

**“FROM PREAMBLE TO PROTECTION: LEGAL ACTORS AS CONSTITUTIONAL CUSTODIANS OF CHILDHOOD”****Harshita**

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*The Indian Constitution enshrines a vision of justice, equality, and dignity that extends to every citizen, including children often the most vulnerable and voiceless members of society. This research paper critically explores how legal actors, particularly the judiciary and advocates, function as constitutional custodians in ensuring the protection and welfare of children in India. Anchored in the values of the Preamble and reinforced by fundamental rights and directive principles, the paper analyses the evolving doctrine of constitutional morality as it pertains to childhood. By examining landmark judicial pronouncements, the proactive use of Public Interest Litigation (PIL), and the growing involvement of legal professionals in child rights advocacy, the study highlights the legal fraternity's pivotal role in advancing a child-centric justice framework. Furthermore, it investigates the alignment (or lack thereof) between statutory frameworks such as the Juvenile Justice Act, POCSO Act, and constitutional ideals. It also critiques institutional and procedural shortcomings that hinder meaningful access to justice for children, including delays, insensitive procedures, and limited awareness among legal practitioners. Drawing from both jurisprudence and socio-legal analysis, the paper ultimately argues that courts and advocates must embody constitutional morality not just in letter but in spirit—through empathy, vigilance, and child-sensitive practices. The study proposes reforms in legal education, advocacy norms, and court processes to better serve the constitutional promise made to every child. This approach reinforces the need for legal actors to act not merely as interpreters of law, but as guardians of the nation's commitment to protect childhood.*

**Keywords:** Child protection, constitutional morality, judiciary, legal advocacy, child rights, Indian Constitution.

**1. INTRODUCTION**

Children, as the most vulnerable members of society, occupy a unique and sensitive position in the constitutional and legal landscape of India.<sup>1</sup> Although they constitute a significant portion of the population, their voices are often unheard, their interests overlooked, and their rights inadequately protected. In such a context, the role of the Indian Constitution becomes central<sup>2</sup>, not merely as a document of governance but

<sup>1</sup> Vyas, Nitinkumar S. "SAFEGUARDING INDIA'S YOUTH: EXPLORING CHILDREN'S HUMAN RIGHTS THROUGH LEGAL LENS."

<sup>2</sup> Thiruvengadam, Arun K. *The constitution of India: A contextual analysis*. Bloomsbury Publishing, 2017.





as a moral and legal charter that places the welfare of children within the broader promise of justice, equality, and dignity. The Preamble to the Constitution enshrines these values as foundational to the Indian Republic. It is within this framework of constitutional morality that the legal system comprising judges, advocates, and legal institutions must be examined in its role as a custodian of childhood.

The Constitution of India does not have a single chapter dedicated to children. Rather, it embeds child welfare across various Fundamental Rights and Directive Principles of State Policy. Articles 14 and 15 guarantee equality and permit special provisions for children<sup>3</sup>, while Articles 21 and 21A secure the right to life with dignity and the right to free and compulsory education. Directive Principles such as Articles 39(e) and (f) and Article 45 reflect the framers' intent to promote the best interests of the child through policy guidance. However, translating these ideals into practice depends heavily on legal actors who interpret, argue, and enforce these constitutional mandates.

The judiciary in India has played an instrumental role in expanding the ambit of child rights by interpreting constitutional provisions in a purposive and empathetic manner. From landmark rulings on child labour and juvenile justice to decisions that address child sexual abuse and adoption procedures, courts have demonstrated their willingness to act as protectors of children's rights. These judgments often invoke constitutional morality, a concept that emphasizes adherence to the spirit of the Constitution even in the absence of explicit textual provisions. In doing so, the judiciary does not merely resolve legal disputes but actively shapes the moral and normative landscape in which children's rights are understood and safeguarded.

Advocates and legal practitioners also play a pivotal role in this ecosystem. Whether through public interest litigation<sup>4</sup>, legal aid services, or daily courtroom advocacy, they serve as bridges between vulnerable children and the justice system. Their responsibility extends beyond technical legal representation to include a deeper ethical commitment to protect and empower those who cannot advocate for themselves. As officers of the court, they are morally and professionally bound to uphold constitutional values and act in the best interests of children. This paper seeks to explore how the judiciary and the legal profession function as constitutional custodians of childhood.<sup>5</sup> It aims to critically analyze their contributions, challenges, and the evolving jurisprudence surrounding child protection in India. In doing so, it places the discourse within the framework of constitutional morality, highlighting the potential of legal actors to move the promise of the Preamble from lofty aspiration to lived reality for every child in the Indian Republic.

