



Legal Protection of Children in India: Offences, Rights, and Juvenile Justice in Comparative Perspective

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Abstract

Child protection is a critical need that has not only been ascertained in the international law but also in national laws. As a signatory to various international conventions, India has developed a strong set of laws that seek to prevent any crimes against children and safeguard their wellbeing. The paper is an attempt to critically analyse the development of child rights in India, starting with the international consideration on child rights under the Geneva Declaration in 1924, the Universal Declaration on human rights and the Convention on the Rights of the child in 1989. The paper also examines key legislations in India including the Right of Children to Free and Compulsory Education Act, 2009, the Prohibition of Child Marriage Act, 2006, the Protection of Children against Sexual Offences Act, 2012, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 as amended on July 2016. A particular focus is made on the dynamic character of offenses, such as cyber-crimes against children, and the implementation by courts, child welfare committees, and other state institutions.

Keywords: *Child Rights, Juvenile Justice, Child Protection, International Conventions*

INTRODUCTION

Children are globally recognized to be the most vulnerable in society. They are physically immature, emotionally dependent and lack the economic strength to be exploited, neglected and abused. There is also a legal one based on international human rights provisions and domestic laws. Child protection has now emerged as one of the most burning hotspots issues of modern law and justice, especially in a nation such as India whereby the child population is one of the highest compared to the world.

The legal status of the child as a distinct legal person, whose rights differ in several aspects those of adults, is a comparatively new development in the history of law. Since ancient times, children have been viewed as little adults, being under the control of their parents or guardians, and are rarely acknowledged as personalities. Yet, the implementation of such tools as the Geneva Declaration of 1924 and later the UNCRC, 1989, gave children a new legal status on an international level. India is also a signatory to all these conventions and has integrated much of these conventions into its own law.

However, regardless of this sophisticated legal framework, the reality on the ground tends to be very dark. The issues of child marriage, child labour, sexual exploitation, and trafficking still persist. As technology evolves, crime has taken different aspects like cyber-grooming and the distribution of child sexual abuse content with it, further complicating the issue. The machinery of implementation such as the police, juvenile justice boards, child welfare committees, and courts tends to be resource-bound, training-bound, and sensitivity-bound.

In this paper, we undertake to critically analyse this framework. It starts by examining the international legal status of children and goes on to analyse Indian constitutional and statutory protections. This is followed by discussion of individual legislations with regard to education, child marriage, sex offences, juvenile justice, cyber-crimes, and child labour. The analysis will also point to the advantages of the existing regime as well as its drawbacks in real practice. It is not merely aimed at providing the legal framework, but also to assess its efficiency in reaching true child protection.

Goals and Objectives:

1. To analyse the impact of international law on child protection on Indian law by looking at the role of international instruments like the CRC, 1989.
2. To examine the efficacy of some of the major legislations in India (RTE Act, PCMA, POCSO, JJ Act, and labour laws) regarding the protection of child rights.
3. To assess judicial interpretations and enforcement issues in application of these laws.

Methodology

This paper follows a doctrinal approach because it is mainly concerned with the law, legislation and judicial decisions on child rights and juvenile justice. The study uses the primary sources of facts like

statutes, provisions of the constitution and international treaties, and secondary sources, including books, scholarly articles, committee reports and rulings of Indian courts.

1. Thematic Framework

The thematic analysis is performed in broad correspondence to the subject syllabus. Each legislative field is analysed in connection with its statutory foundation, accompanied by the international norms, where appropriate. International tools, especially the Convention on the Rights of the Child, 1989 compared to Indian legal system, to outline where they agree and where they differ.

2. Role of Case Law

Case law analysis is also included in the study to learn how the law has been interpreted and applied by the courts with regard to child protection laws. Judicial reason is talked about to explain how doctrines change and are implemented. Significant decisions before and after the Protection of Children from Sexual Offences Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015 have been reviewed to reveal trends in interpretation and implementation issues.

Defining The Child and International Legal Status.

