

# Kaleidoscope of Children: Issues through the Lens of the Youth



सत्ये स्थितो धर्मः



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**Kaleidoscope of Children:  
Issues through the Lens of the Youth**



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First paperback edition - February, 2024

Suggested Citation - Kumari, V., & Srivastava, K. (Eds.). (2024). Kaleidoscope of Children: Issues through the Lens of the Youth. National Law University, Odisha

**ISBN : 978-81-982431-3-3**

**Printed and Produced by**  
Canonfire Creatives Pvt. Ltd.  
150, Saheed Nagar, Bhubaneswar-751 007  
Ph.: 0674-2544844  
E-mail : [csbbsr@canonfirecreatives.com](mailto:csbbsr@canonfirecreatives.com)

# **Kaleidoscope of Children: Issues through the Lens of the Youth**

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We thank Biraj Swain, Chief Minister's Chair Professor,  
Centre for Child Rights, for her invaluable support in  
bringing this book to life.

## Foreword

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We, at the National Law University Odisha, NLUO, are committed to the agenda of educating our students to not just become good law and justice officers, but to become good human beings and citizens too. Hence it is important for our students of law to see, to be aware of their own prejudices and to address those upfront.

This book “*Kaleidoscope of Children: Issues through the lens of the youth*” is an exercise of “seeing”, of visiblising the invisible, of building empathy, building fraternity and solidarity. These are also the cornerstones of the Indian Constitution and India as a democracy. The title of the book Kaleidoscope of Children: Issues from the Lens of Youth was chosen as the students were free to choose a picture of any child and the book presents the Kaleidoscope of children created by the young people who have just recently crossed the age limit of being children. The feelings and thoughts and the essays contained in this collection is their choice and their perspectives, giving a glimpse in their minds. It brings out the contrast between their understanding of childhood being a period of innocence, of growth, education, play, health, love and affection and the pictures that depict a world of deprivation, abuse, exploitation and missed opportunities.

This book has its origin in the optional course on Child Rights offered to third year students of BALLB and BBALLB students at the National Law University Odisha in July 2022. The course covered a wide range of topics from conceptualising children, international regime, status of children in India to various laws relating to children in difficult circumstances. The students in this class were all around 20 years of age. The teaching methodology, however, was not teacher centred. The students were made to do things, to think and reflect on conceptualisation of children and issues around childhood.

As part of conceptualisation of children, the students were asked to pick any five random pictures of children from the net and then write down their own feeling and the thought in their mind as they looked at the picture. The idea was to find out what draws their attention and what they

feel and think about children. During class discussions on the pictures, it was interesting to note that different students had different feeling and / or thought on the same picture. This led to more introspection about what one saw or did not see depended on each person's experiences in life, their exposure and sometimes ignorance of certain issues. For example, one of the pictures had three children under a tree on the street, visibly unclean and poor. The eldest of them was a girl and two others seemed like her younger brothers. The student seemed to be worried only about the girl and her possible sexual exploitation. He perhaps assumed that the boys in that picture may not be subject to similar abuse.

They were then asked to *dig deep into the back story of children's deprivation of childhood through the legal lens* and look at the violations that children face, and the possible remedies that the children can access, to address those deprivations. The student looked and the deprivation that children like them, or even younger than them went through. Student also became aware of the rights that are normal for them but how the same rights were denied to the children in the photos. Each student-author further chose two of the five photos to write their research paper. It is hoped that such connections between the black letter of law and the lived realities of children for whom those laws are made has made these students more alive to the empowering and disempowering role of law and how much needs to be done to change the situation.

The pictures selected by the students depicted children in a varied range of circumstances – child labour, child marriage, abused children, happy children, children with parents, children in school, children in war and conflict situations, children with arms, children with disability, malnourished children, orphans, trafficked children, sexual abuse, immunisation, children in institutions, etc. When it came to writing the research paper, the most recurring theme was child labour, followed by education, institutionalisation, and abuse including sexual abuse. Occasionally the papers focused on children in other difficult circumstances caused by malnutrition, poverty, wars, or broken family. One of the papers focuses on an issue generally not talked about, namely, adoption of refugee children as their status as 'children free of adoption' is not easily established.

While there were pictures of smiling children, happy children with parents, etc, recording students' feeling of happiness and hope looking at those pictures, the articles focus more on the deprivation and denial of childhood to children. It is hoped that the connections between the black letter of law and the lived experience of children for whom those laws have been made, became alive for all these students who underwent this exercise and they will be able to relate to the other side of law.

This collection consists of **26 chapters focused on** four broad themes, i.e.,

- Children's right to development including issues around education, health, and disability,
- Children in difficult circumstances focused on institutionalisation whether due to their own acts or growing up in prisons with their mothers, children in armed conflict, poverty and abused children in institutions;
- Sexual abuse of children including child marriages; and
- Child Labour

But, like our lives are inter-sectional, child rights are also indivisible and universal. Hence, the narratives in these chapters and sections also have an element of inter-sectionality. As the students were free to chose any two areas of their concern, it was not able to classify them by any straight jacket formula. Hence, their papers presented in two volumes cut across these four themes.