### **1.1 HISTORICAL BACKGROUND**

The recognition of children as distinct rights bearing individuals is a relatively modern development in legal and constitutional discourse. In ancient and medieval India, the concept of childhood was largely subsumed under patriarchal and familial structures, where children were seen as extensions of their family units, especially the father. With no clear legal recognition of their autonomy, children's welfare was traditionally governed by customary laws and religious norms, often varying by region and community. The colonial period in India marked a turning point, albeit gradually, in the legal treatment of children. British colonial administrators introduced several legal reforms that began to acknowledge children's vulnerability and need for protection. The enactment of laws such as the Indian Penal Code 1860 and the Apprentices Act 1850,

<sup>3</sup> General, Distr. "Convention on the Rights of the Child." (2010).

<sup>4</sup> Cummings, Scott L., and Deborah L. Rhode. "Public interest litigation: Insights from theory and practice." *Fordham Urb. LJ* 36 (2009): 603.

<sup>5</sup> Dailey, Anne C. "Children's Constitutional Rights." *Minn. L. Rev.* 95 (2010): 2099.





although limited in scope, were some of the early legal measures recognizing the need to safeguard minors from exploitation and abuse. The post independence era brought significant change. The framers of the Indian Constitution, drawing inspiration from various global charters and human rights documents, enshrined the protection of children as a core value. The Preamble's promise of justice, equality, and dignity extended inherently to children. Fundamental Rights and Directive Principles of State Policy underlined the role of the State in securing opportunities for children's development, protection from exploitation, and access to education. Furthermore, legal actors including the judiciary, legislature, and legal aid institutions have played an increasingly proactive role in interpreting and implementing child rights. Through progressive judgments and social justice oriented interpretations, the judiciary has often acted as a constitutional custodian of children's welfare, reinforcing the vision embedded in the Preamble.

### 1.2. Research Questions:

1. How does the Preamble to the Indian Constitution guide the legal framework for the protection and welfare of children?
2. What role do the Fundamental Rights, particularly Articles 14, 15(3), 21, and 21A, play in safeguarding the rights of children in India?
3. In what ways do the Directive Principles of State Policy, such as Articles 39(e), 39(f), and 45, influence child protection laws and policies in India?
4. How has the concept of "constitutional morality" been applied by the Indian judiciary to evolve child protection jurisprudence?
5. What challenges do legal actors face in implementing child protection laws in India, and how can they overcome them?
6. What role do advocates, legal practitioners, and the judiciary play as constitutional custodians in ensuring the realisation of children's rights in India?

### 1.3. Research Objectives:

1. To analyze the guiding role of the Preamble to the Indian Constitution in shaping a child protection framework based on justice, equality, liberty, and dignity.
2. To examine how key Fundamental Rights, including Articles 14, 15(3), 21, and 21A, are interpreted and applied to safeguard children's rights and well-being in India.
3. To investigate the impact of the Directive Principles of State Policy, particularly Articles 39(e), 39(f), and 45, in directing child welfare initiatives and shaping child protection laws.
4. To explore the development of the "constitutional morality" doctrine and its influence on the evolving legal understanding and application of child protection rights in India.
5. To identify the challenges faced by legal actors in the effective enforcement of child protection laws and propose strategies for overcoming these barriers.
6. To critically assess the roles of advocates, legal professionals, and the judiciary in ensuring the realization of children's rights and their alignment with the constitutional vision of child welfare.

## 2. The Constitutional Vision for Children

The Indian Constitution contains a comprehensive moral and legal framework that underpins child welfare and protection. Although there is no distinct chapter devoted exclusively to children, their rights and needs are embedded throughout the Constitution. The Preamble sets forth the moral vision of the Constitution,





while the Fundamental Rights and Directive Principles of State Policy (DPSPs)<sup>6</sup> provide enforceable and directive standards respectively. When interpreted through the doctrine of constitutional morality, these provisions collectively form a holistic child-centric constitutional vision.<sup>7</sup>

### **2.1. Preamble to the Constitution of India**

*“We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation”<sup>8</sup>*

The Preamble lays down the foundational values that guide constitutional interpretation. Justice in its social, economic, and political dimensions is particularly vital for children, who are often deprived of fair opportunities due to poverty, caste, or lack of access. Liberty ensures freedom of thought and education, critical for a child's development. Equality mandates equal treatment and non-discrimination, while fraternity and dignity establish the need to treat every child with respect and compassion. These values form the soul of the constitutional framework for child protection.

