



PROTECTION AND WELFARE OF CHILD RIGHTS IN INDIA: AN ASSESSMENT

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This article examines the concept of a child from both a global and Indian legal viewpoint. Globally, according to the United Nations Convention on the Rights of the Child (UNCRC), a child is considered to be under 18 years old unless local laws specify a younger age of adulthood. India follows this definition in major laws like the Juvenile Justice Act and the POCSO Act, which safeguard children from different types of exploitation and abuse. It is emphasized how important it is to protect children's rights, highlighting their vulnerability and reliance on adults for safety and welfare. India continues to deal with issues such as child labour, trafficking, abuse, and limited access to education and healthcare, despite having strong legal systems, leading to the need for ongoing policy revisions and strict enforcement. Government actions and court decisions are essential in tackling these problems, backed by global agreements and collaborations with non-governmental organizations. The summary ends by recommending continued actions throughout society to establish a secure and supportive atmosphere that allows all children to prosper and make positive contributions to the future of society.

KEY WORDS

- United Nations Convention on the Child Rights (UNCRC)
- Protection of Children from Sexual Offences Act (POCSO)
- Child Labour
- Child Trafficking
- Right to Education
- Juvenile Justice

INTRODUCTION

- **Who is a Child?**

Children represent the future of a nation, embodying the potential for societal growth, innovation, and transformation. A child, in the simplest terms, is a human being between birth and puberty. This phase of life is marked by rapid physical, mental, and emotional development. Understanding who a child is involves recognizing the unique needs and vulnerabilities that characterize this stage of human development.

- **Legal Definitions of a Child**

Internationally

The United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, is a critical international treaty that sets out the civil, political, economic, social, health, and cultural rights of children. According to Article 1 of the UNCRC, a child is defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." This definition provides a universal benchmark for the rights and protection of children globally.

Indian Provisions

In India, the legal definition of a child varies slightly depending on the context of the law. The Juvenile Justice (Care and Protection of Children) Act, 2015, aligns with the UNCRC, defining a child as a person who has not completed 18 years of age. The Protection of Children from Sexual Offences (POCSO) Act, 2012, similarly considers anyone below 18 years as a child. However, there are some variances in other contexts. For instance, the Child Labour (Prohibition and Regulation) Amendment Act, 2016, distinguishes between children (below 14 years) and adolescents (14-18 years).

IMPORTANCE OF CHILD RIGHTS

Children are among the most vulnerable members of society. They are dependent on adults for their physical, emotional, and psychological well-being. Protecting children ensures their basic rights to survival, development, protection, and participation.

Safeguarding children isn't simply a lawful commitment yet in addition an ethical goal. Kids are powerless and reliant upon grown-ups for their prosperity. An essential ethical duty is to ensure their

education, health, and safety. India is one of the UNCRC signatories that is legally obligated to safeguard the rights of children. Creating a safe environment in which children can develop, learn, and thrive without fear of exploitation or abuse is necessary for this. Putting resources into the assurance and government assistance of youngsters has huge long haul benefits. Instructed, solid, and all around sustained kids develop into useful grown-ups who contribute decidedly to society. The societal costs of dealing with the consequences of abuse, neglect, and exploitation later in life are also reduced when children are shielded from these threats.

MAJOR ISSUES PREVALENT IN INDIA RELATED TO CHILD PROTECTION

- **Child Labour**

Despite legal prohibitions, child labour remains a pressing issue in India. Many children are forced into labour due to poverty, lack of access to education, and inadequate enforcement of existing laws. They often work in hazardous conditions, missing out on education and childhood.

- **Child Trafficking**

Child trafficking for labour, sexual exploitation, and illegal adoptions is another grave issue. Trafficked children are subjected to severe abuse and deprivation, violating their basic human rights.

- **Child Abuse**

Physical, emotional, and sexual abuse of children is widespread in India. Despite laws like the POCSO Act, many cases go unreported due to societal stigma, fear, and lack of awareness.

- **Child Marriage**

Child marriage, although illegal, continues to be practiced in various parts of India. It robs children, particularly girls, of their education, health, and future opportunities.

- **Access to Education and Healthcare**

Many children, especially those from marginalized communities, lack access to quality education and healthcare. This hinders their overall development and perpetuates cycles of poverty and deprivation.

