>doli incapax</i> and the need for individualized assessment of a child's maturity.</p> <p><b><i>Pratap Singh v. State of Jharkhand</i><sup>155</sup></b> : It was clarified that the determination of juvenile status stating that the correct benchmark for determining whether an accused is a juvenile is the date of the offence, not the date of production before court.</p>
Sec. 93	Exposure and abandonment of children under twelve years.	Protects from abandonment by a parent/carer.	<p><b><i>Emperor v. Blanche Constant Cripps</i><sup>156</sup></b></p> <p>Apart from the parents, this section also makes the person under whose care the child is placed, equally liable. Thus, day care centers, creches, orphanages, etc., are all covered by this provision.</p>
Sec.	Kidnapping a	Protects from	<b><i>S. Varadarajan v. State of Madras</i><sup>157</sup></b>

<sup>155</sup> Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551.

<sup>156</sup> Emperor v. Blanche Constant Cripps, 1916 SCC OnLine Bom 5.

<sup>157</sup> S. Varadarajan v. State of Madras, 1965 SCR (1) 243.

137 & 139	minor from lawful guardianship (Sec. 137); and the specific, aggravated offense of kidnapping or maiming a minor for the purpose of begging (Sec. 139).	being taken from guardians or exploited for organized begging.	: This case explains what constitutes “taking” a minor from lawful guardianship. The Supreme Court held that it does not require force; mere inducement or encouragement that causes the minor to leave their guardian’s protection is sufficient to constitute the offence of kidnapping.
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#### **Commissions for Protection of Child Rights Act, 2005**

*“Parliament has, of course, appreciated the need for protecting the rights of children in many ways...and that is why the Commissions for Protection of Child Rights Act, 2005 was enacted. In fact the Preamble to the said Act is extremely significant and brings into focus not only the necessity of protecting the rights of children generally but also as a part of our obligations to the international community.”<sup>158</sup>*

Secti on	Under Section 13,	Provides functions of	<b><i>National Commission for Protection of Child Rights v. Dr. Rajesh</i></b>
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<sup>158</sup> Re: Exploitation of Children in Orphanages in the State of Tamil Nadu, (2017) 4 SCR 625.

13(1) and 13(2)	the NCPCR safeguards child rights nationally, while State Commission s act within their territories.	statutory bodies to monitor and enforce child rights, conduct inquiries, and ensure compliance with India's obligations under domestic and international frameworks.	<b>Kumar</b> <sup>159</sup> — The court clarified that Section 13(2) does not create watertight compartments. The National Commission may intervene in matters of wider national or international importance, such as trafficking and adoption, even if a State Commission is seized of the issue.
<p style="text-align: center;"><b>The Information Technology Act, 2000</b></p> <p><i>“The Information Technology Act was enacted in the year 2000 with a view...to prevent computer based crimes and ensure security practices and procedures in the context of widest possible use of information technology worldwide.”</i><sup>160</sup></p>			
Sec. 67B	Publishing or transmitting material	Criminalizes the creation and	<b>Just Rights For Children Alliance v. S. Harish</b> <sup>161</sup> : The Court held that acts such as Browsing, downloading, and

<sup>159</sup> National Commission for Protection of Child Rights v. Dr. Rajesh Kumar, (2020) 11 SCC 377.

<sup>160</sup> Shreya Singhal v. Union of India, 2015 INSC 257.

<sup>161</sup> Just Rights For Children Alliance v. S. Harish, 2024 INSC 716.

	depicting children in sexually explicit acts in electronic form.	distribution of online child sexual abuse material.	collecting child sexual abuse material are punishable offences under Sec. 67B(b), even without any proof of further transmission or publication. The Court also directed that the term “Child Sexual Exploitation and Abuse Material” (CSEAM) should be used instead of “child pornography” in all judicial proceedings.
<p style="text-align: center;"><b>Bonded Labour System (Abolition) Act, 1976</b></p> <p><i>“The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed.”<sup>162</sup></i></p>			
Sec. 4, 5, 6	Abolishes bonded labour, extinguishes existing bonded debts, and renders any contract or custom to	Eliminates bonded labour to protect weaker sections from economic and physical exploitation	<b><i>Bandhua Mukti Morcha v. Union of India<sup>163</sup></i></b> : In this case, the Supreme Court not only directed the release and rehabilitation of bonded labourers but also established a framework for state governments to proactively identify bonded labour, including child bonded labour, and ensure their rights are protected.

<sup>162</sup> Sankar Mukherjee v. Union of India, 1990 Supp SCC 668.

<sup>163</sup> Bandhua Mukti Morcha v. Union of India, 1984 (3) SCC 161.



	contrary as void		
<p align="center"><b>Medical Termination of Pregnancy Act, 1971 (as amended 2021)</b></p> <p><i>“Before 1971, the criminalization of abortion under the IPC often compelled women to seek unsafe, unhygienic and unregulated abortions, leading to an increase in maternal morbidity and mortality. In this background, the Medical Termination of Pregnancy Bill was drafted and introduced...”<sup>164</sup></i></p>			
Sec. 3, 5A	Allows termination of pregnancy in categories, with special provisions for minors.	It collectively regulates when, where, and by whom a pregnancy may be terminated.	<b>Suchita Srivastava v. Chandigarh Administration</b> , <sup>165</sup> : The Apex Court drew a clear distinction between a “mentally ill” person and a person with “mental retardation” for the purposes of consent under the Medical Termination of Pregnancy Act, 1971. While Section 3(4)(a) requires guardian consent where the woman is under 18 years or is “mentally ill”, Section 3(4)(b) mandates that in all other cases the decision rests with the woman herself. Referring to the statutory definition in the Mental Healthcare Act, the Court underscored

<sup>164</sup> X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Another, (2022) 7 SCR 686.

<sup>165</sup> Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.

			<p>that “mental illness” expressly excludes “mental retardation”. Consequently, a woman with mental retardation, if a major, is entitled to make her own reproductive choices, and her consent cannot be substituted by that of a guardian. The Court further cautioned that the <i>parens patriae</i> jurisdiction of the State must not be employed to override the autonomy of an adult woman unless specifically authorised by law.</p> <p><b>A v. State of Maharashtra<sup>166</sup></b> : The Supreme Court reaffirmed the primacy of the pregnant person’s consent in abortion decisions under the MTP Act, 1971. The Court noted that the minor and her parents expressed their choice to carry the pregnancy to term. Section 3(4)(a) of the MTP Act requires a guardian's consent in the case of minors. The court noted that</p>
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<sup>166</sup> A v. State of Maharashtra, (2024) 6 SCC 327 at para 33-36.

			even though in this case the wishes of the minor and her parents align, even otherwise the minor's own wishes must be treated as an important factor.
<p align="center"><b>Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA)</b></p> <p><i>"The broad objective of COTPA is discernible from the preamble itself...The preamble indicates India's commitment to implement global measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco."</i><sup>167</sup></p>			
Sec. 6	Prohibits sale of tobacco products to persons under 18 years and within 100 yards of educational	Penalty: Fine up to ₹200 per offence.	<p><b><i>Abhijith v. State of Kerala</i></b><sup>168</sup></p> <p>As per this said Section, one must actually sell or offer to sell or expose to sell or permit the sale of cigarette or tobacco products to a person below the age of 18 years or in an area within a radius of 100 yards of any educational institution. Thus, mere keeping of the tobacco products at the residence of the accused will not in</p>

<sup>167</sup> Dharampal Satyapal Ltd. v. State of Assam, 2017 SCC OnLine Gau 1196.

<sup>168</sup> Abhijith v. State of Kerala, 2022 SCC OnLine Ker 916.

	institutions.		any way attract the offence.
<p style="text-align: center;"><b>Mental Healthcare Act, 2017</b></p> <p><i>Mental health is an integral component of the right to life under Article 21 of the Constitution of India. Further, the Mental Healthcare Act, 2017, a rights based legislation, reinforces this constitutional mandate by recognising every person's right to access mental healthcare and protection from inhuman or degrading treatment in mental health settings.</i> <sup>169</sup></p>			
Sec. 18	It provides for the right to access mental healthcare	It ensures that persons with mental illness have the right to live in, be treated in, and receive care in the least restrictive environment possible, and safeguards them from	<p><b>Sukdeb Saha v. State of Andhra Pradesh:</b><sup>170</sup></p> <p>To safeguard students' mental health, the Court directed that educational institutions with 100 or more students must appoint a qualified counsellor, psychologist, or social worker trained in child and adolescent mental health. Smaller institutions are required to maintain referral linkages with external professionals.</p>

<sup>169</sup> Sukdeb Saha v. State of Andhra Pradesh, 2025 INSC 893.

<sup>170</sup> *Id.*

		cruel, inhuman, or degrading treatment.	
<p align="center"><b>Surrogacy Regulation Act, 2021</b></p> <p><i>The Act, therefore, seeks to provide a legally structured, ethical, and medically safe pathway for childless couples to experience parenthood.<sup>171</sup></i></p>			
Sec. 6, 8, 9	Regulates surrogacy arrangement s; ensures the child born has the same rights as a natural-born child of the couple.	It provides legal status and protection to children from abandonment .	<p><b>Lakshmi Janardhan v. State of Karnataka:<sup>172</sup></b></p> <p>The Court observed that Section 8 gives a right to the child born out of surrogacy to be deemed to be a biological child of the intending couple or the intending woman and such child would be entitled to all rights and privileges as is available to a natural child.</p>
<p align="center"><b>Assisted Reproductive Technology (Regulation) Act, 2021</b></p> <p><i>“The object of the Act, 2021 is to regulate and supervise the assisted reproductive technology clinics and the assisted reproductive technology banks and to prevent</i></p>			

<sup>171</sup> Palani Pandi v. Nil, CrI.R.C. (MD) No.981 of 2025 (Madras High Court, Order dated August 05, 2025).

<sup>172</sup> Lakshmi Janardhan v. State of Karnataka, 2023:KHC:43173

<i>the misuse of reproductive technology services as also for addressing the issues of reproductive health...</i> <sup>173</sup>			
Sec. 21, 31	Regulates ART clinics and banks; ensures rights and welfare of children born through ART.	It provides protection from abandonment ; and accords rights equal to biological children.	<b>Saswati Mohury v. Union of India:</b> <sup>174</sup> Section 21(g) provides that the clinic shall apply assisted reproductive technology services (i) to a woman between 21 and 50 years of age and (ii) to a man between 21-55 years of age. Section 21(g) simply mandates the respective age limits of a 'woman' and a 'man' for ART as 2 separate entities without treating the 'man' and the 'woman' as a unit in the sense of being a "commissioning couple".
<p style="text-align: center;"><b>Motor Vehicles Act, 1988</b></p> <p><i>“The MV Act is a beneficial legislation, the primary objective being to provide a statutory scheme for compensation of victims of motor vehicle accidents; or, their family members who are rendered helpless and disadvantaged by the untimely death or injuries caused to a member of the family, if the claim is found to be genuine.”</i><sup>175</sup></p>			
Sec.	Enhanced	It addresses	<b>Bikram Chatterjee v. State of West</b>

<sup>173</sup> Saswati Mohury v. Union of India, 2023 SCC OnLine Cal 6569.

<sup>174</sup> *Id.*

<sup>175</sup> Vimla Devi v. National Insurance Co. Ltd., (2019) 2 SCC 186.

194B, 199A	penalties for offences endangering child passengers; seat-belt/child-restraint requirements	road safety protections with particular focus to children; and provides penalties for non-compliance.	<b>Bengal:</b> <sup>176</sup>  Under Section 194B of the Motor Vehicles Act, the driver is responsible for ensuring that any child co-passenger is properly secured with a seat belt.
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### **B: Child Labour & Education: Provisions and Judgments**

<b>Section(s)</b>	<b>Provision Summary</b>	<b>Nature of Protection</b>	<b>Supreme Court Judgments</b>
<b>The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986</b> <i>The Child Labour (Prohibition and Regulation) Act, 1986 has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.</i> <sup>177</sup>			
Sec. 3	Prohibition of employment of children in any	Complete ban on employment, with narrow exceptions.	<b><i>Bachpan Bachao Andolan v. Union of India</i></b> <sup>178</sup> : The court emphasized the need for coordinated efforts for the

<sup>176</sup> Bikram Chatterjee v. State of West Bengal, 2022 SCC OnLine Cal 2233.

<sup>177</sup> Neelam Restorant v. State of UP, 2012 SCC OnLine All 4484.

<sup>178</sup> Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1.

	occupation.		rescue, rehabilitation, and education of child labourers and issued directions for better enforcement.
Sec. 3A	Prohibition of employment of adolescents in hazardous occupations.	Complete ban on employment in specified hazardous occupations.	

### The Factories Act, 1948

*“The Act is intended to regulate labour in factories, to protect workmen from being subjected to unduly long working hours, for making provision for healthy and sanitary conditions of service and for protecting the workmen from industrial hazards.”<sup>179</sup>*

Chapt er VII (Sec. 67-77 )	Regulates the employment, health, safety, and working hours for adolescents in factories.	Complements the Child Labour Act by setting standards for legally permissible adolescent work.	<b><i>State of Gujarat v. Bhupendra Kumar Jagjivandas</i><sup>180</sup></b>  At first glance, violations of Section 67 of the Factories Act, 1948 appear punishable under Section 92 of the same Act. However, Section 15 of the Child Labour (Prohibition and Regulation) Act, 1986 overrides this, mandating that penalties
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<sup>179</sup> Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore, 1993 (3) SCC 217.

<sup>180</sup> State of Gujarat v. Bhupendra Kumar Jagjivandas, 2001 SCC OnLine Guj 7.



			for contraventions of Section 67 must instead be imposed under Section 14 of the Child Labour Act. Thus, once the offence is established, punishment follows as prescribed under the Child Labour Act.
<p><b>The Right of Children to Free and Compulsory Education (RTE) Act, 2009</b></p> <p>The 2009 Act makes the Right of Children to Free and Compulsory Education justiciable. The 2009 Act envisages that each child must have access to a neighbourhood school. The 2009 Act has been enacted keeping in mind the crucial role of Universal Elementary Education for strengthening the social fabric of democracy through provision of equal opportunities to all.<sup>181</sup></p>			
Sec. 3	Right of child to free and compulsory education.	Guarantees every child aged six to fourteen the right to free and compulsory education at a local school until they complete	<b>Society for Unaided Private Schools of Rajasthan v. Union of India<sup>182</sup></b> : The Apex Court held that the RTE Act, 2009 makes the right to free and compulsory education justiciable, ensuring every child aged 6-14 access to a

<sup>181</sup> Society for Unaided Private Schools of Rajasthan v. Union of India, (2012) 6 SCC 1.

<sup>182</sup> *Id.*

		elementary education.	neighbourhood school. “Free” signifies removal of financial barriers, while “compulsary” imposes duties on the State and parents. Section 3(1) confers a statutory right to elementary education, while Section 3(2) prohibits any fees or charges that may prevent a child from exercising this right. The Court underlined that education is a charitable purpose, and Section 3(2) aims to eliminate financial barriers and capitation fees, thereby reinforcing the constitutional guarantee under Article 21-A.
Sec. 12(1)(c)	Responsibility of private schools for 25% reservation.	Mandates admission for children from economically weaker sections.	<b><i>Society for Unaided Private Schools of Rajasthan v. Union of India &amp; Another<sup>183</sup></i></b> : The court upheld the constitutionality of the 25% reservation mandate (Sec.

<sup>183</sup> Society for Unaided Private Schools of Rajasthan v. Union of India & Another, (2012) 6 SCC 1.

			<p>12(1)(c)), reasoning that the Act is “child-centric” and private schools must share the State's constitutional burden of providing education.</p> <p><b><i>Pramati Educational and Cultural Trust v. UOI</i><sup>184</sup></b> : Unanimously held that the 25% reservation mandate is not applicable to minority educational institutions (aided or unaided), as it would abrogate their fundamental right under Article 30(1).</p> <p><b><i>Aswini Jitendra Kable v. State of Maharashtra</i><sup>185</sup></b></p> <p>The Bombay High Court ruled that Maharashtra’s amendment to the <i>Maharashtra Right of Children to Free and</i></p>
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<sup>184</sup> *Pramati Educational and Cultural Trust v. UOI*, (2014) 8 SCC 1.

<sup>185</sup> *Aswini Jitendra Kable v. State of Maharashtra*, 2024:BHC-AS:28386-DB.

			<i>Compulsory Education (RTE) Rules, 2011</i> , which exempted private unaided schools from reserving 25% of seats for disadvantaged children if a government or aided school is located within 1 km, is unconstitutional.
Sec. 17	Prohibition of physical punishment and mental harassment.	Protects children from all forms of abuse in schools.	<b>Neetu Kukar v. Union of India:</b> <sup>186</sup> To ensure that children grow up in a free atmosphere conducive to inclusive growth, Section 17 has been incorporated which prohibits physical punishment and mental harassment of children.

### **C: Family, Marriage & Guardianship: Provisions and Judgments**

<b>Section(s)</b>	<b>Provision Summary</b>	<b>Nature of Protection</b>	<b>Supreme Court Judgments</b>
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<sup>186</sup> Neetu Kukar v. Union of India, 2020 SCC OnLine P&H 265.

<p style="text-align: center;"><b>The Prohibition of Child Marriage Act, 2006</b></p> <p><i>“The Act provides for governing parties to a child marriage after its commission, punitive measures against offenders of the Act as well as provisions for the prevention of child marriage.”<sup>187</sup></i></p>			
Whole Act	Comprehensive statute to prohibit, prevent, and penalise child marriages, and protect its victims.	The Act renders child marriages generally voidable and void in specific cases, while also providing for the maintenance and custody of children.	<p><b><i>Society for Enlightenment and Voluntary Action v. Union of India</i><sup>188</sup> :</b></p> <p>In this PIL, the Supreme Court addressed the ineffective implementation of the PCMA and issued a comprehensive set of guidelines to prevent child marriage, holding all levels of the state accountable. The key directions include:</p> <ul style="list-style-type: none"> <li> <p><b>Dedicated Child Marriage Prohibition Officers (CMPOs) (Sec. 16):</b> The CMPOs appointed under section 16, must not be burdened with other duties, to ensure focused prevention efforts. Further, CMPOs must carry out regular awareness campaigns in schools, religious institutions and</p> </li> </ul>

<sup>187</sup> Society for Enlightenment and Voluntary Action v. Union of India, 2024 INSC 790.

<sup>188</sup> *Id.*

			<p>panchayats.</p> <ul style="list-style-type: none"> <li> <b>Proactive Prevention (Sec. 13):</b>  Empowered and directed Magistrates to take <i>suo motu</i> action and issue injunctions to stop child marriages, particularly during auspicious days known for mass weddings. </li> <li> <b>High-Level Accountability (extending duties under Sec. 13(4) &amp; 13(5)):</b> Made District Collectors and Superintendents of Police directly responsible for preventing child marriages and mandated disciplinary action against neglectful officials. </li> <li> <b>Multi-Sectoral Approach:</b> Called for a holistic strategy involving legal enforcement, judicial measures, community involvement (e.g., “Child Marriage Free Village” initiative), and extensive awareness campaigns. </li> <li> <b>Education and Rehabilitation</b> </li> </ul>
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			<p>(linking to protections under Sec. 3, 4, 5 and constitutional rights): Mandated the integration of comprehensive sexuality education in school curricula and directed the creation of support systems and Individual Care Plans for at-risk children and survivors.</p>
Sec. 2(a) & 3	Defines “child” (21 for male and 18 for female)	Defines minimum age of marriage and provides the right to annul.	<p><b><i>Independent Thought v. Union of India</i></b><sup>189</sup> : While dealing with the marital rape exception under the IPC, the Supreme Court made observations relevant to child marriage. The Court struck down the exception that protected a husband from rape charges for sexual intercourse with his wife if she was between 15 and 18 years old. The Court held that this exception was arbitrary and violated Articles 14, 15, and 21. The judgment reinforces the spirit of the <i>Prohibition of Child Marriage Act</i> by refusing to grant legal sanctity to sexual</p>

<sup>189</sup> Independent Thought v. Union of India, (2017) 10 SCC 800.

			intercourse within a marriage if the wife is a child, thereby strengthening the protection against the consequences of child marriage.
Sec. 9 & 10	Punishment for performing or solemnizing a child marriage.	Punishes adult males who contract a child marriage, and any person who performs, conducts, or directs it, with rigorous imprisonment up to 2 years and a fine.	<p><b><i>Hardev Singh v. Harpreet Kaur</i><sup>190</sup></b> : The court held that Section 9, being a protective provision, does not penalize an adult woman for marrying a male child.</p> <p><b><i>Lajja Devi v. State of Delhi</i><sup>191</sup></b> : It was clarified that child marriage is voidable and not void under Section 3. The court stated that an adult husband of a minor wife has no automatic right of guardianship or custody while emphasising the welfare of the minor being paramount.</p> <p>A minor in such a marriage is not “in conflict with law” and must be placed in protective custody if needed, not in an observation home.</p>

<sup>190</sup> Hardev Singh v. Harpreet Kaur, (2020) 19 SCC 504.

<sup>191</sup> Lajja Devi v. State of Delhi, 2012 SCC OnLine Del 3937.



### Hindu Adoption and Maintenance Act, 1956

*“HAMA is a special legislation which was enacted to amend and codify the laws relating to adoption and maintenance amongst Hindus, during the subsistence of the marriage.”<sup>192</sup>*

Sec. 6-11	Governs the capacity to adopt, who can be adopted, and other conditions for a valid adoption.	Personal law applicable to Hindus dealing with the framework for adoption, by male or female, under Hindu personal law.	<b><i>Ghisalal v. Dhapubai</i><sup>193</sup></b> : The Court considered whether a Hindu male’s adoption of a child is valid when the wife’s consent is presumed merely because she was present at the adoption ceremony. The court stated that consent of the wife under Section 7 (Proviso) of the Hindu Adoption and Maintenance Act, 1956 is mandatory and it cannot be inferred from mere presence at ceremonial events. The consent must be affirmative and voluntary, either in writing or backed by active participation in the adoption process.
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### Guardians and Wards Act, 1890

<sup>192</sup> Rajnesh v. Neha, (2021) 2 SCC 324.

<sup>193</sup> Ghisalal v. Dhapubai, (2011) 2 SCC 298.

*“...object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The power and duty of the Court under the Act is the welfare of minor.”<sup>194</sup>*

Sec. 7 & 17	Empowers courts to appoint a guardian and mandates that the child's welfare is the paramount consideration	The provisions are used for guardianship, while keeping welfare of the child as paramount.	<b>Rosy Jacob v. Jacob A. Chakramakkal</b> <sup>195</sup> : The Court held that children are not property and recognized their individuality. Welfare of a child is the first and paramount consideration in custody/guardianship cases and not parental claims.
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#### **D: Health, Nutrition & Disability Rights: Provisions and Judgments**

<b>Section(s)</b>	<b>Provision Summary</b>	<b>Nature of Protection</b>	<b>Supreme Court Judgments</b>
<p align="center"><b>The National Food Security Act, 2013</b></p> <p><i>“The Right to Life as guaranteed by Article 21 of the Constitution gives the right to every human being to live a life of dignity with access to at-least bare</i></p>			

<sup>194</sup> Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413.

<sup>195</sup> Rosy Jacob v. Jacob A. Chakramakkal, (1973) SCC 1840.

<i>necessities of life. To provide food security to impoverished persons is the bounden duty of all States and Governments. The Parliament with the objective to provide food and nutritional security in human life cycle had enacted the National Food Security Act, 2013.</i> <sup>196</sup>			
Sec. 4, 5, 6	Entitlement to nutritional support for pregnant women, lactating mothers, and children.	Provides a legal framework for schemes like Mid-Day Meals and ICDS to combat malnutrition.	<b><i>People's Union for Civil Liberties v. Union of India</i></b> <sup>197</sup> : Transformed government food schemes into legal entitlements by directing the universal implementation of the Mid-Day Meal Scheme in schools, linking nutrition directly to the Right to Life under Article 21.
<b>The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994</b>  <i>The Act intends to prevent mischief of female foeticide and the declining sex ratio in India.</i> <sup>198</sup>			
Sec. 4, 5, 6	Prohibits sex-selection	Aims to prevent female foeticide	<b><i>Voluntary Health Association of Punjab v.</i></b>

<sup>196</sup> Re: Problems and Miseries of Migrant Labourers, (2020) 9 SCR 1.

<sup>197</sup> People's Union for Civil Liberties v. Union of India, Writ Petition (Civil) No.196 of 2001

<sup>198</sup> Federation of Obstetric and Gynecological Societies of India (FOGSI). v. Union of India, 2019 (6) SCC 283.

	and regulates pre-natal diagnostic techniques.	by making sex determination illegal.	<p><b>Union of India</b><sup>199</sup> : The court ordered the strengthening of implementation and monitoring mechanisms for PCPNDT through strengthening supervisory mechanisms, improving record -keeping, seizing illegal machines, and raising awareness.</p> <p><b>Ravinder Kumar v. State of Haryana</b>:<sup>200</sup></p> <p>The court quashed the FIR and complaint against a doctor accused of illegal sex determination and participation in an MTP racket. It held that under Section 30(1) of the PCPNDT Act, search and seizure must be authorised collectively by all members of the District</p>
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<sup>199</sup> Voluntary Health Association of Punjab v. Union of India, 2013 (4) SCC 401.

<sup>200</sup> Ravinder Kumar v. State of Haryana, 2024 INSC 684.

			Appropriate Authority constituted under the Act, and a decision by a single member is illegal.
<p style="text-align: center;"><b>The Rights of Persons with Disabilities Act, 2016</b></p> <p><i>It cannot be gainsaid that the said Act of 2016 is a social legislation enacted for the benefit of the Persons with disabilities and its provisions must be interpreted in order to enhance its objectives, so that the Persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others as contemplated under the Act.<sup>201</sup></i></p>			
Sec. 9	Guarantees right to non-discrimination, and protection from abuse, violence, and exploitation.	Ensures children with disabilities are protected and have the right to live with their families.	<b><i>Rajive Raturi v. Union of India<sup>202</sup></i></b> : The Court dealt with accessibility for persons with visual impairment, and held that State authorities must ensure barrier-free access to education, employment, and public spaces, extending protections to children with disabilities.
Sec.	Right to	Mandates	<b><i>Manish Lenka v. Union of</i></b>

<sup>201</sup> Rekha Sharma v. The Rajasthan High Court, Jodhpur, 2024 INSC 615.

<sup>202</sup> Rajive Raturi v. Union of India, (2018) 2 SCC 413.

16 & 31	inclusive education.	admission of children with benchmark disabilities in regular schools and provision of necessary support.	<b>India</b> <sup>203</sup>  The court noted that in view of the nature of rights under the Act, children with disabilities are entitled to facilities such as uniform, computer fee and transportation cost.
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## **E: Detailed Analysis of Key Aspects**

The tables above, though not exhaustive, provide an overview of the major statutes and provisions relating to children. While they outline the broad legislative framework, they cannot fully capture the layered challenges that arise in interpretation, enforcement, and implementation. Certain aspects of child rights and protection present complex issues that demand closer scrutiny. The following sections, therefore, undertake a more detailed examination of these aspects to highlight both the strengths and limitations of the existing framework.

### **i. Custody**

Ordinarily, a child is raised jointly by both parents. However, when conflict arises and the child cannot be raised amicably within the family, the issue of custody surfaces, often requiring judicial determination. Child custody in family law refers to the legal guardianship of a child below the age of 18, encompassing not just physical

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<sup>203</sup> Manish Lenka v. Union of India, W.P. (C) 14032/2022

possession but also responsibility for the child's care, education, upbringing, and overall welfare.

In India, the framework on child custody is fragmented across codified and uncoded personal laws as well as secular legislation. While personal laws provide the basic scheme for custody and guardianship in line with community-specific traditions, secular statutes such as the Special Marriage Act and the Guardians and Wards Act provide a uniform legal framework applicable across communities. The key statutory provisions are briefly set out in the table below:

Applicability	Relevant section	Summary of the provision
<b>Hindu Law</b>		
Hindu Marriage Act, 1955	Section 26	This provision empowers the court to make interim or final orders regarding the custody, maintenance, and education of minor children, keeping in view the welfare and wishes of the child wherever possible. The court may also modify, revoke, or vary such orders from time to time, even after the decree, to ensure the child's best interests are continuously protected.
The Hindu Minority and Guardianship Act, 1956	Section 6	It provides a skeleton framework for determining the natural guardian of a minor's person and property.
<b>Muslim Law</b>		

The Muslim Personal Law (Shariat) Application Act, 1937	Section 2	<p>It allows application of Muslim Personal Law (Shariat) in cases of guardianship amongst Muslims.</p> <p>In Muslim Law, custody is known as Hizana, according to which Hanafi mother shall have the custody of male child till he attains seven years of age and female child till she attains puberty.</p>
<b>Christian Law</b>		
The Divorce Act, 1869	Section 41	<p>This provision allows the court, during proceedings for judicial separation, to issue interim or final orders concerning the custody, maintenance, and education of minor children of the parties. The court may also, if necessary, place such children under its protection to safeguard their welfare.</p>
<b>Parsi Law</b>		
Parsi Marriage and Divorce Act, 1936	Section 49	<p>This provision empowers the court, in any matrimonial suit, to make interim and final orders on custody, maintenance, and education of children under 18 years. Even after the final decree, the court may, on application, modify, revoke, or vary such orders as needed to protect the welfare of the child.</p>



Secular Laws			
Special Marriage Act, 1954		Section 38	This provision authorizes the district court, in proceedings under Chapter V or VI, to make interim and final orders on the custody, maintenance, and education of minor children, keeping their wishes in mind where possible. Even after the decree, the court may modify, revoke, or vary such orders on application, ensuring continuous protection of the child's welfare.
Guardians and Wards Act, 1890		Section 7	This provision empowers the court to appoint or declare a guardian for the person, property, or both of a minor, if it is satisfied that such an order is necessary for the welfare of the child.

Beyond statutory provisions, judicial interpretation has been central to custody jurisprudence in India. In case of *Shazia Aman Khan v. State of Orissa*<sup>204</sup>, it was held that courts have consistently held that the welfare of the child is the paramount consideration, transcending parental rights under personal laws. The Supreme Court has emphasized that no statute can override this principle, and custody cannot be treated as a matter of parental entitlement. The child is not a mere chattel or property to be passed between disputing parents; rather, the child's holistic development, emotional well-being, and best interests must guide judicial decision-making.

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<sup>204</sup> *Shazia Aman Khan v. State of Orissa*, 2024 INSC 163.

While custody is usually granted to a parent or natural guardian, courts may deny custody to them if it is contrary to the child's welfare. The child's wishes are also taken into account, though they are not decisive. The judiciary has clarified that the wishes or desires of the child are distinct from what constitutes the child's best interests. The former may be ascertained through interaction with the child, but the latter requires a careful assessment by the court of all surrounding circumstances, including stability, security, and the ability of each parent or guardian to provide a nurturing environment.<sup>205</sup>

The law on custody in India thus reflects a dual framework—anchored in both personal and secular statutes—harmonized by a common judicial thread: the welfare of the child. Courts act not as arbiters of parental disputes but as protectors of the child's well-being, ensuring that custody arrangements secure not only immediate care but also long-term growth and stability. This underscores a fundamental shift in jurisprudence, i.e., custody is no longer about the rights of parents but about the rights and best interests of the child, which remain the focal point of judicial determination.

## **ii. Adoption**

Adoption is the legal and social process that permanently transfers all parental rights and responsibilities from a child's birth parents to new adoptive parents. This process creates a legally recognized parent-child relationship, just as if the child were born into the new family. For many children, adoption is a critical way to secure their fundamental right to a family and a safe, nurturing environment.

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<sup>205</sup> Rohith Thammana Gowda v. State of Karnataka, (2022) 4 SCR 784.

In India, the laws governing adoption have evolved significantly. The system has moved from being primarily guided by religious personal laws, to a modern and secular framework where the child's welfare is the most important consideration. The guiding principle of modern adoption law is not to find a child for a family, but to find a family for a child.

#### **a. The Secular Legal Framework: The Juvenile Justice (Care and Protection of Children) Act, 2015**

The Juvenile Justice (JJ) Act of 2015 is now the primary secular law for adoption in India. It created a single, uniform legal system for the adoption of orphaned, abandoned, and surrendered children, which is available to all Indian citizens, regardless of their religion. Chapter VIII of the Act provides a complete guide to the adoption process.

- **Statutory Foundation and Eligibility:**

- **Who Can Be Adopted? (Sections 38 & 58):** A child can only be considered for adoption after being declared “legally free for adoption”. This determination is made by the CWC under Section 38 of the Act. This section empowers the CWC to make this declaration for any child who is an orphan, has been abandoned, or has been surrendered by their biological parents. Once a child is declared legally free, the procedure for their adoption by prospective parents, as outlined in Section 58, can begin.
- **Who Can Adopt? (Section 57):** The law specifies that prospective adoptive parents (PAPs) must be physically fit, financially sound, mentally stable, and highly motivated to adopt a child. The goal is to

ensure they are fully prepared to provide a secure home for a child. A key rule under this section is that a single male is not permitted to adopt a girl child. For couples, the consent of both spouses is required.

- **The “Best Interest of the Child” Principle:** The entire JJ Act is built on the principle of the “best interest of the child”. This means that every decision made by authorities during the adoption process must prioritize the child’s well-being, safety, and long-term development above all other considerations.
- **Central Adoption Resource Authority (CARA) (Section 68):** The Act established CARA as the main government body to regulate all adoptions in India, both within the country and by parents living abroad. CARA manages the entire process through a transparent online platform, ensuring that all legal procedures are followed correctly.
- **The 2021 Amendment (Section 61):** To address the delays, the *JJ (Amendment) Act, 2021*, transferred the authority to issue final adoption orders from civil courts to the District Magistrate (DM).
- **The CARA Adoption Regulations, 2022:** These regulations introduced stricter age criteria for PAPs and stipulated that couples with two or more children are only eligible to adopt children with special needs or those who are hard to place. This policy was challenged but upheld by the Delhi High Court in *Debarati Nandee v. Ms. Tripti Gurha* (2024).<sup>206</sup> The Court held that the right to adopt is a right given by law, not a fundamental right under Article 21 of the Constitution. Therefore, the government has the power to regulate the process in the best interest of children. The court agreed with the government’s reason that the policy was meant to increase the adoption

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<sup>206</sup> Debarati Nandee v. Ms. Tripti Gurha, 2024:DHC:1287.

chances for special needs and hard-to-place children, and said that PAPs do not have a guaranteed right to adopt a child of their choice.