#### **Article 14: Equality before law<sup>9</sup>**

*“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”*

This article applies equally to children. It mandates non-discrimination and requires that children, irrespective of their social or economic background, receive equal protection.<sup>10</sup> This principle is especially significant when dealing with marginalised children, such as those in conflict with the law or victims of trafficking and abuse.

#### **Article 15(3): Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

*“Nothing in this article shall prevent the State from making any special provision for women and children.”*

This clause provides a constitutional justification for affirmative action and protective legislation for children. It empowers the State to enact child-centric laws such as the Juvenile Justice Act, POCSO Act, and Right to Education Act.<sup>11</sup> It acknowledges children's vulnerability and permits targeted interventions.

#### **Article 21: Protection of life and personal liberty**

*“No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

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<sup>6</sup> Gebeye, Berihun Adugna. "The Potential of Directive Principles of State Policy for the Judicial Enforcement of Socio-Economic Rights."

<sup>7</sup> Garayova, Lilla. "Protecting Children's Rights in the Age of Digitalisation-Legal Implications for the Best Interests of the Child."

<sup>8</sup> Budhabharat Shankarrao, M. A. "SOCIAL NATURE OF THE INDIAN CONSTITUTION." *New Approaches in Commerce, Economics, Engineering, Humanities, Arts, Social Sciences and Management: Challenges and Opportunities*: 8.

<sup>10</sup>Besson, Samantha. "The Principle of Non-Discrimination in the Convention on the Rights of the Child." *International Journal of Childrens Rights* 13.4 (2005): 433.

<sup>11</sup> Bajpai, Asha. *Child rights in India: Law, policy, and practice*. Oxford University Press, 2018.





This article has been judicially interpreted to include a range of child rights, such as the right to live with dignity, the right to shelter, nutrition, health, and protection from abuse.<sup>12</sup> It is the constitutional basis for recognising the best interest of the child as a principle of life with dignity.

**Article 21A: Right to education**

*“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.”*

This article constitutionalises the right to elementary education, recognising it as essential for the development of a child’s personality and as a tool for breaking cycles of poverty and exploitation. It aligns with the constitutional aim of ensuring justice and equality.<sup>13</sup>

**Article 39(e): Certain principles of policy to be followed by the State**

*“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.”*

This Directive Principle guides the State to protect children from child labour, hazardous work, and exploitation.<sup>14</sup> It is foundational to laws that prohibit child employment in dangerous or exploitative occupations.

**Article 39(f): Certain principles of policy to be followed by the State**

*“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.”*

This clause reflects the spirit of the Preamble and sets out the broad vision for child protection. It emphasises holistic development, dignity, and protection, which are now key touchstones in judicial decisions on child welfare.<sup>15</sup>

**Article 45: Provision for early childhood care and education to children below the age of six years**

*“The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”*

This article recognises the importance of early education and care as part of the State's duty. It forms the basis for government programmes like the ICDS (Integrated Child Development Services).

**Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health**

*“The State shall 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...”*

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<sup>12</sup> Unicef. "Convention on the Rights of the Child." (1989).

<sup>13</sup> Umejiaku, Nneka. "Multidimensional Child Poverty and Its Implication on Juvenile Justice System." *Journal of Commercial and Property Law* 11.4 (2024): 177-186.

<sup>14</sup> Bekele, Assefa, and William E. Myers. *First things first in child labour: Eliminating work detrimental to children.* International Labour Organization, 1995.

<sup>15</sup> Hendrick, Harry. *Child welfare: Historical dimensions, contemporary debate.* Policy Press, 2003.





This provision is crucial for child health and nutrition. Malnutrition and poor health are major concerns in India and disproportionately affect children.<sup>16</sup> This article supports policies for food security, mid-day meals, and public healthcare for children.

### **3. The Judiciary as a Custodian of Childhood: Judicial Activism in Child Welfare Cases**

#### **3.1. Key Judgments:**

##### **3.1.1. *Lakshmi Kant Pandey v. Union of India*<sup>17</sup>**

This case addressed child trafficking for adoption, and the Supreme Court laid down detailed guidelines to ensure ethical and legal child adoption procedures, focusing on the protection of children's rights in the adoption process.