GLOBAL CONVENTIONS ON THE ISSUE OF CHILD RIGHTS

Various international conventions have been established to protect child rights, ensuring their welfare and development across the globe. These conventions serve as fundamental frameworks for nations, including India, to create and enforce laws and policies safeguarding children. Among the most significant is the **United Nations Convention on the Rights of the Child (UNCRC) of 1989**, the most comprehensive and widely ratified international treaty on child rights, with 196 countries, including India, as signatories. The UNCRC encompasses a broad range of civil, political, economic, social health, and cultural rights of children, based on principles of non-discrimination, the best interests of the child, the right to life, survival, and development, and respect for the views of the child. India ratified the UNCRC in 1992 and has since incorporated its principles into national legislation and policies aimed at child protection and welfare.

The UNCRC is supplemented by Optional Protocols that enhance its provisions. The Optional Protocol on the **Involvement of Children in Armed Conflict (2000)** prohibits the compulsory recruitment of children under 18 into armed forces and raises the minimum age for direct participation in hostilities to 18. The Optional Protocol on the **Sale of Children, Child Prostitution, and Child Pornography (2000)** addresses the prevention and prohibition of the sale of children, child prostitution, and child pornography, providing additional protection measures. The Optional Protocol on a **Communications Procedure (2011)** empowers children to bring complaints about violations of their rights directly to the Committee on the Rights of the Child.

Additionally, the **International Labour Organization (ILO)** has established key conventions such as **ILO Convention No. 138 on Minimum Age (1973)**, which sets the minimum age for employment to prevent child labour that interferes with education or is harmful to health and development. India has ratified this convention, setting the minimum age for employment in hazardous industries at 18. **ILO Convention No. 182 on the Worst Forms of Child Labour (1999)** aims to eliminate the worst forms of child labour, including slavery, forced labour, trafficking, and hazardous work. India ratified this convention in 2017, reinforcing its commitment to combating child labour.

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) establishes safeguards to ensure intercountry adoptions are in the best interests of the child and prevent their abduction, sale, or trafficking. India ratified this convention in 2003, aligning its adoption processes with international standards.

India has made significant strides in aligning its national laws and policies with these international conventions to protect child rights. Key legislative measures include the **Juvenile Justice (Care and**

Protection of Children) Act, 2015, the Protection of Children from Sexual Offences (POCSO) Act, 2012, the Right to Education (RTE) Act, 2009, and the National Policy for Children, 2013. The Indian judiciary has proactively enforced child rights, interpreting these laws in light of international conventions, reinforcing the right to education, protection from exploitation, and the right to a safe and nurturing environment. Through these efforts, India demonstrates a robust commitment to creating a safe and nurturing environment for its children, ensuring their holistic development and protection.

LEGAL FRAMEWORK

Constitutionally

There are a number of provisions in the Indian Constitution that ensure the safety and well-being of children. The right to a dignified life for children is protected by Article 21, which guarantees the right to life and personal liberty. Article 24 disallows the work of kids in perilous work. Article 39(e) and 39(f) direct the state to guarantee that youngsters are not manhandled and that their experience growing up and youth are safeguarded against double-dealing.¹

Juvenile Justice Act

The Juvenile Justice (Care and Protection of Children) Act, 2015, provides a comprehensive framework for the care, protection, and rehabilitation of children in conflict with the law and those in need of care and protection.

POCSO Act

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is a robust legal framework designed to protect children from sexual abuse and exploitation. It defines various forms of sexual abuse and prescribes stringent punishments for offenders.² The latest Supreme Court judgment involving the Protection of Children from Sexual Offences (POCSO) Act, delivered on July 18, 2023, focused on the admissibility of school transfer certificates for determining the age of the victim. In the case of **Madras High Court vs. The State** (Criminal Appeal No. 1410 of 2023), the Supreme Court ruled that a school transfer certificate alone is insufficient to establish the victim's age under Section 94 of the Juvenile Justice Act, 2015. The Court emphasized the need for a birth certificate issued by a

¹ M.P Jain, Indian Constitutional Law

² policies/#:~:text=The%20Child%20Protection%20Policies%20in,protection%20and%20care%20for%20children.

municipal authority, a date of birth certificate from the school, or in their absence, an ossification test (bone test) to determine age.