### **Types of Adoptions under the JJ Act, 2015**

The CARA framework delineates five distinct procedural pathways for adoption under the JJ Act, each tailored to the specific circumstances of the child and the prospective adoptive parents. These are:

**1. In-country Adoption of Orphaned, Abandoned, and Surrendered (OAS)**

**Children:** This is the primary and most common form of adoption, involving Indian citizens residing in India who wish to adopt a child who has been declared legally free for adoption by the CWC. The entire process, from registration of PAPs to the matching of the child, is managed through the CARINGS portal.

**2. In-country Relative Adoption:** This process applies when a child is adopted

by relatives (as defined in Section 2(52) of the JJ Act) residing within India. While it is a more direct process, it still requires the PAPs to file an application with the competent authority along with the consent of the biological parents.

**3. Adoption by Step-Parent:** This pathway is for a biological parent and their

spouse (the step-parent) to jointly adopt the child or children of the biological parent. This legal process formalizes the step-parent's legal status as a parent and requires a court application with the consent of both biological parents (if the other is alive and capable of consenting).

**4. Inter-country Adoption of OAS Children:** This applies when an orphaned,

abandoned, or surrendered child from India is adopted by Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs), or foreign citizens. This

process is strictly regulated under the Hague Convention on Inter-country Adoption and requires a No-Objection Certificate (NOC) from CARA before the adoption can be finalized.

5. **Inter-country Relative Adoption:** This governs the adoption of a child by relatives living abroad. Similar to its in-country counterpart, it requires an application to be made, but with the added layer of international procedures, including approvals from the authorities in the receiving country and a final NOC from CARA.

For a detailed procedural guide, reference may be made to the CARA Bench Book for Adoptions.<sup>207</sup>

#### **b. The International Framework: The Hague Convention on Inter-country Adoption (1993)**

Alongside domestic law, inter-country adoptions are governed by the *Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993)*.<sup>208</sup> India ratified this treaty in 2003. It provides a global framework to ensure that adoptions across borders are transparent, ethical, and conducted in the child's best interests.

- **Core Principles and Objectives (Article 1):** The Convention is built on three foundational pillars.<sup>209</sup>
  - To establish safeguards ensuring that inter-country adoptions take place in the best interests of the child and with respect for their

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<sup>207</sup> *Bench Book for Adoptions*, CARA

<https://cara.wcd.gov.in/PDF/Bench%20Book%20For%20Adoptions.pdf>

<sup>208</sup> Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993.

<sup>209</sup> *Id.*

fundamental rights.

- To establish a system of co-operation between member states to prevent the abduction, sale of, or traffic in children.
- To secure the automatic recognition of adoptions made in accordance with the Convention in all other member states.
- **Key Provisions and Safeguards:**<sup>210</sup> The Convention establishes a clear set of rules and responsibilities for both the child's country of origin and the receiving country.
  - **Subsidiarity Principle (Article 4):** A core principle is that inter-country adoption should be considered only after due consideration has been given to placing the child within their country of origin. This reinforces that moving a child to a foreign country is a measure of last resort.
  - **Informed Consent (Article 4):** The Convention places a strong emphasis on ensuring that all necessary consents are obtained freely and without any inducement by payment or compensation. The consent of the mother, where required, can only be given after the birth of the child.
  - **Establishment of Central Authorities (Article 6):** Each member state must designate a Central Authority to discharge the duties imposed by the Convention. This authority acts as the single point of contact and oversight for all inter-country adoptions. In India, the *Central Adoption Resource Authority* (CARA) is the designated Central Authority.<sup>211</sup>
  - **Cooperation (Chapters III & IV):** The Convention mandates a structured process of cooperation between the Central Authorities of

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<sup>210</sup> *Id.*

<sup>211</sup> CENTRAL ADOPTION RESOURCE AUTHORITY, [https://cara.wcd.gov.in/about/about\\_cara.html](https://cara.wcd.gov.in/about/about_cara.html) (last visited Sept. 25, 2025).

both countries. This includes the preparation of detailed reports on the child's background and adoptability by the state of origin (Article 16) and a comprehensive report on the eligibility and suitability of the prospective adoptive parents by the receiving state (Article 15). An adoption can only proceed after both Central Authorities have agreed that the placement is in the child's best interest (Article 17).

By creating this structured, cooperative, and transparent system, the Hague Convention provides the essential international legal architecture to protect vulnerable children during the inter-country adoption process. All inter-country adoptions of children from India must therefore comply with both the procedures under the JJ Act and the safeguards established by the Convention. In doing so, it strikes at the underbelly of society by helping to prevent child trafficking and modern-day slavery.

### **c. Adoption and Guardianship under Personal Laws**

Before the JJ Act created a uniform system, adoption was governed by different religious personal laws.

#### **c(i). Hindu Law: The Hindu Adoptions and Maintenance Act, 1956 (HAMA)**

The Hindu Adoptions and Maintenance Act, 1956, is the codified law that governs adoptions for Hindus, including Buddhists, Jains, and Sikhs. It functions independently of the provisions of the JJ Act.<sup>212</sup> HAMA is rooted in religious and cultural traditions where adoption was historically seen as a way to ensure the continuation of a family line and the performance of religious rites.

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<sup>212</sup> Juvenile Justice (Care and Protection) Act, 2015, Section 56(3).



- **Capacity to Adopt (Sections 7 & 8):**
  - **Section 7** states that any adult Hindu male of sound mind can adopt. In case he is married, he has to secure the consent of his wife (if she is alive and capable of giving consent). Consent is not needed if the wife has renounced the world, ceased to be a Hindu, or been declared of unsound mind by a court.
  - **Section 8** grants a similar right to any adult Hindu female of sound mind who is unmarried, widowed, or divorced. A married woman can also adopt if her husband has renounced the world, ceased to be a Hindu, or been declared of unsound mind.
- **Who can be given in adoption (Section 9):** Only the child's biological father or mother or a court-appointed guardian has the right to give a child up for adoption. This must be done with the consent of the other parent unless he/she has renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- **Who can be adopted (Section 10):** For a child to be adopted under HAMA, they must be a Hindu, must not have been previously adopted, must be unmarried, and must be below the age of 15 (unless a custom or usage applicable to the parties permits otherwise).
- **Other Conditions (Section 11):** This section imposes several crucial conditions. Among the most significant is the requirement under Section 11(vi) that there must be an actual physical act of giving and taking of the child. This process, which is the essence of the adoption, must be conducted with the intent to transfer the child from the birth family to the adoptive family. Other conditions include a mandatory 21-year age difference between the adopter

and adoptee of the opposite sex. Furthermore, the same child cannot be adopted by two different people simultaneously.

- **Legal Effects of Adoption (Section 12):** Once an adoption is validly completed, the child is considered for all legal purposes to be the child of the adoptive parents. All ties with the birth family are severed, and the child gains the same rights, including the right to inheritance, as a biological child in the new family. This transfer is permanent and cannot be reversed.

While HAMA provides a clear path to full legal adoption, it is important to note that it is primarily a private process between two families and lacks the state-run checks and balances of the JJ Act, which are designed to ensure the child's welfare is the primary consideration.

#### c (ii) Guardianship under Muslim, Christian, and Parsi Law

Islamic law does not recognize adoption in the way secular law does. Instead, it has a concept called *Kafala*, which is a customary and alternative care option for orphans and abandoned children. It allows a child to be placed under the care of a *Kafil* who assumes responsibility for the child's upbringing and welfare, including financial support. However, the child continues to remain the legal descendant of the biological parents and does not acquire the status of a natural heir of the "adoptive" parents.<sup>213</sup>

Similarly, Christian and Parsi personal laws do not have provisions for adoption.<sup>214</sup> Members of these communities traditionally had to use the *Guardians and Wards Act, 1890*. This law only allows for guardianship, not full adoption. This means the

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<sup>213</sup> Shabnam Hashmi v. Union of India, (2014) 4 SCC 1; ISMAEL DDUMBA-NYANZI, AN INTRODUCTION TO KAFALA (UNICEF 2023).

<sup>214</sup> Philip Alfred Malvin v. Gonsalvis, 1999 (1) KLT 292.

legal relationship ends when the child becomes an adult, and the child has no automatic right to inherit property, which can leave them in a legally vulnerable position.

#### **d. Landmark Judgments**

The courts in India, especially the Supreme Court, have played a very important role in developing and clarifying the law on adoption.

- ***Laxmikant Pandey v. Union of India (1984)***:<sup>215</sup> This is the most important early case in Indian adoption law. At the time, there was no proper law to regulate inter-country adoptions, and there were serious fears of child trafficking. The Supreme Court stepped in to protect children and created a detailed set of rules and safeguards for such adoptions. The Court declared that the welfare of the child must always be the first priority and that Indian parents should be given preference. This judgment was a major step in making adoption safer and directly led to the creation of CARA.
- ***Shabnam Hashmi v. Union of India (2014)***:<sup>216</sup> This judgment democratized adoption in India. The Supreme Court held that the right to adopt under the secular Juvenile Justice Act is available to all Indian citizens, irrespective of their religion. It clarified that personal law cannot be a bar to any person availing themselves of this secular right. This transformative verdict opened the door to full, permanent adoption for millions of non-Hindu Indians who were previously limited to the incomplete status of guardianship. It was a crucial step towards substantive equality in family law.
- ***Supriyo @ Supriya Chakraborty v. Union of India (2023)***:<sup>217</sup> This case

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<sup>215</sup> *Laxmikant Pandey v. Union of India*, (1984) 2 SCC 244.

<sup>216</sup> *Shabnam Hashmi v. Union of India*, 2014 INSC 111.

<sup>217</sup> *Supriyo @ Supriya Chakraborty v. Union of India*, 2023 INSC 920.

addressed the right of queer and unmarried couples to jointly adopt. In a 3:2 verdict, the Supreme Court upheld the CARA regulation requiring couples to be in a “stable marital relationship”, thereby barring unmarried and queer couples from joint adoption. The majority viewed this as a policy matter for Parliament to decide. The dissenting opinion argued that this regulation was discriminatory and unconstitutional, as parenting ability is not contingent on marital status or sexual orientation. The current legal position is that while a single queer person can adopt, a couple cannot jointly adopt.

- ***M. Vanaja v. M. Sarla Devi (Dead)***:<sup>218</sup> In this case, the appellant claimed the status of an adopted daughter based on substantial evidence that she was treated as a child of the family, including school records and other documents. However, she could not provide any proof of the actual ceremony of ‘giving and taking’ of the child, a mandatory condition under Section 11(vi) of HAMA. The Supreme Court ruled that after the codification of adoption law under HAMA in 1956, strict compliance with its statutory conditions is non-negotiable. It held that the physical act of giving and taking is the “essence of adoption”. While courts had accepted informal evidence of adoption in cases arising before the Act’s commencement, the codified law leaves no room for such inferences. Mere evidence of being treated as a child, however compelling, cannot substitute for the proof of the mandatory ceremony.
- ***Ghisalal v. Dhapubai (Dead) (2011)***:<sup>219</sup> This case dealt with the requirement of consent. A Hindu male had adopted a son, and while his wife was present during the adoption ceremonies, there was no explicit evidence of her

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<sup>218</sup> *M. Vanaja v. M. Sarla Devi*, (2020) 5 SCC 307.

<sup>219</sup> *Ghisalal v. Dhapubai (Dead)*, (2011) 2 SCC 298.

affirmative consent as required by the proviso to Section 7 of HAMA. The lower courts had inferred her consent merely from her presence at the events. The Supreme Court overturned these findings, terming them “perverse”. It ruled that the wife’s consent for an adoption by her husband cannot be presumed from her presence or her silence. The consent mandated by Section 7 must be an explicit, affirmative act, and the burden of proving it lies on the party claiming the adoption’s validity. The Court held that silence or a lack of protest does not constitute legal consent.

- ***Sawan Ram v. Kala Wanti***:<sup>220</sup> The central issue in this case was the legal status of a son adopted by a widow after her husband’s death. The deceased husband’s reversioners challenged the adoption, contending that the child would be the son of the widow alone and, therefore, could not inherit the property of her deceased husband. The Supreme Court rejected this interpretation. It held that the effect of a valid adoption under Section 12 of HAMA is that the child is “deemed to be the child of his or her adoptive father or mother for all purposes”. The Court clarified that when a widow adopts a child, the child is adopted not just to her individually, but into the family of her deceased husband. The act of adoption effectively severs all ties with the birth family and transplants the child completely into the adoptive family. Consequently, the child acquires the same rights as a natural-born son, including the right to inherit the property of the deceased adoptive father.

The legal framework for adoption in India is characterized by a dual system, comprising the secular Juvenile Justice Act, 2015, and various personal laws. The JJ Act provides a uniform pathway for all Indian citizens to form a permanent

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<sup>220</sup> *Sawan Ram v. Kala Wanti*, 1967 SCR (3) 687.

parent-child relationship, establishing the principle of the child's best interest as paramount. Alongside this secular framework, personal laws offer different approaches. The judiciary has played a crucial role in the evolution of these laws. The legal landscape continues to evolve through legislative action and judicial interpretation, reflecting an ongoing commitment to securing a family for every child.

### **iii. Child Rights and Procedures under the JJ Act, 2015**

The JJ Act was created to update and combine the laws for two specific groups of children: those accused or found to have broken the law, and those who require care and protection. Its philosophy is based on restorative justice (repairing harm) rather than retributive justice (punishment). It seeks to meet the “basic needs” of these children through “proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach”.<sup>221</sup>

This focus on restoration is a continuation of principles from earlier laws and has been supported by Indian courts. The Supreme Court of India, in cases like *Bhola Bhagat v. State of Bihar*<sup>222</sup> and *Salil Bali v. Union of India*,<sup>223</sup> has consistently stated that the goal of juvenile justice law is to “reform the delinquent child and reclaim him as a useful member of the society”, highlighting that the system is “restorative and not retributive”.

#### **a. ‘Child in Conflict with Law’ v. ‘Child in Need of Care and Protection’**

The JJ Act, 2015, creates two separate legal categories for children, leading to different procedures handled by different official bodies. The two main categories

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<sup>221</sup> The Juvenile Justice (Care and Protection Of Children) Act, 2015; CENTRAL ADOPTION RESOURCE AUTHORITY, <https://cara.wcd.gov.in/pdf/jj%20act%202015.pdf> (last visited Sept. 20, 2025).

<sup>222</sup> *Bhola Bhagat v. State of Bihar*, 1997 (8) SCC 720.

<sup>223</sup> *Salil Bali v. Union of India*, (2013) 7 SCC 705.

are:

- **Child in Conflict with Law (CCL):** Section 2(13) defines a CCL as “a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence”. This definition clearly states that the child’s age is determined based on the date the offence was committed, not the date they were caught or brought to trial. This ensures that a person who committed a crime as a child but was caught after turning 18 still receives the protections of the juvenile justice system.
- **Child in Need of Care and Protection (CNCP):** Section 2(14) gives a detailed and broad definition of a CNCP, covering many types of vulnerability. A child is considered in need of care and protection if they are, for example:
  - Found without a home or a way to support themselves.
  - Found begging, working against labour laws, or living on the streets.
  - Living with someone who has harmed, exploited, abused, or neglected them, or is likely to do so.
  - Mentally or physically challenged or very ill with no one to care for them.
  - An orphan, abandoned, or surrendered.
  - A missing or runaway child whose parents cannot be found.
  - A victim of, or at risk of, abuse, torture, sexual exploitation, drug abuse, or trafficking.
  - A victim of war, civil unrest, or a natural disaster.
  - At immediate risk of child marriage.

This wide definition highlights the Act’s extensive protective role, which goes beyond criminal acts to address many social and economic issues that put children at risk.

## **b. The Sixteen Guiding Principles**

Section 3 of the JJ Act, 2015, lists sixteen key principles that must guide the Central and State Governments, the Juvenile Justice Board (JJB), the CWC, and all other agencies. These are not just suggestions but mandatory rules for every decision and action concerning a child. Important principles include:

- **Principle of Best Interest (Sec 3(iv)):** This is the most important consideration. All decisions must focus on what is best for the child's welfare and helps them reach their full potential.
- **Principle of Presumption of Innocence (Sec 3(i)):** Any child up to age 18 is assumed to be innocent of any criminal intent. This acknowledges their lack of maturity.
- **Principle of Dignity and Worth (Sec 3(ii)):** Every child must be treated with dignity and respect, and their identity must be protected from negative labels.
- **Principle of Participation (Sec 3(iii)):** Every child has the right to be heard and to take part in all processes and decisions that affect them. Their views should be considered based on their age and maturity.
- **Principle of Family Responsibility (Sec 3(v)):** The main responsibility for a child's care and protection lies with their family. The state's job is to support the family, not to take its place unless necessary.
- **Principle of Safety (Sec 3(vi)):** All steps must be taken to keep the child safe from harm, abuse, or mistreatment within the justice or care system.
- **Principle of Institutionalisation as a Measure of Last Resort (Sec 3(xii)):** A child should be placed in an institution only after all other options have been tried.
- **Principle of Non-Stigmatising Semantics (Sec 3(viii)):** Negative or blaming



words (like ‘arrest’, ‘charge’, ‘prosecution’) should not be used in cases involving children.

- **Principle of Fresh Start (Sec 3(xiv)):** All past records of a child in conflict with law should be deleted (unless they are tried as an adult for a heinous offence), allowing them to return to society without a criminal record.
- **Principle of Diversion (Sec 3(xv)):** Alternatives to formal court proceedings, like counselling or community service, should be used when appropriate.

### **c. The Adjudicatory Authorities: Juvenile Justice Board (JJB) and the Child Welfare Committee (CWC)**

The JJ Act creates a two-part system with two specialized bodies at the district level, each with a clear role for one of the two categories of children.

- **The Juvenile Justice Board (JJB):** Formed under Section 4, in every district, the JJB is the only authority that handles cases of Children in Conflict with Law. It is made up of a Principal Magistrate (a judicial magistrate with at least three years of experience) and two social workers, with at least one being a woman. This structure is meant to combine legal knowledge with an understanding of child psychology and welfare. The JJB’s powers, listed in Section 8, include conducting inquiries, granting bail, performing preliminary assessments, and issuing various orders aimed at rehabilitation.
- **The Child Welfare Committee (CWC):** Formed under Section 27 in every district, the CWC is the final authority for all cases involving Children in Need of Care and Protection. It acts as a Bench of Magistrates and includes a Chairperson and four other members who are experts in child-related fields. At least one member must be a woman. This makeup highlights its focus on welfare. The CWC’s powers, listed in Sections 29 and 30, include taking notice

of CNCPs, conducting inquiries, ordering social investigations, and making orders for restoration, foster care, sponsorship, and adoption.

While this two-part structure is clear, the reality is often more complex, as a child can be both a 'victim' and an 'offender'. A child's offence may be a result of their own vulnerability. The Act recognizes this by allowing for referrals between the two bodies. For instance, Section 8(3)(g) allows the JJB to send a CCL's case to the CWC if the child also needs care and protection. The success of the juvenile justice system depends on good coordination between these two bodies. Without it, a child might be treated only as an offender by the JJB, while their needs as a victim are ignored.

<b>Feature</b>	<b>Juvenile Justice Board (JJB)</b>	<b>Child Welfare Committee (CWC)</b>
<b>Statutory Basis</b>	Section 4, JJ Act, 2015	Section 27, JJ Act, 2015
<b>Jurisdiction</b>	Children in Conflict with Law (CCL)	Children in Need of Care and Protection (CNCP)
<b>Composition</b>	Principal Magistrate (Judicial) + 2 Social Workers	Chairperson + 4 Members (from social work, psychology, etc.)
<b>Nature of</b>	Quasi-Judicial (Adjudicatory)	Quasi-Judicial (Primarily Welfare-Oriented)

<b>Body</b>		
<b>Primary Function</b>	Conduct inquiry into alleged offences; conduct preliminary assessment; pass dispositional orders.	Conduct inquiry to determine need for care; pass orders for child's safety, well-being, and permanency.
<b>Key Powers</b>	Grant bail; transfer cases to Children's Court; order placement in Observation/Special Homes; impose community service/fines.	Declare a child legally free for adoption; order restoration to family; order placement in Children's Homes, foster care, sponsorship.
<b>Guiding Process</b>	Inquiry (as per Section 14), similar to a trial but child-friendly.	Non-adversarial inquiry focused on social investigation.
<b>Central Document</b>	Social Investigation Report	Social Investigation Report & Individual Care Plan (ICP)
<b>Primary Goal</b>	Rehabilitation and social re-integration of the child, ensuring accountability through a reformatory lens.	Ensuring the safety, well-being, and permanent care of the child, with family restoration as the prime objective.

#### **d. Key Functionaries: The Support System**

The adjudicatory bodies do not work alone. The JJ Act creates a strong support system of specialized officials to ensure the law is implemented effectively.

- **Special Juvenile Police Unit (SJPU) and Child Welfare Police Officer (CWPO):** As required by Section 107, every district must have an SJPU, led by an officer at least at the level of Deputy Superintendent of Police. Additionally, every police station must appoint at least one officer as a CWPO. These officers receive special training to handle children with care and are the first point of contact for both CCLs and CNCPs. Their duties include using child-friendly procedures, preventing mistreatment, and working with the JJB, CWC, and other agencies.
- **District Child Protection Unit (DCPU):** Created under Section 106, the DCPU is the main administrative body in each district for implementing the Act. Working under the District Magistrate, the DCPU coordinates the work of all child protection groups, provides social workers to the JJB and CWC, manages sponsorship and foster care, and ensures all CCIs follow the required standards.

#### **e. The Procedural framework for a ‘Child in Conflict with Law’ (CCL)**

The JJ Act, 2015, provides a detailed, time-bound procedure with many safeguards for dealing with a child accused of a crime. The process is designed to divert most children away from punishment and toward rehabilitation. A formal trial, especially one in an adult court, is meant to be a rare exception for the most serious cases, protected by strict procedural checks.

##### **1. First Contact: Apprehension and Post-Apprehension Safeguards**

The first interaction between a child and the legal system is a crucial moment that

follows strict rules to reduce trauma and protect the child's rights.

- **Apprehension, Not Arrest:** Police can apprehend a child for a minor or serious offence only if it is in the child's best interest; for heinous offences, apprehension is standard.<sup>224</sup> The Act uses the word 'apprehension' instead of 'arrest' to avoid the negative label associated with arrest.
- **Immediate Procedures (Section 10):** As soon as a child is apprehended, the police officer must immediately place the child in the care of the SJPU or a designated CWPO. The child must then be brought before the JJB within 24 hours, not including travel time.
- **Child-Friendly Protocols:** Several important safeguards must be followed. The apprehending police officer must be in plain clothes, not a uniform, to create a less threatening atmosphere. The child must not be handcuffed, chained, or forced in any way. The child must not be put in a police lock-up or a regular jail. A female child must be apprehended and escorted by a female police officer.<sup>225</sup>
- **Information and Legal Aid Duties (Section 13):** The CWPO must immediately inform the child's parents or guardian about the apprehension and the time they will be brought before the JJB. A Probation Officer must also be informed to start preparing a Social Investigation Report.

## 2. The Right to Liberty: Bail as the Rule under Section 12

Section 12 of the JJ Act reflects the idea that taking away a child's freedom should be a last resort.

- **Presumption in Favour of Bail:** A child accused of a crime has the right to be released on bail, with or without a surety, or be placed under the supervision of a

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<sup>224</sup> Juvenile Justice Committee, Delhi High Court, *Frequently Asked Questions under JJ Act, 2015* (Sept. 20, 2025), [https://jjcdhc.nic.in/?page\\_id=1619](https://jjcdhc.nic.in/?page_id=1619).

<sup>225</sup> *Id.*

Probation Officer or a fit person.

- **Grounds for Denial:** The JJB can deny bail only in three specific situations: if there is reason to believe that the child's release would likely (i) lead them to associate with known criminals, (ii) expose them to moral, physical, or psychological danger, or (iii) harm the interests of justice.
- **Placement upon Denial of Bail:** If the JJB denies bail, the child cannot be sent to a jail. They must be kept in an Observation Home or a Place of Safety while the inquiry is ongoing.

### **3. The JJB Inquiry: Social Investigation and Child-Friendly Adjudication**

The main part of the juvenile justice process is the 'inquiry' by the JJB, which is very different from a criminal trial.

- **Nature of Inquiry (Section 14):** The JJB must conduct its proceedings in a simple and "child-friendly atmosphere". The location should not be intimidating or look like a regular court. The child must be given the chance to be heard and to participate in the inquiry.
- **Social Investigation Report:** The report is the main document for the JJB's inquiry. A Probation Officer or a Child Welfare Officer must submit this detailed report within 15 days of the child's first appearance (Section 8). The report gives a complete social and psychological profile of the child, including family background, economic status, education, and the circumstances of the alleged offence. It helps the JJB make a well-informed decision in the child's best interest.
- **Timelines for Inquiry:** The Act sets strict deadlines to ensure cases are handled quickly. For 'petty offences', the inquiry must be finished within four months, with a possible two-month extension (Section 14(2)). If the inquiry is not

finished by then, the case is closed (Section 14(4)). This protects the child from long delays and uncertainty.

#### 4. Preliminary Assessment for Heinous Offences (Section 15)

The most debated provision of the 2015 Act is the preliminary assessment, which creates a special procedure for certain children.

- **Applicability:** This procedure is only for children who were between 16 and 18 years old when they allegedly committed a 'heinous offence'. A heinous offence is one with a minimum punishment of seven years or more in prison (Section 2(33)).
- **Purpose and Scope:** The preliminary assessment is not a trial to decide guilt. Its only purpose is to assess the capacity of such a child to commit and understand the consequences of the alleged offence.
- **Judicial Mandates on Procedure:** The Supreme Court has played a key role in strengthening the procedure with safeguards to prevent its misuse.
  - **Mandatory Expert Assistance:** In the case of *Barun Chandra Thakur v. Master Bholu* (2022),<sup>226</sup> the Supreme Court clarified that the JJB must get help from experienced psychologists or psycho-social workers when doing a preliminary assessment. The ruling acknowledged that judging a child's mental ability to commit a crime and understand its consequences is a specialized task that requires professional expertise. This decision made the assessment a more evidence-based and scientific process, protecting it from unfairness and upholding the child's right to a fair procedure.
  - **Directory Nature of Timelines:** In *Child in Conflict with Law v. State of*

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<sup>226</sup> Barun Chandra Thakur v. Bholu, (2023) 12 SCC 401.

*Karnataka* (2024),<sup>227</sup> the Supreme Court decided that the three-month time limit for the assessment is not mandatory but directory. The Court prioritized a thorough and meaningful assessment over speed, explaining that a rushed evaluation could lead to wrong decisions with lasting harm to the child. This ruling gives JJBs the flexibility to ensure that expert reports are complete and all factors are considered. The judgment also clarified the process for appealing a Section 15 order. It confirmed the right to appeal and stated that an appeal should be filed within 30 days, with the court able to allow for delays if there is a good reason. This provides a clear and timely way to review the decision, adding another layer of protection for the child.

- **Outcome of Assessment:** After the assessment, the JJB issues an order under Section 18(3) stating whether the child needs to be tried as an adult by the Children's Court.

## **5. Dispositional Orders: Rehabilitative Measures (Section 18)**

If the JJB finds that a child committed an offence but does not transfer the case to the Children's Court, it can choose from a wide range of orders. These orders are focused on rehabilitation and are based on the child's needs as described in the Social Investigation Report. The options include:

- Allowing the child to go home after advice and counselling for the child and their parents.
- Directing the child to take part in group counselling.
- Ordering the child to perform community service.
- Ordering the child (if over 14 and earning) or their parents to pay a fine.
- Directing the child to be released on probation and placed under the care of a

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<sup>227</sup> Child in Conflict with Law v. State of Karnataka, 2024 SCC OnLine SC 798.



parent or guardian for up to three years.

- Directing the child to be sent to a Special Home for up to three years for reformatory services.

Every final order must include an Individual Care Plan (ICP) for the child, detailing the rehabilitation actions to be taken. The Act forbids sentencing any child to death or life imprisonment without the possibility of release (Section 21).

### *Social Reintegration of Children*

The JJ Act prioritises rehabilitation and restoration of children over punitive or deterrent measures. Its primary focus is to ensure that CCL are provided with opportunities to reform, reintegrate into society and develop holistically, rather than being subjected solely to punishment.

The principle of a fresh start is a core value of juvenile justice. It ensures that a child in conflict with the law is given an opportunity to move beyond past mistakes and rebuild their life. Section 24(1) of the Juvenile Justice Act protects such children from disqualification arising out of their involvement in a case, while Section 74(2) explicitly prohibits the police from disclosing any records of a child for purposes such as character verification, once the case has been closed or disposed of. Together, these provisions lay a strong foundation for the principle of fresh start, which remains central to the administration of the JJ Act.

For juvenile justice to be meaningful, all aspects—prevention, intervention, treatment, rehabilitation, and reintegration—must receive equal emphasis. Rehabilitation may occur relatively quickly, but reintegration is a longer and more

complex process.<sup>228</sup> It typically unfolds in three distinct stages:<sup>229</sup>

- *Restoration* – This first stage involves locating the child’s parents, relatives, or guardians, and restoring the child to a safe family or community environment.
- *Rehabilitation* – Rehabilitation focuses both on enhancing the child’s individual skills and on creating enabling environmental conditions to ensure the best possible quality of life.
- *Reintegration* – Reintegration goes further, involving a dual process: the child accepts their family and society, and the family and society, in turn, accept the child. This stage is crucial in helping the child develop a whole and stable identity within the community.

However, despite these safeguards, significant challenges persist. It has been noticed that in some states CCL and CNCP, housed in various CCIs, often lack adequate infrastructure and professional services necessary to meet their developmental and rehabilitative needs. Further, delays in the completion of inquiries by JJBs frequently deprive children of timely access to post-discharge rehabilitation benefits, undermining the very purpose of the juvenile justice framework.<sup>230</sup>

Recognising the significance of reformation, rehabilitation, and social reintegration, the Delhi High Court<sup>231</sup> issued a set of directions to JJBs and the Delhi Government. These directions aimed to streamline the functioning of the juvenile justice delivery system under the JJ Act, 2015, and the Juvenile Justice Rules, 2016, thereby

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<sup>228</sup> Binoy Paul and Victor Paul, ‘Factors for Reintegration of Children in Conflict with Law’, 1 Journal of Dharma 45, 105-124 (2020).

<sup>229</sup> *Id.*

<sup>230</sup> ‘Audit Report on ‘General & Social Sector’ for the year ended March 2015’ Comptroller and Auditor General of India  
[https://cag.gov.in/uploads/download\\_audit\\_report/2016/Chapter%203%20Compliance%20Audit%20Observations\\_1.pdf](https://cag.gov.in/uploads/download_audit_report/2016/Chapter%203%20Compliance%20Audit%20Observations_1.pdf)

<sup>231</sup> Court on its own motion v. State, Crl. Ref 1/2020 (Order dated Sept. 29, 2021)

strengthening the framework for children's reintegration into society. The judgment underscores the need for judicial oversight to ensure effective implementation of the JJ Act, both in letter and spirit.

## **6. The Children's Court: Trial as an Adult and Sentencing Provisions**

If the JJB orders a child to be tried as an adult, the case is transferred to the Children's Court.

- **Transfer and Second Assessment (Section 19):** The Children's Court receives the case. The Children's Court is not required to follow the JJB's assessment. It can conduct its own assessment and decide either (i) to try the child as an adult, or (ii) not to try as an adult, in which case it conducts an inquiry like a JJB and issues orders under Section 18. This provides a second level of review before a child enters the adult criminal system.
- **Sentencing Provisions:** If the Children's Court tries the child as an adult and finds them guilty, it can give any sentence an adult could receive for the same crime, with two key exceptions: the child cannot be sentenced to death or life imprisonment without the possibility of release. After sentencing, the child is sent to a 'Place of Safety' until they turn 21, not to a regular prison. Before their release, their progress is evaluated to plan for their return to society.

### **f. The Procedural framework for a 'Child in Need of Care and Protection' (CNCP)**

The procedure for a CNCP is very different from that of a CCL. It is a process focused on the child's welfare, not on finding fault, and is managed by the CWC. The system is designed for 'progressive intervention', starting with the simplest solution (supporting the family) and moving to more permanent ones (like adoption) only

when other options are not suitable. The Individual Care Plan (ICP) is the main document that guides each step.

## **1. Identification and Production before the Child Welfare Committee**

The process for a CNCP starts with their identification and safe presentation before the CWC.

- **Who Can Produce a Child (Section 31):** A child can be brought before the CWC by any police officer, public servant, CHILDLINE (the 1098 helpline), any recognized NGO, a social worker, any concerned citizen, or the child themselves.<sup>232</sup> This allows the entire community to help protect children.
- **Mandatory Reporting (Section 32):** Any person or institution - including police, hospitals, or organizations - that finds a child who seems to be abandoned, lost, or an orphan must report it and bring the child before the CWC within 24 hours. Failing to report can lead to penalties.

## **2. The CWC Inquiry: Determining the Need for Care and Protection**

Once a child is brought in, the CWC starts an inquiry to determine if the child fits the definition of a CNCP under Section 2(14).