Under the first theme of children's right to development, this collection discusses the right of every child to access education, so that the child develops to their fullest potential and have a secure future. Education is the ticket to graduation from survival (at the margins) to thrive! Health precedes the pursuit of education and hence, articles connected with issues of health, malnutrition, disability, etc., have also been included within this theme. Proper health and hygiene play a key role in ensuring all-round development of children. But children are dependent on adults for the fulfilments of these most basic rights to health, hygiene and



nutrition (all of which contribute to cognitive development of the child in formative years) and have almost no say when denied adequate health care, proper nutrition, sanitation, and a healthy living environment. So when such violations happen, who are responsible and legally what can be done to restore these rights in letter and spirit, is what the student-authors discuss in their chapters in this section.

The second theme of institutionalisation and children in difficult circumstances contains articles written about children in conflict with law, children in prisons with their mothers, children in war and conflict situations and refugee children. It highlights that though children are the most vulnerable in a situation of conflict and at high risk of being orphaned or separated from their families. Poverty and issue of begging by children have also found a place under this theme.

The third theme of this collection is child abuse. It analyses various forms of abuse the children suffer and the recourse available to provide protection to children under threat of actual abuse. It spotlights the fact that children can be vulnerable to abuse in various settings in their daily lives i.e. at home, in school, at childcare institutions, at place of work and in the community. India has multiple and comprehensive policies and legal frameworks for addressing violence against children and ensuring their protection. Neglected children growing up in an institution puts them at risk of physical, emotional, mental, and social harm and it is the right of every child to grow up in a supportive family environment. Deprived of parental care, children face consequences that may scar them for the life.

The fourth theme is child labour in this compilation. Poverty is the primary reason due to which substantive numbers of children are driven to some form of labour resulting in extreme physical and mental harm. It also leads to dangerous practices of bonded labour, sexual and/or economic exploitation. The legal recourse available, judicial pronouncements and various scheme promoting compulsory primary education as the antidote to child labour are also discussed by some student-authors in this section.

Coming back to our inspiration “*seeing*”, this book makes law students, young adults *see*, see the children not similarly placed as them but deserving every bit of the same rights. It is about humanising the children world-wide. It is about bringing legal perspective to understand and challenge deprivations that children experience. It is about building fraternity, solidarity and humanity.

Before parting, I want to recognise the work done by the faculty who supervised the student-authors to revise and improve their articles and the team of students who have worked meticulously to copy-edit their articles for publication. Kriti Srivastava has been at the heart of this endeavour getting everybody to work as a team resulting in due recognition of the student-authors and student-editors work. I hope that this book will inspire more such publication of the research work done by students. I hope that all those interested to get a glimpse in the lives of children and thoughts of youth on children, will find this book useful and interesting.

We sincerely hope the readers will have as much a transformative experience reading this, as we, the faculty and our student-authors had, conceptualising and writing this.

Signature:

**Prof Ved Kumari**

Vice Chancellor,

National law University, Odisha

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# BREAKING CHAINS:A HOLISTIC APPROACH TOWARDS COMBATING CHILD LABOUR AND MARRIAGE

Astha Bhattacharya\*

## Five random pictures of children chosen from the web



Figure1  
<https://telanganatoday.com/concerns-rised-over-increased-child-abuse-crime-rate-in-pakistan>

**Feeling :** Shock

**Thought :** For a child, their parents/ guardians/family is their safety vault. It is our shared responsibility as a society to stop child abuse, support victims, and create a safe space where every child can grow and thrive.

**Feeling :** Pity

**Thought :** At an age, when they should be playing with their friends and not worrying about anything, they are carrying the burden and responsibility of their family with some children even being the sole bread-earner.



Figure 2 <https://thegurukuliansfoundation.org>



Figure3  
<https://www.gaonconnection.com/desh-duniya/2-million-child-brides-are-in-chhattisgarh>

**Feeling:** Anxiety

**Thought:** This invokes anxiety as the child has not completed their education, and using them as a medium or modicum for procreation stands for an ancient belief system.

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\* 4<sup>th</sup> Year Student, BBA LLB (Hons.), National Law University Odisha

**Feeling : Anger**

**Thought :** The child goes through corporal punishments it imbibes psychological trauma along with layers of fear.



Figure 4  
<https://medium.com/@azrakhn9913/corporal-punishment-in-schools-madrassas-8a67cea32f75>



Figure 5 <https://www.france24.com/en/20170330-number-syrian-refugees-passes-5-million>

**Feeling : Remorse**

**Thought :** The kid is without having food and clean water from several days yet he has the sheer courage to go through these extremities while trying to smile.

I have chosen to focus on a holistic approach towards combating child labor and child marriage.

# PART 1 - CHILD MARRIAGE

## INTRODUCTION

“Children are the world’s most valuable resource and its best hope for the future”  
- John F. Kennedy

If there is any stakeholder in the society that could be considered closest to resembling clay, it would be children. Just as a skilled potter can shape clay into any form, children and their personalities, beliefs and behaviors can be shaped by their parents, caregivers, and educators. Everything they see, hear, and experience can have a lasting impact on their development.