The judgment highlighted that the prosecution must provide adequate proof of age using the correct documents as stipulated by the law. In this case, the prosecutrix's age was disputed, and the only document provided was a school transfer certificate, which the Court found insufficient. The Supreme Court referred to previous judgments to reaffirm the procedures for age determination and stressed the importance of accurate age verification to ensure the fair application of the POCSO Act.³

In the 1990 landmark case ***Vishal Jeet v. Union of India***, the Supreme Court addressed child trafficking and sexual exploitation. Petitioner Vishal Jeet highlighted the plight of children, especially girls, deceived into prostitution. The Court acknowledged the severity of the issue and directed the Union and State Governments to establish Advisory Committees, implement rehabilitation programs, enforce laws like the Immoral Traffic (Prevention) Act, 1956, and launch awareness campaigns. The judgment emphasized the state's duty to protect children's rights and welfare, urging proactive efforts against such exploitation.

Child Labour (Prohibition and Regulation) Amendment Act, 2016

This Act prohibits the employment of children below 14 years in all occupations and adolescents (14-18 years) in hazardous occupations. It also regulates the conditions of work for adolescents.

In a recent 2023 Supreme Court judgment on child labour, the case titled ***M.C. Mehta v. State of Tamil Nadu*** focused on the protection of child rights and the strict enforcement of child labour laws. The Court emphasized the importance of eradicating child labour and ensuring children's safety and well-being. It directed the central and state governments to take stringent measures to prevent child labour and ensure proper rehabilitation and education for affected children. The judgment reinforced the need for strict compliance with the Child Labour (Prohibition and Regulation) Act, 1986, and urged the authorities to take proactive steps to safeguard the rights of children involved in labour.⁴

Right to Education Act, 2009

The Right to Education Act ensures free and compulsory education for children aged 6 to 14 years. It aims to provide equitable access to quality education for all children.⁵

³ SCC Online

⁴ SCC Online, *M.C. Mehta v. State of Tamil Nadu*, Supreme Court of India, 2023.

⁵ Rao Mamta, *Law relating to women and children*, Eastern Book Company Lucknow 2nd Edition

Mohini Jain v. State of Karnataka

In the case of Mohini Jain v. State of Karnataka (1992), the Supreme Court of India held that the right to education is a fundamental right under Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Court ruled that the capitation fee system, which demanded exorbitant fees from students seeking admission to professional colleges, violated the constitutional right to education. The judgment emphasized that the state has a duty to provide equal access to education for all citizens and that education is essential for the realization of other fundamental rights. This landmark decision underscored the importance of education in ensuring social justice and equality, prompting legislative and policy measures to regulate and ensure affordable access to education across the country.

GOVERNMENT INITIATIVES**NATIONAL POLICY FOR CHILDREN, 2013**

The goal of the National Policy for Children, 2013, is to ensure the holistic development and well-being of all children in India. It aims to protect their rights, promote their health, education, and development, and safeguard them from exploitation and abuse. The policy emphasizes creating a nurturing and enabling environment for children, ensuring their survival, growth, protection, and participation in a manner that allows them to reach their full potential.

INTEGRATED CHILD PROTECTION SCHEME (ICPS)⁶

ICPS aims to create a protective environment for children in India, ensuring their safety, security, and well-being. It aims to prevent and respond to child abuse, neglect, exploitation, and trafficking. ICPS focuses on strengthening family and community-based care, providing rehabilitation and reintegration services for children in need, and enhancing the capabilities of child protection systems through capacity building and coordination among various stakeholders.

NATIONAL PLAN OF ACTION FOR CHILDREN, 2016

This plan outlines specific goals and strategies to address issues such as child labor, trafficking, abuse, and neglect. It emphasizes the need for a multi-sectoral approach to child protection.

MID-DAY MEAL SCHEME

The Mid-Day Meal Scheme provides nutritious meals to school children, improving their nutritional status and encouraging school attendance.

⁶ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=104042>

BETI BACHAO BETI PADHAO

The aim of Beti Bachao Beti Padhao is to address gender bias and improve the status of girls in India. It focuses on preventing gender-based sex-selective abortions, ensuring the survival and protection of the girl child, and promoting her education and empowerment, thereby fostering gender equality.