Any discussion involving child protection begins with the definition of child. Age might seem like an easy concept to understand however the legal impact is complicated by the fact that the age limit differs in statutes and jurisdictions. In the international community, Article 1 of CRC¹, 1989 defines a child as all human beings under the age of 18yrs, according to the law of the country of origin of the child, majority is reached before that age. This is the most acceptable definition and has been used to establish international and domestic structures. In India, the Majority Act, 1875 provides that everyone who is domiciled in India would reach majority age on attaining 18 years, unless there is a guardianship of property situation, in which case the majority age would be 21. This is a statute that creates a standard level, and the sector specific laws have their own standards. In one instance, the Juvenile Justice (Care and Protection of Children) Act, 2015 defines a child as an individual under the age of 18 years, and in the labour laws, the legislator has coined the term adolescent to denote individuals aged 14 to 18 years. These exceptions constitute the technical method of the legislature yet also create interpretative difficulties on the practice level. The global history of child rights started with Geneva Declaration of 1924, which was accepted by League of Nations. It was not legally enforceable but represented the first statement of the duty of adults and the state to children. It also stressed that children should be provided with the means to normal development, should be fed, when unwell, orphaned, and should not be exploited. It is important because it was the first to recognize children as a separate type of

¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

rights-holders. Universal Declaration of Human Rights, 1948 and CRC, 1989. After the terrors of the Second World War, the Universal Declaration of Human Rights (UDHR), 1948 acknowledged the family as something that receives protection by society and state indirectly protecting children. But it was best articulated with the CRC, 1989, which India ratified in 1992. The CRC establishes civil, political, economic, social, and cultural rights of children, so it is the first international treaty that is strictly binding and focused on children. It is based on four main principles, non-discrimination, best interests of the child, right to life, survival and development and respecting the views of the child. The CRC has left an immense impact on the Indian law making. Indicatively, the Juvenile Justice Act and the Protection of Children against Sexual offences Act (POCSO) have provisions that show the commitment to the CRC through child friendly procedures and redressal mechanisms. The United Nations Children Fund (UNICEF) is an important humanitarian in the realization of child rights, even in India. Its interventions can be categorized as supporting early childhood education programs, anti-child marriage and child labour campaign. The International Labour Organization (ILO) has incorporated conventions on the labour front, including Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182). India is a signatory of both, thus strengthening its resolve to eradicate the practice of exploitative child labour.

Collectively, these tools have contributed to influencing the domestic legal response in India.

Right of Children to Free and Compulsory Education Act, 2009:

To bring this promise of the constitution to life, the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act²) was adopted. The Act also renders education as a right to a child within the mentioned age group. It especially requires the central and state governments, local authorities, and schools to provide all children with free elementary education. Physical punishment, mental harassment, admission screening procedures, capitation fees and teachers' private tuition are also prohibited under the Act. Notably, it requires all unaided school privates to allocate 25 percent of seats at the point of entry to children representing the less favoured economic groups, the state subsidizing the fee. Moreover, the Act stipulates norms concerning the ratio between the number of pupils and teachers, facilities and hours of work of the teachers. To recommend how the best implementation should be done, a National Advisory Council and State Advisory Councils were formed. Court's decision like *Society for Unaided Private Schools of Rajasthan v. The RTE Act*³ is not without challenges. Although the 25% reservation is transformative, it is supported by the need by the state to balance the integrity of civil liberties and the social imperatives of the Indian population.

² The Right of Children to Free and Compulsory Education Act, No. 35 of 2009, INDIA CODE (2009).

³ *Unaided Private Schools of Rajasthan v. Union of India*, 2012 6 SCC 1.

The Policy also lays emphasis on advocacy, research, and capacity building, and the significance of partnering with civil society and international organizations. There is also a huge focus on allocation of resources, and the government should focus on budgetary allocation of child related schemes. In this respect, the Policy has played the key role in reinforcing other initiatives like Integrated Child Protection Scheme (ICPS) and Mid-Day Meal Scheme.