Children are important assets to society because they represent the future of that society. They are the next generation of leaders, innovators, and problem solvers, and their success and well-being are critical to the long-term prosperity of society. Children bring a unique perspective and creativity to the world, and they have the potential to make significant contributions in various fields.

They come from different backgrounds, cultures, and beliefs, but they all share the same fundamental right to a safe, healthy, and happy childhood. Unfortunately, millions of children around the world face various challenges, including poverty, hunger, lack of access to education and healthcare, and discrimination. Despite these challenges, children continue to amaze us with their resilience, creativity, and spirit. It is our responsibility as adults and as a society to provide children with the support and resources they need to thrive and reach their full potential.

Children are considered vulnerable because they are still in the process of growing and developing physically, mentally, and emotionally, and they often lack the skills and knowledge to protect themselves from harm. They are also dependent on adults for their basic needs, including food, shelter, and protection, and may not have access to the resources and support necessary to thrive. The total population of children in the world is roughly 656,640,181.5 whereas the total population under the age of



18 is 2,397,435,502.5.<sup>1</sup> India has the largest adolescent population in the world which is 253 million, and every fifth person is between 10 to 19 years.<sup>2</sup> India is a diverse country with a rich cultural heritage, and children in India come from a variety of backgrounds and ethnicities. They face a range of challenges and opportunities, depending on their socioeconomic background, geographic location, and other factors.

Some of the major issues children are facing in India include poverty, malnutrition, lack of access to education, healthcare, child labor, child marriage, and gender discrimination. Despite these challenges, there have been significant improvements in the well-being of children in India over the years, including increased access to education, improvements in healthcare, and a decline in child mortality rates.

### **The Conundrum of Child Marriage and its Legal Ramifications**

Children represent a significant portion of India's population, accounting for approximately 28% of the total population. This means that they are an essential demographic group that cannot be ignored when planning for the country's future. Overall, children are important in India for their demographic significance, economic potential, social progress, and cultural heritage. Investing in their well-being and development is essential for the country's future growth and prosperity.

Child marriage refers to the marriage of a child younger than 18 years old, in accordance to Article 1 of the Convention on the Right of the Child<sup>3</sup>. In simple terms, child marriage is the marriage of a person aged before majority. As a derivative interpretation of several international documents, it is a violation of human rights<sup>4</sup>. Although both sexes are impacted, girls are disproportionately affected as they make up the majority of victims. Child marriage and engagement are frequently the result of traditions shaped by economic, cultural, and religious considerations.

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<sup>1</sup>Milan, "How Many Children Are There in the World? - UNICEF Data" (*UNICEF DATA*, 10 May 2022) <https://data.unicef.org/how-many/how-many-children-under-18-are-in-the-world/> (accessed on 20 April 2023)

<sup>2</sup>"Adolescent Health :: National Health Mission" <https://nhm.gov.in/index1.php?lang=1&level=2&-sublinkid=818&lid=221> accessed April 22, 2023

<sup>3</sup>The Convention on the Rights of the Child, art 1

<sup>4</sup>UNICEF, *Child Marriage Information Sheet*, May 2006

The Child Marriage (Restraint) Act, 1929 was superseded by the Prohibition of Child Marriage Act, 2006 in India, which set the legal marriage age at 21 for men and 18 for women. The fact that child marriages in India can take place in line with different personal laws means that there is no single law that governs them, which makes efforts to prevent and resolve this problem.

### **Issues about Child Marriage**

Child marriage is a complex problem that has significant effects on young girls' development and well-being. The following are the main issues surrounding child marriage:<sup>5</sup>

**HEALTH RISKS:** Child brides are more likely to experience mental and physical health problems. They are more vulnerable to problems that arise during pregnancy and childbirth, including maternal mortality, premature birth, and obstetric fistula. Child brides also frequently experience sexual abuse, domestic violence, and mental health issues like anxiety and depression.

**EDUCATION:** Girls who are married off as children often stop attending school, which limits their access to higher education and future employment opportunities. Girls who do not receive an education are also more susceptible to poverty and unstable economic conditions.

**ECONOMIC DISADVANTAGE:** Young brides frequently marry older men who might not have the resource to support them and their children, which puts them in financial difficulty and feeds the cycle of poverty.

**GENDER INEQUALITY:** By sustaining the idea that girls are less valuable than boys, child marriage contributes to gender inequality. It solidifies the idea that a girl's main function is to get married, have kids, and take care of the home.

**VIOLATIONS OF HUMAN RIGHTS:** Child marriage denies girls their rights to health care, education, and protection from exploitation and abuse.

Child marriage is a problem that requires a comprehensive strategy to address its underlying causes, which include gender inequality, poverty, and cultural norms. This entails educating girls to empower them, advocating for

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5 Pintu Paul, 'Child Marriage Among Girls in India: Prevalence, Trends and Socio-Economic Correlates' (2020) 14 Sage Journal 2

gender equality, bringing attention to the negative effects of child marriage, and upholding the laws that forbid the practice.