JUDICIAL RESPONSE

Indian courts have delivered several landmark judgments that reinforce the protection of child rights. For example, the Supreme Court's ruling in *Bachpan Bachao Andolan v. Union of India*⁷ emphasized the need for stringent action against child trafficking and exploitation. The latest significant Supreme Court judgment on child welfare in 2023 pertains to child custody in the case of *Selvaraj v. Revathi*, the Supreme Court ruled in favour of the father's custody of a child born in 2011. Despite earlier orders to transfer custody to the mother, the court recognized that the child, aged 12 years and 9 months, expressed a strong preference to remain with the father. Emphasizing the child's welfare as paramount, the court allowed the father to retain custody while granting the mother visitation rights and the ability to communicate with the child.⁸

The judiciary plays a crucial role in interpreting and enforcing child protection laws. Courts often issue directives to the government to ensure the effective implementation of laws and policies related to child welfare.

M.C. Mehta v. State of Tamil Nadu and others

In *M.C. Mehta v. State of Tamil Nadu and others* (1996), the Supreme Court of India held that employing children in hazardous industries violates their fundamental rights under Article 24 of the Constitution. The Court directed the government to ensure the prohibition of child labor in hazardous occupations, provide compulsory education to all children, and implement welfare schemes for the rehabilitation of child laborers. The judgment emphasized the state's duty to protect children from exploitation and promote their education and well-being.⁹

In several cases, the judiciary has taken a proactive stance to protect child rights. For instance, in the case of *Sampurna Behura v. Union of India*¹⁰, the Supreme Court directed the central and state

⁷ <https://archive.crin.org/en/library/legal-database/bachpan-bachao-andolan-v-union-india-ors.html>

⁸ *Selvaraj v. Revathi*, 2023 SCC OnLine SC 1644, decided on December 12, 2023, SCC Online

⁹ <http://haqcrc.org/child-rights/indian-laws-policies/>

¹⁰ <https://indiankanoon.org/doc/67162757/>

governments to ensure the effective implementation of the Juvenile Justice Act and other child protection laws.

SUGGESTIONS AND CONCLUSIONS

Although India's child protection laws are strong, they need to be updated often to meet new and changing issues. Amendments should include severe consequences for deterrence and address new types of exploitation including cyberbullying and online trafficking. Adopting international agreements like ILO Convention No. 182, which addresses the most severe types of child labor, will bring India into compliance with international norms. Effective enforcement is essential, including extensive training for law enforcement on how to handle juvenile cases delicately and the creation of specialized teams. Accountability is ensured via reinforced monitoring systems. The promotion of child rights and responsibilities is facilitated by community engagement initiatives such as grassroots campaigns and school workshops. International organizations provide technical help, but NGOs play a crucial role in linking policy and practice. The goal of rehabilitation should be to create safe environments for the reintegration of exploited children, with a focus on psychological assistance and education.

CONCLUSION

In conclusion, understanding the multifaceted definition of a child and childhood is essential for recognizing the unique needs and vulnerabilities that children face. The legal frameworks, both internationally and within India, provide a strong foundation for safeguarding child rights. The importance of protecting children cannot be overstated, as it ensures their physical, emotional, and psychological well-being, thereby fostering a generation that can contribute positively to society.

Despite robust legal provisions, major issues such as child labour, trafficking, abuse, and lack of access to education and healthcare persist in India. Addressing these challenges requires not only stringent enforcement of existing laws but also the introduction of new policies that adapt to emerging threats. The judiciary has played a pivotal role in interpreting and enforcing child protection laws, with landmark judgments emphasizing the need for proactive measures and rehabilitation.

Government initiatives like the National Policy for Children, Integrated Child Protection Scheme, and **Beti Bachao Beti Padhao** have made significant strides in promoting the welfare of children. However, effective implementation and monitoring of these schemes are crucial for achieving tangible results.

Moving forward, strengthening laws and policies, enhancing enforcement mechanisms, and fostering community awareness and participation are essential steps. Encouraging the involvement of NGOs and international bodies can also provide additional support and resources. Ultimately, creating a safe and nurturing environment for children is a collective responsibility that requires sustained efforts from all sectors of society. By investing in the protection and welfare of children, we not only uphold their rights but also lay the foundation for a just and prosperous future.