However, the Policy does not have the force of itself--it is still a statement of policy under which legislative and executive action should be taken. Its success largely relies on political will and administrative ability of the state. Its influence is limited by the lack of a special body of monitoring and the mechanisms of binding responsibility. Combined as they are with the RTE Act, 2009, and the National Policy for Children⁴, 2013, reflect a move towards a rights-based approach to child welfare that provides India with a chance to keep pace with international commitments. Whereas the RTE Act offers a legally binding right, the Policy offers the guiding vision. The distance between intention and action, however, is the key issue. The absence of effective enforcement and regular review can leave children struggling to access education and developmental opportunities, even with an understanding of their rights officially in place.

Prohibition of Child Marriage and Protection from Sexual Offences:

Child marriage is one of the worst social vices that have been ingrained in India through tradition, poverty and gender inequality. PCMA of 2006, Prohibition of Child Marriage Act, was passed to supersede the previous Child Marriage Restraint Act, 1929, which had not been effective. The PCMA is broader and addresses not just the aspect of restraining but also prevention as well as punishment of child marriage. The Act is clear that a child is a male under 21 years and a female under 18 years. In contrast with its predecessor, the PCMA adds that a child marriage can be voided at the discretion of the contracting party who was a child when married. This type of petition may be affected within two years of majority. In instances where coercion, trafficking, and exploitation are involved in marriage, the marriage is declared void ab initio. A key clause is that the children born out of child marriages are legitimate and they will not be subject to further stigma. Penalties against those who carry out, conduct or encourage child marriages are also prescribed in the Act including imprisonment and fines. It also allows the appointment of Child Marriage Prohibition Officers whose responsibilities include the prevention of child marriages, gathering evidence, and counselling communities.

The Act defines any person under 18 years of age as a child and encompasses crimes including penetrative and non-penetrative sexual assault, sexual harassment, and the exploitation of children for

⁴ Government of India, National Policy for Children, 2013.

pornographic purposes. Importantly, it addresses the instigation and facilitation of these acts, thereby expanding the safety net for children. POCSO mandates the establishment of Special Courts to expedite trials and advocates for child-sensitive legal procedures. These procedures include careful documentation of a child's statements outside court, avoiding aggressive questioning, and conducting in-camera trials. This shift from standard criminal law principles to accommodate the unique vulnerabilities of children effectively places the onus of proof in certain cases on the accused. The law has also acknowledged the role of technology. It allows the use of contemporary investigative methods, such as forensic analyses and AI-assisted tools, particularly in cases involving the distribution of child sexual abuse material.

In the Supreme Court case of **State of Himachal Pradesh v. Asha Ram**⁵, the court reiterated that strict adherence to POCSO protocols is essential, emphasizing that any delays in investigations or trials can cause further trauma to the child. The prompt and sensitive handling of such cases underscores the serious approach courts take towards these offences.

The PCMA and POCSO represent two fundamental components of child protection legislation in India. The former addresses systemic issues linked to early marriage, while the latter tackles sexual violence and abuse directly. However, the effectiveness of both laws largely hinges on their implementation at the community level. Their influence is frequently diminished by societal stigma, hesitance to report crimes, and a lack of properly trained law enforcement personnel. Enhanced awareness initiatives, community engagement, and improved training for enforcement agencies are crucial to unlocking the full potential of these legal frameworks.

Cyber-crimes Against Children and Criminal Liability

In the age of digital we can no longer protect children in real life but in the virtual one too. Children have been subjected to new ways of exploitation owing to the rapid growth of the internet and social media. Some of the most common offences include cyber-grooming, circulation of child sexual abuse material (CSAM), cyber-bullying and identity theft.

India has inculcated a few stipulations to deal with these threats. Published, transmitted and stored obscene material with reference to children are illegalized by the Information Technology Act, 2000, as amended. The provision of CSAM is specifically addressed in sections 67B and provisions thereof. Moreover, in the POCSO Act, 2012, pornographic use of children, including digital content, is specifically forbidden. One of the new trends is the use of Artificial Intelligence (AI) in law enforcement to identify and track abuse on the internet. There is a tendency to use AI algorithms to

⁵ State of Himachal Pradesh v. Asha Ram (2019) 3 SCC 788.

detect patterns, track social media sites, and identify suspicious content. As attractive as they seem, such technologies also pose privacy, data protection, and misuse concerns unless they are regulated properly.