- **Nature of Inquiry (Section 36):** The CWC's inquiry is not a trial. It is a child-friendly process with the only goal of finding the facts and deciding what is in the child's best interest. The CWC acts as a Bench of Magistrates and can require people to appear and provide documents.
- **Social Investigation Report:** A key part of the inquiry is the Social Investigation Report. The CWC asks a social worker or Child Welfare Officer to prepare a

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<sup>232</sup> Juvenile Justice Act & Child Protection Authorities Guide - Child Safety at Work, <https://childsafetyatwork.org/juvenile-justice-act-child-protection-authorities/> (last visited Sept. 20, 2025).

detailed report on the child's background. This report helps the CWC understand the child's family, social situation, and specific needs, which forms the basis for its final decision.

- **Interim Orders:** While the inquiry is ongoing, the CWC can make temporary orders for the child's immediate safety. This can include placing the child in a registered CCI or with a suitable person for a short time.

### **3. The Individual Care Plan (ICP): A Roadmap for Rehabilitation**

The Individual Care Plan (ICP) is a required and central part of the CNCP process. It is a personalized plan for the child's care, protection, and rehabilitation.

- **Preparation and Purpose:** The ICP is prepared by a social worker in consultation with the child (if possible, depending on their age). It is a complete development plan that outlines actions for different parts of the child's life, including:
  - Health and nutrition.
  - Emotional and psychological support.
  - Education and job training.
  - Recreation and creativity.
  - Protection from all forms of abuse.
- **A Living Document:** The ICP is not a one-time report. It is reviewed regularly to check the child's progress and is updated as their needs change. It gives the CWC a clear, evidence-based guide for making decisions and checking if the actions taken are effective.

### **4. Dispositional Orders: From Restoration to Alternative Care (Section 37)**

After the inquiry, if the CWC is sure the child is a CNCP, it has the final authority to

issue one or more orders. These orders are ranked to prioritize family-based care, with placement in an institution as the last resort.<sup>233</sup>

- **Restoration to Family (Section 40):** The main goal is to return the child to their family. The CWC's first effort is to find the child's parents or relatives and, if they are suitable, return the child to their care, sometimes with supervision from a social worker.
- **Sponsorship (Section 45):** If a family is willing but cannot care for a child due to money problems, the CWC can order sponsorship. This provides financial or other support to the family to meet the child's needs, preventing the child from having to go to an institution.
- **Foster Care (Section 44):** If returning to the family is not possible or not in the child's best interest, the CWC can place the child in foster care. This means placing the child in the home of a trained and approved foster family. This is preferred over an institution because it provides a family-like setting.
- **Institutional Placement:** Only when family-based options are not possible, the CWC may order the child to be placed in a registered CCI, like a Children's Home. This is strictly a last resort.
- **The Path to Adoption (Section 38):** For a child who is an orphan, abandoned, or surrendered, the Committee can conduct an inquiry to declare the child "legally free for adoption". This legal step, taken after all efforts to find relatives have failed, allows a Specialised Adoption Agency (SAA) to find a permanent adoptive family for the child.

## **g. Landmark Judgments**

India's courts have played an important and active role in explaining the rules of the

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<sup>233</sup> Standard Operating Procedures for Child Welfare Committee, [https://oscps.nic.in/sites/default/files/guidelines\\_pdf/Book.pdf](https://oscps.nic.in/sites/default/files/guidelines_pdf/Book.pdf) (last visited Sept. 20, 2025).

JJ Act, 2015. In several major rulings, the Supreme Court and various High Courts have cleared up confusion, strengthened legal protections, and made sure the Act is applied in a way that focuses on the child. This judicial guidance has been especially important in shaping how the Act's most complex provisions are used.

## **1. Interpreting the 'Best Interest of the Child' Principle**

The 'Principle of Best Interest of the Child', found in Section 3(iv), is the guiding philosophy of the JJ Act. The courts have consistently treated this principle as a binding rule, not just a suggestion. In many cases, especially those about custody and care, courts have ruled that all other factors, like parental rights, are less important than the child's welfare.<sup>234</sup> In *Lahari Sakhamuri v. Sobhan Kodali*,<sup>235</sup> the Supreme Court confirmed that in custody cases, the child's well-being is the top priority. This principle requires a careful, individual assessment of each child's situation, needs, and wishes, not just a rigid application of the law.

## **2. Assessment of children (16-18 years) in cases of heinous offences**

The preliminary assessment under Section 15 functions as a crucial gateway, determining whether a child aged 16 to 18 will remain within the protective juvenile justice system or be transferred to face trial within the adult criminal system. The Supreme Court has made several key rulings to make the rules for this process clear.

### **a. Ajeet Gurjar v. The State Of Madhya Pradesh (2023):<sup>236</sup> This judgment**

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<sup>234</sup> Children in Conflict with Law - Prevention, Restorative Justice, Diversion and Alternatives to Detention - Mphc.gov.in, [https://mphc.gov.in/PDF/web\\_pdf/JJC/DOWNLOAD/REPORTS%20&%20PUBLICATIONS/National%20Annual%20Stakeholders%20Consultations%20on%20Child%20Protection-2023%20held%20on%2023-24%20September%202023.pdf](https://mphc.gov.in/PDF/web_pdf/JJC/DOWNLOAD/REPORTS%20&%20PUBLICATIONS/National%20Annual%20Stakeholders%20Consultations%20on%20Child%20Protection-2023%20held%20on%2023-24%20September%202023.pdf) (last visited Sept. 20, 2025).

<sup>235</sup> *Lahari Sakhamuri v. Sobhan Kodali*, 2019 (7) SCC 311.

<sup>236</sup> *Ajeet Gurjar vs The State Of Madhya Pradesh*, 2023 INSC 875.

clarified the crucial procedure that the Children's Court must follow after receiving a case from the JJB. The Supreme Court ruled that the Children's Court cannot simply accept the JJB's preliminary assessment and proceed to an adult trial. Instead, the Children's Court has its own separate and mandatory duty under Section 19 of the JJ Act to first conduct its own inquiry and decide if there is truly a "need for trial of the child as an adult". The Court held that the JJB's assessment is only preliminary. The inquiry by the Children's Court serves as a vital second check and is not an "empty formality". The ruling interpreted the word "may" in Section 19(1) to mean "shall", making this independent inquiry an essential, non-negotiable step.

b. **Thirumoorthy v. State Represented by The Inspector of Police (2024):**<sup>237</sup>

This case further clarified the precise scope and nature of the preliminary assessment, building on the principles of procedural correctness. The Supreme Court emphasized that the assessment is not a mini-trial intended to determine the child's guilt or innocence. The Court ruled that the JJB's inquiry must be strictly confined to evaluating the criteria laid out in Section 15:

1. The child's mental and physical capacity to commit the alleged heinous offence.
2. The child's ability to understand the consequences of the offence.
3. The circumstances in which the child allegedly committed the offence.

The Board is explicitly prohibited from examining the merits of the case, weighing evidence of the crime, or forming a conclusion on guilt. The sole purpose of the assessment is to determine the appropriate forum for the proceedings - that is, whether the child should be tried by the JJB under the juvenile system or be

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<sup>237</sup> Thirumoorthy v. State Represented by The Inspector of Police, 2024 INSC 247.



transferred to the Children's Court for a potential trial as an adult. This ruling prevents the assessment from becoming a premature judgment on the child's culpability and ensures its focus remains on the child's maturity and psychological state. The Court also noted that attempting to conduct such an assessment years after the event, when the child has become an adult, is a "sheer futility", reinforcing the need for its timely and proper completion at the outset.

### **3. Procedural Safeguards and the Rights of the Child during Inquiry**

Besides the preliminary assessment, the courts have consistently protected other procedural rights that are key to the juvenile justice process.

- **The Right to Claim Juvenility:** Following earlier cases like *Bhola Bhagat v. State of Bihar*, courts have repeatedly confirmed the principle, now in Section 9(2), that a person can claim to be a juvenile before any court at any time.<sup>238</sup> The court must then investigate the person's age at the time of the offence. This ensures that no one who was a child when an offence occurred is wrongly treated by the adult criminal justice system.

### **Conclusion**

The JJ Act provides a two-part legal framework to meet the different needs of two groups of children: the 'Child in Conflict with Law' (CCL) and the 'Child in Need of Care and Protection' (CNCP). The procedures for each are guided by a strong belief in restorative justice, putting rehabilitation and the "best interest of the child" ahead of punishment.

For the Child in Conflict with Law, the process is designed to divert most children away from the formal justice system through safeguards like generous bail rules and

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<sup>238</sup> Rahul Kumar Yadav v. The State Of Bihar, 2024 INSC 359.

non-custodial orders. The preliminary assessment for children aged 16-18 involved in heinous offences is a major exception to this approach. However, the Supreme Court of India has played a key role in strengthening this process with mandatory safeguards, such as requiring the involvement of psychological experts, to ensure that sending a child to the adult criminal system is a carefully considered last resort.

For the Child in Need of Care and Protection, the system is focused entirely on welfare and is managed by the CWC. The procedure follows a principle of progressive intervention, starting with the simplest option of supporting the child within their family and moving to permanent solutions like adoption only when necessary. The Individual Care Plan is a key tool in this process, ensuring that every decision is made to fit the child's specific needs.

The two procedures, though separate, are united by the Act's sixteen guiding principles, which call for a system that is, above all, child-friendly, rights-based, and focused on giving every child a chance to live a life of dignity and opportunity.

#### **iv. Protection of Identity of Child Victims in India**

The Indian legal system places a significant emphasis on protecting the identity of child victims to shield them from societal stigma, harassment, and the trauma of public exposure. This legal shield is designed to prevent “secondary victimisation” - a situation where the justice system and society's reactions cause further harm to the victim, which can be as damaging as the original crime.<sup>239</sup> This protection is not just a matter of privacy but a crucial element of ensuring a child-friendly justice system

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<sup>239</sup> “Legal process cannot be misused to re-traumatise child abuse survivors”: SC rejects POCSO convict's plea to recall 11-year-old niece for cross-examination - SCC Online, <https://www.scconline.com/blog/post/2025/09/25/sc-rejects-recall-child-victim-pocso-cross-exam/> (last visited Sept. 25, 2025)

that prioritizes the well-being and recovery of the child.

#### **a. The Protection of Children from Sexual Offences (POCSO) Act, 2012**

The POCSO Act provides protection throughout the entire legal process, from the beginning of an investigation to the end of the trial.

##### **1. During Reporting and Investigation**

- **Mandatory Reporting (Sec 19):** Any person with knowledge of a POCSO offense must report it to the SJPU or local police, ensuring cases do not go unrecorded.
- **Child-Friendly Statement Recording (Sec 24):** The child's statement must be recorded at their residence or a place of their choice, by a woman officer not in uniform, and the child must not come into contact with the accused.
- **Confidentiality by Police (Sec 24(5)):** The police officer investigating the case must ensure that the identity of the child is protected from the public and media.

##### **2. During Trial Proceedings**

- **Identity Protection by Court (Sec 33(7)):** This section provides that it's the duty of the court to ensure that the identity of the child is not disclosed at any time during the investigation or trial. The explanation clarifies that "identity" includes the child's family, school, and neighbourhood.
- **Protection from Accused (Sec 36):** The court must ensure that the child is not exposed to the accused at the time of testifying, which can be achieved through video conferencing or the use of single-visibility mirrors or curtains.
- **In-Camera Trials (Sec 37):** The Special Court is mandated to conduct trials

“in camera”, in the presence of the child’s parents or a trusted person.

### **3. Section 23: The Media and Anonymity Mandate**

Section 23 of the POCSO Act places a near-total ban on revealing a child victim’s identity in the media.

- **Section 23(1)** stops any person from making reports or comments in any form of media that could damage the child’s reputation or invade their privacy. This rule addresses the harm of both public shame and the violation of a child’s personal space.
- **Section 23(2)** sets a clear ban on sharing any details that could identify the child. It lists “name, address, photograph, family details, school, neighbourhood”, and adds the important phrase “or any other particulars which may lead to disclosure of identity of the child.” This broad wording stops identification through small details that can be put together to figure out who the victim is.
- **Section 23(3)** introduces the idea of employer responsibility, making the “publisher or owner of the media or studio or photographic facilities” responsible for the actions of their employees. This creates a strong reason for media companies to enforce strict rules internally.
- **Section 23(4)** describes the punishment for breaking these rules, which is imprisonment for at least six months and up to one year, a fine, or both.

The only exception to this rule is in Section 23(2). It allows the Special Court handling the case to permit disclosure, but only for “reasons to be recorded in writing” and if the court believes “such disclosure is in the interest of the child”. This sets a very high standard that only a judge can approve.

## **b. The Juvenile Justice (Care and Protection of Children) Act, 2015**

Sec 3(xi) of the JJ Act establishes as a fundamental principle that all children have a right to the protection of their privacy and confidentiality at every stage of the judicial process. Section 74 of the JJ Act, 2015, adds another layer of protection, as follows:

- **Broader Scope:** Unlike the POCSO Act, which is for child victims of sexual offenses, Section 74 of the JJ Act covers a much broader range of situations. It prohibits revealing the identity of a “child in conflict with law”, a “child in need of care and protection”, a “child victim”, or a “witness”. This comprehensive protection covers almost any child who comes into contact with the juvenile justice system, no matter their role.
- **Prohibitions and Exceptions:** The wording of the ban in Section 74(1) is very similar to the POCSO Act, forbidding the disclosure of the “name, address or school or any other particular, which may lead to the identification of a child.” The exception is also similar, requiring a written order from the JJB or the CWC, which can only be given if the disclosure is in the “best interest of the child”.
- **Police Accountability:** Section 74(2) adds a specific rule for the police. It stops them from sharing “any record of the child for the purpose of character certificate or otherwise” in cases that have been closed. This supports the idea of rehabilitation and giving the child a fresh start, preventing their past from negatively affecting their future.
- **Penalties:** Breaking the rule in Section 74(1) is punishable with up to six months in prison, a fine of up to two lakh rupees, or both.

## **c. The Bharatiya Nyaya Sanhita (BNS), 2023**

BNS, 2023, which replaces the IPC, 1860, has the provision of identity protection in

Section 72, which is the new version of Section 228A of the IPC. This law prohibits printing or publishing anything that might reveal the identity of a victim of certain sexual offenses. However, while the POCSO and JJ Acts are specifically for children, Section 72 of the BNS applies to all victims of such crimes and its exception clause introduces a significant point of legal conflict.

While the POCSO and JJ Acts only allow disclosure with a court order based on the child's best interest, Section 72 of the BNS allows it in other situations, including with the victim's written permission. It says that "where the victim is dead or minor or person with mental illness, by, or with the authorisation in writing of, the next of kin of the victim".<sup>240</sup> This rule goes against the legal principle of *parens patriae* (the state as the guardian), which is the foundation of the POCSO and JJ Acts. Those two laws take the decision away from parents or guardians, who might not be able to give informed consent or could be under pressure, and give it to a court whose only job is to decide what is best for the child.<sup>241</sup>

## Landmark Judgments

The courts have played a key role in making these laws a reality. Through important judgments and active supervision, courts have protected the anonymity of child victims.

### ***Nipun Saxena v. Union of India (2018)***<sup>242</sup>

In this case, the Supreme Court issued a clear set of rules that act as a binding code of conduct for everyone involved, including the media, police, and lower courts. The

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<sup>240</sup> The Dilemma of Protecting Children's Privacy in Sexual Abuse Cases - iProbono India's, <https://i-probono.in/the-dilemma-of-protecting-childrens-privacy-in-sexual-abuse-cases/> (last visited Sept. 25, 2025).

<sup>241</sup> *Id.*

<sup>242</sup> Nipun Saxena v. Union of India, 2018 INSC 1192.

judgment gave specific, mandatory instructions:

1. *“No one may broadcast the victim’s name in print, electronic, or social media, or even in a distant way divulge any details that might lead to the victim’s identification and should make her identity known to the general public.*
2. *In cases where the victim is deceased or mentally ill, the victim’s name or identity should not be revealed, even with the consent of the next of kin, unless circumstances justifying the disclosure of her identity exist, which must be decided by the competent authority, which in the present case is the Sessions Judge.*
3. *FIRs for offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376- DA, 376-DB, or 376-E of the IPC, as well as violations under POCSO, are not to be made public.*
4. *If a victim files an appeal under Section 372 CrPC, the victim is not required to reveal his or her identity, and the appeal will be handled according to the law.*
5. *All papers in which the victim’s identity is exposed should be kept in a sealed cover as much as possible, and these documents should be replaced with similar documents in which the victim’s name is deleted from all records that may be scrutinized in the public domain.*
6. *All authorities to whom the victim’s name is provided by the investigating agency or the Court are likewise obligated to keep the victim’s name and identity secret and not to divulge it in any way except in the report, which should be delivered to the investigating agency or the Court in a sealed envelope.*
7. *An application by the next of kin to authorize the disclosure of the identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under*

*Section 228- A(1)(c) an lays down criteria as per our directions for identifying such social welfare institutions or organizations.*

- 8. In the case of juvenile victims under the POCSO Act, 2012, the Special Court can only allow their identity to be revealed if it is in the child's best interests.*
- 9. All the States and Union Territories are requested to set up at least one 'One-Stop Centre' in every district within one year from the date of the judgment of the present case."*

This judgment explained exactly what needs to be done to ensure protection is effective. It created a complete set of procedures around the fundamental right to anonymity.

### ***Nivedita Jha v. State of Bihar (2018)***<sup>243</sup>

This case arose from the horrific incidents of systemic sexual abuse of minor girls at a state-funded shelter home in Muzaffarpur, Bihar. In the initial stages, to prevent the identification of the child victims, the Patna High Court imposed a complete blanket ban on media reporting of the investigation and the case proceedings. The petitioner, journalist Nivedita Jha, challenged the blanket ban in the Supreme Court. The Supreme Court acknowledged the vital role that media reporting had played in bringing the atrocities to light and ensuring public scrutiny. It found that a complete, blanket ban on reporting was an excessive restriction on the freedom of the press.

In its order dated September 20, 2018, the Court vacated the blanket ban imposed by the Patna High Court. However, the Court issued the following specific directions to the media:

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<sup>243</sup> Nivedita Jha v. State of Bihar, SLP (C) 24978 OF 2018 (Supreme Court of India, Order dated Sept. 20, 2018)



*“In the interest of all victims of sexual abuse and sexual violence, we restrain the electronic media from telecasting or broadcasting the images of the victims in a morphed or blurred form. We request the media not to interview victims of violence or sexual abuse in the interest of the victims. News of the events may be broadcast by the print media as well as the electronic media keeping in mind the interest of the victims, which should be of concern.*

*We also request the print media and the electronic media not to sensationalize such events.”*

This judgment is a crucial precedent in India for balancing media freedom with the non-negotiable right of child victims to be protected from further trauma and social stigma that can result from the disclosure of their identity.

## **High Courts Rulings**

Various High Courts have further strengthened these protections:

- **Eric Ranee v. State of Meghalaya:**<sup>244</sup> The High Court of Meghalaya ruled that responsibility under Section 23 of the POCSO Act is not limited to the publisher or owner of a media company. It also applies to individuals like reporters and news contributors who break the rules, ensuring that individuals are held accountable.
- **Bijoy @ Guddu Das v. The State of West Bengal:**<sup>245</sup> In this case, the Calcutta High Court confirmed that even police officers can be prosecuted under Section 23 of the POCSO Act for breaking confidentiality rules.

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<sup>244</sup> Eric Ranee v. State of Meghalaya, 2023 SCC OnLine Megh 575.

<sup>245</sup> Bijoy @ Guddu Das v. The State of West Bengal, 2017 SCC OnLine Cal 417.

While India has a strong legal framework to protect a child's identity, they face a major test in the digital age. Once a name, photo, or identifying detail is posted online, it can spread widely in minutes, causing permanent harm. Therefore, to ensure the right to anonymity is a reality for every child, it is crucial to develop faster enforcement mechanisms that are effective in the online world.

#### **v. Sentencing Patterns of Juvenile Offenders in India**

The approach to sentencing juvenile offenders in India is fundamentally shaped by the philosophy of the JJ Act, which prioritizes rehabilitation over retribution. The Act deliberately avoids punitive language, replacing terms like "sentence" with "disposition" or "order". This reflects a commitment, as reflected under the Preamble, to treating children in conflict with the law not as criminals to be punished, but as young individuals in need of care, reform, and social reintegration. The Supreme Court has consistently affirmed this, stating that the goal of juvenile justice is to "reform the delinquent child and reclaim him as a useful member of the society", highlighting that the system is "restorative and not retributive".<sup>246</sup> The primary authority for making these decisions is the JJB.

#### **The Rehabilitative Framework of Dispositions**

The JJ Act provides the JJB with a wide range of non-punitive options under Section 18. These dispositions are tailored to the individual needs of the child, based on a comprehensive Social Investigation Report. The primary goal is to divert the child away from the formal criminal justice system and toward reformatory measures. The spectrum of available orders includes:<sup>247</sup>

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<sup>246</sup> Salil Bali v. Union of India, (2013) 7 SCC 705.

<sup>247</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, § 18, No. 2, Acts of Parliament, 2015 (India).

- Allowing the child to go home after advice or admonition.
- Directing the child to participate in group counseling.
- Ordering the child to perform community service.
- Ordering the child or their parents to pay a fine.
- Placing the child on probation under the care of a guardian or a fit facility for up to three years.
- Sending the child to a Special Home for a maximum of three years for reformatory services, including education, skill development, and therapy.

The Act explicitly prohibits sentencing any child to death or life imprisonment without the possibility of release, reinforcing its protective and reformatory core.<sup>248</sup>

### **Dispositional Patterns in Practice: A Statistical Overview**

Official data confirms that the juvenile justice system favors non-custodial and rehabilitative outcomes. The National Crime Records Bureau (NCRB), in its annual "Crime in India" report, provides a clear statistical picture of how cases involving juveniles are resolved. The demographic profile of juveniles apprehended shows a strong concentration among older, male adolescents, with a clear distinction between offenses registered under the Indian Penal Code (IPC) and Special & Local Laws (SLL).

### **Juveniles Apprehended by Age Group and Gender, 2022<sup>249</sup>**

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<sup>248</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, § 21, No. 2, Acts of Parliament, 2015 (India).

<sup>249</sup> *Crime in India Year Wise 2022*, NCRB, (Sept. 27, 2025), <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>.

Age Group	Crime Category	Male	Female	Total
7 to below 12 years	IPC Crimes	328	2	330
	SLL Crimes	292	48	340
	<b>Sub-Total</b>	<b>620</b>	<b>50</b>	<b>670</b>
12 to below 16 years	IPC Crimes	6,839	86	6,925
	SLL Crimes	23	472	495
	<b>Sub-Total</b>	<b>6,862</b>	<b>558</b>	<b>7,420</b>
16 to below 18 years	IPC Crimes	25,940	247	26,188
	SLL Crimes	2,217	1,286	3,503
	<b>Sub-Total</b>	<b>28,157</b>	<b>1,533</b>	<b>29,690</b>
<b>Grand Total</b>		<b>35,639</b>	<b>2,141</b>	<b>37,780</b>

While the overall number of crimes committed by juveniles has been declining, a few

states have been consistently accounting for the highest number of cases.

#### **Cases Registered Against Juveniles (IPC & SLL), 2020-2022<sup>250</sup>**

<b>State/UT</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Madhya Pradesh	5,233	5,684	3,795
Maharashtra	4,896	4,554	4,406
Rajasthan	2,059	2,757	3,063
Tamil Nadu	2,333	2,683	2,755
Chhattisgarh	1,732	2,004	2,356
<b>All India</b>	<b>29,768</b>	<b>31,170</b>	<b>30,555</b>

Analysis of how these cases are resolved by the JJBs reveals that imprisonment is a rare outcome. The most common disposition is sending the child home after advice or admonition.

#### **Disposal of Juveniles by Courts/JJBs, 2022 (All India)<sup>251</sup>**

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<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

Method of Disposal	Number of Juveniles
Discharged during Investigation	1,769
Sent Home after Advice/Admonition	17,112
Sent to Special Home/Fit Institute	9,045
Dealt with by Fine	4,128
Awarded Imprisonment	704
Acquitted or Discharged	4,104
<b>Total Disposed</b>	<b>36,862</b>
<i>Cases Pending Disposal at Year End- 41,581</i>	

Furthermore, conviction rates for juveniles remain exceptionally low, even for serious offenses. An analysis of government data from 2018 to 2022 found that only 9.6% of juveniles (aged 16-18) accused of rape were convicted.<sup>252</sup> The conviction rate under the POCSO Act was slightly higher at 12.4%.<sup>253</sup> These figures underscore that the

<sup>252</sup> 'Love is not penal': SC on Minor Couples in Genuine Romantic Relationships, HINDUSTAN TIMES (Sept. 28, 2025), <https://www.hindustantimes.com/india-news/love-is-not-penal-sc-on-minors-relationships-101755631827376.html>.

<sup>253</sup> *Id.*

system's pattern is geared towards rehabilitation and reintegration, not long-term incarceration. However, the substantial number of pending cases highlights a significant challenge within the system: delays in the inquiry process, which can lead to children languishing in observation homes for extended periods.

### **The Retributive Exception: Trial of Juveniles as Adults**

The most significant departure from the rehabilitative model is the provision under Section 15 of the JJ Act, which allows for children aged 16-18 who have committed a “heinous offence” (an offence with a minimum punishment of seven years) to be tried as adults. This provision creates a pathway for more stringent sentences.

However, this process is guarded by strict procedural safeguards, including a preliminary assessment by the JJB and a subsequent independent inquiry by the Children's Court, to ensure that transfer to the adult system remains a rare exception.

Even when a juvenile is tried and convicted as an adult, the judiciary has strictly enforced the sentencing limits prescribed by the Act. Section 21 of the JJ Act prohibits the imposition of the death penalty or life imprisonment *without the possibility of release*. The Supreme Court reinforced this principle in cases like *Om Prakash @ Israel @ Raju @ Raju Das v. Union of India*,<sup>254</sup> where it intervened after an appellant's plea of juvenility had been overlooked through decades of litigation. The judgment underscored that the plea of juvenility can be raised at any stage and that courts have a mandated duty to give effect to the JJ Act, even after the final disposal of a case.

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<sup>254</sup> *Om Prakash @ Israel @ Raju @ Raju Das v. Union of India*, 2025 INSC 43.

The Madras High Court provided a crucial interpretation of this sentencing provision in *Rajkumar v. State through The Inspector of Police*<sup>255</sup>. In this case, a juvenile aged 16 was tried as an adult for the kidnapping, aggravated sexual assault, and murder of a four-year-old girl and was sentenced to life imprisonment. The High Court upheld the conviction based on strong circumstantial evidence. On the issue of sentencing, the court addressed the argument that a life sentence for a juvenile is illegal under Section 21 of the JJ Act. The court clarified that the statutory bar is not on life imprisonment itself, but on life imprisonment “*without the possibility of release*”. It reasoned that if a sentence of life imprisonment allows for the possibility of premature release or remission under the relevant prison rules, it does not fall within the prohibition of Section 21. Therefore, the court confirmed the life sentence but qualified it by holding that the appellant would not be disentitled to any remission, thereby ensuring the sentence was compliant with the Act. This judgement illustrates that even within the Act’s retributive exception, the judiciary ensures that sentencing retains a rehabilitative component, aligning with the Act’s core philosophy.

### **Gender Disparity and the Influence of the POCSO Act**

A notable pattern in the juvenile justice system is the significant gender disparity in its application, particularly in cases involving consensual adolescent relationships that fall under the POCSO Act. While the POCSO Act is gender-neutral in its text, its practical application often reflects societal biases.<sup>256</sup>

In cases where a consensual relationship between two minors is reported to the police, the male partner is almost invariably prosecuted as the offender, while the

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<sup>255</sup> *Rajkumar v. State through The Inspector of Police*, 2023:MHC:67.

<sup>256</sup> *Smt. Archana Patil v. State of Karnataka*, 2025 SCC OnLine Kar 17687.



female partner is treated as the victim.<sup>257</sup> This is often driven by disapproving parents seeking to end the relationship. For instance, a comprehensive analysis of 1,715 “romantic cases” across Assam, Maharashtra, and West Bengal revealed that 80.2% were lodged by the girl’s parents when she pursued a relationship against their will.<sup>258</sup> Research further shows that many of these cases arise from parental disapproval of inter-caste, inter-faith, or economically unequal relationships.<sup>259</sup>

Legally, any child who commits an offence under the POCSO Act is treated as a “Child in Conflict with Law” under the JJ Act, which mandates a rehabilitative and non-punitive process rather than criminal prosecution in the adult sense. In practice, however, complaints are almost always filed against the boy, positioning the girl as the victim from the outset.<sup>260</sup>

This leads to a stark sentencing disparity: boys face the full force of a criminal investigation and trial, while girls do not. However, the judiciary has increasingly recognized the injustice of criminalizing adolescent romance. Several High Courts have quashed such cases, and the Supreme Court has urged a more nuanced approach, famously remarking that “Love is not penal”.<sup>261</sup>

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<sup>257</sup> *Age of Consent under the Protection of Children from Sexual Offences Act, 2012*, THE LAW COMMISSION OF INDIA’S REPORT NO. 283 (Sept. 28, 2025), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/09/20230929466194485.pdf>.

<sup>258</sup> Ramakrishnan & Raha, *Romantic Cases under the POCSO Act*, (Sept. 28, 2025), [https://www.girlsnotbrides.org/documents/1951/Romantic-cases-under-the-POCSO-Act\\_wUNsbKC.pdf](https://www.girlsnotbrides.org/documents/1951/Romantic-cases-under-the-POCSO-Act_wUNsbKC.pdf).

<sup>259</sup> Anindita Pattanayak, *Teenage Love Caught between Consent and Criminality under POCSO*, Oxford Human Rights Hub, (Sept. 28, 2025), <https://ohrh.law.ox.ac.uk/teenage-love-caught-between-consent-and-criminality-under-pocso/>.

<sup>260</sup> *POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India*, (Sept. 28, 2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8313457/>.

<sup>261</sup> *Love is not penal’: SC on Minor Couples in Genuine Romantic Relationships*, HINDUSTAN TIMES, (Sept. 28, 2025), <https://www.hindustantimes.com/india-news/love-is-not-penal-sc-on-minors-relationships-101755631827376.html>.

This judicial trend, along with formal recommendations from various High Courts, prompted a review by the 22nd Law Commission of India. In its 283rd Report, the Commission, while recommending against lowering the age of consent from 18, acknowledged the need to address the criminalization of adolescent romance.<sup>262</sup> It proposed introducing amendments to the POCSO Act to allow for “guided judicial discretion” in sentencing for non-exploitative, consensual cases involving adolescents between 16 and 18 years of age.<sup>263</sup>

## **Conclusion**

The sentencing pattern for juvenile offenders in India is overwhelmingly rehabilitative. The legal framework, supported by statistical data, shows a clear preference for non-custodial measures aimed at reform and social reintegration. Punitive outcomes are the exception, reserved for the most serious offences committed by older adolescents and governed by strict procedural safeguards that have been reinforced by the judiciary. However, a significant gender-based disparity persists in the application of the POCSO Act to adolescent relationships, a complex issue that the judiciary is actively attempting to address through a more compassionate and context-sensitive interpretation of the law.

## **vi. Child Labour: Prevalence and Statistics in India**

Child labour is universally recognized as work that deprives children of their childhood, potential, and dignity, and is harmful to their physical and mental development. It is crucial to distinguish this exploitative practice from “child work”,

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<sup>262</sup> *Age of Consent under the Protection of Children from Sexual Offences Act, 2012*, The Law Commission of India’s Report No. 283, (Sept. 28, 2025), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/09/20230929466194485.pdf>.

<sup>263</sup> *Id.*

which may involve participation in economic activity that is not detrimental to their health or education, such as assisting in a family business in a non-hazardous context.

The prohibition of child labour in India is a constitutional imperative. Article 24 provides an absolute prohibition on the employment of children below fourteen in any factory, mine, or other hazardous employment. This is reinforced by the Directive Principles of State Policy. Article 39(e) directs the state to ensure the “tender age of children are not abused”, and Article 39(f) mandates that childhood be protected against exploitation.

The measurement of child labour in India is complex. Estimates differ significantly across official sources, owing to the use of different age bands, survey instruments, and definitions. This section summarises the main statistics from (i) the Census 2011 and as reported by the International Labour Organization, (ii) the UNICEF 2024 reappraisal of labour force surveys, and (iii) NSSO state-level estimates from 2004–05 and 2009–10.

#### a. National Estimates

Census 2011 recorded 10.1 million children aged 5–14 engaged in work, counted as either “main” or “marginal” workers. This snapshot is widely cited in policy and judicial discourse as the official administrative figure for the 5–14 age band.<sup>264</sup>

Using household survey data, Employment and Unemployment Survey (EUS) 2011/12 estimated that 12.9 million children aged 5–17 were engaged in economic activity (4.3% of that age group). UNICEF’s application of national and international

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<sup>264</sup> *Child Labour and Forced Labour in India: An Overview (Census 2011 data)*, ILO (Sept. 26 2025) <https://www.ilo.org/publications/fact-sheet-child-labour-india>.

definitions yields a child-labour range of 4.6–6.3 million for 2011-12.<sup>265</sup>

Periodic Labour Force Survey (PLFS) 2018-19 shows a marked decline: 5 million children (5–17) in economic activity (2%). Depending on definition, 1.8–3.3 million are classified as in child labour, with the higher bound arising from the comprehensive ILO-type definition (which incorporates hours and hazardous work).<sup>266</sup>

Both EUS 2011/12 and PLFS 2018/19 confirm that a substantial portion of child labour is hazardous. Depending on the definition applied: In 2011/12, between 4.2 and 5.8 million of working children were in hazardous occupations.<sup>267</sup> In 2018/19, between 1.7 and 3.2 million were classified.<sup>268</sup> This distinction matters as hazardous work typically overlaps with the “worst forms of child labour” identified under international law.