##### **3.1.2. *Sheela Barse v. Union of India*<sup>18</sup>**

In this case, the Supreme Court directed reforms in juvenile homes to improve conditions and protect children's rights, establishing a framework for institutional care based on the principle of the *best interest of the child*.

##### **3.1.3. *M.C. Mehta v. State of Tamil Nadu (1996)*<sup>19</sup>**

The Supreme Court addressed child labour in the hazardous matchbox industry, ordering the State to eliminate child labour and rehabilitate children, reaffirming the right to protection from exploitation, education, and a safe environment.

##### **3.1.4. *Vishal Jeet v. Union of India (1990)*<sup>20</sup>**

This case dealt with the exploitation of children as domestic workers. The Court emphasized strengthening child labour laws and their enforcement to provide a safe environment and prevent child exploitation.

##### **3.1.5. *Bachpan Bachao Andolan v. Union of India*<sup>21</sup>**

This case involved child labour and trafficking. The Supreme Court directed the government to take immediate measures to curb child exploitation and trafficking, applying the constitutional obligation to ensure children's well-being and interpreting the *best interest* principle.

##### **3.1.6. *Kailash v. Union of India (2011)*<sup>22</sup>**

The Supreme Court reinforced the protection against child labour and ordered stricter enforcement of the Child Labour (Prohibition and Regulation) Act, 1986, strengthening the rights of children in hazardous occupations.

##### **3.1.7. *Shabnam Hashmi v. Union of India (2014)*<sup>23</sup>**

The case focused on the National Child Protection Policy and the government's responsibility to protect children from trafficking and abuse, ensuring children's rights to protection, education, and dignity.

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<sup>16</sup> Paul, Vinod Kumar, et al. "Reproductive health, and child health and nutrition in India: meeting the challenge." *The Lancet* 377.9762 (2011): 332-349.

<sup>17</sup> (AIR 1984 SC 469)

<sup>18</sup> (AIR 1986 SC 1773)

<sup>19</sup> 6 SCC 756

<sup>20</sup> 3 SCC 318

<sup>21</sup> (2011) 5 SCC 1

<sup>22</sup> 5 SCC 413

<sup>23</sup> 4 SCC 312



**3.1.8. Gaurav Jain v. Union of India (1999)<sup>24</sup>**

This case involved children residing in institutions for extended periods. The Court directed reforms to improve conditions, emphasizing family-based care and the *best interest* principle for children in institutional settings.

**3.1.9. State of Uttar Pradesh v. S.C. (2017)<sup>25</sup>**

The Supreme Court directed the government to ensure that child care institutions comply with the Juvenile Justice (Care and Protection of Children) Act, 2015, with regular monitoring to safeguard children's well-being.

**3.1.10. Pragati and Others v. Union of India (2021)<sup>26</sup>**

In this judgment, the Supreme Court addressed child sexual exploitation through online platforms, directing the government to combat child pornography and online abuse, reinforcing the need for modernized child protection laws in the digital era.

**3.1.11. Ruhi Agrawal & Anr. v. Nimish S. Agrawal (2025)<sup>27</sup>**

In this custody case, the Supreme Court modified interim visitation rights for a child, emphasizing the child's safety and well-being, and the importance of monitoring such visits to ensure the child's best interests.

**3.1.12. Vivek Kumar Chaturvedi & Anr. v. State of Uttar Pradesh (2025)<sup>28</sup>**

The Supreme Court ruled in favor of the father's custody claim, directing that the child be retained in the custody of the paternal grandfather, reinforcing the importance of the child's best interests in family law disputes.

**3.1.13. Sharmila Velamur v. V. Sanjay (2025)<sup>29</sup>**

The Supreme Court ruled in favor of a custody claim while taking into account the child's best interests, in this case, a child with a disability. The Court emphasized that the principle of comity of courts must yield to the best interests of the child.

**3.1.14. Rekha v. State of Uttar Pradesh (2025)<sup>30</sup>**

The Allahabad High Court issued directions regarding the welfare of children residing in prisons with their incarcerated parents, emphasizing that such children should not be deprived of their fundamental rights to education and dignity, ensuring their best interests are considered.