The risks of online exploitation have been realized even by the Supreme Court of India. In **Shreya Singhal v. Union of India**⁶, the Court did not overrule Section 66A of the IT Act as it was also found to be unconstitutional, however, the Court recognized the fine line between freedom of expression and safety of an inexperienced group, such as children, against exposure to harmful information over the internet. The enforcement ecosystem has just been reinforced by the introduction of new government services like the National Cyber Crime Reporting Portal that enables citizens to report crimes committed against children via the Internet. These measures have not been effective in curbing as offenders may work across borders anonymously. It is important to coordinate with international agencies like Interpol, in addition to engaging social media companies. Knowledge among children and parents is also a crucial preventative factor. Another crucial element of child protection legislation is to establish to what degree children are subjected to criminal responsibility. According to Indian law, very young children are automatically entitled to be immune to any action due to the notion that they do not have the awareness to comprehend the impact of their actions.

In the State of Bharat under the Bharatiya Nyaya Sanhita, 2023 (BNS) that substitutes the Indian Penal Code, children are given immunity under Sections 20 and 21 (formerly the Indian Penal Code Sections 82 and 83). According to section 20, a child under the age of seven cannot be criminally responsible. Section 21 provides similar protection to children aged seven to twelve years provided that they are found not to possess enough maturity of understanding. This rule advocates the doctrine of doli incapax.

But children who have attained a specific age may be liable to a particular offence. In the case of the BNS, the criminalisation of such acts as selling obscene objects to minors (Sections 294 and 295), leaving children alone (Section 93), and kidnapping or abduction (Sections 137-144) remain in place. It also identifies serious crimes like trafficking of children and making them engage in prostitution (Sections 98 and 99). These clauses reiterate the point that children may be in need of protection, but that they can also become the casualties of criminal activities that specifically exploit their vulnerability. The courts have been reserved in this regard. When it comes to children, the courts tend to give more preference to rehabilitation over punishment due to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act gives citizens the right to have children who are in conflict with the law handled by Juvenile Justice Boards as opposed to common courts of law, and

⁶ Shreya Singhal v. Union of India (2015) 5 SCC 1.

focuses more on reformative justice as opposed to retributive justice. The twin issues of cyber-crimes and criminal liability exemplify the tricky nature of child law in contemporary India. On the one hand, the state should be proactive in policing the Internet spaces to avoid exploitation; on the other hand, it is necessary that children involved in the crime should be handled with care and given a chance to reform. It will have to balance protection and accountability. Online risks can be mitigated through proper cyber safety education at school, increased parental attention and technological innovations. Likewise, the juvenile justice staff should be trained consistently with some provision of infrastructural support to ensure that the children who have committed a crime are not victimized again by the criminal justice system.⁷

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

It is the law that addresses children in conflict with law besides children in need of care and protection. The reason behind its enactment was the outrage experienced by the population at the time of the enactment of the Juvenile Justice Act, 2000 due to the participation of a juvenile in the Delhi gang rape case that occurred in 2012. Section 3 provides a general principle which governs the whole activity under the Act. These are presumption of innocence, dignity and worth of the child, best interest of the child, family responsibility and the non-stigmatizing semantics principle (that children are not branded criminals). The principles play an important role in ensuring that there is a child-oriented approach to the administration of justice to juveniles. Under Section 4 of the Act, the Juvenile Justice Board⁷ (JJB) has been established to deal with children who conflict with the law. The JJB⁷ is comprised of a Metropolitan Magistrate or Judicial Magistrate and two social workers, at least one being a woman. Section 8 provides the powers and functions of the Board including carrying out inquiries, issuing suitable orders, and rehabilitating. The pre-trial process before the JJB⁷ should be informal, fast, and discreet. Section 29 and 30 describe the powers and functions of CWCs which include the restoration of children to their families wherever they can, Section 14 stipulates that the JJB must conclude an inquiry within four months, and the juveniles must not be left in a state of great uncertainty. Under section 19, the Children Court has the mandate of hearing cases in which juveniles between the ages of 16 and 18 are accused of committing heinous crimes. Section 26 Wilful children: In this section, children who have gone astray should be restored safely, not punished. The JJ Act⁴ emphasizes on rehabilitation and social re-entry. Some of the measures involve adoption, foster care, sponsorship and aftercare programs.