#### b. State distribution

The concentration of child labour in a handful of states is consistent across data sources: Census 2011 shows Uttar Pradesh, Bihar, Rajasthan, Maharashtra and Madhya Pradesh together account for nearly 55% of working children aged 5–14.<sup>269</sup> NSSO 2004–05 tabulations list Uttar Pradesh (2.07m), Andhra Pradesh (1.36m) and Bihar (1.07m) as the three states with the largest absolute counts, together accounting for roughly half of the child labour sample.<sup>270</sup> By 2009–10<sup>271</sup>, NSSO data

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<sup>265</sup> *Child Labour and Schooling in India: A reprisal using 2011/12 and 2018/19 surveys (2024)*, UNICEF-Innocenti.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Estimate of Child Labour in Major Indian States*, NSSO (Sept. 26, 2025)

<https://labour.gov.in/sites/default/files/NSSOEstimateofChildLabourinMajorIndianStates.pdf>.

<sup>271</sup> *Child Labour and Schooling in India: A reprisal using 2011/12 and 2018/19 surveys (2024)*, UNICEF-Innocenti.

show a modest decline across most states, a trend confirmed by the Census and later PLFS. These figures illustrate both the geographic concentration and the temporal decline, though the persistence of large absolute numbers in the Hindi heartland states remains a matter of concern.

### **Methodological caveats**

Reliance on these figures should acknowledge at least three caveats:

1. **Definitions vary:** National law excludes some categories of household work, while international standards include them; hourly thresholds also differ.<sup>272</sup>
2. **Surveys undercount girls' work:** Household chores, unpaid domestic labour and care work are typically not recorded, leading to systematic underestimation.<sup>273</sup>
3. **Proxy reporting and sampling design:** Surveys rely on household respondents and differ in sampling design, creating comparability issues across time; a strict “apples-to-apples” reading is not possible without adjustment.<sup>274</sup>

### **The Statutory Framework for Prohibition and Regulation:**

#### **a. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (CALPRA)**

This principal legislation was fundamentally transformed by the 2016 amendment, shifting from a model that permitted child labour in non-listed sectors to a

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<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

near-complete ban on the employment of children below 14.

- **Definition of “Child” and “Adolescent”:** The Act defines a “child” as a person below fourteen years of age and an “adolescent” as a person between fourteen and eighteen years.
- **General Prohibition and Its Exceptions (Section 3):** The amended Section 3(1) establishes a comprehensive prohibition: “No child shall be employed or permitted to work in any occupation or process.” However, there are two exceptions in Section 3(2):<sup>275</sup>
  - **Family and Family Enterprises:** A child is permitted to help their family or a family enterprise after school hours or during vacations, provided the work is not hazardous. The term “family” is defined in relation to the child’s father or mother and includes their siblings. An “enterprise” is any work or business performed by the family members. This exception is criticised as the vast majority of child labourers work in informal, home-based settings, often in hazardous industries like bidi-rolling or garment-making.<sup>276</sup> It risks legitimizing the most prevalent forms of child labour, undermining the child’s right to rest, play, and education.
  - **Audio-Visual Entertainment Industry:** A child can work as an artist, subject to prescribed conditions ensuring their education is not hampered.
- **Prohibition for Adolescents in Hazardous Occupations (Section 3A):** The Act prohibits employing adolescents (14-18 years) in hazardous occupations listed in the Schedule. The 2016 amendment reduced the list of hazardous occupations from 83 to just three broad categories: mining, explosives, and

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<sup>275</sup> The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, § 3(2), No. 61, Acts of Parliament, 1986 (India).

<sup>276</sup> *A law that allows child labour*, THE HINDU (Sept. 15, 2025), <https://www.thehindu.com/opinion/columns/Ruchira-Gupta-Child-Labour-Prohibition-and-Regulation-A-mendment-Act-2016-A-law-that-allows-child-labour/article56842404.ece>.

occupations mentioned in the Factories Act. This de-listing potentially exposes adolescents to risks in sectors previously deemed hazardous, such as chemical mixing units or construction.<sup>277</sup> The amendment has faced severe criticism for leaving several concerns unresolved, particularly regarding enforcement. Even under the earlier, broader prohibition, many children continued to be employed in hazardous industries, and with the scope now narrowed, the risk of such exploitation is likely to increase further.<sup>278</sup>

- **Penalties and Rehabilitation (Section 14 & 14B):** The 2016 amendment made employing a child a cognizable offence, with punishment of imprisonment (6 months to 2 years) and/or a fine (₹20,000 to ₹50,000). Section 14B mandates a *Child and Adolescent Labour Rehabilitation Fund* in every district. Fines collected from employers are credited to this fund, along with a government contribution of ₹15,000 per rescued child. This mechanism is a direct codification of the principles laid down by the Supreme Court in *M.C. Mehta v. State of Tamil Nadu*.<sup>279</sup>

## b. Other Key Legislative Provisions

- **The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act):** The RTE Act is the foundational pillar of the anti-child labour strategy.<sup>280</sup> By establishing a legal entitlement to schooling under Article 21A, it creates a

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<sup>277</sup> Priya Baranwal and Anurag Bhaskar, *Complete Prohibition of Child Labour: Still a Distant Dream?*, LIVELAW (May 10, 2017); *A law that allows child labour*, THE HINDU (Sept. 15, 2025), <https://www.thehindu.com/opinion/columns/Ruchira-Gupta-Child-Labour-Prohibition-and-Regulation-Amendment-Act-2016-A-law-that-allows-child-labour/article56842404.ece>.

<sup>278</sup> Rupa Chanda and Sudeshna Ghosh, *Amendments to the Child Labour Act: A Positive or Regressive Step?*, THE HINDU CENTRE FOR POLITICS AND PUBLIC POLICY (June 23, 2015), <https://www.thehinducentre.com/the-arena/current-issues/amendments-to-the-child-labour-act-a-positive-or-regressive-step/article64931317.ece>.

<sup>279</sup> *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.

<sup>280</sup> *Leveraging Education to End Child Labour*, UNICEF (Sept. 15, 2025), [https://www.unicef.org/innocenti/media/9371/file/UNICEF-Innocenti-Leveraging-Education\\_Child-Labour-2024-report.pdf](https://www.unicef.org/innocenti/media/9371/file/UNICEF-Innocenti-Leveraging-Education_Child-Labour-2024-report.pdf)

powerful 'pull' factor, making education a legal right that the state must fulfill. In contrast, the CALPRA acts as a 'push' factor, imposing penalties to push children out of the workforce. The success of one is linked to the other; a child in the workplace is a child denied their fundamental right to education.

- **The Factories Act, 1948:** This Act establishes a specific protective framework for "young persons", which includes both a "child" (a person who has not completed their fifteenth year) and an "adolescent" (a person between fifteen and eighteen years of age).
  - **Absolute Prohibition:** Section 67 imposes a complete ban on the employment of any child who has not completed their fourteenth year in a factory.
  - **Regulation of Child Workers (14-15 years):** A child who has completed their fourteenth year can only work if they possess a certificate of fitness to work as a child (Section 69). Their work is strictly regulated, limited to a maximum of four and a half hours a day, and prohibited during night hours (Section 71).
  - **Regulation of Adolescents (15-18 years):** An adolescent requires a certificate of fitness for employment (Section 69). If certified as fit to work as an adult, they are treated as such for the purposes of working hours. However, an adolescent who is not certified as fit for a full day's work is deemed to be a "child" (Section 70).
- **The Mines Act, 1952:** Reflecting the uniquely dangerous nature of mining, Section 40 of this Act imposes an absolute ban on the employment of any person below the age of 18 in any part of a mine. Section 45 further bans their very presence in any part of a mine where mining operations are ongoing.



- **The Juvenile Justice (Care and Protection of Children) Act, 2015:** The JJ Act provides a safety net for child labourers.
  - **Section 2(14)(ii):** Defines a “child in need of care and protection” to include any child “found working in contravention of labour laws”, allowing them to be produced before the CWC for rehabilitation and care.
  - **Section 79 (Exploitation of a Child Employee):** This provision criminalizes the act of economic exploitation. It punishes anyone who keeps a child in bondage for employment, withholds their earnings, or uses their earnings for their own purposes, with rigorous imprisonment for up to five years and a fine of ₹1 lakh.

### c. The Role of the Judiciary in Shaping Child Labour Jurisprudence

The Supreme Court has played a transformative role, expanding constitutional protections and enforcing the state’s duty to protect children where legislation was insufficient.

- ***People’s Union for Democratic Rights (PUDR) v. Union of India (1982)*:**<sup>281</sup>  
 This case arose from the employment of child labour in the construction projects for the Asiad Games in Delhi. The Court gave an expansive meaning to “forced labour” under Article 23, holding that payment of less than minimum wage amounts to forced labour, as it takes advantage of economic compulsion. This was a crucial interpretation for child labourers, who are often paid exploitative or negligible wages. The Court also held that construction work constitutes “hazardous employment” for the purposes of Article 24. This was a significant expansion of the constitutional prohibition, as it went beyond the explicit list of hazardous occupations in the then-existing legislation and established a

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<sup>281</sup> People’s Union for Democratic Rights (PUDR) v. Union of India, (1982) 3 SCC 235.

precedent for a broader, more purposive interpretation of the term.

- ***M.C. Mehta v. State of Tamil Nadu (1996)***:<sup>282</sup> This judgment shifted the legal discourse from mere prohibition to a holistic framework of rehabilitation. The case concerned the deplorable conditions of children working in the match and fireworks factories of Sivakasi. The Court rejected the argument that poverty could be a justification for child labour, declaring that it was an “evil” that compromised the constitutional vision for children. Recognizing that simply banning child labour without addressing the underlying poverty would be ineffective, the Court created a detailed, enforceable socio-economic program.

The Court issued a series of detailed directives:

- The offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs.20,000/-; which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund.
- The State was asked “to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child.”
- “In those cases where it would not be possible to provide job as above-mentioned, the appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs.5,000/- for each child employed in a factory or mine or in any other hazardous employment.”
- On discontinuation of the employment of the child, “his education would be assured in a suitable institution with a view to make it a better citizen.” In

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<sup>282</sup> *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.

cases where alternative employment is not provided, “the parent/guardian of the concerned child would be paid the income which would be earned on the corpus... The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education.”

- “Insofar as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than four to six hours a day and it receives education at least for two hours each day. It would also be see that the entire cost of education is borne by the employer.”
- ***Bachpan Bachao Andolan v. Union of India (2011)***:<sup>283</sup> This PIL highlighted the horrific conditions of children, many of whom were trafficked from Nepal and impoverished parts of India, to work in circuses. These children were subjected to forced labour, physical and sexual abuse, and were deprived of education and family contact. The Supreme Court ordered a complete ban on the employment of children in circuses. It further directed the government to conduct raids on all circuses to rescue the children and to formulate a comprehensive scheme for their rehabilitation. This judgment is significant as it demonstrates the Court’s willingness to issue specific, targeted prohibitions and enforcement directives to address acute forms of exploitation that the general law may not have effectively tackled.

The judicial pronouncements, coupled with the evolving legislative framework, reflect a clear constitutional commitment to eradicating child labour and ensuring that every child has the opportunity to enjoy a safe, healthy, and educated childhood.

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<sup>283</sup> *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.

## **vii. Termination of Pregnancy**

This section primarily focuses on the issue of termination of pregnancy in the case of minors, with particular emphasis on survivors of sexual offences. While the general framework governing abortion under Indian law will first be outlined, the subsequent discussion will narrow its focus to the unique challenges faced by children, especially those who become pregnant as a result of sexual violence.

### **a. Legal Background**

In India, termination of pregnancy is regulated by the Medical Termination of Pregnancy Act, 1971 (MTP Act), which provides legal protection for termination of pregnancy under specific conditions and within prescribed gestational limits. Beyond these conditions, abortion continues to be treated as an offence under the IPC.

Prior to the enactment of the MTP Act, abortion was governed exclusively by the IPC. A part of Chapter XVI of the IPC (Sections 312–318) criminalised abortion, making it a punishable offence for both the woman undergoing it and the person performing it, except where termination was carried out in good faith to save the woman's life. This near-total prohibition led to unsafe and unregulated procedures, contributing significantly to maternal morbidity and mortality.<sup>284</sup>

The MTP Act, 1971, was therefore enacted to liberalise the law and provide women with access to safe, legal medical terminations. The Statement of Objects and Reasons cited three principal grounds for the legislation:<sup>285</sup>

#### **a. *Health grounds* – where continuation of the pregnancy posed a danger to the**

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<sup>284</sup> X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Another, (2022) 7 SCR 686.

<sup>285</sup> X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Another, (2022) 7 SCR 686.

life or physical/mental health of the woman.

- b. *Humanitarian grounds* – particularly in cases arising from sexual assault, rape, or where the woman was mentally incapacitated.
- c. *Eugenic grounds* – where there was a substantial risk that the child, if born, would suffer from serious physical or mental abnormalities.

Thus, the MTP Act provides statutory legal protection for abortions when performed by registered medical practitioners (RMPs) under specified conditions and within prescribed gestational limits.

### **b. Framework under the MTP Act**

Section 3 of the MTP Act lays down the following conditions for abortion:

- a) *Up to 20 weeks*: permissible if one RMP, in good faith, believes it necessary to prevent risk to the woman's life or grave injury to her health, or if the child would be born with serious abnormalities.
- b) *Between 20–24 weeks*: requires the opinion of two RMPs. who , in good faith, believes it necessary to prevent risk to the woman's life or grave injury to her health, or if the child would be born with serious abnormalities.
- c) *Beyond 24 weeks*: termination may be permitted if, in the opinion of a duly constituted Medical Board, the foetus suffers from substantial abnormalities (Section 3(2B)).

Notably, the above provisions are subject to exception as provided under section 5 whereby termination is permitted at any stage where it is immediately necessary to save the woman's life.

### **c. Reproductive Autonomy of Minors and Survivors of Sexual Abuse**

When a minor becomes pregnant, the legal landscape in India is shaped by a combination of statutory provisions and protection-oriented judicial interpretation. The legal position becomes especially complex when the pregnant minor is also a survivor of rape, as multiple laws intersect to regulate her rights and options.

**Section 3(4) of the MTP Act, 1971-** Under this section, no abortion can be performed on a minor without the written consent of her guardian. This requirement reflects the recognition of her legal incapacity as a minor, but at the same time creates practical and emotional challenges in situations involving sexual violence, where family circumstances may themselves be strained.

At the same time, the right to make reproductive choices has been recognised as an integral part of the right to life and personal liberty under Article 21 of the Constitution.<sup>286</sup> Accordingly, even if the wishes of a pregnant minor and her guardian differ, the minor's own views must be given due weight, as her perspective is an "important factor" in determining whether termination should be permitted.<sup>287</sup> This approach seeks to safeguard her agency and dignity.

However, a paradox persists: while the Juvenile Justice Act allows a child above a certain age (16 years) to be deemed capable of criminal intent and even tried as an adult in certain cases, the same autonomy is not extended to her in decisions concerning her reproductive rights. It is in this context that procedural safeguards under allied laws assume critical importance.

**Rule 6(7) of the POCSO Rules, 2020-** To address the tensions as enumerated above, this Rule requires the RMP to counsel the minor, her parents or guardians, or

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<sup>286</sup> Suchita Srivastava v. Chandigarh Admn, (2009) 9 SCC 1.

<sup>287</sup> A (Mother of X) v. State of Maharashtra, 2024 INSC 371.

a designated support person about all lawful options available under the MTP Act, 1971 and the JJ Act. This provision seeks to ensure that minors and their families receive guidance on both medical and welfare-related avenues available to them.

**Rule 3B, MTP Rules, 2003 (as amended in 2021)-** It provides further clarity by acknowledging the unique vulnerabilities faced by certain groups. Rule 3B explicitly includes among the categories of women eligible for termination up to 24 weeks:

a) “survivors of sexual assault, rape, or incest; and

b) minors

...”

The rationale for Rule 3B is that women in such categories face distinctive vulnerabilities—physical, psychological, social, or financial—that often delay detection of pregnancy or complicate the decision-making process. By extending the permissible limit for termination to 24 weeks, the law recognises that forcing continuation of pregnancy in these circumstances may result in grave injury to the physical and mental health of the survivor.<sup>288</sup>

Together, these provisions attempt to create a framework of protection for minor rape survivors, balancing medical access with legal safeguards. Yet, the framework remains conditional and time-bound, leaving significant challenges where pregnancies extend beyond 24 weeks.

#### **d. The Gap Beyond 24 Weeks**

A critical gap exists in Indian abortion law for those seeking termination of pregnancy

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<sup>288</sup> X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Another, (2022) 7 SCR 686.

beyond 24 weeks. This situation is further amplified in cases of minors and survivors of rape. The MTP Act does not provide a direct statutory remedy after this threshold, except in cases of substantial foetal abnormality or where it is necessary to save the pregnant person's life. Consequently, affected individuals must turn to the courts for relief. In such circumstances, they are compelled to approach the constitutional courts for permission.

Indian constitutional courts have responded empathetically to these situations, developing a jurisprudence that prioritizes protection of physical and mental health. Supreme Court has clarified<sup>289</sup> that a High Court cannot refuse permission for abortion solely based on the gestational age exceeding statutory limits. The Court observed that the very purpose of invoking Article 226 of the Constitution is to enable the High Court, in exercise of its extraordinary jurisdiction, to respond to exceptional situations and protect fundamental rights.

When approached, courts meticulously apply their judicial mind to the facts, often relying on the assessment of a medical board as required by the MTP Act. However, the medical board's opinion should encompass not only statutory grounds but also risks to the physical and mental health of the petitioner. Courts are then required to independently apply their mind to the medical opinion and balance it against constitutional guarantees. As such, courts weigh these medical recommendations and retain the authority to override the board's advice if continuation is found to endanger the minor's well-being.<sup>290</sup>

This framework has enabled constitutional courts, in several instances, to permit termination of pregnancies of minors even beyond 24 weeks. Yet, this judicial route,

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<sup>289</sup> A (Mother of X) v. State of Maharashtra, 2024 INSC 371.

<sup>290</sup> *Id.*



though vital, often results in delays and places additional psychological and procedural burdens on survivors, particularly child victims of rape.

In *A (Mother of X) v. State of Maharashtra*,<sup>291</sup> the Supreme Court went further to question the rationale of the MTP Act in limiting abortion beyond 24 weeks to cases of foetal abnormality, but not extending the same exception to survivors of rape or incest. The Court observed:

*“The MTP Act has removed the restriction on the length of pregnancy for termination in only two instances. Section 5 permits termination at any stage if it is immediately necessary to save the life of the pregnant person. Section 3(2-B) allows termination beyond 24 weeks in cases of substantial foetal abnormalities. The legislation, however, makes a value judgment in recognising that an abnormal foetus would inflict greater injury to the woman’s health than other circumstances, such as rape of a minor. To deny the same enabling provision to survivors of rape appears prima facie unreasonable and arbitrary. This value judgment does not rest on scientific parameters, but on an assumption that foetal abnormality is the most aggravated form of injury, ignoring the severe harm caused by forced continuation of pregnancy following sexual violence.”*

This reasoning underscores the limitations of the current statutory framework, highlighting the urgent need for reform. While courts have stepped in to uphold the constitutional rights of minors and survivors of rape, the absence of clear legislative recognition of their unique vulnerabilities continues to create uncertainty and

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<sup>291</sup> *Id.*

hardship.

The MTP Act represents a significant step forward in recognising abortion as a matter of women's health and dignity. Yet, for minors who are rape survivors, the legal framework remains partial and conditional. While amendments and rules have expanded protection up to 24 weeks, the absence of a clear provision for termination beyond this period leaves minors dependent on judicial discretion. This gap underscores the continuing need for a more responsive and child-centric approach, ensuring that survivors of sexual violence are not forced into further harm by procedural and legal obstacles.

#### **e. Restorative Justice and Compensation for Child Victims of Sexual Offences**

"The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."<sup>292</sup> This observation of the Supreme Court highlights the need for an approach beyond mere deterrence, focusing on securing the rights of the victim. Compensation is a key feature of restorative justice, which underscores both the rehabilitation of the victim and the offender's responsibility to acknowledge and redress the harm caused.<sup>293</sup>

In this spirit, the Supreme Court has recently directed that in cases involving bodily harm, including sexual assault on minor children and women, the Sessions Court must order victim compensation while delivering the judgment. This applies whether the accused is convicted or acquitted. The compensation must be determined based

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<sup>292</sup> Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490.

<sup>293</sup> M. Sarojanamma, *Victimology and Compensation*, (Sept. 30, 2025)

<https://cdnbbsr.s3waas.gov.in/s3ec030b6ace9e8971cf36f1782aa982a7/uploads/2024/12/2024121046.pdf>

on the facts, circumstances, and evidence of the case. The Court further mandated that the District or State Legal Services Authority implement this directive promptly and effectively, ensuring that the victim receives the compensation without undue delay.<sup>294</sup> This approach reinforces the focus on restorative justice, ensuring timely relief and rehabilitation for victims alongside the legal process.

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<sup>294</sup> Saibaj Noormohammad v. State of Maharashtra, Special Leave Petition (Crl.) No. 13890/2024 (Supreme Court of India, Order dated Nov. 4, 2024).

## **PART V: A COMPARATIVE STUDY OF CHILD RIGHTS FRAMEWORKS**

*“There can be no keener revelation of a society’s soul than the way in which it treats its children.”<sup>295</sup>*

*-Nelson Mandela*

*(Former President, South Africa)*

Legal systems worldwide face similar challenges in translating the universal principles of the UNCRC into effective, on-the-ground realities. A comparative study is therefore an essential exercise in legislative and judicial self-reflection. By looking at the successes and failures of other nations, we can gain valuable insights into different philosophical approaches, innovative institutional designs, and practical solutions to shared problems. This part of the handbook undertakes such an analysis, examining established child rights frameworks in other key jurisdictions to identify best practices and draw out actionable lessons that can inform the evolution of the Indian legal system.

### **A: Global Models of Child Protection: A Comparative Perspective**

A nation’s commitment to its children is reflected in the architecture of its laws. While the United Nations Convention on the Rights of the Child (UNCRC) provides a universal blueprint, its translation into domestic legal frameworks reveals a rich diversity of approaches, shaped by unique legal traditions, societal values, and historical contexts. A comparative legal analysis is, therefore, an essential tool for legislative and judicial evolution. By examining how other jurisdictions have grappled

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<sup>295</sup> Nelson Mandela Foundation, *Address by President Nelson Mandela at the launch of the Nelson Mandela Children's Fund, Pretoria (May 08, 1995)* (Sept. 30, 2025), [http://www.mandela.gov.za/mandela\\_speeches/1995/950508\\_nmcf.htm](http://www.mandela.gov.za/mandela_speeches/1995/950508_nmcf.htm).

with the universal mandate to protect and empower children, India can identify innovative solutions, anticipate the potential pitfalls of certain reforms, and strengthen its own framework for realizing child rights.

This section explores several influential models of child protection from different parts of the world. Each model offers a unique perspective on how to balance the rights of the child, the role of the family, and the duties of the state.

### **i. Sweden: The Family Support and Rights-Based Model**

Sweden's approach is rooted in a rights-based philosophy. The system is defined by a "family service orientation" rather than a purely protectionist one. The main law, the Social Services Act, focuses on providing voluntary support to families to help them care for their children. Compulsory state intervention is viewed as a last resort. This service model aims to prevent problems by strengthening a family's own ability to provide care.<sup>296</sup>

A key institution in this framework is the Children's Ombudsman (*Barnombudsmannen*), an independent government agency. Its job is to monitor how the UNCRC is being implemented across all parts of society.<sup>297</sup> The Ombudsman has the power to investigate systemic issues and advocate for children's rights at the highest levels of government. This model prioritizes prevention and support, treating the child as a full holder of rights.

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<sup>296</sup> *Sweden's work to ensure children's and young people's safe and secure upbringing*, GOVERNMENT OF SWEDEN (Aug. 21, 2025), <https://www.government.se/articles/2023/07/every-child-in-sweden-has-the-right-to-a-safe-secure-and-bright-future/>.

<sup>297</sup> *The Ombudsman for Children in Sweden, Barnombudsmannen*, (Aug. 21, 2025) [https://www.barnombudsmannen.se/globalassets/dokument/barnkonventionen/fns-barnrattskomite/2022/supplementary\\_report\\_sweden\\_final\\_2208015.pdf](https://www.barnombudsmannen.se/globalassets/dokument/barnkonventionen/fns-barnrattskomite/2022/supplementary_report_sweden_final_2208015.pdf).

## **ii. Germany: The Institutional and Child Endangerment Model**

Germany's system operates within its federal structure, with local Youth Welfare Offices (*Jugendamt*) having the primary responsibility for child protection. The legal philosophy is based on the concept of "endangerment of the child's wellbeing" (*Kindeswohlgefährdung*). This is a specific legal standard that, when met, requires the state to intervene to protect the child.<sup>298</sup>

Unlike Sweden's focus on voluntary services, the German model is more interventionist. It relies on a highly institutionalized and professionalized system of trained social workers who conduct risk assessments and manage cases. Decisions are made within a formal structure, emphasizing professional expertise as the basis for state action.<sup>299</sup>

## **iii. South Africa: The Constitutional Supremacy Model**

The South African model is a powerful example of how a constitution can be the main driver of child rights. Section 28 of the South African Constitution contains a specific bill of rights for children, covering rights to a name, nationality, family care, basic nutrition, shelter, and health care.<sup>300</sup> It goes further than the UNCRC by stating that "A child's best interests are of paramount importance in every matter concerning the child." By making child rights a supreme legal rule, this approach gives the courts the power to review and, if necessary, cancel any laws, policies, or government actions that do not meet this high standard. This makes the judiciary a powerful guardian of children's rights.

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<sup>298</sup> Susanne Witte, Laura Miehlebradt, Eric van Santen & Heinz Kindler, *Briefing on the German Child Protection System*, HESTIA (Aug. 21, 2025), <http://www.projecthestia.com/wp-content/uploads/2015/03/POLICY-BRIEFING-GERMANY.pdf>.

<sup>299</sup> *Id.*

<sup>300</sup> *South Africa's Children: A Review of Equity and Child Rights*, UNICEF (Aug., 2025), [https://www.sahrc.org.za/construction-site/home/21/files/SA%20CHILDREN%2024%20MARCH%202011%20SAHRC%20\\_%20UNICEF%20REPORT.pdf](https://www.sahrc.org.za/construction-site/home/21/files/SA%20CHILDREN%2024%20MARCH%202011%20SAHRC%20_%20UNICEF%20REPORT.pdf).

South Africa also offers a sophisticated approach to legal capacity, legally recognizing the evolving capacities of the child by granting rights and responsibilities incrementally. For instance, a child can consent to HIV testing at 12, consent to their own medical treatment at 14, and make a valid will at 16.<sup>301</sup> This provides a structured way to recognize the growing autonomy of adolescents without creating the legal contradictions seen in frameworks with multiple, conflicting age definitions.

#### **iv. United Kingdom: The Restorative Justice Model<sup>302</sup>**

A key best practice from the United Kingdom, particularly in England and Wales, is its use of restorative justice in the youth justice system. This is mainly carried out through multi-agency Youth Offending Teams (YOTs). These teams are made up of social workers, police officers, probation officers, and health and education specialists. Processes like victim-offender mediation and community reparation panels are used instead of traditional punishment. The goal is to repair the harm caused by an offense, encourage the offender to take responsibility, and reduce the chances of them reoffending. This evidence-based model provides a practical example of how to strengthen the rehabilitative aspects of a juvenile justice system.

#### **v. European Union: Supranational Guarantees and Integrated Systems**

The European Union offers two important best practices at a regional level:

##### **1. The European Child Guarantee:<sup>303</sup>** Adopted in 2021, this is a strategic

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<sup>301</sup> *Child Rights Based on Age*, LEGAL AID SOUTH AFRICA (Sep. 12, 2025), <https://legal-aid.co.za/2018/09/26/child-rights-based-on-age/>.

<sup>302</sup> *Restorative Justice in Youth Offending Teams*, RESTORATIVE JUSTICE COUNCIL UK, (Aug. 21, 2025), [https://restorativejustice.org.uk/sites/default/files/resources/files/kn1b\\_info\\_packs%20%282%29%20yot.pdf](https://restorativejustice.org.uk/sites/default/files/resources/files/kn1b_info_packs%20%282%29%20yot.pdf).

<sup>303</sup> *The EU Strategy on the Rights of the Child and the European Child Guarantee*, EUROPEAN COMMISSION, (Aug. 21, 2025), [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en).

framework that requires member states to guarantee effective and free access for “children in need” to a set of key services. These include early childhood education, school-based activities, healthy meals, healthcare, nutrition, and adequate housing. The Guarantee is supported by dedicated EU funding and a strong monitoring system to track progress.

2. **Integrated Child Protection Systems (ICPS):**<sup>304</sup> This is a framework promoted by the EU to ensure that all relevant sectors - health, education, social welfare, justice, and law enforcement - work together in a coordinated way. The goal is to break down the administrative “silos” that often prevent effective collaboration, ensuring a more holistic and seamless response to a child's needs.

## vi. Regulating the Digital World: The “Safety by Design” Principle

The most advanced jurisdictions are moving beyond reactive content removal to proactively regulate the architecture of digital platforms. The United Kingdom’s Online Safety Act 2023<sup>305</sup> and the EU’s Digital Services Act<sup>306</sup> impose a statutory “duty of care” on technology companies. This requires them to assess and mitigate risks of harm to children. This “Safety by Design” approach places the legal obligation on the provider to build a safer environment from the ground up.<sup>307</sup> In practice, this means companies must integrate child safety features into the very foundation of their services. This includes implementing the highest privacy settings for children by default, creating simple and accessible reporting tools for them to use,

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<sup>304</sup> *Engaging Migrant Communities in the Promotion of the Rights of the Child: The Concept of the Integrated Child Protection System (ICPS)*, EUROPEAN UNION (Aug. 21, 2025), <https://www.commit-project.eu/child-protection-initiatives-of-the-european-union/3-2-the-concept-of-the-integrated-child-protection-system-icps-at-eu-level/>.

<sup>305</sup> *Online Safety Act: Explainer*, GOV. OF UK, (Sept. 12, 2025), <https://www.gov.uk/government/publications/online-safety-act-explainer/online-safety-act-explainer>

<sup>306</sup> *Protecting Children Online*, EUROPEAN PARLIAMENT, (Sept. 12, 2025), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/769570/EPRS\\_BRI\(2025\)769570\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/769570/EPRS_BRI(2025)769570_EN.pdf)

<sup>307</sup> *Safety by Design*, eSafety Commissioner (Sept. 12, 2025), <https://www.esafety.gov.au/industry/safety-by-design>.



and ensuring that algorithmic recommendation systems do not push harmful content towards young users.<sup>308</sup>

The models explored in this section reveal that there is no single ‘correct’ approach to child protection. The rights-based, supportive model of Sweden, the institutionalized system of Germany, the constitutionally-driven framework of South Africa, and the integrated, supranational strategies of the EU each offer valuable lessons. Together, they demonstrate a global trend towards recognizing the child as a full rights-holder and the importance of professional, coordinated, and preventative systems. These international perspectives provide a rich foundation for the next section, which will analyze what specific, actionable lessons India can draw from these experiences.

## **B: Synthesizing Global Lessons for the Indian Legal System**

The comparative analysis of child rights frameworks across these diverse jurisdictions offers valuable insights and actionable lessons for the ongoing evolution of India’s legal system. By synthesizing these international best practices, a clear roadmap for legislative, judicial, and institutional reform emerges.

### **i. The Imperative of Professionalization and Decentralization**

The German *Jugendamt* model highlights the critical need for a professional, expert-led group of child protection workers at the local level. In India, this provides a strong case for reforming the structure and training of CWCs and District Child Protection Units (DCPUs). The key lesson is that giving legal power to bodies that lack the necessary professional training in social work, child psychology, and law can lead to inconsistent and ineffective protection for children. High-quality

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<sup>308</sup> *Id.*

decision-making in child protection requires a system that is both decentralized to the local level and staffed by qualified professionals.

## **ii. Adopting Restorative Justice to Reinforce Rehabilitation**

The successful use of Youth Offending Teams and restorative justice in the UK offers a clear path for India to strengthen the rehabilitative goals of the JJ Act. For children in conflict with the law, especially those who have committed less serious offenses, adopting restorative practices could be highly effective. Methods like victim-offender mediation and family group conferencing can provide a more meaningful sense of justice for victims than traditional punitive measures. At the same time, they help the child understand the consequences of their actions and support their reintegration into the community, which is the primary goal of the JJ Act.

## **iii. Moving from Siloed Schemes to an Integrated Guarantee**

The EU's "Child Guarantee" and "Integrated Child Protection Systems" reveal the limitations of India's current approach to child welfare, which is based on numerous separate schemes that often operate in isolation. While India has many important schemes like the Integrated Child Development Services (ICDS) and the Mid-Day Meal Scheme, they frequently lack coordination and fail to provide a complete safety net for a vulnerable child.

The lesson for India is to move towards a legally enforceable guarantee of a core set of essential services for every child in need, including nutrition, health, education, and housing. This would require more than just policy convergence; it would demand integrated data systems, joint planning, and shared accountability mechanisms across different government ministries to ensure that no child falls through the cracks.

By learning from these international experiences, India can refine its own legal and institutional machinery by integrating the principles of professionalization, restorative justice, guaranteed services, and proactive regulation. The ultimate goal is to build a system that not only responds effectively to harm but, more importantly, creates a supportive and protective environment where every child is empowered to thrive. The synthesis of global best practices with India's unique legal context provides a clear and achievable path toward this objective.

## **PART VI – ADMINISTRATIVE FRAMEWORK AND ACCESS TO JUSTICE**

*“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.”<sup>309</sup>*

*-Kofi Annan*

*(Former Secretary-General, United Nations)*

The preceding parts of this handbook have meticulously detailed the international, constitutional, and statutory frameworks that define the rights of children in India. However, the promise of these legal instruments can only be realized through a dedicated and effective machinery of the state. This part transitions from the letter of the law to its practical application. It examines the critical institutions and mechanisms responsible for translating legal mandates into tangible outcomes for children.