### **Latest Data and Statistics related to Child Marriage**

India leads the world in the number of Child Brides, with an astounding 1.5 million girls under the age of 18 being married every year, according to UNICEF estimates.<sup>6</sup> In the world, one in three child brides comes from India. 102 million of the 223 million child brides in the nation are married before turning 15, which is a concerning statistic. Even though the percentage of Child Marriages decreased from 47% to 27% between 2005–2006 and 2015–2016, the current rate of girls getting married before turning 18 is still too high. India comes in fourth place out of the eight South Asian countries in terms of the prevalence of child marriage.<sup>7</sup>

In the past five years, the proportion of women ages 20 to 24 who wed before turning 18 has decreased from 27% to 23%. Child marriage is more common than the national average of 23% in eight states. With more than 40% of women in their 20s and 30s married before turning 18, West Bengal, Bihar, and Tripura lead the list. States with higher rates of literacy as well as stronger social and health indices have performed significantly better on this metric. Women who were married before the age of 18 in Kerala decreased from 7.6% in 2015-16 to 6.3% in 2019–20.<sup>8</sup>

### **Legal Provisions**

The legislation has not been able to stop the practice of child weddings, which occurs in all religions but is most frequently associated with Hindus. A movement is underway to eliminate it, and numerous NGOs are engaged in this struggle. Even public interest lawsuits brought failed to significantly alter the situation. Legislative attempts to address child marriage in India have a long history, going back to the time the nation was still forming its constitution and gaining independence. To address child marriage, several

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<sup>6</sup>“Ending Child Marriage and Adolescent Empowerment” (UNICEF India) < <https://www.unicef.org/india/what-we-do/end-child-marriage> > (accessed on 22 April 2023)

<sup>7</sup>‘India - Children and Armed Conflict’ <<https://childrenandarmedconflict.un.org/where-we-work/india/>> (accessed on 20 April 2023)

<sup>8</sup>E Online, “Child Marriage: 20% of Women in 20-24 Age Group Married before the Age of 18, Report Finds” Economic Times accessed on (December 22, 2022) < <https://economictimes.indiatimes.com/news/india/child-marriage-20-of-women-in-20-24-age-group-married-before-the-age-of-18-report-finds/articleshow/96416424.cms?from=mdr>> (accessed on 22 April 2023)

important pieces of legislation have been passed, including:

THE CHILD MARRIAGE (RESTRAINT) ACT 1929<sup>9</sup> - This groundbreaking legislation set a minimum legal age for marriage in India to outlaw child marriage. The *Sushila Gothala v State of Rajasthan*<sup>10</sup> court decision upheld the minimum age of 18 for girls and 21 for boys to get married. Child marriage has continued in spite of this legislation.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006<sup>11</sup> - This groundbreaking legislation set a minimum legal age for marriage in India with the intention of outlawing child marriage. The *Apex Courts' decision*<sup>12</sup> upheld the minimum age of 18 for girls and 21 for boys to get married. Child marriage has continued in spite of this legislation.

INDIAN PENAL CODE<sup>13</sup> AND CHILD MARRIAGE - The Indian Penal Code, 1860 addresses the ramifications of child marriage, including the actual union of spouses and childbirth. According to Section 376<sup>14</sup>, there are specific situations in which having sex with a woman— with or without her consent—becomes rape. Notably, Exception 2 of Section 376<sup>15</sup> states that having sex with a wife who is not younger than fifteen years old does not qualify as rape.

Certain situations and the offence of rape are as follows:

Above 18 + Consent= No Rape

Above 18 + No Consent= Rape

Below 18 + With or without consent= Rape

Above 15 + Girl being Wife + With or without consent= No Rape

Below 15 + Girl being wife + With or without consent= Rape

Given the scenarios outlined, it appears that the Indian Penal Code, 1860 has recognized the prevalence of child marriages in society and, inadvertently, supported marriage as an institution. This is clear from the clause that states

<sup>9</sup>Child Marriage (Restraint) Act 1929.

<sup>10</sup>AIR 1995 Raj 90.

<sup>11</sup>Prohibition of Child Marriage Act 2006.

<sup>12</sup>*Sushila Gothala v State of Rajasthan* AIR 1995 RAJ 90

<sup>13</sup>Indian Penal Code 1860.

<sup>14</sup>Indian Penal Code 1860.

<sup>15</sup>Indian Penal Code 1860.

that having sex with a wife who is between the ages of 15 and 18 is not considered rape.

THE MATRIMONIAL ANGLE OF THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 - No cases have been found where “Child Marriage” is deemed to be illegal. But in India, the legality of a marriage is determined by family law standards. Different sections of the Prohibition of Child Marriage Act, 2006 (the ‘Act’) may be relevant when determining whether child marriage is legal. Additional regulations pertaining to “maintenance” and “the legitimacy of the child” have been introduced by the Act in relation to these child marriages.