**4. Advocates and Legal Aid: Voices for the Voiceless**

Advocates play a crucial role in advocating for the rights and welfare of children, particularly in cases involving juvenile offenders, child trafficking, and child marriage. In the context of child welfare, they function not only as legal professionals but also as moral agents and defenders of children's rights, ensuring that marginalized groups receive representation in courts. This section explores the role of advocates, the

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<sup>24</sup> 9 SCC 83

<sup>25</sup> 9 SCC 473

<sup>26</sup> 5 SCC 619

<sup>27</sup> SCC 190

<sup>28</sup> SCC 276

<sup>29</sup> SCC 387

<sup>30</sup> AHC 920





importance of Public Interest Litigations (PILs), pro bono work, legal aid, and the ethical obligations of lawyers as defenders of vulnerable children.

#### **4.1. The Role of Advocates in PILs, Pro Bono Work, and Legal Aid**

Public Interest Litigations (PILs) have emerged as an important tool for social justice in India, allowing advocates to represent the interests of vulnerable and marginalized groups, including children. Advocates have been instrumental in filing PILs on behalf of children, particularly in cases related to child labour, trafficking, education, and child abuse. PILs empower advocates to bring attention to systemic issues and push for judicial intervention to secure children's rights and welfare.

Pro bono work, wherein legal services are provided for free, has become a vital part of the legal profession's commitment to social justice. Advocates involved in pro bono work contribute significantly to the representation of children in need, especially when families cannot afford legal representation. In many cases, child-specific legal aid schemes have enabled advocates to provide support to children facing abuse, exploitation, and neglect.

The **Legal Services Authorities Act, 1987**, has played a crucial role in ensuring that children have access to free legal services, particularly those from economically disadvantaged backgrounds. Under this Act, Legal Services Authorities have been established at the national, state, and district levels to provide free legal aid and assistance to children in need.<sup>31</sup> The Act also facilitates the appointment of advocates to represent children in cases involving the violation of their rights, ensuring that their interests are represented in judicial proceedings.

##### **4.1.2 Legal Services Authorities Act, 1987 and Child-Specific Schemes**

The **Legal Services Authorities Act, 1987** aims to provide equal access to justice for the poor and marginalized, ensuring that legal services are available to those who cannot afford them. Under this Act, various schemes have been introduced to specifically cater to the needs of children, including those who are victims of trafficking, child marriage, child labour, or other forms of exploitation.<sup>32</sup>

Key provisions include:

- **Free legal aid** to children who are victims of abuse, exploitation, and other violations of their rights.
- **Specialized legal aid schemes** for children in conflict with the law, such as those in juvenile homes or facing charges related to child labour or trafficking.
- **Child-friendly legal representation** to ensure that children's voices are heard in courts and that their best interests are prioritized in legal proceedings.

These schemes have empowered advocates to act as guardians of children's rights, ensuring that children are not deprived of their right to legal representation and protection under the law.

##### **4.1.3. Bar Council Ethics and Duty to Represent the Marginalized**

The **Bar Council of India** sets ethical standards for advocates and emphasizes their duty to represent marginalized individuals, including children. As per the Bar Council's Code of Ethics, advocates are obligated to act as moral agents, ensuring that justice is accessible to all, regardless of social status or economic background.<sup>33</sup>

<sup>31</sup>Legal Services Authorities Act, 1987

<sup>32</sup>Legal Services Authorities Act, 1987

<sup>33</sup> Nandni. "A Comparative Study-Code of Ethics Provided by BCI for Advocates in Distinction with International Bar Association." *Supremo Amicus* 21 (2020): 329.







Advocates have a specific ethical responsibility to represent marginalized groups, including children in need of protection from abuse, exploitation, or neglect. This duty extends beyond mere legal representation, as advocates are expected to engage in social responsibility and uphold the principles of justice, equality, and fairness. The Bar Council's ethical framework compels lawyers to act in the best interests of children, representing their rights and providing a voice for those who are often silenced.

#### **4.1.4. Representation of Juvenile Offenders:**

Advocates have played a pivotal role in cases involving juvenile offenders. Under the **Juvenile Justice (Care and Protection of Children) Act, 2015**, legal representatives are responsible for ensuring that children in conflict with the law receive fair treatment, rehabilitation, and an opportunity to reintegrate into society. Lawyers have been instrumental in ensuring that juvenile offenders are not subjected to adult penal procedures and are instead provided with appropriate rehabilitation, education, and care.<sup>34</sup>

#### **4.1.5. Victims of Trafficking:**

Child trafficking is a grave violation of children's rights. Advocates have been at the forefront of representing children who are victims of trafficking, helping them access justice and secure compensation. In several cases, advocates have successfully brought traffickers to justice, while also securing the rehabilitation and reintegration of the victims. Legal interventions have focused on preventing trafficking and ensuring that children have access to protection and support.