The reformative spirit of the Act has been promoted in Indian courts. In **Hari Ram v. State of Rajasthan**⁸, According to the Supreme Court opined that the age on the day of committing the offence

⁷ Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023).

⁸ Hari Ram v. State of Rajasthan (2009) 13 SCC 211.

and not the day of trial should be considered as the juvenile. Courts have ruled since 2015, in matters concerning heinous offences that it is constitutional to transfer juveniles older than 16 years to adult courts, but at the same time, preliminary evaluation is essential to guard against misuse. Regardless of its detailed framework, the Act is not an easy law to enforce.

Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

The Act initially forbade the use of children under the age of 14 years in hazardous work but allowed their work in non-hazardous areas with regulation of terms of work (such as working hours and rest). In response to international obligations, especially to the ILO Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182), along with local campaigning, the Act was significantly revised in 2016. The amendment changed to a more stringent model of prohibition. Child rights activists have also criticised the shrinking of the list of hazards faced by adolescents. It will take collaboration between several institutions to be implemented. The nodal part of the enforcement has been assigned to the District Magistrate. Protecting and rehabilitating child workers is also the responsibility of Legal Services Authorities especially at the district level. In *M.C. Mehta v. State of Tamil Nadu*⁹. The Supreme Court ordered the development of rehabilitation programs to be used on children working in hazardous industries .

Conclusion:

Child protection has become more than a moral duty; now it is a legal duty that is well framed. The world has found the basis of a global agreement recognizing the importance of children as independent rights-holders in international instruments like the Geneva Declaration of 1924, and the Convention on the Rights of the Child, 1989. India has already made important legislative efforts as a signatory to entrench these commitments within its local legal framework. One of the most comprehensive world-wide systems of the Indian framework now exists. The Right to Education Act, 2009 had made education a basic right so that children aged six to fourteen years should be given free education. The Prohibition of Child Marriage Act¹⁰, 2006 and the Protection of Children against Sexual Offences Act, 2012 put into direct confrontation a pernicious social tradition and a broad range of sexual crimes, respectively, with a child-friendly justice. The Juvenile Justice (Care and Protection of Children) Act, 2015 is a delicate balance because it safeguards not only children who are in conflict with law, but also children requiring care, which should be rehabilitative rather than punitive. In 2016, the amended

⁹ *M.C. Mehta v. State of Tamil Nadu* (1996) 6 SCC 756.

¹⁰ *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India).

version of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 further restricts the ban on child labour, which indicates that India is adopting the international standards of labour. Although these are powerful legal privileges, they are currently challenged in a way that diminishes their effectiveness. Child marriage and child labour is perpetuated by social aspects like poverty, illiteracy and deep-rooted practices. The new technology has also brought about new types of exploitations, such as cyber-crimes, which are hard to trace and convict across borders. In addition, institutional inefficiencies, including lack of skilled staff, excess workloads assigned to juvenile boards and welfare committees, and absence of infrastructural facilitation, make implementation difficult. Many gaps have been addressed by judicial pronouncements, and litigation cannot replace systematic enforcement. It takes a multi-pronged approach. First, implementing agencies should be provided with sufficient training and resources to approach child-related issues sensitively. Second, the existing legal prohibitions will not be effective without any social change and engagement of the community. Third, technology must be utilized in a responsible way to fight cyber-exploitation and provide protection against exploitation. Fourth, priority should be placed on rehabilitation whereby children who are rescued under abuses, labour or even war against law are reintroduced in society with pride and prospects.

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