### **A: Executive and Administrative Initiatives**

The effective translation of legislative mandates and constitutional guarantees for child rights into tangible outcomes depends on the efficacy of the executive and administrative framework. This portion provides a comprehensive analysis of this framework, beginning with the apex statutory bodies designed for oversight - the National and State Commissions for Protection of Child Rights - and extending to the flagship national policies and schemes that form the bedrock of the government's programmatic interventions.

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<sup>309</sup> Namrata Hazarika, *World Day Against Child Labour- 12th June*, Geneva International Centre for Justice, (Sept. 30, 2025), <https://www.gicj.org/positions-opinions/gicj-positions-and-opinions/2698-world-day-against-child-labour-%E2%80%93-12-june>.

## **i. The Apex Watchdog: National and State Commissions for Protection of Child Rights (NCPCR/SCPCR)**

At the heart of India's administrative framework for child rights are the National and State Commissions for Protection of Child Rights. Established as statutory watchdogs, these bodies are endowed with significant powers of inquiry and oversight.

### *i(a). Statutory Foundation: An Analysis of the Commissions for Protection of Child Rights Act, 2005*

The Commissions for Protection of Child Rights Act, 2005 (CPCR Act) was enacted with the express objective of providing for the constitution of a National Commission (NCPCR) and State Commissions (SCPCRs) to ensure the speedy trial of offences against children and to address violations of child rights.<sup>310</sup> The Act represents a significant legislative step towards creating a specialized, high-level body dedicated exclusively to the protection and promotion of the rights of children.

The composition of the NCPCR, as stipulated under Section 3 of the Act,<sup>311</sup> is designed to bring together a multidisciplinary body of experts. It consists of a Chairperson, who must be a "person of eminence and has done outstanding work for promoting the welfare of children", and six members appointed by the Central Government. These members are required to have expertise in diverse fields crucial to child welfare, including:

- Education
- Child health, care, welfare, or child development

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<sup>310</sup> The Commissions For Protection Of Child Rights Act, 2005, § 13, No. 4, Acts of Parliament, 2005 (India).

<sup>311</sup> The Commissions For Protection Of Child Rights Act, 2005, § 3, No. 4, Acts of Parliament, 2005 (India).

- Juvenile justice or care of neglected or marginalized children or children with disabilities
- Elimination of child labour or children in distress
- Child psychology or sociology
- Laws relating to children

To ensure gender representation, the Act mandates that at least two of the six members must be women.<sup>2</sup> The Chairperson and members hold office for a term of three years and are eligible for reappointment for one additional term, subject to age limits of 65 years for the Chairperson and 60 years for members.

A cornerstone of the CPCRA Act is its definition of “child rights”. Section 2(b) defines the term to include *“the children’s rights adopted in the United Nations Convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992”*.<sup>312</sup> This provision is of profound legal significance as it statutorily embeds the principles and articles of the UNCRC into the domestic legal framework, making the Convention a direct source of the Commissions’ mandate and a benchmark against which all laws, policies, and administrative actions in India are to be measured.

To enable the Commissions to discharge their functions effectively, the Act vests them with significant procedural powers. Under Section 14, the Commission, while inquiring into any matter, is granted all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908.<sup>313</sup> These powers include summoning and enforcing the attendance of any person, requiring the discovery and production of

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<sup>312</sup> The Commissions For Protection Of Child Rights Act, 2005, No. 4, Acts of Parliament, 2005 (India).

<sup>313</sup> The Commissions For Protection Of Child Rights Act, 2005, § 14, No. 4, Acts of Parliament, 2005 (India).

any document, receiving evidence on affidavits, requisitioning any public record from any court or office, and issuing commissions for the examination of witnesses or documents. This quasi-judicial authority provides the Commissions with the necessary tools to conduct thorough investigations into complaints of rights violations.

*i (b). The Commissions in Action: Key Functions, Interventions, and Reports*

The functions of the Commissions are expansively detailed in Section 13 of the CPCRP Act, establishing them as multi-faceted bodies with responsibilities spanning monitoring, investigation, advocacy, and research.<sup>314</sup> Their core duties include:

- Examining and reviewing the safeguards provided under any law for the protection of child rights and recommending measures for their effective implementation.
- Inquiring into violations of child rights and recommending the initiation of proceedings.
- Examining factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, natural disasters, trafficking, and other forms of exploitation.
- Studying treaties and other international instruments and making recommendations for their effective implementation.
- Undertaking and promoting research in the field of child rights.
- Spreading child rights literacy and promoting awareness of available safeguards.
- Inspecting any juvenile custodial home or other institution for children.

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<sup>314</sup> The Commissions For Protection Of Child Rights Act, 2005, § 13, No. 4, Acts of Parliament, 2005 (India).

Beyond this general mandate, the Commissions are specifically tasked with monitoring the implementation of three cornerstone legislations: the Right of Children to Free and Compulsory Education (RTE) Act, 2009; the Protection of Children from Sexual Offences (POCSO) Act, 2012; and the Juvenile Justice (Care and Protection of Children) Act, 2015. This positions the NCPCR as the central oversight authority for the entire ecosystem of child protection law in India.

In practice, the NCPCR has engaged in a wide array of interventions that demonstrate the breadth of its mandate. It has developed digital platforms to enhance accessibility and monitoring, such as the GHAR (Go Home and Reunite) portal,<sup>315</sup> designed to digitally track the restoration and repatriation of children to their families, and the POCSO e-Box, an online platform for registering complaints of child sexual abuse.<sup>316</sup> The Commission also takes *suo motu* cognizance of incidents reported in the media, launching inquiries into issues ranging from child trafficking and online safety to the inappropriate portrayal of children in web series.<sup>317</sup> The sheer volume of its work is indicative of its central role; between 2016-17 and 2020-21, the NCPCR received 50,857 complaints, underscoring its function as a primary national-level grievance redressal mechanism for child rights violations.<sup>318</sup>

### *i (c). Judicial Scrutiny of the Commissions' Powers: Landmark Judgments*

The expansive statutory mandate of the NCPCR has been tested and clarified

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<sup>315</sup> GHAR (GO Home and Re-Unite) Portal for Restoration and Repatriation of Child, NCPCR, (Sept. 10, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2001879>.

<sup>316</sup> POCSO E-Box, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (Sept. 10, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1742816>.

<sup>317</sup> NCPCR asks social media platforms to explore ways to protect children online, THE ECONOMIC TIMES, (Sept. 10, 2025), <https://m.economictimes.com/tech/technology/ncpcr-asks-social-media-platforms-to-explore-ways-to-protect-children-online/articleshow/113573770.cms>.

<sup>318</sup> Nearly 51,000 child abuse complaints reach NCPCR in last five years, THE NEW INDIAN EXPRESS, (Sept. 10, 2025), <https://www.newindianexpress.com/nation/2022/Oct/30/nearly-51000-child-abuse-complaints-reach-ncpcr-in-last-five-years-2513213.html>.



through significant judicial pronouncements, which have delineated the boundaries of its powers and exposed certain structural weaknesses in its enabling legislation.

A critical judgment in this regard is ***NCPCR v. State of Jharkhand***<sup>319</sup> In this case, the NCPCR, after taking *suo motu* cognizance of alleged child trafficking in Jharkhand, filed a writ petition under Article 32 of the Constitution before the Supreme Court, seeking broad reliefs including the creation of a Special Investigation Team (SIT). The Supreme Court dismissed the petition, delivering a crucial ruling on the scope of Article 32 for statutory bodies. The Court held that the remedy under Article 32 is primarily intended for individuals to enforce their fundamental rights and cannot be invoked by statutory bodies created to protect those very rights. It reasoned that such bodies are equipped with their own dedicated powers under their enabling statutes and must operate within that framework rather than seeking direct constitutional remedies. The Court criticized the NCPCR's petition for its vague and omnibus prayers and underscored that the Commission should utilize its existing statutory powers of inquiry and investigation to address rights violations. This decision effectively limits the NCPCR's ability to seek the most potent form of judicial intervention, compelling it to rely on its own, often less immediately enforceable, statutory mechanisms.

Another case, ***National Commission for Protection of Child Rights v. Dr. Rajesh Kumar***,<sup>320</sup> brought to light the inherent jurisdictional friction between the NCPCR and the State Commissions. The case arose from a dispute over which body had the authority to investigate a child trafficking incident in West Bengal, as both the NCPCR and the West Bengal SCPCR had initiated proceedings. The Supreme

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<sup>319</sup> NCPCR v. State of Jharkhand, Writ Petition (C) No. 222/2020 (Supreme Court of India, Order dated Sept. 24, 2024).

<sup>320</sup> National Commission for Protection of Child Rights v. Dr. Rajesh Kumar, (2020) 11 SCC 377.

Court termed the situation a “so sad” jurisdictional tug-of-war and a “clash of egos”. The Court observed that Section 13 of the CPCRA Act clothes both the National and State Commissions with “identical powers and functions”, creating a potential for conflict and non-cooperation. In a powerful admonition, the bench stated that such commissions “cannot become sources of power, self-aggrandisement or means of obtaining the trappings of power” but must function solely for the betterment of children in a “spirit of cooperation”. This case illustrates how the statutory ambiguity regarding jurisdictional hierarchy can lead to administrative paralysis, ultimately undermining the goal of child protection.

*i (d): Institutional Challenges: From Jurisdictional Ambiguity to Enforcement Deficits*

The statutory framework of the CPCRA Act, 2005, when viewed through the lens of these judicial interpretations, reveals significant institutional challenges that hamper the effectiveness of the Commissions. The Act creates what appears to be a powerful apex body with a broad mandate to monitor all child rights laws and the powers of a civil court. However, this is undermined by a critical disconnect between its mandate and its enforcement capabilities.<sup>321</sup>

Furthermore, the statutory design itself contains a fundamental flaw. By granting nearly identical powers to both the NCPCR and the SCPCRs without a clear hierarchy or a mechanism to resolve jurisdictional disputes, the Act creates the potential for a legislated stalemate. The *Rajesh Kumar* judgment demonstrates how this lacuna can be exploited, allowing a state-level body to potentially block a national-level inquiry by being the first to take cognizance of a matter.<sup>322</sup> This can

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<sup>321</sup> Mani Gupta, *The Commissions for Protection of Child Rights Act, 2005 - A Critique*, 19 NATIONAL LAW SCHOOL OF INDIA REVIEW (NLSIR) 84, 2007.

<sup>322</sup> National Commission for Protection of Child Rights v. Dr. Rajesh Kumar, (2020) 11 SCC 377.

lead to a “race to cognizance”, where the first body to act can exclude the other, potentially resulting in situations where a less rigorous state-level inquiry prevents a more comprehensive national one. The Supreme Court’s description of this dynamic as “mud-slinging” underscores how this legislative ambiguity can paralyze the child protection oversight mechanism, ultimately harming the interests of the very children these bodies were created to protect.<sup>323</sup>

### **Powers and Functions of NCPCR/SCPCR under the CPCR Act, 2005**

<b>Category of Power/Function</b>	<b>Specific Function/Power</b>	<b>Relevant Section of CPCR Act, 2005</b>	<b>Nature of Power</b>
<b>Monitoring &amp; Review</b>	Examine and review legal safeguards for child rights.	Section 13(1)(a)	Recommendatory
	Present annual and special reports to the government.	Section 13(1)(b)	Reporting/Advisory
	Study treaties and international instruments on child rights.	Section 13(1)(f)	Recommendatory
	Monitor implementation of RTE Act, POCSO Act, JJ	Section 13, POCSO Act	Monitoring

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<sup>323</sup> *Id.*

	Act.	S.44, JJ Act S.109	
<b>Inquiry &amp; Investigation</b>	Inquire into violation of child rights and recommend proceedings.	Section 13(1)(c)	Recommendatory
	Inquire into complaints or take <i>suo motu</i> notice of violations.	Section 13(1)(j)	Quasi-Judicial
	Summon persons, require discovery of documents, receive evidence.	Section 14(1)	Quasi-Judicial (Powers of Civil Court)
<b>Advocacy &amp; Research</b>	Undertake and promote research in child rights.	Section 13(1)(g)	Research/Advisory
	Spread child rights literacy and awareness.	Section 13(1)(h)	Advocacy
<b>Special Powers</b>	Inspect juvenile custodial homes or any institution for children.	Section 13(1)(i)	Investigative

## ii. Key National Policies and Schemes for Child Welfare

In recent years, there has been a discernible strategic shift towards “Mission Mode” governance, characterized by large-scale, convergent, and technology-driven initiatives. This section critically appraises three flagship schemes - Mission Vatsalya, POSHAN Abhiyaan, and Beti Bachao, Beti Padhao - analyzing their objectives, structure, and the overarching governance philosophy they represent.

### *ii (a): Mission Vatsalya: The Paradigm Shift Towards Non-Institutional Care*

Mission Vatsalya represents the government’s umbrella scheme for child protection services. It evolved from the erstwhile Integrated Child Protection Scheme (ICPS), which was launched in 2009-10 to consolidate three separate programs: the Programme for Juvenile Justice, the Integrated Programme for Street Children, and the Scheme for Assistance to Homes for Children (Shishu Greh).<sup>324</sup> The scheme was renamed “Child Protection Services” in 2017 and subsequently subsumed under Mission Vatsalya from 2021-22 onwards.

The core objective of Mission Vatsalya is to create a roadmap for achieving child protection priorities in alignment with the Sustainable Development Goals (SDGs), with the foundational legal framework provided by the JJ Act, and the Protection of Children from Sexual Offences Act, 2012.<sup>325</sup> A defining feature of the mission is its philosophical shift towards promoting family-based, non-institutional care, explicitly stating that the institutionalization of children should be a measure of last resort.

The service delivery structure is hierarchical. At the state level, the State Child Protection Society (SCPS) is responsible for overall implementation, planning, and

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<sup>324</sup> Ministry of Women and Child Development (Government of India), *Mission Vatsalya: Implementation Guidelines* (2022), <https://cara.wcd.gov.in/pdf/Mission%20Vatsalya%20Guideline.pdf>.

<sup>325</sup> *Id.*

mapping. At the district level, the District Child Protection Unit (DCPU), functioning under the supervision of the District Magistrate, is the nodal authority for ensuring service delivery and the care and protection of children.<sup>326</sup>

The mission's programmatic components are twofold. First, it provides financial support for institutional care through various types of Child Care Institutions such as Children's Homes, Observation Homes, Special Homes, and Open Shelters. Second, it promotes and funds non-institutional care options. These include:

- **Sponsorship:** Providing supplementary financial support (Rs. 4000 per month per child) to families to meet the medical, educational, and developmental needs of the child, thereby preventing family separation due to poverty.
- **Foster Care:** Placing a child in the domestic environment of a family other than their biological family for the purpose of alternate care, also with financial assistance of Rs. 4000 per month.
- **After-Care:** A program for individuals who leave institutional care upon turning 18, providing financial support to help them transition to independent life.<sup>327</sup>

*ii (b). POSHAN Abhiyaan and Mission POSHAN 2.0: Combating Malnutrition*

Launched in 2018, the POSHAN Abhiyaan (Prime Minister's Overarching Scheme for Holistic Nutrition) is India's flagship program to combat malnutrition. Its primary objective is to improve the nutritional status of children in the 0-6 years age group, adolescent girls, pregnant women, and lactating mothers. The mission sets specific, time-bound targets for reducing key indicators of malnutrition, including stunting, under-nutrition (underweight prevalence), anemia, and low birth weight.<sup>328</sup>

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<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

<sup>328</sup> Press Information Bureau, *Poshan Maah: Building a Healthier, Stronger Nation Through Nutrition* (Sept. 18, 2025), <https://www.pib.gov.in/PressNoteDetails.aspx?NoteId=155235&ModuleId=3>.

The scheme's implementation is based on:

1. **Convergence:** It is a multi-ministerial mission that seeks to integrate the efforts of various ministries and departments, such as the Ministry of Women and Child Development (WCD), Ministry of Health and Family Welfare, and Ministry of Drinking Water and Sanitation, to ensure a holistic approach.<sup>329</sup>
2. **Technology:** The scheme leverages technology for real-time monitoring. The **Poshan Tracker** application is a critical tool used by Anganwadi workers to capture data on beneficiaries, track service delivery, and monitor growth indicators, providing a real-time dashboard for administrators.<sup>330</sup>
3. **Community Mobilization (Jan Andolan):** A key component is to transform the fight against malnutrition into a people's movement. This is achieved through community-based events (CBEs), such as *Annaprasan Diwas* and *Suposan Diwas*, and annual nationwide campaigns like *Poshan Pakhwada* and *Poshan Maah* to raise awareness and promote behavioral change.<sup>331</sup>
4. **Capacity Building:** The scheme invests in training frontline functionaries, particularly Anganwadi Workers, to enhance their skills in service delivery and counseling.<sup>332</sup>

In 2021, the government launched **Mission POSHAN 2.0**, which amalgamated the Anganwadi Services, the Supplementary Nutrition Programme, the Scheme for Adolescent Girls, and the original POSHAN Abhiyaan. This created a unified, integrated nutrition support program with the aim of strengthening nutritional content,

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<sup>329</sup> *Mission Poshan Abhiyaan*, IBEF, (Sept. 10, 2025)

<https://www.ibef.org/government-schemes/mission-poshan>

<sup>330</sup> *Poshan Abhiyan*, Women and Child Development Department, Haryana, India. (Sept 10, 2025)

<https://wcdhry.gov.in/schemes-for-children/poshan-abhiyan/>

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

delivery, and outreach.<sup>333</sup>

*ii (c). Beti Bachao, Beti Padhao: Addressing Gender Bias and Empowering the Girl Child*

The Beti Bachao, Beti Padhao scheme was launched in 2015 as a response to the alarming decline in the Child Sex Ratio (CSR) revealed by census data. It was initially launched in 100 gender-critical districts and has since been expanded nationwide.<sup>334</sup> The scheme is a tri-ministerial effort, jointly implemented by the Ministry of Women and Child Development, the Ministry of Health and Family Welfare, and the Ministry of Education, reflecting its multi-dimensional approach.

The scheme is built on three core objectives:<sup>335</sup>

1. To prevent gender-biased sex-selective elimination.
2. To ensure the survival and protection of the girl child.
3. To ensure the education and empowerment of the girl child.

The implementation strategy is twofold. First, it involves large-scale mass communication and awareness campaigns designed to challenge deep-rooted patriarchal mindsets and promote the value of the girl child. Second, it entails multi-sectoral interventions at the district level, converging the efforts of health, education, and social welfare departments to achieve monitorable targets, such as improving the Sex Ratio at Birth, increasing girls' enrollment in secondary education, and ensuring the universalization of ICDS services for girls. A key component of the scheme's strategy is to promote financial security for girls through schemes like the

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<sup>333</sup> Mission Poshan Abhiyaan | IBEF, (Sept.10, 2025), <https://www.ibef.org/government-schemes/mission-poshan>

<sup>334</sup> Beti Bachao Beti Padhao – Care of girl child, (Sept. 10, 2025), [https://www.pmindia.gov.in/en/government\\_tr\\_rec/beti-bachao-beti-padhao-caring-for-the-girl-child/](https://www.pmindia.gov.in/en/government_tr_rec/beti-bachao-beti-padhao-caring-for-the-girl-child/)

<sup>335</sup> Beti Bachao Beti Padhao | Women and Child Development ..., (Sept. 10, 2025), <https://wcdhry.gov.in/schemes-for-women/beti-bachao-beti-padhao/>



**Sukanya Samriddhi Yojana (SSY)**, a small savings scheme that encourages parents to save for their daughter's education and marriage.<sup>336</sup>

## Overview of Key National Schemes for Child Welfare

The key policies and schemes, as discussed above, have been summarised below:

<b>Scheme Name</b>	<b>Nodal Ministry/ Ministries</b>	<b>Core Objectives</b>	<b>Target Beneficiaries</b>	<b>Key Components/ Strategy</b>
<b>Mission Vatsalya</b>	Ministry of Women and Child Development	To create a protective environment for children, strengthen the juvenile justice system, and promote non-institutional care.	Children in Need of Care and Protection (CNCP); Children in Conflict with Law (CICL).	Non-institutional care (Sponsorship, Foster Care, After-Care), support to CCIs, strengthening of DCPUs.
<b>POSHAN Abhiyaan 2.0</b>	Ministry of Women and Child Development	To improve nutritional outcomes and reduce stunting,	Children (0-6 years), Pregnant Women	Convergence of ministries, use of technology

<sup>336</sup> *Id.*

	ent	under-nutrition, anemia, and low birth weight.	(PW), and Lactating Mothers (LM).	(Poshan Tracker), community mobilization ( <i>Jan Andolan</i> ), capacity building.
<b>Beti Bachao, Beti Padhao</b>	Ministry of WCD, Ministry of Health & Family Welfare, Ministry of Education	To prevent gender-biased sex selection, ensure girl child survival and protection, and ensure her education and empowerment.	The Girl Child, with a focus on gender-critical districts.	Mass communication campaigns for behavioral change, multi-sectoral action at the district level, promotion of financial schemes.

## **B: Juvenile Justice Committees**

High Courts carry a constitutional responsibility to uphold and protect the rights of all citizens, including children, as enshrined in the Indian Constitution.<sup>337</sup> Safeguarding children's rights has evolved in systematic stages, notably shaped by judicial initiatives and resolutions in the Chief Justices' Conferences over the years.

### **i. Evolution Through Chief Justices' Conferences**

**2006 Conference:** The Chief Justices resolved to nominate a High Court Judge to oversee remand and observation homes under the Juvenile Justice (Care and Protection of Children) Act, 2000. This decision was prompted by concerns over substandard conditions in such homes, highlighting the need for meaningful improvement as envisaged by law. Additionally, the lack of sufficient support for After-care Homes, especially for adolescents and girls, was noted and flagged for urgent attention.<sup>338</sup>

**2009 Conference:** The resolution was reiterated,<sup>339</sup> emphasizing ongoing judicial commitment to these issues. This was recognition of the fact that many facilities still required substantial enhancement to fulfill their intended protective and developmental roles for children.

**2013 Conference:** Taking cue from the Delhi High Court, it was resolved that Juvenile Justice Committees should be established in all High Courts, comprising senior judges and stakeholders.<sup>340</sup> These Committees were tasked to actively monitor the implementation of the Juvenile Justice Act and ensure its provisions are

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<sup>337</sup> Re: Exploitation of Children in Orphanages in the State of Tamil Nadu, [2017] 4 SCR 625.

<sup>338</sup> Sampurna Behura v. Union of India, (2018) 4 SCC 433.

<sup>339</sup> *Resolutions*, Chief Justices' Conference-2009 (August 14-15, 2009) <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/04/2024042436.pdf>.

<sup>340</sup> *Minutes*, Chief Justices' Conference-2013 (April 05-06, 2013) <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/04/2024042439.pdf>.

effectively realized.

Following these initiatives, courts, including the Supreme Court, established their respective Juvenile Justice Committees. In August 2013, the Supreme Court constituted a Committee to review the implementation of the JJ Act. This subsequently led to a meeting with State-level High Court Juvenile Justice Committees in February 2014. A key recommendation from this meeting was to organize round table conferences of High Court Committees to facilitate cross-State learning and devise strategies for effective implementation. Accordingly, Regional Level Round Table Conferences were held, focusing on critical areas such as the functioning of CWCs and JJBs, as well as the provision of legal services to children. These conferences, the first of their kind in India, provided a platform for stakeholders to share experiences, challenges, and best practices, and collectively strengthen the implementation of the JJ Act.<sup>341</sup>

## **ii. Purpose and Structure of Juvenile Justice Committees**

Juvenile Justice Committees are judicial initiatives, established by internal court resolutions and orders rather than direct legislative mandate. The main aim is to improve juvenile welfare by ensuring robust implementation of the Juvenile Justice Act at the ground level. These Committees facilitate regular monitoring of facilities, promote sensitivity in handling juvenile cases, oversee the constitution and functioning of JJBs and CWCs, and coordinate visits to various homes and centres.<sup>342</sup>

## **iii. Strengthening and Expanding Oversight**

**2015 Conference:** It further reinforced the role of High Courts in strengthening the

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<sup>341</sup> *Second Round of Consultations on Effective Implementation of Juvenile Justice Act, 2000- Focus on Rehabilitation Services* <https://ghconline.gov.in/training/Notification-02-09-2015-2.pdf>.

<sup>342</sup> Sampurna Behura v. Union of India, (2018) 4 SCC 433.

Juvenile Justice System, urging regular visits, constitution of required JJBs and CWCs, and collaboration with State and District Legal Services Authorities (DLSAs).<sup>343</sup> The focus was placed on ensuring that standards, policies, and guidelines are properly implemented in all facilities serving juveniles.

**2016 Conference:** The vital necessity for institutional support for Child in Conflict with Law and Children in Need of Care and Protection was recognised. The Juvenile Justice Committees of the High Courts were charged with monitoring adoption case pendency and prioritizing decisions to declare children free for adoption. Additionally, these Committees were to monitor the pending cases of orphaned, abandoned and surrendered children.<sup>344</sup> Thus, the mandate of the Juvenile Justice Committee was further sharpened.

#### **iv. Impact and Judicial Recognition**

Juvenile Justice Committees have made significant strides in enhancing the living conditions and well-being of children in care facilities. The Supreme Court has observed that, following the Chief Justices' Conference resolutions, every High Court constituted a Juvenile Justice Committee headed by a judge. These Committees have been effective in driving positive change and improvements in homes and in the lives of countless children.<sup>345</sup>

More recently, the Juvenile Justice Committee of the Supreme Court of India, chaired by Hon'ble Justice B.V. Nagarathna, organised the *9th National Annual Stakeholders Consultation* in September 2024. The Consultation, on "*Protecting the*

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<sup>343</sup> *Resolutions adopted in the Chief Justices' Conference, 2015 [03rd and 04th April, 2015]*  
<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/04/2024042447.pdf>

<sup>344</sup> *Resolutions adopted in the Chief Justices' Conference, 2016 [22nd and 23rd April, 2016]*  
[https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/notices-circulars/2016-05-06\\_1462510021.pdf](https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/notices-circulars/2016-05-06_1462510021.pdf)

<sup>345</sup> Sampurna Behura v. Union of India, (2018) 4 SCC 433.

*Rights of Children Living with Disabilities (with a focus on CiCL and CNCP) and Intersectionality of Disabilities*”, was convened in association with UNICEF India. It marked the culmination of a series of state-level consultations and brought together key stakeholders to deliberate on advancing the rights of every child in India. On this occasion, the then Hon’ble the Chief Justice of India released a *Handbook on Persons with Disabilities* to sensitise the legal community and the wider society on the use of inclusive terminology, with the Handbook also made available in Braille and audiobook formats. The two-day Consultation also featured sessions on global instruments and national legislations, family-based alternative care and social support, health and education services, and convergence between relevant laws and schemes.<sup>346</sup>

The establishment and evolution of Juvenile Justice Committees within High Courts represent a significant achievement in the Indian legal system’s commitment to safeguarding child rights. By providing a structured mechanism for judicial oversight, these Committees have ushered in significant improvements in care standards, rehabilitation, and the protection of children in need and in conflict with law. This ultimately ensures that the provisions of the Juvenile Justice Act are not merely aspirational, but actively implemented on the ground.

### **C: The Role of Legal Services Authorities in Ensuring Access to Justice**

While the executive is responsible for formulating and implementing welfare schemes, the judiciary and its allied institutions play an important role in ensuring that the rights of children are not just statutory pronouncements but enforceable

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<sup>346</sup> Supreme Court of India to organise a two-day National Annual Stakeholders Consultation on Protecting the Rights of Children Living with Disabilities on 28-29 September, 2024, Press Release, Supreme Court of India (Sept. 27, 2024) <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/09/2024092718.pdf>.

realities. Access to justice, as a fundamental right,<sup>347</sup> serves as the crucial mechanism for transforming these statutory guarantees into enforceable realities.. The Legal Services Authorities, established across the country, are the primary vehicles for providing free and competent legal services to the weaker sections of the society. This section examines the statutory mandate of these authorities and analyzes the evolution of their approach, particularly through the flagship schemes of the National Legal Services Authority (NALSA), from providing basic legal aid to architecting a comprehensive, child-centric justice ecosystem.

#### **i. The Statutory Mandate: Section 12(c) of the Legal Services Authorities Act, 1987**

The foundation for a child's right to legal aid is unequivocally established in Section 12(c) of the Legal Services Authorities Act, 1987 (LSA Act). This provision states that every person who is "a child" is entitled to legal services.

This statutory right imposes a mandatory duty upon all Legal Services Institutions (LSIs) to ensure free and competent legal aid to any child. This includes children in conflict with the law who appear before JJBs as well as children in need of care and protection who are produced before CWCs. The provision of legal services under the LSA Act is thus a cornerstone of the child justice system, ensuring that no child is left unrepresented or unable to access legal remedies due to a lack of resources.

#### **ii NALSA's Flagship Schemes for Child Protection**

Building upon the broad mandate under the LSA Act,<sup>348</sup> NALSA has formulated specific schemes to operationalize and standardize the provision of legal services to

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<sup>347</sup> Anita Kushwaha v Pushp Sudan, (2016) 8 SCC 509.

<sup>348</sup> Legal Services Authorities Act, 1987, § 4(b), No. 39, Acts of Parliament, 1987 (India).

children, reflecting an evolving and increasingly nuanced understanding of their needs.

## **ii (a). NALSA's Scheme for Victims of Trafficking and Commercial Sexual Exploitation, 2015**

To address the acute vulnerabilities of specific groups of children, NALSA has also developed targeted schemes. The NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015, is a prime example. Its objective is to provide comprehensive legal services to victims, including children, at every stage of the process: *prevention, rescue, and rehabilitation*.<sup>349</sup>

A particularly innovative aspect of this scheme is its strategy of using legal aid not just for court representation, but as a tool for social and economic reintegration. The scheme directs LSIs to help victims access their entitlements under a wide range of government welfare programs, such as the Integrated Child Development Services (ICDS), educational schemes, housing schemes, and livelihood support.<sup>350</sup> This holistic approach recognizes that legal justice for a trafficked child is incomplete without ensuring their long-term social and economic security, thereby reducing their vulnerability to re-trafficking.

## **ii (b). The Evolution to a Consolidated Framework: The NALSA (Child-Friendly Legal Services for Children) Scheme, 2024**

The 2024 scheme represents a significant evolution, marking a shift towards a more sophisticated and holistic model of legal services. The Scheme aims to implement

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<sup>349</sup> NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015, (Sept. 10, 2025), <https://cdnbbsr.s3waas.gov.in/s3f8df2e15374e3dc37766e59ac494f0fd/uploads/2025/04/202504171297645925.pdf>

<sup>350</sup> *Id.*



preventive, strategic, and gender-responsive legal services for vulnerable children, with particular emphasis on children with disabilities, in order to promote equity and ensure equal opportunities for all.

The key advancements in the 2024 scheme include:<sup>351</sup>

- **Creation of a Specialized Workforce:** The scheme establishes specialised Legal Services Units for Children (LSUC) with an aim to create a trained and specialized workforce of panel lawyers and Para-Legal Volunteers (PLVs). Crucially, it introduces the concept that these legal services must be **child-centric, gender-responsive, disability-centric, and trauma-informed**. This moves beyond mere legal representation to demand a higher standard of sensitivity and specialized skill from legal aid providers. Further, the LSUC unit is mandated to include Legal Aid Defence Counsel (LADC), who are lawyers that handle exclusively legal aid cases. The LADC functions under NALSA's Legal Aid Defence Counsel Scheme, 2022, and plays a crucial role in providing dedicated and focused legal services to children.
- **Enhanced Focus on Inclusivity:** By integrating the scheme for differently-abled children, the 2024 framework places a strong and explicit emphasis on ensuring equity and equal opportunities for children with disabilities. It mandates the use of appropriate language, visual aids, and accessible infrastructure when providing legal assistance to them.
- **Proactive Community Outreach:** The scheme mandates LSIs to conduct proactive community outreach programs to identify and assist the most vulnerable children. This marks a shift from a reactive model, where the system waits for a child to be produced before it, to a proactive one that seeks to identify

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<sup>351</sup> *Id.*

at-risk children within the community.

The trajectory from the LSA Act of 1987 to the NALSA scheme of 2024 reveals an evolution in the institutional understanding of “legal aid” for children. The 1987 Act created a simple entitlement to a lawyer. The 2024 Scheme, however, marks a significant paradigm shift. The introduction of concepts like “trauma-informed care”, “disability-centric services”, and the goal of fostering a “child-sensitive environment within the justice system” demonstrates that NALSA’s vision has expanded far beyond the mere provision of legal counsel.<sup>352</sup>

### **iii. NALSA’s Initiatives in Action: From Legal Aid to Systemic Reform**

The operationalization of NALSA’s schemes involves a multi-pronged strategy that combines direct intervention with capacity building and is often galvanized by judicial directives.

#### **iii (a). Capacity Building: Training of Panel Lawyers and Para-Legal Volunteers (PLVs)**

Recognizing that the quality of legal aid depends on the skills of the provider, NALSA’s schemes place a strong emphasis on training. Para-Legal Volunteers (PLVs) are envisioned as the first point of contact in communities. They are trained to spread legal awareness, identify children in need of care and protection, and act as a bridge between the community and the formal legal services institutions.

For panel lawyers appointed to assist children, particularly before the JJBs, specific duties are outlined to ensure a minimum standard of service. These include the responsibility to interact with the juvenile and his or her parents before a hearing, to

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<sup>352</sup> *Id.*

maintain a detailed file for each case, and to ensure continuous representation even in their absence by coordinating with a fellow legal aid lawyer.<sup>353</sup> This structured approach aims to prevent perfunctory or tokenistic legal representation.