Child marriage is defined as a voidable marriage in Section 3 of the Prohibition of Child Marriage Act, 2006. According to Section 3<sup>16</sup>, a petition for the annulment of a child marriage may be heard by the District Court at any time, but no earlier than two years after the child reaches majority. Nevertheless, Section 12 of the Act declares child marriage null and void under certain circumstances. Section 12<sup>17</sup> states that if a minor is forced into marriage, sold for marriage, or exploited for immoral reasons after marriage, the marriage is deemed null and void. Furthermore, child marriages are void if the child is later sold, trafficked, or used as an exploitative tool for illegal activity.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 – This addresses girls’ maintenance and the legality of children born out of child marriages in Sections 4 and 5. In accordance with these sections, the district court can make decisions regarding the child’s upbringing, support, and residence in favor of the female spouse while the petition is pending and until her subsequent remarriage. In addition, Section 4<sup>18</sup> recognizes children born in such marriages as legitimate.

### **Judicial Precedents**

*Lajja Devi v State* <sup>19</sup>– The Prohibition of Child Marriage Act, 2006 supersedes personal laws, and a child marriage entered into by a minor girl is voidable, according to the court’s ruling in *Lajja Devi v. State*. The court stressed that child marriages cannot be declared void in any situation because the Act makes them voidable.

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<sup>16</sup>Prohibition of Child Marriage Act 2006.

<sup>17</sup>Prohibition of Child Marriage Act 2006.

<sup>18</sup>Prohibition of Child Marriage Act 2006.

<sup>19</sup>2013 CRI L J 3458

*Independent Thought v UOI and Anr*<sup>20</sup>- The Supreme Court examined Section 375 of the Indian Penal Code, 1860 and the Prohibition of Child Marriage Act, 2006 in the historic decision of *Independent Thought v. UOI and Anr*. In interpreting the exception to Section 375, the court pointed out the inconsistencies in the law and declared that “sexual intercourse or sexual acts by a man with his own wife, where the wife is not below 18 years, is not rape.”

*T. Sivakumar v The Inspector of Police*<sup>21</sup> - The High Court reversed the decision of a division bench in *T. Sivakumar v. The Inspector of Police* and upheld the use of Section 3 of the Prohibition of Child Marriage Act. The court decided that, subject to the specified statute of limitations, a marriage is voidable until the parties accept it or file for annulment under Section 3. As a result, the court made it clear that a child marriage is automatically voidable by virtue of Section 3, meaning that an application under the Act is not required.

## **Recent Developments**

The Prohibition of Child Marriage Act, 2006 superseded the Prohibition of Child Marriage Act, 1929 in an effort to reduce child marriages in India. According to International Centre for Research on Women and the United Nations Population Fund (UNFPA)<sup>22</sup>, child marriages continue to occur at a rate of 50% in the nation despite this legal framework, especially in rural areas where conditions are frequently more difficult. When it comes to totally ending child marriages, particularly in rural areas, India lags behind. The legislature introduced the Prohibition of Child Marriage (Amendment) Bill, 2021 in response to this problem. By raising it to 21, this proposed bill seeks to bring the legal age of marriage for female children into line with that of male children.

In addition, the Bill aims to prolong the period of time that a marriage can be deemed null and void. Presently, the statute of limitations is two years from the legal marriage age, which is eighteen years for women and twenty-one years for men, as stated in Section 3(3) of the Act. The Bill suggests extending this period to a period of five years.

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<sup>20</sup>AIR 2017 SC 4904

<sup>21</sup>AIR 2012 Mad 62

<sup>22</sup>United Nations Population Fund, *Child Marriage in Southern Asia* < <https://asiapacific.unfpa.org/sites/default/files/pub-pdf/Child%20Marriage%20in%20Southern%20Asia.pdf>> (accessed on 26 April 2023)

The statement of objects and reasons for the bill states that the amendment is required to achieve gender equality, citing Article 14 of the Indian Constitution. Should the bill be approved, it would also require modifications to all personal laws, setting the legal age of marriage at 21 for both men and women.

### **Various Government Schemes related to Child Marriage**

The Indian government and the State Government have implemented several schemes and initiatives to address the issue of child marriage. Here are some of the key schemes:

**Balika Samridhhi Yojana:** Through this scholarship program, impoverished girls and their families can receive financial assistance. This scheme aims at

raising girls' social status, advancing their marriageable age, and increasing school enrolment are the objectives.

**Ladli Scheme:** This programme, which was introduced by the government of Haryana in 2005, attempts to dispel the stigma associated with female birth in a state where males predominate. Its main goals are raising awareness of female protection issues and enhancing female students' educational opportunities.

**Kishori Shakti Yojana (KSY):** The mission of KSY is to provide health, education, and life skills to underprivileged adolescent girls. It also aims to increase girls' involvement in decision-making and prevent child marriage.

**Shagun Scheme Ashirbad:** The Punjabi government launched this program with the goal of easing financial burdens on families and encouraging the birth and upbringing of girls. It offers gifts and financial support to brides from economically disadvantaged backgrounds.

**National Scheme of Incentive for The Girls Of Secondary Education:** This 2008 all-India program encourages girls to go to secondary school, especially those from underprivileged backgrounds. Girls are given a fixed deposit, which they can access with interest after passing their tenth-grade exam, as financial support.

**Dhanalakshmi Scheme:** This conditional cash transfer program with insurance coverage was introduced in 2008 with the goal of discouraging

child marriage by giving parents access to an alluring insurance plan. Nevertheless, the plan is not in use at the moment.