#### **4.2. Child Marriage:**

Advocates have also represented victims of child marriage, a violation of children's rights under Article 21 of the **Indian Constitution**.<sup>35</sup> Lawyers have been active in filing petitions for the annulment of child marriages and advocating for stronger legal provisions to prevent such marriages. Through PILs and other legal channels, advocates have pushed for the enforcement of laws like the **Prohibition of Child Marriage Act, 2006**, and have worked with governmental and non-governmental organizations to raise awareness about the harmful effects of child marriage on children's health, education, and well-being.<sup>36</sup>

### **4.3. Advocates as Moral Agents and Child Rights Defenders**

Advocates, through their representation of children, have taken on the role of moral agents and defenders of child rights. By ensuring that children's best interests are upheld in legal proceedings, they challenge systemic injustices and ensure that children's voices are heard in courts. Advocates working in the area of child rights often collaborate with social workers, psychologists, and other experts to ensure that children receive holistic care and attention, both legally and emotionally.

Through advocacy and litigation, advocates help promote a culture of respect for children's rights, ensuring that the Constitution's promise of justice, equality, and dignity is upheld for every child.<sup>37</sup> Their role extends beyond the courtroom, as they are often involved in drafting policies, conducting awareness campaigns, and promoting child-centric legal reforms.

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<sup>34</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>35</sup> Raj, Anita. "When the mother is a child: the impact of child marriage on the health and human rights of girls." *Archives of disease in childhood* 95.11 (2010): 931-935.

<sup>36</sup> Prohibition of Child Marriage Act, 2006

<sup>37</sup> Onifade, Oyebimpe, et al. "The Critical Role of Legal Advocacy in Expanding Educational Opportunities for Underprivileged Children: Strategic Frameworks and Policy Solutions."





## 5. Interplay Between Statutory Law and Constitutional Values

The protection and promotion of children's rights in India is governed by a complex interplay between statutory laws and constitutional values. Statutory laws such as the **Juvenile Justice (Care and Protection of Children) Act, 2015**, the **Protection of Children from Sexual Offences (POCSO) Act, 2012**, and the **Child Labour (Prohibition and Regulation) Act, 1986** serve as legal instruments aimed at addressing specific issues relating to child welfare, but their effectiveness depends on their alignment with the fundamental rights and constitutional values enshrined in the **Indian Constitution**. This section explores how these statutory laws harmonize with constitutional principles, the gaps that remain, and the tensions in their implementation.

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

The **Juvenile Justice (Care and Protection of Children) Act, 2015** is a comprehensive law aimed at ensuring the welfare of children who are in need of care and protection, or those in conflict with the law. It embodies the principles of **Article 21** (Right to Life and Personal Liberty) and **Article 15(3)** (special provisions for children) of the **Indian Constitution**, which recognize children as a vulnerable group that requires protection from exploitation and abuse.

The Act also adheres to the constitutional values of **equality** and **justice** by emphasizing the *best interests of the child*, ensuring that children are treated differently from adults in the legal system, and promoting rehabilitation and reintegration. The **Juvenile Justice Board (JJB)** and **Child Welfare Committees (CWC)** are constituted to provide a child-friendly mechanism for handling cases of children in conflict with the law or those in need of care.<sup>38</sup>

However, the implementation of the **Juvenile Justice Act** has faced challenges. A key tension lies in the growing debate around whether juveniles involved in serious crimes should be tried as adults, particularly in cases where the crime is violent in nature. The Supreme Court in **Prakash Singh v. Union of India (2016)** held that the *best interests of the child* must always be prioritized, but the increasing public concern over juvenile crime has created a rift between juvenile protection and the demand for harsher punishment. Additionally, there is a lack of sufficient infrastructure for rehabilitative care, which impedes the full realization of the Act's goals.

### 5.2. Protection of Children from Sexual Offences (POCSO) Act, 2012

The **Protection of Children from Sexual Offences (POCSO) Act, 2012** is another crucial piece of legislation that aligns with constitutional values, particularly the protection of children's dignity and liberty under **Article 21**. The Act aims to safeguard children from sexual abuse, harassment, and exploitation, establishing a framework for child-sensitive legal proceedings. It incorporates various provisions to provide a safe environment for children to report abuse, ensuring that their dignity and privacy are protected throughout legal processes.