### **iii (b) Legal Awareness and Community Outreach**

In *Suhas Chakma v. Union of India*,<sup>354</sup> the Supreme Court has highlighted that awareness is essential for the effective functioning of legal aid mechanisms. This can be generated through different mediums, including, promotional campaigns through radio, street corner plays (*nukakd nata*), availability of legal aid be publicised through boards at public places with the address and contact details of the jurisdictional Legal Services Institution. Accordingly, a core component of NALSA's strategy is to empower communities through knowledge. With respect to children, the 2024 scheme explicitly mandates LSIs to conduct awareness programs in schools, colleges, and communities. The objective is to educate children, parents, teachers, and other stakeholders about child rights, the legal remedies available for their violation, and the role of the Legal Services Authorities in providing free assistance.<sup>355</sup>

### **iii (c). The Role of the Judiciary in Directing NALSA's Interventions**

The work of NALSA and the SLSAs does not operate in a vacuum; it is often driven and directed by the higher judiciary, particularly the Supreme Court. In several important PILs, the Court has used the LSI network as its de facto implementation

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<sup>353</sup> *Guidelines Issued by National Legal Services Authority (NALSA) for Legal Services in Juvenile Justice Institutions* (Sept. 10, 2025), <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408306075921.pdf>

<sup>354</sup> *Suhas Chakma v. Union of India*, 2024 INSC 813.

<sup>355</sup> NALSA (Child-Friendly Legal Services for Children) Scheme, 2024 (Sept. 10, 2025), <https://cdnbbsr.s3waas.gov.in/s35065a82a3b4e103b6f33c206062dd768/uploads/2025/04/202504251071125456.pdf>

and monitoring arm to enforce social justice legislation.

The most prominent example is the case of *Sampurna Behura v. Union of India*.<sup>356</sup> In this case, through a series of orders, the Supreme Court issued specific directions to State Governments and High Courts on a wide range of issues, including the establishment and proper functioning of JJBs and CWCs, the registration of all Child Care Institutions, the appointment of probation officers, and, crucially, the provision of legal aid lawyers for children. These judicial directives directly reinforce the mandate of NALSA and the SLSAs. The Court's orders provide the necessary impetus and authority, while the LSI network provides the grassroots machinery to implement and report back on compliance.

## **D: Social Audit and Oversight of Child Care Institutions**

### **i. Introduction**

Social audit has “gained relevance as a tool of public accountability”.<sup>357</sup> It has been defined as an assessment of a department's non-financial objectives through systematic and regular monitoring on the basis of the views of its stakeholders.<sup>358</sup> This articulation encapsulates the ethos of oversight in the domain of child protection, measuring not merely financial propriety, but the lived experience of the children themselves.

The imperative of subjecting CCIs and other institutes to social audit arises from recurring concerns: whether these institutions comply with statutory standards; whether they deliver rehabilitative rather than custodial care; and whether children's voices are heard in shaping their daily lives and long-term outcomes. The Supreme

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<sup>356</sup> *Sampurna Behura v. Union of India*, (2018) 4 SCC 433.

<sup>357</sup> *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu, In re*, (2017) 7 SCC 578.

<sup>358</sup> *Id.*

Court's interventions over the past decade, coupled with the national social audit commissioned by the NCPCR,<sup>359</sup> have placed these questions squarely in the centre of judicial and policy discourse.

## **ii. Legal Framework**

The JJ Act, together with the Juvenile Justice (Model) Rules, 2016, provides the statutory foundation for CCIs and allied institutes. This framework can be understood across five interrelated dimensions:

### *(a) Compulsory Registration and Recognition*

Section 41 of the JJ Act mandates that no institution shall house children without registration under the Act.<sup>360</sup> Applications must specify the type of institution, children's home, open shelter, observation home, special home, place of safety, or specialised adoption agency. Registration is granted only upon satisfaction of prescribed minimum standards, and failure to obtain registration attracts closure, with immediate rehabilitation measures for children affected.<sup>361</sup>

### *(b) Standards of Care and Infrastructure*

Chapter VI of the JJ Act and Rules 29–38 of the Model Rules prescribe obligations relating to accommodation, sanitation, medical care, education, vocational training, recreation, and counselling.<sup>362</sup> Requirements include dormitory size, child-to-caregiver ratios, access to clean drinking water, provision of clothing and

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<sup>359</sup> *National Report on the Social Audit of Child Care Institutions*, NATIONAL COMMISSION ON PROTECTION OF CHILD RIGHTS, (2018), [https://ncpcr.gov.in/uploads/167145198563a05551c7b75\\_national-report--social-audit-of-ccis.pdf](https://ncpcr.gov.in/uploads/167145198563a05551c7b75_national-report--social-audit-of-ccis.pdf).

<sup>360</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 41, No. 2, Acts of Parliament, 2015 (India).

<sup>361</sup> *Id.*

<sup>362</sup> Juvenile Justice (Model) Rules, 2016, Rules 29–30.

bedding, and privacy in sanitation facilities. Rule 33 specifically insists upon access to counselling services, recognising the psychosocial vulnerabilities of institutionalised children.<sup>363</sup>

*(c) Governance and management*

Every CCI is required to establish a Management Committee under Rule 39, comprising the person-in-charge, probation officer, case worker, counsellor, house parent, medical officer, and a teacher.<sup>364</sup> The Committee must meet monthly to review individual care plans, infrastructure adequacy, and grievances of children. Rule 40 obliges the constitution of Children's Committees for different age groups of children. These Children's Committees are to be constituted solely by the children. This ensures the participation of a child within the child protection architecture. They are neither ends in themselves nor substitutes for families; rather, they are instruments of protection, rehabilitation, and reintegration. The Supreme Court has consistently emphasised that institutionalisation must be temporary, child-centric, and oriented toward restoration.

The empirical evidence, drawn from the MWCD mapping and the NCPCR social audit, confirms both progress and persistent gaps. While several States demonstrate high compliance with statutory standards, others reveal deficiencies in registration, staffing, infrastructure, inspections, and child participation. These variations underscore the need for continuous judicial and executive oversight, informed by robust data and guided by principles of accountability.

Social audits, inspections, and Individual Care Plans are not merely administrative

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<sup>363</sup> *Id.*, r. 33.

<sup>364</sup> *Id.*, r. 39.

exercises; they are instruments through which the lived experiences of children are translated into actionable oversight. The Court has endorsed these mechanisms as essential to measuring the effectiveness of CCIs in achieving their rehabilitative mandate. After all, the well-being of children in institutional care reflects the State's commitment to constitutional morality, the doctrine of *parens patriae*, and the ideals enshrined in the JJ Act.<sup>365</sup>

*(d) Oversight, inspection and accountability*

Section 54 of the Act empowers inspection committees at the state and district levels to conduct regular inspections.<sup>366</sup> Rule 41 prescribes that such inspections be carried out at least once every three months, with reports forwarded to the State Child Protection Society.<sup>367</sup> The NCPDR and State Commissions for Protection of Child Rights are also authorised to inspect and to commission social audits.<sup>368</sup>

*(e) Individualised rehabilitation and reintegration*

Section 55 of the JJ Act obliges preparation of an Individual Care Plan (ICP) for every child, addressing health, emotional well-being, education, vocational training, and restoration to family or community.<sup>369</sup> Rule 19 elaborates the ICP template, requiring review by the Management Committee and the CWC at regular intervals.<sup>370</sup> These provisions operationalise the statutory recognition that institutionalisation must be temporary, and oriented towards reintegration.

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<sup>365</sup> *Id.* r. 40.

<sup>366</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 54, No. 2, Acts of Parliament, 2015 (India).

<sup>367</sup> Juvenile Justice (Model) Rules, 2016, Rule 41.

<sup>368</sup> National Commission for Protection of Child Rights Act, 2005, § 12, 13, No. 6, Acts of Parliament, 2005 (India).

<sup>369</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 55, No. 2, Acts of Parliament, 2015 (India).

<sup>370</sup> *Id.*

*(f) Financial accountability and social audit*

Institutions receiving government grants are subject to financial audit. Beyond this, the statute envisages social audits as a means of assessing whether CCIs are fulfilling their protective and rehabilitative objectives.<sup>371</sup> This Court has noted that such audits go to the heart of public accountability in child protection.<sup>372</sup>

In sum, the legal framework is both detailed and ambitious: it prescribes material standards, embeds child participation, and institutionalises oversight and individualised care. The challenge, as subsequent sections will demonstrate, lies in ensuring uniform compliance across the diverse landscape of these institutes in the country.

### **iii. Judicial Engagement**

The role of the judiciary in the protection of children within institutional care has been both catalytic and supervisory. Over the past decade, this Court has been seized of multiple matters highlighting abuse, neglect, and regulatory lacunae in CCIs. These interventions have not been confined to a single proceeding but reflect a broader jurisprudential trend of treating CCIs as spaces that must be held to the highest standards of transparency and accountability.<sup>373</sup>

The Court has consistently underscored that no institution may house children without registration under Section 41 of the JJ Act, and that the process of registration is not a matter of administrative formality but of substantive compliance. Directions have repeatedly been issued to States and Union Territories to ensure

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<sup>371</sup> Re: Exploitation of Children in Orphanages in the State of Tamil Nadu, In re, (2017) 7 SCC 578.

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*



that all institutions, governmental or non-governmental, to obtain registration within time-bound frameworks, failing which they must cease operations.<sup>374</sup>

Equally important has been the insistence on inspections and monitoring. Recognising that statutory committees under Section 54 and Rule 41 were often either dormant or irregular, the Court mandated that inspections must be conducted with regularity and seriousness, with reports submitted not merely for record but for corrective action.<sup>375</sup> This insistence flows from the recognition that paper compliance is insufficient without continuous field-level oversight.

A further line of emphasis has been on child protection policies and grievance redressal mechanisms. The Court has required CCIs to adopt formal child protection policies, accessible to every child, and has drawn attention to the need for counsellors, probation officers, and trained staff to give these policies practical meaning. The absence of professional staff has been identified as one of the systemic weaknesses undermining the rehabilitative purpose of CCIs.<sup>376</sup>

In subsequent monitoring orders, the Court has gone beyond compliance directions to acknowledge the significance of social audit as a legitimate tool of accountability. As observed, “social audit has gained relevance as a tool of public accountability. It has been defined as an assessment of a department’s non-financial objectives through systematic and regular monitoring on the basis of the views of its stakeholders.”<sup>377</sup> By endorsing social audits in the context of CCIs, the Court has affirmed that the effectiveness of such institutions cannot be judged merely by

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<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> *Id.*

<sup>377</sup> *National Report on the Social Audit of Child Care Institutions*, National Commission for Protection of Child Rights, (2018), [https://ncpcr.gov.in/uploads/167145198563a05551c7b75\\_national-report--social-audit-of-ccis.pdf](https://ncpcr.gov.in/uploads/167145198563a05551c7b75_national-report--social-audit-of-ccis.pdf).

financial propriety or infrastructural adequacy, but by the lived experiences of children and the degree to which their rights are secured.<sup>378</sup>

Finally, the Court has highlighted that institutionalisation is not an end in itself. The jurisprudence reflects a consistent orientation towards rehabilitation and reintegration: every child must have an Individual Care Plan; family tracing and restoration must be prioritised; and long-term institutionalisation must remain the exception, not the rule. In this sense, the Court has sought to re-centre CCIs around the child, rather than the convenience of the institution.

Read together, these judicial pronouncements embody a unified principle: that CCIs, while necessary in limited circumstances, must be subject to uncompromising scrutiny and must function as instruments of protection, dignity, and reintegration, not as warehouses of neglect.<sup>379</sup>

#### **iv. Empirical Reality**

A robust understanding of the state of CCIs requires engagement with empirical evidence. The Supreme Court has repeatedly emphasised that oversight and policy directions must be informed by reliable data.<sup>380</sup> Key sources illuminate the current landscape: the Ministry of Women and Child Development (MWCD) mapping/survey of CCIs, and the National Commission for Protection of Child Rights (NCPCR) national social audit.<sup>381</sup> Complementing these national exercises, state-level research initiatives and social audits such as the study conducted in 2015 by Dr.

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<sup>378</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 55, 41, No. 2, Acts of Parliament, 2015 (India); Juvenile Justice (Model) Rules, 2016, Rules 19, 39–41.

<sup>379</sup> *Id.*

<sup>380</sup> Re: Exploitation of Children in Orphanages in the State of Tamil Nadu, In re, (2017) 7 SCC 578.

<sup>381</sup> Ministry of Women and Child Development, “Mapping and Review of Child Care Institutions”, Government of India (2018); *National Report on the Social Audit of Child Care Institutions*, National Commission for Protection of Child Rights, (2018), [https://ncpcr.gov.in/uploads/167145198563a05551c7b75\\_national-report--social-audit-of-ccis.pdf](https://ncpcr.gov.in/uploads/167145198563a05551c7b75_national-report--social-audit-of-ccis.pdf).

Ram Manohar Lohiya National Law University, Lucknow (RMLNLU) at the directions of the Juvenile Justice Committee, Allahabad<sup>382</sup> offer valuable insights into systemic gaps and ground-level realities. Also, social audits sometimes help uncover deeper systemic issues, as exemplified by the Tata Institute of Social Sciences (TISS) report that revealed the sexual abuse of 34 minor girls at a State-run shelter home in Muzaffarpur.<sup>383</sup>

The MWCD mapping provides a government-verified baseline for CCIs across India. As of the latest exercise, 7,163 CCIs were identified nationally, encompassing children's homes, observation homes, special homes, places of safety, and specialised adoption agencies.<sup>384</sup> The mapping revealed significant inter-state variation in registration compliance, staff deployment, and infrastructure adequacy. For instance, while certain States reported near-universal registration, others had up to 20% of CCIs operating without formal recognition under Section 41 of the JJ Act.<sup>385</sup> Staffing deficits were notable: many institutions lacked counsellors, medical officers, or trained house parents, compromising both care quality and child protection.<sup>386</sup>

Complementing this, the NCPCR social audit offers granular insights into operational realities. The audit examined infrastructure, staffing, child protection mechanisms, health and nutrition, educational support, and records maintenance. Key findings included:<sup>387</sup>

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<sup>382</sup> Kumar Askand Pandey and Anurag Bhaskar, *Social Audit of Child Care Institutions (CCIS): Experiences from Uttar Pradesh* 9 RMLNLUJ (2017) 70.

<sup>383</sup> Amarnath Tewary, *TISS report points to model shelter homes in Bihar*, THE HINDU, (Aug. 5, 2018), <https://www.thehindu.com/news/national/other-states/tiss-report-points-to-model-shelter-homes-in-bihar/article24609376.ece>.

<sup>384</sup> *Id.* at 12.

<sup>385</sup> *Id.* at 14-16.

<sup>386</sup> *Id.* at 18-20.

<sup>387</sup> *Id.*

- **Registration & Legal Compliance:** Approximately 85% of CCIs maintained valid registration under JJ Act provisions; however, gaps persisted in documentation and renewal processes.
- **Staffing & Training:** Only 62% of institutions had the mandated posts filled, and training in child rights or psychosocial care was irregular.
- **Infrastructure & Facilities:** While most CCIs provided dormitories, kitchens, and toilets, adherence to norms for bed-space, privacy in sanitation, and recreational facilities was inconsistent.
- **Child Protection & Participation:** About 70% had formal child protection policies and grievance mechanisms; fewer than 50% had functional children's committees actively participating in daily routines.
- **Health & Nutrition:** Admission medical checks were conducted in 78% of CCIs, though records were often incomplete. Access to emergency care and first aid equipment varied widely.
- **Education & Rehabilitation:** Educational assessments and case planning existed in principle, but implementation of individualised rehabilitation and reintegration plans was uneven.

Taken together, these empirical studies underscore two points. First, the legal framework is only as effective as its enforcement; structural deficits in staffing, infrastructure, and monitoring persist despite statutory clarity. Second, the inclusion of child voices and participatory mechanisms remains inconsistent, highlighting the need for audit tools that capture qualitative outcomes, not merely compliance metrics.

The MWCD and NCPCR data also provide a basis for state-wise comparison,

revealing trends that inform judicial and executive interventions. States with higher compliance rates often demonstrated robust Management Committee functioning, active children’s committees, and timely inspections, whereas low-performing States exhibited gaps in registration, social audits, and staffing.

Empirical evidence, thus, reinforces the Court’s repeated insistence on social audits, inspections, and monitoring as indispensable instruments to ensure that CCIs are rehabilitative, accountable, and child-centric.

## **v. State-wise Reality**

The national data from MWCD mapping and the NCPCR social audit reveal significant variations across States and Union Territories in the functioning of CCIs.<sup>388</sup> While some States have achieved near-complete compliance with statutory standards, others continue to struggle with registration, staffing, infrastructure, and child participation. The following picture emerged:

### *a. Registration and Legal Compliance*

States such as Kerala, Maharashtra, and Delhi reported nearly full registration of CCIs under Section 41 of the JJ Act, with timely renewal of licences and documentation<sup>389</sup>. In contrast, States including Uttar Pradesh, Bihar, and certain North-Eastern States had between 10–20% of CCIs operating without formal registration.<sup>390</sup> This divergence indicates systemic enforcement challenges, despite uniform statutory requirements.

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<sup>388</sup> Ministry of Women and Child Development, “Mapping and Review of Child Care Institutions”, Government of India (2018); *National Report on the Social Audit of Child Care Institutions*, National Commission for Protection of Child Rights, (2018), [https://ncpcr.gov.in/uploads/167145198563a05551c7b75\\_national-report--social-audit-of-ccis.pdf](https://ncpcr.gov.in/uploads/167145198563a05551c7b75_national-report--social-audit-of-ccis.pdf).

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

### *b. Staffing and Capacity*

High-performing States generally maintained full staffing in line with Model Rules: Office-in-Charge, counsellors, medical officers, caseworkers, and house parents were deployed, and training in child rights and psychosocial care was regular.<sup>391</sup> Low-performing States, however, exhibited chronic vacancies, limited training, and over-reliance on untrained volunteers.<sup>392</sup> These gaps directly impact the quality of care, grievance handling, and individual rehabilitation plans.

### *c. Infrastructure and Facilities*

States demonstrating strong compliance adhered to norms for dormitory size, recreational areas, sanitation, and drinking water facilities.<sup>393</sup> Conversely, certain States reported overcrowding, inadequate bathing privacy, insufficient beds or mats, and poor access to recreational or counselling spaces.<sup>394</sup> These deficiencies not only undermine the rehabilitative purpose of CCIs but also heighten risks of abuse and neglect.

### *d. Child Protection and Participation*

The constitution and functioning of Children's Committees varied widely. In high-compliance States, children actively participated in daily routines, menu planning, and grievance redressal.<sup>395</sup> By contrast, in many States, children's committees were either non-existent or non-functional, and formal child protection policies were not consistently implemented.<sup>396</sup>

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<sup>391</sup> *Id.*

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*

<sup>396</sup> *Id.*

#### *e. Health, Nutrition, and Education*

States such as Tamil Nadu and Karnataka reported near-universal completion of medical checks upon admission, regular health monitoring, and adherence to dietary norms.<sup>397</sup> Low-performing States, however, had incomplete medical files, irregular diet provision, and inadequate educational assessment. Special needs interventions and Individual Care Plans, though prescribed under Rule 19 of the Model Rules, were sporadically implemented across several regions.<sup>398</sup>

#### *f. Inspections and Social Audit Implementation*

The frequency and quality of inspections and social audits also varied. Some States conducted quarterly inspections with actionable follow-ups, documented in inspection reports; others failed to schedule regular inspections, with little corrective action taken.<sup>399</sup> Judicial monitoring, as emphasised in the 2017 and 2019 SCC interventions, remains crucial to address these gaps and maintain accountability.

#### *g. Observations*

Taken together, the state-wise picture demonstrates that compliance with the JJ Act and Model Rules is uneven. High-performing States illustrate that statutory standards, robust governance, and active child participation are achievable. Conversely, persistent gaps in low-performing States highlight the need for targeted oversight, capacity-building, and enforcement measures.<sup>400</sup>

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<sup>397</sup> *Id.*

<sup>398</sup> Juvenile Justice (Model) Rules, 2016, Rule 19.

<sup>399</sup> Ministry of Women and Child Development, "Mapping and Review of Child Care Institutions", Government of India (2018).

<sup>400</sup> Ministry of Women and Child Development, "Mapping and Review of Child Care Institutions", Government of India (2018); *National Report on the Social Audit of Child Care Institutions*, National Commission for Protection of Child Rights, (2018), [https://ncpcr.gov.in/uploads/167145198563a05551c7b75\\_national-report--social-audit-of-ccis.pdf](https://ncpcr.gov.in/uploads/167145198563a05551c7b75_national-report--social-audit-of-ccis.pdf).

These gaps are particularly acute in certain States. For instance, the case of Uttar Pradesh may be taken as an illustrative example. The empirical survey in Uttar Pradesh reveal persistent systemic gaps in the functioning of CCIs:<sup>401</sup>

- **General Functioning:** While committees such as Management Committees and Children's Committees are formally constituted as per the Juvenile Justice Rules, they largely exist only on paper, with irregular or no meetings, and limited coordination among key stakeholders like District Probation Officers, CCI Superintendents, DCPUs, and Basic Education Officers.
- **Staffing Issues:** Staffing deficits are acute across CCIs. Many institutions rely on outsourced or temporary staff, with no permanent teachers, inadequate number of cooks, and insufficient paramedical personnel.
- **Infrastructural Deficiencies:** Infrastructure shortcomings further compromise child care. Observation and Special Homes are frequently overcrowded, with open spaces, recreational facilities, and privacy either lacking or severely limited. Age-wise segregation is inconsistently applied, and differently-abled children receive little or no specialized support.
- **Child Care and Rehabilitation Gaps:** The focus of many CCIs appears skewed towards containment rather than rehabilitation, with minimal Individual Care Plans (ICPs) prepared, inadequate medical checks, and inappropriate policing measures.

Collectively, these findings underscore that while the legal framework and statutory mechanisms exist, their implementation in Uttar Pradesh remains uneven.

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<sup>401</sup> S Kumar Askand Pandey and Anurag Bhaskar, Social Audit of Child Care Institutions (CCIS): Experiences from Uttar Pradesh, 9 RMLNLUJ (2017) 70.



## vi. Digital Tools and Infrastructure Support for Social Audits

In order to strengthen real-time monitoring and inspections of CCIs across the country, the NCPCR has developed the **MASI (Monitoring App for Seamless Inspection)**. This digital platform is linked to the central monitoring portal, enabling automatic generation of inspection reports. MASI facilitates unified inspections by multiple authorities designated under the JJ Act, including CWCs, State and District Inspection Committees, Members of JJBs, and State Commissions for Protection of Child Rights (SCPCR). By providing a single platform for conducting inspections, MASI ensures consistency, transparency, and efficiency in assessing the functioning of CCIs nationwide. As of 20 December 2023, over 5,347 inspections have been recorded through the app, demonstrating its growing utility in child protection oversight.<sup>402</sup>

Complementing digital monitoring, the Mission Vatsalya Scheme provides financial and infrastructural support to strengthen institutional mechanisms. Under the scheme, a grant of Rs. 9,25,800/- is allocated for the establishment of two dedicated rooms (approximately 300 sq. ft. each) within Children's Homes or integrated CCI complexes (Vatsalya Sadans). These rooms are designated for the functioning of CWCs and offices of JJBs, enabling them to operate within the same premises as CCIs for effective implementation of the JJ Act. Where sufficient space is available in existing Children's Homes, it is utilized for CWC operations; otherwise, the scheme provides for renting suitable premises in districts lacking adequate infrastructure. Typically, one room serves as the sitting area for the CWC, while the other functions as a waiting area for children and their families, ensuring a child-friendly environment

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<sup>402</sup> Un-starred Question No. 214, *Survey of Child Care Institutions*, Ministry of Women and Child Development, Government of India (Feb. 02, 2024) <https://sansad.in/getFile/loksabhaquestions/annex/1715/AU214.pdf?source=pqals>.

during inspections and hearings.<sup>403</sup>

## Conclusion

This part has provided a comprehensive overview of the administrative and justice delivery framework that underpins child rights in India. It has mapped the intricate network of institutions designed to translate the nation's legal and constitutional commitments into a lived reality for children. Section A detailed the executive machinery, from the statutory oversight of the National and State Commissions for Protection of Child Rights to the large-scale programmatic interventions like Mission Vatsalya and POSHAN 2.0, which form the backbone of the state's welfare delivery. Section B discussed the purpose and structure of Juvenile Justice Committees. Section C shifted the focus to the critical pillar of access to justice, examining the constitutional mandate for legal aid and its operationalization through the specialized, child-friendly schemes of the National Legal Services Authority. The evolution of NALSA's approach, from the simple provision of a lawyer to the creation of a trauma-informed, child-centric support system, highlights a maturing understanding of what meaningful access to justice requires for a vulnerable child. Section D deals with the relevance and importance of social audit of CCIs. This mechanism has been recognised by the Supreme Court as a necessary tool for implementation of JJ Act as it ensures transparency and accountability.

In conclusion, the administrative and justice delivery framework for children in India is a testament to the nation's progressive legislative and policy vision. Yet, its ultimate success is not guaranteed by its design alone. The journey from statutory

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<sup>403</sup> Smt. Smriti Zubin Irani, *MASI portal developed for Seamless Inspection of CCIs*, Press Release: Press Information Bureau, Ministry of Women and Child Development, (Aug 2, 2023, 4:18 PM) <https://www.pib.gov.in/PressReleaselframePage.aspx?PRID=1945038>.

promise to tangible protection is the final and most critical frontier in the quest for child rights. The effectiveness of this entire machinery hinges on sustained political will, adequate resourcing, and the unwavering commitment of every stakeholder to bridge the implementation deficit, ensuring that the architecture of protection does not remain a blueprint but becomes a true sanctuary for every child.

## **E. Monitoring / Inspection Of Observation Homes & Child-Care Institutions (CCIs)**

The JJ Act places a multi-tiered monitoring and inspection duty across the statutory machinery. The aim of this multi-tiered mechanism is to safeguard the rights of children, maintain standards of care, and ensure that institutions and authorities function in compliance with the law.

### **i. Legislation, Rules And Inspection Formats**

- **Statutory mandate — Child Welfare Committees, Inspection Committees and monitoring commissions.** The JJ Act places a multi-tiered monitoring and inspection duty across the statutory machinery. Section 30<sup>404</sup> lays down the functions and responsibilities of the CWC, which includes receiving children, conducting inquiries into their welfare, directing social investigations and monitoring institutions in which children are placed; the CWC thus has express supervisory and inspection responsibilities as part of its core functions.
- **Section 54 — Inspection committees and frequency.** Section 54 of the JJ Act requires State Governments to constitute State and District

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<sup>404</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 30, No. 2, Acts of Parliament, 2015 (India).

Inspection Committees for all institutions registered or recognised under the Act; the rules made under the Act implement Section 54 by specifying the composition of these Committees, their duties and procedures for inspection and reporting. The statutory architecture contemplates regular, institutionalised visits by constituted inspection teams.

- **Section 109 — Higher level monitoring.** Section 109 assigns to the NCPCR and the SCPCRs the monitoring of implementation of the JJ Act and empowers those Commissions in inquiries relating to JJ Act provisions to exercise the powers vested in them under the CPCR Act, 2005. This creates a supervisory layer capable of system-level review and follow-up beyond district inspection committees and local CWCs.
- **Rules, forms and the inspection format — Model Rules 2016 & Model Amendment Rules 2022.** The Juvenile Justice (Care & Protection of Children) Model Rules, 2016, as subsequently amended by the Model Amendment Rules, 2022, give practical effect to the Act's inspection mandate. The Model Rules: (a) set out the composition of District/State Inspection Committees (including DCPU/ DCPO as Member-Secretary, a medical officer, a woman member, a mental-health/child-care expert and civil society representation); (b) require that District Inspection Committees inspect all CCIs in the district in Form-46 and that inspections be carried out at least once every three months; and (c) prescribe the formats / forms to be used for inspection, registration and renewal. The 2022 Model Amendment Rules made specific, procedural additions (including new/updated

forms and adjustments to reporting and linkage provisions).<sup>405</sup>

- **Form 46 (and Form 46A) — the inspection instrument.** The Model Rules prescribe **FORM-46** as the comprehensive inspection format to be used by District Inspection Committees (and allied inspection bodies) when visiting CCIs; **FORM-46A** is a related format used for registration and renewal inspections. Form-46 captures: date/time of visit; names and designation of inspecting officials; a checklist on infrastructure, staffing (medical officer, counsellor, caregiver ratios), case records, education, health, child complaint book, incidents of abuse/discipline, and space for specific violations and corrective suggestions. Because Form-46 is the instrument the statute/rules direct inspectors to use, it should form the primary evidentiary baseline when the Court assesses compliance with the statutory “inspection” mandate.<sup>406</sup>
- **Rules 12 & 16 (Model Rules / Amendments) — procedural and reporting enhancements.** The Model Amendment Rules 2022 make targeted modifications across the principal rules (including changes to rule-level responsibilities and reporting / linkage requirements). The amendments update certain reporting obligations and strengthen linkage between Boards/Committees, District Magistrates and Commissions for follow-up; they also insert or substitute specified forms and reporting clauses (the consolidated Model Rules / Amendment document should be relied on for precise rule numbers and text in any formal pleading). For immediate purposes Rule-12 (as

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<sup>405</sup> Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 64 and Juvenile Justice (Care and Protection of Children) Model Amendment Rules, 2022, Form 46.

<sup>406</sup> Id.

amended) and Rule-16 (and the substituted Form-16 / Form-46A entries) are relevant because they relate to institutional record-keeping, reporting of incidents including deaths, and inspection/registration procedures.<sup>407</sup>

The JJ Act (S.30, S.54, S.109) together with the Model Rules (2016) and the Model Amendment Rules (2022) create a layered, mandatory inspection regime: CWCs/JJBs and District/State Inspection Committees are charged with regular, institutional inspections (with minimum periodicity expressed in the rules), and the NCPCR/SCPCRs exercise a supervisory, system-level monitoring role. The rules' prescribed inspection instruments, **Form-46 / 46A** are the operative checklists for determining whether the on-ground standards were met at the time of inspection.

## ii. National Overview, Public Data and State-Wise Reality

a. **Public data at the national level** – There are three categories of public or official data which shed light on whether the statutory inspection regime is working in practice:

- **Operational monitoring portal / app (MASI)** developed by NCPCR to capture inspections in real time; MASI is the only centrally-coordinated, digital repository explicitly created to record inspection visits by CWCs, District/State Inspection Committees, JJB members, SCPCRs and NCPCR itself. MASI is a single platform that auto-generates inspection reports once the mandated questionnaire is completed.<sup>408</sup>
- **Scheme / programme datasets:** the Mission Vatsalya scheme (the

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<sup>407</sup> Juvenile Justice (Care and Protection of Children) Model Amendment Rules, 2022, Rule 12 and Rule 16.

<sup>408</sup> Smt. Smriti Zubin Irani, *MASI portal developed for Seamless Inspection of CCIs*, Press Release: Press Information Bureau, Ministry of Women and Child Development, (Aug 2, 2023, 4:18 PM) <https://www.pib.gov.in/PressReleaselframePage.aspx?PRID=1945038>.

present central programme for child-protection systems) maintains a state-wise list of CCIs supported under the scheme. In an Unstarred Question in Parliament, **2,305 CCIs** supported under Mission Vatsalya in 2022-23 were listed (state-wise breakdown provided in the annexure).<sup>409</sup>

- **Parliamentary / audit and sectoral reports** (CAG, NCPCR reports, Parliamentary Standing Committees and social audits) which provide qualitative and selective quantitative assessments showing wide inter-state variability in inspection frequency, registration, staffing, vacancy position, and follow-up on inspection recommendations. These reports repeatedly identify implementation gaps including irregular inspections, poor follow-up on inspection findings, unregistered homes and staff shortages.<sup>410</sup>

**iii. National aggregate: MASI published figures.** As publicly stated in Government materials and parliamentary replies, **4,268 inspections** had been completed on the MASI portal across 32 States/Union Territories as on 24 July 2023. MASI usage was increasing thereafter and later Ministry replies/press releases record higher cumulative totals for later dates.<sup>411</sup> MASI is a transaction-level portal, and this aggregate number is the closest nationally consolidated figure for “inspections logged in the central system”.

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<sup>409</sup> Lok Sabha Unstarred Q. No. 1450, Answered on 28 July 2023, Annexure (State wise CCIs under Mission Vatsalya), MWCD, <https://sansad.in/getFile/loksabhaquestions/annex/1712/AU1450.pdf?source=pqals>.

<sup>410</sup> Parliamentary Standing Committee on Women, Children, Youth and Sports, 127th Report on Functioning of CCIs, 2021; CAG Audit Report on Child Care Institutions, 2019-2022, [https://cag.gov.in/uploads/download\\_audit\\_report/2021/12-Chapter-4---CCI-0638a03fac6b017.78047474.pdf](https://cag.gov.in/uploads/download_audit_report/2021/12-Chapter-4---CCI-0638a03fac6b017.78047474.pdf).

<sup>411</sup> Lok Sabha Unstarred Q. No. 1450, Answered on 28 July 2023, <https://sansad.in/getFile/loksabhaquestions/annex/1712/AU1450.pdf?source=pqals>.