**Sabla (Rajiv Gandhi Scheme For Empowerment Of Adolescent Girls):**

This scheme was launched in 2010 and targets adolescent girls between the ages of 11 to 18 years. It seeks to improve their nutrition, health, and education and prevent child marriage.

**National Action Plan to Prevent Child Marriage:** Launched in 2013, this plan provides a comprehensive framework for preventing child marriage in India. It involves multi-sectoral coordination, community mobilization, awareness-raising, and capacity- building initiatives.

**CBSE Udaan Scheme:** This Ministry of Human Resource Development program launched is run by the Central Board of Secondary Education. It aims to increase the number of girls enrolled in esteemed engineering and technical colleges throughout India.

**Beti Bachao Beti Padhao (Bbbp) Scheme:** The scheme launched in 2015 aims to address gender discrimination and improve the welfare of girls. It seeks to prevent child marriage by promoting girls' education and encouraging the birth and upbringing of girls.

## CONCLUSION

India has enacted laws such as the Prohibition of Child Marriage Act (PCMA) to prevent child marriage. However, these laws need to be strengthened and enforced more effectively. This can be done by increasing penalties for those who violate the law and ensuring that law enforcement agencies take child marriage cases seriously. Raising awareness about the negative consequences of child marriage can help change social attitudes towards the practice. This can be done through campaigns that target families, community leaders, and religious leaders. Education and awareness-raising initiatives can also be conducted in schools to help students.

Girls who are empowered through education and economic opportunities are more likely to resist pressure to marry at a young age. The government and civil society organizations can work together to create more opportunities for girls, such as vocational training and scholarships. Engaging communities in efforts to prevent child marriage can be effective in changing attitudes and behaviors. Community-based initiatives can be developed to address the root causes of child marriage and encourage support for girls' education.



Girls from marginalized and economically disadvantaged communities are more likely to be forced into early marriage. Programs and policies that target these populations can help prevent child marriage and support girls' education and empowerment. Girls who are already married at a young age need support to continue their education, access healthcare, and pursue economic opportunities. Programs that provide this support can help prevent further cycles of poverty and child marriage.

Child marriage remains a significant problem in India, despite efforts to curb the practice through legal and social initiatives. The negative impact of child marriage on the health, education, and economic opportunities of girls cannot be overstated. However, progress is being made, and there is hope for a future where girls are not forced into early marriage. By empowering girls through education and economic opportunities, changing social attitudes towards gender roles, enforcing laws, and raising awareness, it is possible to end child marriage in India. A sustained and comprehensive effort from government, NGOs, communities, and families is needed to create a brighter future for girls in India.

## **PART 2 - CHILD LABOUR**

In India, where millions of children are forced to work in a variety of industries under hazardous conditions, Child Labor is still a serious and widespread problem. The issue of child labor endures despite current legislation prohibiting it because of the intricate interactions between economic, social, and cultural elements. Children are frequently abused physically and psychologically, placed in dangerous situations, and denied access to education.

According to the International Labour Organization (ILO), India is the country with the greatest number of child laborers worldwide, with an estimated 10.1 million children between the ages of 5 and 14 working in hazardous conditions for little pay, long hours, and other conditions. Children work in a variety of industries, including manufacturing, construction, domestic service, and agriculture. They frequently endure cruel working conditions without access to basic health and safety safeguards.<sup>23</sup>

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<sup>23</sup>B Suresh Lal, 'Child Labour in India: Causes and Consequences' (2019) International Journal of Science and Research 1

A comprehensive approach is necessary to address child labor in India in an effective manner. This entails increased public advocacy and awareness, strengthened legal protections, stronger enforcement systems, and improved access to social welfare and educational initiatives. Due to the problem's complexity, multiple stakeholders must work together in order to effect significant change and protect the rights and welfare of all children.

### **Causes of Child Labour in India**

**Poverty:** The main factor causing child labor is poverty. Children who come from low- income families may be forced to work in order to help support the family and pay for necessities.

**Lack of education:** Without access to education, kids might not know their rights or have the skills necessary for better career opportunities. Parents with low levels of education might also put their children's short-term financial gain ahead of the long-term advantages of education.

**Cultural and societal norms:** It's possible that certain communities have cultural norms that accept young children working. In these situations, families might not think there's anything wrong with their kids working alongside adults, and they might think that discipline and useful skills can be learned through work.

**Inadequate enforcement of Child Labour laws:** Weak labour protections can perpetuate the cycle of Child Labour. Employers may exploit children for their low wages and disregard their safety and wellbeing.

**Demand for cheap labour:** Some industries may prefer to hire children because they are

cheaper and more manageable than adult workers. This demand for cheap labour perpetuates the cycle of Child Labour.

### **Types of Child Labour in India<sup>24</sup>**

**Bonded Child Labour:** Children who are forced to work to pay back debts owed by themselves or their families are subjected to a type of child exploitation known as "bonded child labor." These kids frequently work long hours in dangerous settings and experience various forms of abuse.