POCSO is consistent with the constitutional mandate of ensuring **justice** and **equality**, as it mandates that children be treated with special care and protection, and establishes guidelines for the examination of children in a manner that respects their mental and emotional well-being.<sup>39</sup> The **Child Protection Units** set

<sup>38</sup> Mehta, Nilima. "Child protection and juvenile justice system." *Mumbai, Childline India Foundation* (2008).

<sup>39</sup> Maan, Shikha. "Protection of Children from Sexual Offences: An Analysis of the POCSO Act, 2012." *Issue 4 Indian JL & Legal Rsch.* 4 (2022): 1.





up under the Act also emphasize the importance of multidisciplinary care for children, with social workers, police, and medical personnel working together to provide comprehensive support to victims of abuse.<sup>40</sup> However, the implementation of the POCSO Act faces significant challenges, including delays in trials, under-reporting of cases, and a lack of awareness about the rights of children under the law. The Act also requires specialized training for law enforcement and judicial officers to handle sensitive cases, yet this training remains inconsistent across various states. The **inadequate infrastructure** for child care and protection, and difficulties in **sensitive reporting and witness protection**, continue to impede the full realization of the POCSO Act's objectives.

### 5.3. Child Labour (Prohibition and Regulation) Act, 1986

The **Child Labour (Prohibition and Regulation) Act, 1986** was enacted to prohibit the employment of children in hazardous industries and regulate their work in non-hazardous industries. The Act aligns with constitutional principles of **equality** under **Article 14**, as it recognizes the inherent vulnerability of children and seeks to prevent exploitation. The **Right to Education** under **Article 21A** further strengthens the constitutional link, as it mandates free and compulsory education for children up to the age of 14 years, preventing child labour from interfering with children's right to education.

Despite its alignment with constitutional values, the Act has faced significant challenges in its implementation. The continued prevalence of child labour in rural and urban areas, particularly in sectors like agriculture, domestic work, and small-scale industries, highlights gaps in the enforcement of the law. Inadequate **inspections, corruption, and lack of awareness** in rural areas have resulted in children being employed in unsafe and exploitative environments. Additionally, the **amendment in 2016** that raised the permissible age for work in non-hazardous occupations has been criticized for potentially exposing children to exploitation.

### 5.4. Harmonising Statutory Law with Constitutional Mandates

While the statutory laws discussed above are designed to protect children from various forms of abuse and exploitation, the challenge remains in ensuring their alignment with the **constitutional values** of **equality, justice, and dignity**. These laws often embody the principles of the **best interest of the child, non-discrimination, and protection from harm**, which are foundational to the Constitution.

However, gaps remain in their implementation. For instance, the **inequality in access to legal resources** for marginalized children, such as those from rural areas, continues to undermine the effectiveness of these laws. Moreover, systemic issues such as **poor infrastructure**, lack of trained professionals, and **slow judicial processes** often delay justice, leaving children vulnerable to prolonged harm. The tension between **enforcing strict punitive measures** for certain offences (e.g., juvenile crimes) and the **rehabilitative ethos** of child protection is another ongoing challenge.

### 4.5. Gaps and Tensions in Implementation

Several gaps and tensions persist in the implementation of statutory laws protecting children. Key issues include:

- **Inconsistent Enforcement:** There is often a disconnect between the law on paper and its enforcement on the ground. A lack of adequate resources and personnel for monitoring and enforcement makes it difficult to uphold children's rights effectively.

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<sup>40</sup> Alfandari, Ravit, and Brian J. Taylor. "Processes of multiprofessional child protection decision making in hospital settings: Systematic narrative review." *Trauma, Violence, & Abuse* 24.1 (2023): 295-312.





- **Judicial Delay:** Prolonged trials and a backlog of cases contribute to the delay in the delivery of justice for children.
- **Awareness Deficits:** Despite the existence of child protection laws, awareness about these laws remains limited, particularly in rural areas and among disadvantaged communities. This often results in under-reporting of crimes against children.
- **Coordination Issues:** Effective implementation requires the coordination of multiple stakeholders, including law enforcement, social workers, and the judiciary. However, coordination issues between these entities often hamper the smooth functioning of child welfare systems.