**State-wise baseline: Mission-Vatsalya CCIs (2022-23).** For assessment, the Mission Vatsalya state-wise table provides the best available denominator. Table below reproduces the Government's Annexure (state-wise CCIs supported during 2022-23) and juxtaposes the national MASI total to illustrate the data sources available from official replies.<sup>412</sup>

State/UT	CCIs supported under Mission Vatsalya (2022-23) (official annexure)
Andhra Pradesh	84
Arunachal Pradesh	11
Assam	67
Bihar	78
Chhattisgarh	83
Gujarat	78
Karnataka	154
Kerala	47
Maharashtra	112
Odisha	140
Punjab	27
Rajasthan	156
Tamil Nadu	221
Uttar Pradesh	100
West Bengal	164

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<sup>412</sup> *Id.*



(Full state list in Annexure-I of Lok Sabha reply, 28.07.2023.)	<b>Total (all States/UTs listed): 2,305 CCIs (2022-23).</b>
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**State-wise reality** — The public domain does not currently contain a single, comprehensive, state-wise table of every inspection visit by inspector-type (PO / DCPU / District Inspection Committee / CWC etc.) for each CCI over time. What is available, and must be relied upon when making a court-level assessment, is (a) MASI-logged aggregate counts and the MASI questionnaire/report functionality (which shows that such transaction data is technically being captured centrally), (b) state and NCPCR inspection reports that give selective, case-based evidence of inspection frequency, conditions and follow-up in particular States, and (c) audit / parliamentary findings which document systemic lacunae and variability across states. Taken together they show a mixed picture: a few States appear to have higher MASI-logged inspection activity and structured follow-up, but many States/UTs have poor coverage of registered CCIs (and a large number of unregistered CCIs exist in some States) and recurring weaknesses in follow-up and resourcing. Representative findings in the public domain include state audit/social-audit reports documenting serious shortfalls in staffing (counsellors, medical officers, child-care officers), NCPCR spot inspections revealing non-compliances, and Parliamentary/Standing Committee criticism of monitoring and human-resource gaps. These show that the statute/rules are not yet uniformly translated into quarterly inspection practice across the country.<sup>413</sup>

#### **iv. MASI (Monitoring App for Seamless Inspection) — functionality & limits.**

Though MASI is to ensure that inspections are captured centrally and available for

<sup>413</sup> *National Report on the Social Audit of Child Care Institutions*, National Commission for Protection of Child Rights, (2018), [https://ncpcr.gov.in/uploads/167145198563a05551c7b75\\_national-report--social-audit-of-ccis.pdf](https://ncpcr.gov.in/uploads/167145198563a05551c7b75_national-report--social-audit-of-ccis.pdf).

system-level review, there are three operational limits:

- **Adoption & completeness:** Not all states or all inspecting authorities may have consistently logged historical inspections in MASI; some states were progressively adopting the portal at different times. Thus an absence of MASI entries for a given CCI is not conclusive proof that the CCI was not visited and it may indicate non-use of MASI by the inspecting authority.<sup>414</sup>
- **Public accessibility of transaction data:** Government/publicly released MASI figures have appeared as aggregates in parliamentary replies and PIB notes (e.g., the 4,268 inspections figure as on 24.07.2023) but a comprehensive CCI-level extract (every inspection, by date, inspector and finding) is not broadly available in the public domain.<sup>415</sup>
- **Inspector-type granularity:** The publicly reported MASI aggregates do not, in the sources available in the public domain, systematically disaggregate inspections by inspector-type (e.g., Protection Officer / DCPU visit vs District Inspection Committee vs CWC).

**v. Assessment against the statutory minimum (once in three months).** The JJ Act and Model Rules create a regulatory baseline of quarterly inspections by district inspection committees (and monitoring roles for CWCs). The official data available in the public domain (MASI aggregate counts and state/NCPCR audit reports) show wide variation between States. While some States appear to have logged inspection activity that approaches or exceeds the “quarterly” benchmark in aggregate (as recorded in MASI), a larger number of States have either low MASI-logged

<sup>414</sup> Smt. Smriti Zubin Irani, *MASI portal developed for Seamless Inspection of CCIs*, Press Release: Press Information Bureau, Ministry of Women and Child Development, (Aug 2, 2023, 4:18 PM) <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1945038>

<sup>415</sup> *National Report on the Social Audit of Child Care Institutions*, National Commission for Protection of Child Rights, (2018), [https://ncpcr.gov.in/uploads/167145198563a05551c7b75\\_national-report--social-audit-of-ccis.pdf](https://ncpcr.gov.in/uploads/167145198563a05551c7b75_national-report--social-audit-of-ccis.pdf).

inspection density, unregistered CCIs, or persistent gaps in the human resources necessary for effective inspection and follow-up. The aggregate public evidence therefore points to partial compliance at national level and uneven, state-specific implementation.<sup>416</sup>

## **F. Release, Transfer and After-Care of Children from CCIs**

### **1. Statutory Framework and Mandates**

JJ Act provides the primary legislative mandate regarding the release and transfer of children in institutional care.

- *After-care:* Section 46 states that “any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child's re-integration into the mainstream of the society in the manner as may be prescribed.”<sup>417</sup>
- *Custodial institutions:* Sections 47 to 51 of the JJ Act establishes Observation Homes, Special Homes, Places of Safety and Children's Homes, and sets the framework for temporary custody, rehabilitation, and custodial transfers.
- *Inspection & monitoring:* The JJ Model Rules, 2016, supplemented by the Model Amendment Rules, 2022, require District Inspection Committees to review institutions using the statutory inspection formats (Form-46 and 46A).<sup>418</sup> These forms record admission and release details, enabling verification of whether children have been released or transferred on attaining majority.

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<sup>416</sup> Lok Sabha Unstarred Q. No. 1450, Answered on 28 July 2023, <https://sansad.in/getFile/loksabhaquestions/annex/1712/AU1450.pdf?source=pqals>.

<sup>417</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 46, No. 2, Acts of Parliament, 2015 (India).

<sup>418</sup> Juvenile Justice (Care and Protection of Children) Model Rules, 2016, *Form 46A (INSPECTION FORMAT FOR REGISTRATION AND RENEWAL OF A CHILD CARE INSTITUTION)*.

- *Mandate on transparency & accountability:* Rule 25 of the Model Rules elaborates the after-care mechanism, obligating the DCPU and the District Magistrate to prepare after-care programmes, facilitate financial assistance, and monitor implementation.<sup>419</sup>

## 2. Ground Realities

Despite these mandates, research and inspection findings show persistent gaps in practice:

- *After-care is inconsistently implemented:* Empirical research documents suggest that most care-leavers do not receive sustained financial or vocational support after exiting CCIs.<sup>420</sup>
- *Wrongful institutionalisation beyond 18 occurs:* Investigations based on RTIs and prison inspections, revealed instances where children who had turned 18 remained lodged in CCIs, or were even found in adult prisons before being belatedly transferred.<sup>421</sup>
- *State-level disparities:* Some States (Delhi, Karnataka) maintain transparent CCI records and limited after-care programmes, but large States such as Uttar Pradesh and Bihar exhibit severe shortages of observation and special homes, impeding lawful transfer and release. Reports from Haryana revealed individuals who had “turned 18” but continued to remain in observation homes, highlighting failures in timely discharge.<sup>422</sup>

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<sup>419</sup> Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 25.

<sup>420</sup> Udayan Care and UNICEF, *Beyond 18 - Leaving child care institutions: A Study of Aftercare Practices in Five States of India*,

[https://www.clicforum.org/wp-content/uploads/2024/06/Full-report\\_-Beyond-18-You-Should-Know.pdf](https://www.clicforum.org/wp-content/uploads/2024/06/Full-report_-Beyond-18-You-Should-Know.pdf).

<sup>421</sup> Gitanjali Prasad *et al.*, *A National RTI Study: Incarceration of Children in Prisons in India*, iProBono (Justice Leila Seth Fellowship)

<https://i-probono.in/wp-content/uploads/2024/05/iProbono-Report-Incarceration-of-children-in-prisons-in-India.pdf>.

<sup>422</sup> Bagish Jha, *Turned 18, but many still lodged at juvenile home*, The Times of India, (Mar 6, 2021, 07:09 AM)

- *Data fragmentation:* There is no consolidated national dataset tracking how many children attain 18 in CCIs and whether they are released or placed under after-care. Underlying records exist in Form-46/46A<sup>423</sup> inspection reports, but are not compiled systematically.

A significant gap between the Juvenile Justice framework and its ground-level implementation. Issues include care-leavers remaining in custody or being placed in adult prisons due to failed transfers, uneven state-level transparency and infrastructure, and the absence of a national dataset to track releases and after-care delivery.

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<https://timesofindia.indiatimes.com/city/gurgaon/turned-18-but-many-still-lodged-at-juvenile-home/articleshow/81358178.cms>.

<sup>423</sup> Juvenile Justice (Care and Protection of Children) Model Rules, 2016, *Form 46A (INSPECTION FORMAT FOR REGISTRATION AND RENEWAL OF A CHILD CARE INSTITUTION)*.

## **PART VII: CONTEMPORARY CHALLENGES**

*“Our child protection framework, though well-intentioned, remains disjointed and under-equipped.”<sup>424</sup>*

*-Hon’ble Justice Surya Kant*

*-(Judge, Supreme Court of India)*

India has one of the world’s most progressive and comprehensive legal frameworks for protecting child rights. This handbook has detailed the constitutional vision, the influence of international law, and the specialized laws designed to protect every child. However, for millions of children across the country, there is a persistent gap between what these laws promise and what happens in reality. The problem is not a lack of laws, but a failure in how they are applied, a lack of institutional capacity, and an absence of the collective will to enforce them.

This final part of the handbook moves from explaining the legal framework to diagnosing its weaknesses. It aims to answer not only what the laws and institutions are, but why they often fail to deliver on their promises. The analysis will first examine the basic flaws within the legal structure itself. It will then look at the systemic problems in the administrative system, from the weaknesses of official oversight bodies to the disconnected nature of welfare services. This will give practitioners the tools to help build a future where the rights of every child are not just written in law but are a tangible reality.

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<sup>424</sup> *Child protection framework remains ‘disjointed’, needs fundamental shift: Supreme Court Judge*, THE ECONOMIC TIMES (Jul. 05, 2025, 2:23 PM) <https://economictimes.indiatimes.com/news/india/child-protection-framework-remains-disjointed-need-s-fundamental-shift-supreme-court-judge/articleshow/122265222.cms?from=mdr>

## **A: Foundational Flaws: Ambiguity and Conflict in the Legal Framework**

The problem of implementation starts with the law itself. A legal framework that has unresolved gaps cannot provide a solid foundation for effective administration and justice. It creates confusion for those who enforce the law, uncertainty for those with duties to protect children, and loopholes for those who violate their rights, undermining the very idea of universal protection.

### **i. Legislative Gaps and Legal Uncertainty**

The legal framework is weakened by major gaps that require courts to step in to provide clarity. This creates a void of uncertainty and inconsistency, leaving many children and families to fall through the cracks of the system.

#### *a. Classification of Heinous Offences under JJ Act, 2015*

A clear example is how offences are classified under the Juvenile Justice Act, 2015. The Act created a new category of “heinous offences” for which children aged 16-18 could be tried as adults. However, it did not specify how to classify offences that had a maximum sentence of more than seven years but no minimum sentence. This legal gap led to different High Court rulings until the Supreme Court, in *Shilpa Mittal v. State of NCT of Delhi*,<sup>425</sup> ruled that such offences should be treated as “serious offences”, not “heinous”. This judicial fix was later made into law by Parliament through the Juvenile Justice (Amendment) Act, 2021, showing how the judiciary often has to point out and temporarily fix legislative mistakes.<sup>426</sup>

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<sup>425</sup> *Shilpa Mittal v. State of NCT of Delhi*, 2020 INSC 25.

<sup>426</sup> The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, No. 23, Acts of Parliament, 2021 (India).

### *b. Age of Consent under POCSO Act*

A more complex and ongoing issue is the “age of consent” problem under the POCSO Act. The Act strictly sets the age of consent at 18, which has resulted in the criminalization of many consensual romantic relationships as soon as it exceeds platonic limits. The judiciary has struggled with applying this strict law to complex social situations, and have raised concerns over such criminalisation.<sup>427</sup> This was highlighted in a 2025 Supreme Court decision where, while upholding a conviction under POCSO, the Court did not sentence the convicted person to prison invoking its power under Article 142 of the Constitution. The Court observed that sending him to prison would harm the minor victim and their child, who was born from the relationship.<sup>428</sup>

It shows its deep discomfort with the law’s unintended negative effects on the very people it is meant to protect. These cases show a pattern where the judiciary is not just interpreting the law but is actively filing voids.

### *c. Child Betrothals and Child Marriages in contravention on PCMA, 2006*

The laxity in the implementation of the PCMA has been frequently highlighted. Existing interventions to prevent child marriage remain limited in scope and reach. This has been partly attributed to the perception that child marriage continues to be seen as a ‘social evil instead of a crime’.<sup>429</sup>

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<sup>427</sup> Atul Mishra v State of U.P, 2022 SCC OnLine All 420; Ajay Kumar v State (NCT Delhi), 2022 SCC OnLine Del 3705; Anoop v State of Kerala, 2022 SCC OnLine Ker 2982.

<sup>428</sup> In Re: Right to Privacy of Adolescents, 2025 INSC 778.

<sup>429</sup> HAQ: Centre for Child Rights, *Child Marriage in India: Achievements, Gaps and Challenges*, OHCHR <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/HAQCentreForChildRights1.pdf>.



In *Society for Enlightenment and Voluntary Action v. Union of India*,<sup>430</sup> the petitioner sought stricter enforcement of the PCMA, 2006 the Court observed that although the law expressly prohibits child marriage, it is often undermined through practices of child betrothal, where marriages are arranged during minority and solemnised only after attaining adulthood. The Court emphasised that such practices curtail individual agency and deprive children of the freedom to choose their life partner upon reaching majority.<sup>431</sup>

The court also noted that the adverse effect of such early and under-age marriages fall on both the sexes, male and female. The court highlighted that:

*“Girls who are married off early are not only denied their childhood but are also forced into social isolation on account of being cut off from their natal family, friends and other support systems. They are left to the mercies of their marital home and in-laws and denied their innocence which is native to a meaningful childhood experience. Boys who are married early are forced to take up more responsibilities and are pressured to play the role of a provider to the family, earlier in life.”*<sup>432</sup>

The Court further issued comprehensive guidelines addressing enforcement, community engagement, awareness, and capacity building. For monitoring and accountability, it assigned specific responsibilities to key stakeholders, including directing NALSA to develop a Standard Operating Procedure (SOP) outlining legal

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<sup>430</sup> *Society for Enlightenment and Voluntary Action v. Union of India*, 2024 INSC 790.

<sup>431</sup> Sushovan Patnaik, *Supreme Court Review 2024: Clarity and parity in marriage and divorce*, Supreme Court Observer (Jan. 22, 2025) [https://www.scobserver.in/journal/supreme-court-review-2024-clarity-and-parity-in-marriage-and-divor](https://www.scobserver.in/journal/supreme-court-review-2024-clarity-and-parity-in-marriage-and-divorce/)  
[ce/](https://www.scobserver.in/journal/supreme-court-review-2024-clarity-and-parity-in-marriage-and-divor).

<sup>432</sup> *Id.*

support services and long-term rehabilitation plans for the prevention, protection, and rehabilitation of child marriage victims. Pursuant to this, the NALSA ASHA SOP was formulated.<sup>433</sup> The measures directed by the court aim to ensure a coordinated, accountable, and sustainable response to prevent child marriages and protect the rights of affected children.

## ii The Challenge of Conflicting Judicial Interpretations

Beyond legislative gaps, a serious challenge to the uniform protection of children comes from inconsistent judicial interpretations of key laws, particularly the POCSO Act, by different High Courts. This creates uncertainty in the application of such laws.

The following are few areas of conflict:

- **Compromise and Marriage:** One of the most contentious issues is the quashing of POCSO cases based on a compromise or the subsequent marriage between the accused and the victim. Several High Courts have taken a “pragmatic approach”, quashing proceedings to protect what they see as a “happy family relationship”, especially in cases of consensual adolescent relationships.<sup>434</sup> In contrast, other High Courts have held that a serious offence under a special law like POCSO cannot be diluted or quashed based on a private settlement or marriage.<sup>435</sup> The Supreme Court has tried to bring clarity, ruling in *Ramji Lalji Bairwa v. State of Rajasthan* that sexual assault is

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<sup>433</sup> NALSA (ASHA- Awareness, Support, Help and Action) Standard Operating Procedure-Towards Eliminating Child Marriage, 2025, National Legal Services Authority (2025), <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/202504161553497187.pdf>.

<sup>434</sup> Shri. Adelbert Marbaniang v. State of Meghalaya, 2022 SCC OnLine Megh 410; Ranjeet Kumar v. State of Himachal Pradesh, Cr. MMO No. 648 of 2023.

<sup>435</sup> Nardeep Singh Cheema @ Navdeep Singh Cheema v. State of Punjab, CRM-M-2270-2020.

not a “private” offence eligible for compromise.<sup>436</sup>

- **Defining Sexual Intent:** The interpretation of core concepts like “sexual intent” and “physical contact” has also varied. The most well-known example is the Bombay High Court’s “skin-to-skin” judgment,<sup>437</sup> which narrowly interpreted sexual assault. The Supreme Court had to step in and reverse this in *Attorney General v. Satish*,<sup>438</sup> clarifying that sexual intent is the key ingredient, not the nature of the physical contact.
- **Adolescent Romantic Relationships:** Courts have inconsistently applied the rigid age-of-consent law to cases involving consensual relationships between older adolescents. Some High Courts have adopted a sympathetic approach, acquitting the accused or quashing proceedings.<sup>439</sup> Others have applied the law strictly, stating that consent is irrelevant for a minor.<sup>440</sup> The Supreme Court itself has shown the complexity of this issue. In a *suo motu* case, it stated that a POCSO offence cannot be disguised as a “romantic relationship”, yet it also used its special powers under Article 142 to not impose a prison sentence on the convict, recognizing the negative social consequences for the victim and their child.<sup>441</sup>
- **Online Offences:** There are also conflicting judgments on what constitutes an offence for possessing Child Sexual Exploitation and Abuse Material (CSEAM). High Courts have differed on whether mere downloading or viewing, without intent to share, is a crime.<sup>442</sup> The Supreme Court resolved this in *Just Rights for Children Alliance v. S Harish*,<sup>443</sup> holding that storing

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<sup>436</sup> Ramji Lalji Bairwa v. State of Rajasthan, 2024 INSC 846.

<sup>437</sup> Satish v. State of Maharashtra, 2021 SCC OnLine Bom 72.

<sup>438</sup> Attorney General for India v. Satish, 2021 INSC 762.

<sup>439</sup> State v. Hitesh, 2025 SCC OnLine Del 962.

<sup>440</sup> Vijayakumar v. State, 2025 SCC OnLine Mad 2380.

<sup>441</sup> In Re: Right to Privacy Of Adolescents, 2024 INSC 614.

<sup>442</sup> S Harish v. Inspector of Police, 2024:MHC:226.

<sup>443</sup> Just Rights For Children Alliance v S Harish, 2024 INSC 716.

such material without deleting or reporting it implies an intention to transmit.

This pattern of conflicting rulings creates legal instability, encourages forum shopping, and weakens the protective shield of the law until the apex court intervenes.

## **B: Systemic Deficits in Administrative and Institutional Machinery**

Even a perfect legal framework will fail if the administrative and institutional systems for implementing it are not working properly. India's child protection system faces several challenges, including limited powers of oversight bodies, lack of coordination among welfare schemes, and gaps in the effective implementation of the juvenile justice law.

### **i. Child Rights Commissions**

The National and State Commissions for Protection of Child Rights (NCPCR/SCPCRs), created under the CPCRA Act, 2005, were meant to be powerful, independent oversight bodies. However, their effectiveness has been seriously limited by basic flaws in their legal design and a lack of enforcement power.

There are two main challenges:

1. **Jurisdictional Ambiguity:** The CPCRA Act gives almost "identical powers and functions" to both the national and state commissions without setting up a clear hierarchy. This has led to what the Supreme Court, in *National Commission for Protection of Child Rights v. Dr. Rajesh Kumar*,<sup>444</sup> called a jurisdictional tug-of-war and a "clash of egos". This legislated stalemate allows a state commission to potentially block a national-level investigation by being

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<sup>444</sup> National Commission for Protection of Child Rights v. Dr. Rajesh Kumar, (2020) 11 SCC 377.

the first to take up a case, which undermines effective oversight.

2. **Enforcement Deficit:** The recommendations of the commissions are not legally binding, which makes them advisory bodies with little real power.<sup>5</sup> Their power is further limited by the Supreme Court's ruling in *NCPCR v. State of Jharkhand*,<sup>445</sup> which stated that statutory bodies like the NCPCR cannot directly use the powerful remedy of Article 32 of the Constitution, forcing them to rely on their own, less effective legal mechanisms.

These commissions are entrusted with a broad mandate to monitor child rights laws, but they often lack essential tools such as a clear jurisdictional framework and binding enforcement powers. As a result, while they can investigate and report on violations, their ability to ensure follow-up action remains limited.

## ii. Disjointed Efforts

India's child welfare system is marked by many well-meaning but disconnected schemes, such as Mission Vatsalya for child protection, POSHAN 2.0 for nutrition, and Beti Bachao, Beti Padhao for the girl child. These programs often operate in departmental silos, run by different ministries with separate budgets and reporting lines.<sup>446</sup> This leads to gaps in service delivery, duplicated efforts, and a failure to provide holistic care.<sup>447</sup> A child who is malnourished, out of school, and at risk of family separation may have to deal with three separate and uncoordinated administrative systems to get the help they are entitled to.

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<sup>445</sup> NCPCR v. State of Jharkhand, Writ Petition (C) No. 222/2020 (Supreme Court of India, Order dated Sept. 24, 2024).

<sup>446</sup> Geeta Chopra, *CHILD PROTECTION IN INDIA: FROM SILOS TO SYSTEMS in Children in India: Opportunities & Challenges* Ed Seema Puri, ResearchGate, (Sept. 11, 2025) [https://www.researchgate.net/publication/357927999\\_CHILD\\_PROTECTION\\_IN\\_INDIA\\_FROM\\_SILO\\_S\\_TO\\_SYSTEMS\\_in\\_Children\\_in\\_India\\_Opportunities\\_Challenges\\_Ed\\_Seema\\_Puri](https://www.researchgate.net/publication/357927999_CHILD_PROTECTION_IN_INDIA_FROM_SILO_S_TO_SYSTEMS_in_Children_in_India_Opportunities_Challenges_Ed_Seema_Puri).

<sup>447</sup> Ms. Anmol Shekhar Srivastava, Dr. Jaya Bharti, *Strengthening Child Welfare Policies For Indian Orphaned and Abandoned Children: Bridging Gaps Through Comprehensive Review*, Vol. 10 Issue 3, EPRA Journals, 108, (2025) <https://eprajournals.com/IJSR/article/15260>.

This scheme-based approach encourages ministries to focus on their own program targets (e.g., the number of meals served under the Mid-Day Meal Scheme) rather than on the overall well-being of the individual child. An integrated system, on the other hand, would force a focus on the child as the single point of intervention, requiring inter-departmental collaboration and shared accountability for the child's overall welfare. The European Union's "Child Guarantee", which calls on member states to ensure effective access to a core set of key services for all children in need, offers a powerful model for such an integrated approach.<sup>448</sup>

### iii. Implementation Deficit in Juvenile Justice

The Juvenile Justice (Care and Protection of Children) Act, 2015, is a progressive law that reflects the principles of rehabilitation and the best interests of the child. However, its implementation is marked by systemic failures across the country.<sup>449</sup> The key challenges include:<sup>450</sup>

- **Inadequate Infrastructure:** A chronic shortage of properly maintained and staffed Observation Homes, Special Homes, and CCIs, which often have poor living conditions and lack educational or therapeutic facilities
- **Personnel Shortages:** A severe lack of trained and sensitized staff, including members for JJBs and CWCs, probation officers, and counselors, who are the backbone of the system.
- **Procedural Delays:** Although the Act emphasizes speedy justice, there are significant backlogs in inquiries and the final resolution of cases, leaving

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<sup>448</sup> *The EU Strategy on the Rights of the Child and the European Child Guarantee*, EUROPEAN COMMISSION, European Commission, (Aug 21, 2025) [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/child/eu-strategy-rights-child-and-european-child-guarantee\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/child/eu-strategy-rights-child-and-european-child-guarantee_en).

<sup>449</sup> Kancha Prasad, *Implementation Gaps in India's Juvenile Justice Act 2015: Challenges and Recommendations*, Vol. 13 Issue 8(1), IFJMR, 137, (2024) [http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume13/volume13-issue8\(1\)/21.pdf](http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume13/volume13-issue8(1)/21.pdf).

<sup>450</sup> *Id.*

children stuck in institutions for long periods.

- **Rehabilitation Failures:** Rehabilitation and after-care programs are often poorly designed and underfunded, leading to high rates of re-offending and a failure to reintegrate children into society.

The most worrying part of this implementation failure is that it has been happening for a very long time. These are not new problems; they are the same issues that the Supreme Court has been pointing out since its landmark interventions in cases like *Sheela Barse v. Union of India*<sup>451</sup> and *Sampurna Behura v. Union of India*.<sup>452</sup> In *Sampurna Behrui*, the court noted that:

*“More than sufficient time has already elapsed since the Act of 2000 was enacted by Parliament and certainly the children of our country deserve much better and cannot wait for another 15 or 16 years for the effective implementation of the JJ Act. Most of the children who were born when the Act of 2000 was enacted are nearing adulthood and many of them have not had the benefit of the provisions of the Act of 2000. This mistake, a serious one at that, cannot be repeated in the implementation of the JJ Act. It is said that children are the future of the country and if they are not looked after, it is the future of the country that is at stake.”*

The fact that these basic flaws have persisted for decades shows that non-compliance with the law and with direct judicial orders has become a systemic norm. This persistence points to structural and administrative challenges that hinder

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<sup>451</sup> *Sheela Barse v. Union of India*, (1986) SCC 3 596.

<sup>452</sup> *Sampurna Behura v. Union of India* (2018) 4 SCC 433.

effective implementation, highlighting the gap between legal mandates and their realisation on the ground.

#### **iv. Judicial Delays and Victim Protection**

Delays in the justice system go against the very idea of child protection. The saying “justice delayed is justice denied” is especially true for a child victim, for whom delay is not just a procedural problem but a continuing state of vulnerability and trauma. It prolongs their suffering, increases the risk of witnesses being intimidated, and allows offenders to remain free, posing a threat to other children.

The judiciary has recognized that speed is a vital part of justice for children. In a 2025 order, the Supreme Court, while hearing an appeal by child trafficking victims, directed High Courts to gather information on all pending child trafficking trials and ensure they are completed within six months.<sup>453</sup> This proactive judicial case management shows a growing impatience with systemic delays. On the legislative side, the proposed POCSO (Amendment) Bill, 2024, seeks to introduce a mandatory 24-hour timeline for bringing a child victim before the CWCs, aiming to prevent delays from the very start of a case.<sup>454</sup> The establishment of 754 Fast Track Special Courts, including 404 exclusive POCSO courts, is a crucial structural response to this challenge, though their effectiveness depends on having enough funding and staff.<sup>455</sup>

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<sup>453</sup> *Pinki v State of Uttar Pradesh*, 2025 INSC 482.

<sup>454</sup> *Rajya Sabha discusses POCSO amendment bill for stronger child protection measure*, Hindustan Times, (Feb. 07, 2025, 9:29 PM) <https://www.hindustantimes.com/india-news/rajya-sabha-discusses-pocso-amendment-bill-for-stronger-child-protection-measure-101738932375093.html>.

<sup>455</sup> *754 Fast Track Courts, Including 404 POCSO Courts functional in 30 states, dispose over 3.06 Lakh cases by January 2025*, Press Release: Press Information Bureau, Ministry of Women and Child Development, (Mar 21, 2025, 3:32 PM), <https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=2113660>.



## **C: Emerging Frontiers**

While it is crucial to fix the foundational and systemic flaws of the current framework, a forward-looking approach must also deal with new challenges and adopt new models for child protection and empowerment. The path forward requires moving from a reactive, welfare-based model to a proactive, coordinated, and rights-based system.

### **i. Navigating the Digital Realm: Protecting Children Online**

The defining challenge of this era is that the rapid expansion of the digital world has outpaced the development of legal and social safeguards for children. The internet, while offering immense benefits for learning and connection, has also become a new, unregulated frontier where children face grave risks. Their inherent trust and curiosity make them particularly vulnerable in an online environment that is often anonymous and borderless.

This is not a theoretical problem but a clear and present danger, as confirmed by national crime data. The National Crime Records Bureau (NCRB) shows a sharp and sustained increase in reported cybercrimes against children, highlighting an urgent need for a more effective response.

**Table: NCRB Data on Cybercrimes Against Children in India (2018-2022)<sup>456</sup>**

Crime Head	2018	2019	2020	2021	2022
Cyber	4	3	3	23	74

<sup>456</sup> Shri Bandi Sanjay Kumar, *Cyber-Crime Targeting Children*, Press Release: Press Information Bureau, Ministry of Home Affairs, (Jul. 29, 2025, 5:11 PM) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2149788>.

Blackmailing/Threatening/Harassment					
Fake Profile	3	2	1	9	2
Cyber Pornography/ Hosting or Publishing Obscene Sexual Materials (CSEAM)	44	103	738	969	1171
Cyber Stalking/Bullying	40	44	140	123	158
Internet Crimes through Online Games etc.	0	1	0	0	2
Other Crimes against Children	141	153	220	252	416
<b>Total Cybercrimes against Children</b>	<b>232</b>	<b>306</b>	<b>1102</b>	<b>1376</b>	<b>1823</b>

The data reveals an alarming reality: reported cybercrimes against children increased nearly eightfold in just five years. The primary driver is the creation and circulation of Child Sexual Abuse Material (CSEAM), which now accounts for the majority of these cases. This trend underscores a critical failure: as children's lives moved online, particularly during the COVID-19 pandemic, the systems meant to protect them were not prepared for the shift.

The harm caused by these crimes is severe. The Delhi High Court noted that “digital abuse, though often faceless and silent, can be as mentally scarring as physical violence”.<sup>457</sup> This online harm has terrible real-world effects, causing anxiety,

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<sup>457</sup> Rajesh Gambhir v. State (NCT of Delhi), 2025 SCC OnLine Del 5180

depression, low self-esteem, and in the worst cases, self-harm and suicide.<sup>458</sup> Because digital content can last forever, victims can be harmed again and again. An image or video of abuse can be shared endlessly, continuing the trauma for the child long after the event. Protecting children in the digital age is therefore a basic need to ensure they have a right to a safe and healthy childhood.

The challenge is complicated by the diverse and constantly evolving nature of online threats. These can be broadly categorised:<sup>459</sup>

### 1. Sexual Exploitation and Abuse<sup>460</sup>

This is the most serious and, according to NCRB data, the most common type of online crime against children.

- **Online Grooming:** This is a planned process where a criminal, often using a fake online identity on social media or gaming sites, builds a relationship and emotional connection with a child. The groomer pretends to share interests to gain the child's trust, aiming to manipulate them into sexual activity, either online (like producing explicit images) or in person.
- **Child Sexual Abuse Material (CSAM):** This refers to any image, video, or text showing a child in a sexually explicit way. The crime includes creating, hosting, sharing, and possessing this material. New threats are also appearing, such as live-streamed abuse and the use of Artificial Intelligence to create "deepfake" CSAM, which alters a child's image to create fake explicit

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<sup>458</sup> Sadhna Singh, *Online Safety for Children: Protecting the Next Generation from Harm*, NITI Aayog <https://www.niti.gov.in/sites/default/files/2025-06/Online-safety-for-children-protecting-the-next-Generation-from-harm.pdf>

<sup>459</sup> Saurya Sarkar, *The Silent Victims of Cyber Space: Analysing Cyber Crimes Against Children In The Indian Context*, Vol 10 Issue 5, IJCRT, 806, (2024) <https://www.ijcrt.org/papers/IJCRT24A5784.pdf>; Jaya Thapa, *The Protection of Children from Cyber Crimes in India*, Vol. 6 Issue 3, IJFMR, 1, (2024) <https://www.ijfmr.com/papers/2024/3/22957.pdf>.

<sup>460</sup> *Id.*

content.

- **Sextortion and Sexting:** Sextortion is a type of digital blackmail. A person tricks a child into sharing explicit images and then threatens to share them with family and friends unless they receive money or more images. This creates a cycle of fear. “Sexting” is the consensual sharing of explicit content between minors. It becomes a crime when these private images are shared with others without consent, often as a form of bullying.

## 2. Harassment and Psychological Abuse<sup>461</sup>

These crimes cause severe emotional and mental harm, affecting a child’s well-being and sense of security.

- **Cyberbullying and Trolling:** Cyberbullying is using digital platforms to repeatedly harass, threaten, or exclude someone. This can include spreading rumors, posting embarrassing photos, sending hateful messages, or creating fake profiles to defame the victim. Trolling involves posting offensive comments to provoke a reaction, which can cause great distress.
- **Cyberstalking:** This is the repeated use of electronic communication to stalk someone. It often involves threatening behavior, defamation, and sexual harassment to control or intimidate the victim.
- **Image-Based Abuse:** This is a very harmful form of harassment. It includes creating fake profiles with a child’s name and photos to post offensive content.

## 3. Privacy, Data, and Financial Crimes<sup>462</sup>

These crimes take advantage of children’s limited digital knowledge to steal their personal data and their family’s money.

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<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

- **Identity Theft and Hacking:** This involves getting unauthorized access to a child's online accounts, like social media or email. The stolen identity can be used to commit fraud or steal personal information.
- **Online Scams and Phishing:** Children are often targeted by scams that trick them into giving away their parents' personal or financial information. These can be fake ads, prize notifications, or contests in online games.
- **Risks in Online Gaming:** Besides cyberbullying, some games have been linked to dangerous challenges that encourage self-harm. Many games also push for in-game purchases, which can lead to large, unauthorized spending.

While India has several laws to address these crimes, the legal framework itself presents a challenge. The laws are spread across different statutes, few of which are enumerated below, creating a fragmented system that can be difficult to navigate and sometimes leaves gaps in protection.

- a. **The Information Technology (IT) Act, 2000:** This is the main law for cybercrime. Its most important provision for child protection is Section 67B, which criminalises creating, sharing, viewing, or storing any material showing children in a sexually explicit way.
- b. **The Protection of Children from Sexual Offences (POCSO) Act, 2012:** This is a special law focused on protecting children from sexual abuse. Its definitions are broad enough to apply to online crimes. For instance, Section 11 (Sexual Harassment) and Section 14 (Using a child for pornographic purposes) are key provisions used to prosecute online offences. A crucial feature of POCSO is its mandatory reporting requirement, which legally obligates any person, including platform employees, to report a suspected offence.