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<sup>24</sup>Kim Jihye, 'Harmful forms of Child Labour in India from a time-use perspective' (2023) Taylor & Francis Online <<https://www.tandfonline.com/doi/full/10.1080/09614524.2022.2155620>> (accessed on 26 April 2023)

Their experience of debt bondage limits their options for education and other opportunities, which feeds the cycle of exploitation and poverty. The Bonded Labour System (Abolition) Act, 1976 forbids bonded child labor in India. Unfortunately, this act's enforcement is frequently slack, allowing a large number of kids to continue being forced into bonded labor. To effectively address this issue, poverty and illiteracy—two major contributors to debt bondage—must be addressed. It is essential to offer opportunities and support to families in order to help children escape the cycle of exploitation. Enforcing laws more strictly, spreading awareness, and putting social programs into place are all crucial steps toward ending bonded child labor and safeguarding children's welfare.

**Domestic Child Labour:** Children work in households as domestic helpers, such as cleaning, cooking, and taking care of children. These children are often exploited, abused, and denied education.

**Street Labour:** Children work on the streets, selling goods, begging, and scavenging. They are often vulnerable to abuse, exploitation, and trafficking.

**Industrial Child Labour:** In India, over 10 million children, including over 4.5 million girls between the ages of 5 and 14, work in unorganized sectors, with a significant portion of children under the age of 18 employed in the industrial sector<sup>25</sup>. Many small businesses employ children, including those in the diamond, brick kiln, agriculture, fireworks, and clothing industries. Since a few of these companies run out of homes, government intervention may be difficult. Due to their perceived ease of management and dismissal, children are frequently found working in roadside dhabas, cafes, tea stalls, and grocery stores. This unorganized sector is one of the largest employers of children in India. These are just some of the types of child labor that exist in India. Many of these practices are illegal, yet they continue to persist due to poverty, lack of education, and inadequate implementation of laws and policies. These illegal forms of child labor continue, underscoring issues with poverty, education, and insufficient enforcement of laws and policies. Such practices are common, which emphasizes the necessity of all-encompassing initiatives to address the underlying causes, improve educational opportunities, and fortify the application of laws to end child labor in a variety of industries.

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<sup>25</sup>International Labour Organization, 'Child Labour in India' <[https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_557089.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_557089.pdf)> (accessed on 26 April 2023)

## **Child Labour Laws in India**

Child Labour laws in India are aimed at protecting children from exploitation and abuse by prohibiting their employment in hazardous occupations and ensuring their education and welfare. Today, there are sufficient statutes condemning and prohibiting Child Labour such as:

**THE FACTORIES ACT OF 1948:** It is against the law to employ anyone younger than 14 in a factory. The legislation also imposed limitations on the types, timing, and duration of pre-adult labour in factories for those between the ages of 15 and 18.

**MINIMUM WAGES ACT, 1948:** The Minimum Wages Act of 1948 sets minimum pay rates for several jobs that are listed in the Act's schedule and have been designated by the relevant government. The Act set minimum pay rates for children, adults, and adolescents.

**THE PLANTATION LABOUR ACT, 1951:** It states that without a medical certification attesting to their physical fitness, no child (under 14 years old) or adolescent (between 15 and 18 years old) may work on a plantation. Only when the child or adolescent is deemed healthy enough to work can a certifying surgeon issue a fitness certificate.

**THE MINES ACT OF 1952:** It restricts minors under the age of eighteen from working in mines. It is strictly forbidden for children to mine because it is one of the riskiest jobs and has historically resulted in multiple child fatal accidents.

**MERCHANT SHIPPING ACT, 1958:** Under no circumstances may a child under the age of fifteen be employed on a ship. These include working aboard a home trade ship with a gross tonnage of less than 200, a ship under family control, a school or training ship, or a ship where the child will be employed for very little money and supervised by their father or another male relative who lives nearby.

**THE BEEDI AND CIGAR WORKERS (CONDITIONS OF EMPLOYMENT) ACT:** All factories that manufacture cigars, beedis, or both, with or without the use of power, are subject to the 1966 legislation. The act forbids hiring children under the age of 14 in these kinds of establishments. In these factories, workers between the ages of 14 and 18 are not permitted to work from 7 p.m. to 6 a.m.

**CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986:** Employing minors under the age of 14 for hazardous jobs that are on the list of prohibited jobs is prohibited by the Act. The list was updated in 2006 and 2008 as well.

**THE JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT, 2000:** A prison sentence is imposed on anyone who obtains or uses a child in bondage or any other hazardous employment. Those who use child labor in violation of prior laws face penalties under this law.

**THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT OF 2009:** The law mandates that all children between the ages of six and fourteen attend free public schools. A quarter of the seats in every private school must go to children from disadvantaged backgrounds and kids with physical disabilities, according to this Act.

### **Constitutional Provisions related to Child Labour in India**

The Constitution of India has several provisions that address the issue of child labor in the country. The most relevant provisions are:

**Article 21:** According to Article 21(A) of the Indian Constitution, all children between the ages of 6 and 14 must get free and compulsory education.

**Article 24:** This article prohibits the employment of children below the age of 14 years in factories, mines, or any other hazardous work.