## 6. CONCLUSION AND SUGGESTIONS

### 6.1. Conclusion

The legal framework for child welfare and protection in India is grounded in both constitutional mandates and statutory laws designed to safeguard the rights of children. Laws such as the **Juvenile Justice (Care and Protection of Children) Act, 2015**, the **Protection of Children from Sexual Offences (POCSO) Act, 2012**, and the **Child Labour (Prohibition and Regulation) Act, 1986** serve as crucial instruments in addressing the various forms of exploitation, abuse, and neglect that children face. These laws embody constitutional values such as **equality, justice, and dignity**, ensuring that children are afforded protection from harm and given opportunities for development and rehabilitation.

However, despite the robust legal framework, there remain significant gaps in the effective implementation of these laws. Issues such as **delays in judicial processes, insufficient enforcement mechanisms, lack of awareness, and inadequate resources** continue to hinder the full realization of these legal provisions. Furthermore, the growing tensions between punitive measures and the **rehabilitative** ethos of child protection challenge the ability of the justice system to strike a balance between deterrence and rehabilitation.

In order to address these gaps and enhance the protection of children, it is imperative that there is a more concerted effort towards aligning statutory law with constitutional values through effective implementation, greater awareness, and enhanced infrastructure.

### 6.2. Suggestions

#### 1. Strengthening Enforcement Mechanisms:

There is a need to increase the effectiveness of enforcement of child protection laws. This includes better training for law enforcement personnel, increased inspections, and the establishment of child protection units at the local level. Ensuring that the law is actively and consistently enforced will help reduce violations of children's rights.

#### 2. Expediting Judicial Processes:

To minimize delays in justice, there is a need to expedite judicial processes related to child protection cases. This can be achieved by establishing dedicated child protection courts, implementing case management systems, and reducing the backlog of cases involving children. Fast-tracking cases related to child abuse, trafficking, and child labour will ensure that justice is served in a timely manner.

#### 3. Increasing Awareness Campaigns:

Awareness about children's rights and the existing legal protections remains limited, especially in rural areas. Government and non-government organizations should launch extensive awareness campaigns to educate both children and adults about the legal provisions available for their





protection. Community-based programs can help spread knowledge about laws such as POCSO, Juvenile Justice Act, and the Right to Education.

4. **Capacity Building for Legal Professionals:**

Legal professionals, including judges and advocates, should be provided with specialized training to handle child protection cases. This training should include understanding child psychology, the specifics of child abuse cases, and the importance of child-friendly judicial processes. Such training will improve the handling of cases and ensure that the needs of children are appropriately met in the courtroom.

5. **Enhancing Support Systems for Rehabilitation:**

The focus of child protection should not only be on punitive measures but also on rehabilitation and reintegration into society. Ensuring adequate facilities for the rehabilitation of children in conflict with the law, victims of trafficking, and those rescued from child labour is essential. Increased investment in **juvenile homes, recovery centers, and counseling services** will support the emotional and social reintegration of children into society.

6. **Strengthening the Role of Child Welfare Committees (CWC) and Juvenile Justice Boards (JJB):**

The **Child Welfare Committees (CWC)** and **Juvenile Justice Boards (JJB)** play a critical role in child protection. Their role needs to be enhanced with better coordination between different stakeholders and more resources for the effective functioning of these bodies. These institutions should be better equipped to handle the increasing number of cases and ensure that the best interests of the child are prioritized in all decisions.

7. **Collaboration Between Government and Civil Society Organizations:**

There should be greater collaboration between the government and civil society organizations to provide comprehensive support to children. NGOs play a vital role in child protection and can assist with the implementation of statutory laws, provide shelters, offer rehabilitation programs, and assist in public awareness initiatives. Strengthening these partnerships will lead to a more integrated approach to child welfare.

8. **Reviewing and Amending Laws Regularly:**

The statutory laws protecting children must be regularly reviewed to address emerging challenges. The laws should be updated to tackle new forms of child exploitation, such as online abuse, cyberbullying, and child pornography, which are becoming increasingly prevalent. Regular amendments to existing laws will ensure that they remain relevant and capable of providing adequate protection in an evolving society.

9. **Child-Centric Policy Reforms:**

Policy reforms should be child-centric and focus on prevention, protection, and rehabilitation. This includes ensuring that **access to education, health care, and social security** are made available to all children, especially those in marginalized communities. Policies that address the root causes of child exploitation, such as poverty, illiteracy, and lack of social infrastructure, will contribute to a more sustainable and child-friendly legal environment.

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