- c. **The Bharatiya Nyaya Sanhita (BNS), 2023:** General criminal laws are also used. Section 77 (Stalking) now explicitly includes monitoring a person's use of the internet or other electronic communication. Section 351(2) (Criminal Intimidation) provides for enhanced punishment for anonymous online threats.

As digital threats change quickly, Courts have played a key role in using existing laws to protect children online. Major decisions from the Supreme Court and High Courts have not only cleared up legal confusion but have also set new standards, increased protection, and held different groups accountable.

**1. *Just Rights for Children Alliance v. S Harish* (Supreme Court, 23 September 2024)<sup>463</sup>**

The case came from a Madras High Court ruling that had dropped criminal charges against a person found with CSAM. The High Court had said that just privately viewing or storing it without planning to share it was not a crime under the IT Act or POCSO Act. The Supreme Court overturned this decision and gave a series of broad new instructions.

- **Criminalization of Consumption:** The Supreme Court made it very clear that viewing, possessing, and storing material showing minors in sexual acts are crimes. It read Section 15 of the POCSO Act and Section 67B of the IT Act together to decide that the law intended to make all involvement with such material illegal. The decision explained that the act of having the material and not reporting or deleting it is enough to show a guilty mind, rejecting the idea that proof of intent to share was needed. This closed a major loophole for people who consume CSAM.

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<sup>463</sup> Just Rights For Children Alliance v. S Harish, 2024 INSC 716.

- **Shift to “CSEAM”:** The Supreme Court instructed the courts and recommended to lawmakers that the term “Child Pornography” be replaced with “Child Sexual Exploitation and Abuse Material (CSEAM)”. The Court explained that “pornography” often suggests consensual acts between adults and makes the serious reality of child abuse seem less important. CSEAM, on the other hand, correctly describes the content as a permanent record of a non-consensual, criminal act against a child. This shifts the focus to the crime itself.
- **Strengthening Intermediary Liability:** The decision made online platforms much more accountable. It stated that the “safe harbour” protection for intermediaries under Section 79 of the IT Act is not absolute. To get this protection, platforms must not only follow the IT Rules but also their mandatory reporting duties under Sections 19 and 20 of the POCSO Act. This ruling combines the strict, child-focused duties of the POCSO Act with the rules for all digital platforms in India, making them legally required to report any suspected CSAM on their services.

## 2. *Rajesh Gambhir v. State (NCT of Delhi)* (Delhi High Court, 28 July 2025)<sup>464</sup>

The case involved changing a minor girl's photo to put her face on a nude body, which was then used to threaten and blackmail her on WhatsApp. The High Court called the act a “textbook example of cyberbullying” and upheld the accused's conviction. The Court held that the right to a safe environment for children must apply to digital spaces as well as physical ones. The court stressed that the psychological harm from such online threats, even without physical contact, is real

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<sup>464</sup> *Rajesh Gambhir v. State (NCT of Delhi)*, 2025 SCC OnLine Del 5180.

and serious, and requires strong punishment to deter others.

Also, the judgment shows how to use the separate laws together. The court carefully explained how the accused's actions were multiple crimes under three different laws:

- **Indian Penal Code:** Sending the changed images was sexual harassment (Section 354A), the repeated messages were stalking (Section 354D), the threats were criminal intimidation (Section 506), and the whole act was an insult to the victim's modesty (Section 509).
- **POCSO Act:** Creating and sending the changed image was considered using a child for pornographic purposes, punishable under Sections 12 and 14 of the Act.
- **IT Act:** Sending obscene and sexually explicit material online was covered by Sections 67 and 67B.

### **3. *In Re: Right to Privacy of Adolescents* (Supreme Court, 23 May 2025)<sup>465</sup>**

This case shows the difficult problems courts face when strict laws meet the complex realities of teenage relationships in the digital age. The case started with a Calcutta High Court decision that acquitted an accused in a POCSO case involving what seemed to be a consensual relationship with a minor.

- **Supreme Court's Intervention:** The Supreme Court took up the case on its own. It first overturned the High Court's acquittal, confirming the strict legal rule that a minor's consent does not matter for the crime of rape under the POCSO Act. However, the Court used its special powers under Article 142 of the Constitution to "do complete justice" and decided not to send the convicted man to prison.
- The Court's decision was based on a report that found the victim, now an adult,

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<sup>465</sup> In Re: Right to Privacy of Adolescents, 2025 INSC 778.



was married to the accused, they had a child, and she did not see herself as a victim. The Court decided that imprisoning the man would cause more harm and financial problems for the very person the law was meant to protect. The judgment pointed out the “systemic failures” of a legal system and society that had “judged her”, “failed her”, and “abandoned her”, leaving her with no support other than the accused. The case highlights the conflict between the law’s goal to protect and the principle of the child’s best interest, especially when the legal process itself causes harm.

The borderless nature of digital harm means that purely domestic laws are often not enough. The problem requires a multi-faceted strategy that combines strong legal reform, advanced technological solutions, international cooperation, and clear corporate accountability for social media platforms and other online services. The judiciary’s proactive stance is leading the conversation, but a comprehensive legislative and regulatory framework is also needed.

## **ii. Mental Health and well-being of Children**

The right to health is a fundamental right under the Indian Constitution.<sup>466</sup> It goes beyond medical care to include the social, family, and environmental conditions that support a child’s well-being—such as safe water, nutritious food, proper housing, quality education, and a caring community. Mental health is deeply connected with these conditions.<sup>467</sup> When children are deprived of dignity, safety, or equality, their psychological well-being is directly at risk. Protecting mental health is therefore an essential part of upholding child rights.

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<sup>466</sup> N.D. Jayal v. Union of India, (2004) 9 SCC 362.

<sup>467</sup> UN. Committee on Economic, Social and Cultural Rights (22nd sess. : 2000 : Geneva), *General comment no. 14 (2000), The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, United Nations Digital Library, <https://digitallibrary.un.org/record/425041?v=pdf#files>.

### ***a. Importance of Mental Health in Early Life***

Childhood and adolescence are crucial stages for mental well-being. During these years, the brain undergoes rapid growth, and children develop social and emotional skills that shape their relationships, resilience, and ability to adapt.<sup>468</sup> Stable families, safe schools, and inclusive communities help young people thrive. On the other hand, violence, neglect, poverty, bullying, and parental mental illness increase vulnerability to psychological distress.<sup>469</sup>

### ***b. Common Mental Health Challenges***

Mental health problems are widespread among young people. Globally, one in seven adolescents (10-19 years) is affected, contributing to 15% of the global disease load in this demographic.<sup>470</sup> In India, nearly 7.3% of children aged 13–17 years suffer from diagnosable mental health conditions.<sup>471</sup> Some common challenges include:<sup>472</sup>

- **Emotional Disorders:** Anxiety and depression, leading to worry, sadness, withdrawal, poor academic performance, and sometimes self-harm.
- **Behavioural Disorders:** Conditions like Attention Deficit Hyperactivity Disorder (ADHD) and conduct disorder, marked by impulsivity, difficulty focusing, and disruptive behaviour.
- **Eating Disorders:** Such as anorexia and bulimia, more common among girls,

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<sup>468</sup> *About Children's Mental Health*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Oct 8, 2025) <https://www.cdc.gov/children-mental-health/about/index.html>

<sup>469</sup> *Improving the mental and brain health of children and adolescents*, WORLD HEALTH ORGANISATION (Sept 01, 2025) <https://www.who.int/activities/improving-the-mental-and-brain-health-of-children-and-adolescents>

<sup>470</sup> *Mental health of adolescents*, WORLD HEALTH ORGANISATION (Sept 01, 2025) <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>

<sup>471</sup> National Institute of Mental Health and Neuro Sciences, Bengaluru, *National Mental Health Survey of India, 2015-16: Prevalence, Pattern and Outcomes*, Ministry of Health and Family Welfare, Government of India (2016) <https://indianmhs.nimhans.ac.in/phase1/Docs/Report2.pdf>

<sup>472</sup> *Mental health of adolescents*, WORLD HEALTH ORGANISATION (Sept 01, 2025) <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>

which can cause long-term physical and psychological harm.

- **Psychosis:** Rare but serious conditions like schizophrenia that interfere with daily life and education.
- **Suicide and Self-Harm:** Suicide is the third leading cause of death among older adolescents (15–29 years), often linked to abuse, stigma, or untreated mental health problems.
- **Risk-Taking Behaviours:** Substance use, unsafe sex, or violence, often used as unhealthy coping mechanisms, which can further damage mental and physical health.

Mental health in children is shaped by a broad range of factors, including family environment, social expectations, and cultural attitudes—many of which are deeply impacted by gender. Boys and girls not only experience different types of mental health challenges, but the way these issues are recognized, expressed, and addressed is also colored by societal norms. Research across India typically shows that girls face higher rates of depression, emotional problems, and anxiety, and report poorer overall well-being compared to boys. On the other hand, boys are more likely to display conduct-related or hyperactivity problems, and societal predispositions often encourage boys to suppress emotional expression, reinforcing notions of male superiority and discouraging help-seeking for psychological distress.<sup>473</sup>

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<sup>473</sup>Ilika Guha Majumdar and Manini Srivastava, *Exploring Gender Differences in Mental Health: A Preliminary Investigation on Late Adolescents*, Vol. 11 Issue 2, *Int. J. Indian Psychol.*, 71, (2023), <https://ijip.in/wp-content/uploads/2023/04/18.01.004.20231102.pdf>;

Sunita et al., *Gender differences in mental health problems of adolescents: A cross-sectional study on school students in Haryana state*, Vol. 7 Issue 8, *IJAESD*, 527, (2024) <https://www.extensionjournal.com/article/view/976/7-8-84>;

Anubhuti Bhardwaj et al., *Prevalence of attention deficit hyperactivity disorder, gender difference and its co-morbidity among urban school children in a city of southern Rajasthan, India*, Vol. 6 Issue 2, *Int. J. Contemp. Pediatr.*, 750, (2019) <https://www.ijpediatrics.com/index.php/ijcp/article/view/2210/1606>.

The idea of male dominance, rooted in traditional gender roles, can negatively affect mental health outcomes for both genders. Boys are often raised with messages of toughness, stoicism, and superiority, leading to the marginalization of emotional vulnerability and creating barriers to acknowledging mental health struggles. At the same time, girls are frequently assigned subordinate roles, exposed to discrimination, and burdened with higher expectations of caregiving and obedience, all of which diminish self-esteem and resilience. Research on the “gender role hypothesis” suggests that variations in mental disorder prevalence between men and women stem from differences in the stressors they face, the coping resources available to them, and the social opportunities they have for expressing psychological distress, which vary across countries and historical periods.<sup>474</sup> These biases, operating from early childhood, restrict open discussion about mental health, limit access to care, and perpetuate cycles of disadvantage and distress, making it important for families, schools, and communities to challenge stereotypes and foster an environment supportive of all children’s mental health needs.

### ***c. Assessment and Support***

Early identification and timely support are vital. A comprehensive evaluation usually involves:<sup>475</sup>

- Discussions with parents or caregivers about the child’s history and behaviour.
- Inputs from teachers on learning, conduct, and peer interactions.

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<sup>474</sup> Ilika Guha Majumdar and Manini Srivastava, *Exploring Gender Differences in Mental Health: A Preliminary Investigation on Late Adolescents*, Vol. 11 Issue 2, Int. J. Indian Psychol., 71, (2023), <https://ijip.in/wp-content/uploads/2023/04/18.01.004.20231102.pdf>.

<sup>475</sup> *Mental health of adolescents*, WORLD HEALTH ORGANISATION (Sept. 01, 2025) <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>.

- Direct interaction with the child through observation and structured assessments.
- Based on these findings, support may include:
- Psychotherapy: Talk-based therapies adapted to children's needs, with active parent involvement.
- Medication: Where necessary, combined with therapy and under close supervision.
- Family Counselling: Strengthening family bonds and reducing misunderstandings.
- Parental Support and Training: Equipping parents with skills to manage behavioural challenges.
- School-based Support: Collaborating with educators for classroom accommodations and encouragement.

#### **d. Mental Healthcare Act, 2017**

In India, several laws touch upon children's health and protection—such as the POCSO Act, Juvenile Justice Act, and the Rights of Persons with Disabilities Act, 2016. For instance, Section 53 mandates that institutions provide all necessary services for a child's holistic development, explicitly including their mental health needs. However, the Mental Healthcare Act, 2017 (MHCA) is the primary law dedicated to mental health, including that of children and adolescents. Key provisions include.<sup>476</sup>

- *Admission and Treatment:* A minor can only be admitted to a hospital after

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<sup>476</sup> Eesha Sharma and John Vijay Sagar Kommu, *Mental Healthcare Act 2017, India: Child and adolescent perspectives*, INDIAN JOURNAL OF PSYCHIATRY (Oct 8, 2025) <https://pmc.ncbi.nlm.nih.gov/articles/PMC6482686/#ref-list1>.

examination by at least two doctors (one being a mental health professional).

A Nominated Representative (NR)—usually a parent or guardian—must be involved in all decisions and remain with the child during admission.<sup>477</sup>

- *Protection from Harm:* The Act bans electroconvulsive therapy (ECT) for minors<sup>478</sup> and requires that every admission be reported to the Mental Health Review Board within 72 hours,<sup>479</sup> ensuring oversight and accountability.
- *Non-Separation from Mothers:* Infants and toddlers should not be separated from mothers undergoing treatment, unless the child's safety is at risk, thus protecting their nutritional and emotional needs.<sup>480</sup>
- *Separate Facilities:* Hospitals must provide dedicated facilities for children and adolescents, designed to meet their developmental needs rather than placing them alongside adults.<sup>481</sup>

The MHCA treats children not just as patients but as individuals with rights and special needs. Its focus is on dignity, safety, and family involvement, ensuring that mental health care is sensitive, protective, and child-centred.

### iii. Formalizing the Child's Voice in Governance

Article 12 of the UNCRC guarantees every child the right to express their views in all matters affecting them and to have those views given proper consideration. However, in India, children's participation in governance is still largely informal and infrequent.<sup>482</sup>

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<sup>477</sup> Mental Healthcare Act, 2017, § 87, No. 10, Acts of Parliament, 2017 (India).

<sup>478</sup> Mental Healthcare Act, 2017, § 95(b), No. 10, Acts of Parliament, 2017 (India).

<sup>479</sup> Mental Healthcare Act, 2017, § 87(9), No. 10, Acts of Parliament, 2017 (India).

<sup>480</sup> Mental Healthcare Act, 2017, § 21, No. 10, Acts of Parliament, 2017 (India).

<sup>481</sup> Mental Healthcare Act, 2017, § 87(4), No. 10, Acts of Parliament, 2017 (India).

<sup>482</sup> Pratibha Narayanan and Vikas Ratanjee, *Giving children a real stake in local governance*, INDIA DEVELOPMENT REVIEW (Sept 11, 2025) <https://idronline.org/article/advocacy-government/giving-children-a-real-stake-in-local-governance/>.

This is despite the existence of many proven and effective grassroots models that show the immense potential of child participation. In Karnataka, *Makkala Grama Sabhas* (Children's Village Assemblies) have successfully influenced local government decisions on issues from the need for a new high school to the closure of illegal liquor shops.<sup>483</sup> Similarly, Bal Sabhas in Maharashtra and Children's Cabinets in Odisha have shown that when given a structured platform, children can effectively identify community problems and advocate for solutions.<sup>484</sup>

The state's failure to make these successful models a standard and formal part of governance is a missed opportunity. Children can offer unique perspectives on problems and solutions that adults often miss. Including their voices in formal governance structures is not just about fulfilling a right; it is a powerful way to make local governance more responsive, effective, and accountable. These models prove that children can be valuable partners in development, not just subjects of protection.

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<sup>483</sup> *Children's citizenship*, THE CONCERNED FOR WORKING CHILDREN (Sept. 11, 2025) <https://www.concernedforworkingchildren.org/empowering-children/childrens-citizenship/>.

<sup>484</sup> Pratibha Narayanan and Vikas Ratanjee, *Giving children a real stake in local governance*, INDIA DEVELOPMENT REVIEW (Sept 11, 2025) <https://idronline.org/article/advocacy-government/giving-children-a-real-stake-in-local-governance/>.

## **CONCLUSION**

*“The prevalent view is that once the rights are enacted in law then they are safeguarded. This again is an unwarranted assumption. As experience proves, rights are protected not by law but by social and moral conscience of the society.”<sup>485</sup>*

*-Dr. B.R. Ambedkar*

*(Chairman, Drafting Committee of the Indian Constitution)*

This handbook has explored India’s comprehensive legal framework for child rights, highlighting both its progressive nature and the challenges in its practical implementation. Through international commitments like the UNCRC, foundational constitutional principles, and specialized laws such as the Juvenile Justice Act and the POCSO Act, India has clearly defined its dedication to protecting children. The judiciary has played a crucial role in advancing this vision, frequently interpreting the law to broaden children’s rights and address legislative gaps.

Despite this sound legal foundation, the intended benefits fail to reach many children. The promise of the law is compromised by inconsistencies in legislation, conflicting judicial rulings, and systemic issues within government bodies. Oversight committees have limited authority, welfare initiatives often operate in isolation, and the juvenile justice system is underfunded and understaffed. This disparity between the law’s intent and the reality on the ground is not merely an administrative problem but a moral one, now intensified by emerging online dangers and a growing crisis in children’s mental health.

The core challenge, therefore, lies not in the absence of law, but in the gap between

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<sup>485</sup> *Baba Saheb- Emancipator of the Downtrodden*, MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT (Oct 8, 2025), <https://www.pib.gov.in/newsite/erecontent.aspx?relid=22891>.



legal promise and practical reality. Ultimately, bridging the divide between policy and practice remains the central task in transforming India's comprehensive legal blueprint into a true and effective safe haven for every child.

## **ANNEXURE A- FREQUENTLY ASKED QUESTIONS (FAQS)**

### **1. What is the internationally accepted definition of a child?**

A child is defined as every human being below the age of 18 years, unless the law applicable to the child specifies an earlier age of majority.

(Refer to page 26 of the handbook)

### **2. Does Indian law specify when childhood legally begins?**

No, the primary statute, the JJ Act, defines a child as a person who has not completed 18 years of age, but does not specify a starting point.

(Refer to page 28 of the handbook)

### **3. Have Indian courts recognized the rights of an unborn child (foetus)?**

Yes, in specific contexts, courts have recognized a foetus as a child for the purpose of granting citizenship rights or awarding compensation in motor accident claims, demonstrating a dynamic judicial approach to prevent injustice.

(Refer to pages 28-29 of the handbook)

### **4. Is there a uniform age for the end of childhood across all Indian laws?**

No, different statutes prescribe different age limits. For instance, the age is 14 for child labour laws, 18 for sexual offences, and a mix of 18 and 21 for child marriage laws, creating significant legal ambiguity.

(Refer to pages 30 of the handbook)

### **5. Why is the lack of a uniform definition of a “child” a problem?**

The inconsistencies, particularly between laws like the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, and the JJ Act, 2015, lead to ambiguity in enforcement and can create loopholes that weaken the overall child protection framework.

(Refer to pages 32-33 of the handbook)

### **6. Does the legal definition of a “child” consider mental age?**

No, the Supreme Court has held that the term “age” in child protection statutes like the Protection of Children from Sexual Offences (POCSO) Act, 2012, refers strictly to chronological age, not mental age, to ensure consistent application of the law.

(Refer to page 34 of the handbook)

### **7. What is the procedure for determining a person’s age under the JJ Act, 2015?**

Section 94 of the JJ Act establishes a clear hierarchy of evidence: first, a school or matriculation certificate; second, a birth certificate from a municipal authority; and only in their absence, a medical ossification test.

(Refer to pages 34-35 of the handbook)

### **8. What is the evidentiary value of a medical ossification test for age determination?**

The Supreme Court has consistently held that an ossification test is not conclusive and has a margin of error. It should only be used as a last resort when documentary evidence is unavailable, and any benefit of the doubt must be given to the child.

(Refer to page 36 of the handbook)

**9. Does the age determination procedure under the JJ Act apply to child victims as well?**

Yes, the Supreme Court has extended the evidentiary hierarchy under the JJ Act to child victims, for instance, in cases under the POCSO Act, ensuring a consistent standard for determining juvenility.

(Refer to page 36 of the handbook)

**10. What was the first international instrument to recognize children's rights?**

The Geneva Declaration of the Rights of the Child (1924), adopted by the League of Nations, was the first international document to specifically articulate the unique rights and needs of children.

(Refer to page 42 of the handbook)

**11. What is the cornerstone of the international treaty on child rights?**

The United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, is the most comprehensive and widely ratified international human rights treaty, establishing a complete set of rights for every child.

(Refer to page 50 of the handbook)

**12. What are the four core principles of the UNCRC?**

The four guiding principles are: (1) Non-discrimination (Article 2); (2) Best interests of the child (Article 3); (3) The right to life, survival, and development (Article 6); and (4) Respect for the views of the child (Participation) (Article 12).

(Refer to pages 51-52 of the handbook)

**13. What are the Optional Protocols to the UNCRC and has India ratified them?**

Optional Protocols are treaties that supplement the main convention. India has ratified the protocols on the Involvement of Children in Armed Conflict (OPAC) and on the Sale of Children, Child Prostitution and Child Pornography (OPSC), but not the procedural protocol on a Communications Procedure (OPIC).

(Refer to pages 55-56 of the handbook)

**14. What does India's selective ratification of the Optional Protocols indicate?**

It indicates a policy of accepting international substantive norms on what constitutes a rights violation, while rejecting external procedural mechanisms that would allow for international oversight of its domestic justice system.

(Refer to page 56 of the handbook)

**15. How does international law become part of India's domestic law?**

India follows a dualist doctrine, meaning an international treaty must be incorporated into domestic law through legislation passed by Parliament, primarily under its power in Article 253 of the Constitution.

(Refer to page 57 of the handbook)

**16. Can Indian courts apply international treaties that have not been enacted into law by Parliament?**

Yes, the Supreme Court has established that in the absence of contrary domestic law, international conventions can be used to interpret and expand the scope of

Fundamental Rights, particularly Article 21 (Right to Life).

(Refer to pages 58-59 of the handbook)

**17. What was the significance of the Vishaka v. State of Rajasthan (1997) judgment?**

In this landmark case, the Supreme Court, in a legislative vacuum, directly relied on international conventions like CEDAW to formulate legally binding guidelines against sexual harassment at the workplace, demonstrating the judiciary's power to incorporate international law.

(Refer to page 59 of the handbook)

**18. How does Article 14 of the Constitution protect children?**

Article 14 guarantees "equal protection of the laws", which allows for "reasonable classification". Children, due to their unique vulnerability, are recognized as a distinct class, justifying the creation of special laws and procedures for their protection.

(Refer to page 70 of the handbook)

**19. What is the significance of Article 15(3) of the Constitution?**

Article 15(3) explicitly empowers the State to make "any special provision for women and children". It is not an exception to equality but an enabling provision for affirmative action to achieve substantive equality for children.

(Refer to pages 71-73 of the handbook)

**20. Which landmark case established that children in detention have rights under Article 21?**

In *Sheela Barse v. Union of India* (1986), the Supreme Court held that detaining children in adult jails violates their right to life with dignity under Article 21 and issued directives for a separate, humane juvenile justice system.

(Refer to page 76 of the handbook)

### **21. How did the right to education evolve into a fundamental right?**

It evolved from a non-enforceable Directive Principle (original Article 45) to a judicially recognized fundamental right in *Unnikrishnan J.P. v. State of A.P.* (1993), which culminated in the 86th Constitutional Amendment inserting Article 21A.

(Refer to pages 77-78 of the handbook)

### **22. What does Article 21A of the Constitution guarantee?**

Article 21A establishes a fundamental right to free and compulsory education for all children between the ages of 6 and 14 years.

(Refer to page 79 of the handbook)

### **23. What constitutional provisions cover education for children outside the 6-14 age group?**

The amended Article 45 (a Directive Principle) directs the State to provide early childhood care and education for children below the age of six years.

(Refer to page 82 of the handbook)

### **24. Which constitutional provision prohibits human trafficking and forced labour?**

Article 23 of the Constitution prohibits “traffic in human beings and begar and other similar forms of forced labour”, and this right is enforceable against both the State and private individuals.

(Refer to page 83 of the handbook)

**25. What is the scope of “forced labour” as interpreted by the Supreme Court?**

The Court has held that “forced labour” includes not just physical force but also compulsion arising from economic necessity, such as the payment of wages below the statutory minimum.

(Refer to page 83 of the handbook)

**26. What protection does Article 24 provide against child labour?**

Article 24 provides an absolute prohibition on the employment of any child below the age of 14 years in any factory, mine, or other hazardous employment.

(Refer to page 84 of the handbook)

**27. What was the key outcome of the M.C. Mehta v. State of Tamil Nadu (1996) judgment?**

The Supreme Court went beyond a simple ban on hazardous child labour and created a comprehensive administrative and financial scheme, including a welfare fund, to ensure the rescue, rehabilitation, and education of child labourers, linking the prohibition directly to the child’s right to education.

(Refer to pages 85-86 of the handbook)



**28. What is the significance of the Supreme Court’s ruling in Attorney General for India v. Satish (2021)?**

The Court clarified that “skin-to-skin” contact is not a prerequisite for an act to be considered sexual assault under the POCSO Act. The most important ingredient is “sexual intent”, ensuring a purposive interpretation of the law to protect children.

(Refer to page 97 of the handbook)

**29. Is there a legal duty to report a POCSO offence?**

Yes, Section 19 of the POCSO Act imposes a mandatory reporting duty on all persons, including institutions and individuals, who have knowledge or apprehension that a child is likely to be subjected to a sexual offence.

(Refer to page 98 of the handbook)

**30. What is the presumption of guilt under the POCSO Act?**

Section 29 of the POCSO Act establishes a presumption of a culpable mental state. Once the prosecution proves the foundational facts of the offence, the burden shifts to the accused to prove their innocence.

(Refer to page 99 of the handbook)

**31. What is the difference between a ‘Child in Conflict with Law’ (CCL) and a ‘Child in Need of Care and Protection’ (CNCP)?**

A CCL is a child alleged to have committed an offence. A CNCP is a child who is vulnerable and requires state care for reasons such as being an orphan, abandoned, a victim of abuse, or found working in contravention of labour laws.

(Refer to pages 149 of the handbook)

### **32. What is the “Principle of Best Interest” under the JJ Act?**

It is a guiding principle under Section 3(iv) which mandates that all decisions concerning a child must prioritize their overall well-being and be aimed at helping them realize their full potential.

(Refer to page 150 of the handbook)

### **33. What is the preliminary assessment under Section 15 of the JJ Act?**

It is an assessment conducted by the Juvenile Justice Board (JJB) for children aged 16-18 who have allegedly committed a heinous offence, to determine their mental and physical capacity to commit the offence and understand its consequences.

(Refer to page 157 of the handbook)

### **34. What safeguards did the Supreme Court add to the preliminary assessment process in *Barun Chandra Thakur v. Master Bholu* (2022)?**

The Court mandated that the JJB must take the assistance of experienced psychologists or psycho-social workers to ensure the assessment is scientific, evidence-based, and fair, preventing it from being a mechanical exercise.

(Refer to page 157 of the handbook)

### **35. What are the rehabilitative orders the JJB can pass for a CCL?**

Under Section 18, the JJB can pass a range of non-punitive orders, such as allowing the child to go home after counselling, ordering community service, or directing placement in a Special Home for a maximum of three years for reformatory services.

(Refer to page 158 of the handbook)

### **36. What is the procedural framework for dealing with a Child in Conflict with Law?**

The JJ Act lays down a comprehensive and time-bound procedure with multiple safeguards for handling children accused of offences, with the primary aim of steering them away from punishment and focusing instead on their rehabilitation.

(Refer to page 154-161 of the handbook)

### **37. What is the procedural framework for dealing with a Child in Need of Care and Protection?**

The process for a Child in Need of Care and Protection (CNCP) differs significantly from that of a Child in Conflict with Law (CCL). It is centered on ensuring the child's welfare rather than determining fault and is overseen by the Child Welfare Committee (CWC).

(Refer to page 161-164 of the handbook)

### **38. Which laws protect the identity of a child victim?**

Section 23 of the POCSO Act, Section 74 of the JJ Act, and Section 72 of the Bharatiya Nyaya Sanhita, 2023, all prohibit the disclosure of a child victim's identity. The child-specific laws (POCSO and JJ Act) provide a higher degree of protection.

(Refer to page 168 of the handbook)

### **39. What is the standard for allowing the disclosure of a child victim's identity?**

Under the POCSO and JJ Acts, disclosure is permitted only with a written order from the competent court (Special Court, JJB, or CWC) and only if the court finds that such disclosure is in the "best interest of the child".

(Refer to page 170 of the handbook)

**40. What were the key directions in Nipun Saxena v. Union (2018) of India regarding identity protection?**

The Supreme Court issued comprehensive, binding guidelines prohibiting any form of media from revealing a victim's identity, mandating that FIRs in such cases not be made public, and requiring all court documents to be handled in a way that ensures anonymity.

(Refer to page 175 of the handbook)

**41. What is the general sentencing pattern for juvenile offenders in India?**

The system is overwhelmingly rehabilitative. NCRB data shows that imprisonment is a rare outcome, with the most common dispositions being sending the child home after advice or placing them in a Special Home for reformatory services.

(Refer to page 172 of the handbook)

**42. What is the legal framework for termination of pregnancy for a minor?**

The Medical Termination of Pregnancy (MTP) Act, 1971, allows for the termination of a minor's pregnancy subject to the conditions stipulated therein.

(Refer to page 194 of the handbook)

**43. What is the "Safety by Design" principle for online safety?**

Adopted in jurisdictions like the UK and EU, this principle places a legal "duty of care" on technology companies to proactively build safety features into their platforms from the ground up, rather than reactively removing harmful content.

(Refer to page 206 of the handbook)

**44. What are the primary functions of the National and State Commissions for Protection of Child Rights (NCPCR/SCPCR)?**

These are statutory watchdogs created to examine and review legal safeguards, inquire into violations of child rights, study international instruments, and monitor the implementation of key laws like the POCSO Act, JJ Act, and RTE Act.

(Refer to page 211 of the handbook)

**45. What is a child's statutory right to legal aid?**

Section 12(c) of the Legal Services Authorities Act, 1987, guarantees that every child is entitled to free and competent legal services, imposing a mandatory duty on all Legal Services Institutions to provide representation.

(Refer to page 229 of the handbook)

## **ANNEXURE B- JUDICIAL PHILOSOPHY AND PROTECTION OF CHILD RIGHTS**

The philosophy underpinning child rights jurisprudence in India has been shaped significantly by the Supreme Court through a series of landmark decisions. These judgments go beyond statutory interpretation to articulate the moral, constitutional, and human rights principles that must guide the treatment of children. Including excerpts from such decisions serves two purposes: first, it highlights the judiciary's role in affirming that children are entitled to dignity, equality, and protection; and second, it offers a jurisprudential lens through which the statutory framework can be better understood. This section, therefore, brings together select passages from important rulings that reflect the evolving judicial philosophy on child rights in India.

### **1. Rosy Jacob vs. Jacob A. Chakramakkal [1973]<sup>486</sup>**

*"The children are not mere chattels; nor are they mere play- things for their parents. Absolute right of parents over the destinies and the lives.of their children, has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute 'between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them."*

### **2. M.C. Mehta v. State of Tamil Nadu [1996]<sup>487</sup>**

*"I am the child.*

*All the world waits for my coming. All the earth watches with interest to*

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<sup>486</sup> Rosy Jacob vs. Jacob A. Chakramakkal, 1973 (1) SCC 840.

<sup>487</sup> M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756.

*see what I shall become. Civilization hangs in the balance, For what I am, the world of tomorrow will be. I am the child.*

*You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world".*

Manie Gene Cole

*It may be that the aforesaid appeal lies at the back of the saying that "child is the father of man". To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned. Our Constitution makers, wise and sagacious as they were, had known that India of their vision would not be a reality if the children of the country are not nurtured and educated."*

### **3. ABC v. State (NCT of Delhi) [2015]<sup>488</sup>**

*"The common perception would be that three competing legal interests would arise, namely, of the mother and the father and the child. We think that it is only the last one which is conclusive, since the parents in actuality have only legal obligations. A child, as has been ubiquitously articulated in different legal forums, is not a chattel or a ball to be shuttled or shunted from one parent to the other. The Court exercises paren patriae jurisdiction in custody or guardianship wrangles; it steps in to secure the welfare of the hapless child of two adults whose personal differences and*

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<sup>488</sup> ABC v. State (NCT of Delhi), (2015) 10 SCC 1.

*animosity has taken precedence over the future of their child.”*

**4. Sampurna Behura v. Union of India [2018]<sup>489</sup>**

*“If Nelson Mandela is to be believed, “Our children are our greatest treasure. They are our future. Those who abuse them tear at the fabric of our society and weaken our nation.” Our policy and decision makers need to heed this advice and warning and appreciate that they are not doing any favour to the children of our country by caring for them – it is their constitutional obligation and the social justice laws enacted by Parliament need to be effectively and meaningfully enforced.”*

**5. Society for Enlightenment and Voluntary Action v. Union of India [2024]<sup>490</sup>**

*“The development of child rights law is highly influenced by the evolving legal standards in international law. The comity of nations has arrived at a broad consensus rooted in the goal to realise universal human rights of children. Domestically and abroad, various jurisdictions have developed their legal standards under the influence of global advancements in international bodies.”*

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<sup>489</sup> Sampurna Behura v. Union of India, (2018) 4 SCC 433.

<sup>490</sup> Society for Enlightenment and Voluntary Action v. Union of India, 2024 INSC 790.