**Article 39(e) and (f):** These articles mandate that the state shall direct its policy towards ensuring that children are not abused or forced by economic necessity to enter vocations that are unsuitable for their age, and that the health and strength of workers, men and women, and the tender age of children are not abused.

**Article 45:** This article provides for free and compulsory education for children between the ages of six and fourteen years.

**Article 47:** This article provides for the improvement of public health and the prohibition of the consumption of intoxicating drinks and drugs that are injurious to health.

### **National Schemes and Plans Related to Curbing Child Labour**

India has several national plans and schemes in place to address the issue of child labor. Here are some of the major ones:

**National Policy on Child Labour:** Intends to establish a society in which all children are protected from exploitation and have access to healthcare, education, and basic needs. By 2025, it aims to eradicate Child Labour from dangerous jobs and processes.

**National Child Labour Project:** The NCLP is a central government scheme that provides special schools and vocational training centers to children rescued from hazardous work. The scheme also provides financial assistance to families of such children to prevent them from sending their children to work.

**Mid-Day Meal Scheme (MDMS):** Children attending government and government-aided schools receive free cooked meals as part of the MDMS, a centrally sponsored program. The program assists in keeping kids in school and keeps them from becoming child laborers or dropping out.

**Sarva Shiksha Abhiyan (SSA):** The Government of India's flagship program, the SSA, launched in 2001 aims to give all children between the ages of six and fourteen access to universal elementary education. Both the prevention of Child Labour and the rehabilitation of Child Labourers are covered by the program.

**National Children's Action Plan:** The National Plan of Action for Children, 2005 states that until a child turns eighteen, their rights shall be respected. To guarantee that every child can realize his or her intrinsic potential and develop into a healthy and contributing member of society, the government should offer all necessary protections as well as an environment that is conducive to their survival, growth, and protection. All levels and branches of government must work together on this, and relationships with families, communities, the volunteer sector, civil society, and the children themselves are also necessary.

**Integrated Child Protection Scheme (ICPS):** The goal of the centrally sponsored ICPS program is to provide a safe haven for children who require care and protection. It offers safeguards against child labor as well as the prevention of child abuse, neglect, and exploitation.

**National Urban Livelihoods Mission (NULM):** The NULM is a centrally sponsored program that gives urban poor households access to opportunities for skilled wage employment and gainful self-employment, with the goal

of reducing poverty and vulnerability. The plan has guidelines in place to stop child labor.

**Rashtriya Kishor Swasthya Karyakram (RKSK):** The RKSK is a program designed to enhance teenagers' health and wellness. It contains clauses that aim to stop child labor and support young people's education and career development.

**Child Labour (Prohibition and Regulation) Amendment Rules, 2017:** It is a revised set of guidelines designed to reinforce the 1986 Child Labour (Prohibition and Regulation) Act's provisions. The main characteristics of the amendment regulations are that children under the age of 14 are not allowed to work in any profession or process, with the exception of family businesses, and that teenagers (ages 14 to 18) are not allowed to work in any hazardous profession or process.

These national plans and schemes, along with various state-specific initiatives, are aimed at preventing child labor, rescuing and rehabilitating child laborers, and promoting education and skills development for children.

### **Judicial Precedents related to Child Labour**

In *Nilabati Behera v State of Orissa* (1993)<sup>26</sup>, the Supreme Court decided that parents should receive compensation if their child passes away as a result of state negligence. The mother of a child who passed away while working in a mine as a bonded laborer was involved in the case.

In the 1982 case of *People's Union for Democratic Rights v Union of India*<sup>27</sup>, the Supreme Court decided that minors working as domestic helpers should have the same rights and safeguards as other employees.

In *M.C. Mehta v State of Tamil Nadu* (1997)<sup>28</sup>, the Supreme Court ruled that children under the age of 14 cannot work in dangerous industries and that these children must receive health and education services.

In the 2005 case of *Pratap Singh v State of Jharkhand*<sup>29</sup>, the Jharkhand High Court ruled that it was against children's fundamental rights to work in mines and ordered the state government to prosecute the mine owners.

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<sup>26</sup>1993 AIR 1960

<sup>27</sup>1982 AIR 1473

<sup>28</sup>AIR 1997 SC 699

<sup>29</sup>AIR 2005 SC 2731

The Supreme Court of India mandated the establishment of a national database for child labor in *Bachpan Bachao Andolan v Union of India* (2011)<sup>30</sup> in order to monitor and rehabilitate children who were freed from child labor.

## CONCLUSION

In summary, the article underscores the critical need for collaborative efforts among government agencies, civil society organizations, and businesses to address the pervasive issue of Child Labour in India. The emphasis is placed on raising awareness about the negative effects of Child Labour, promoting the importance of education, and implementing programs to inform parents. Recommendations include strengthening Child Labour laws, increasing the number of labour inspectors, enforcing penalties for violations, and providing rehabilitation services for rescued Child Labourers.

The article also highlights the challenges hindering effective implementation, such as limited capacity, poor coordination among agencies, and resource constraints. It stresses the importance of a cooperative, multi-stakeholder strategy involving the government, businesses, communities, and civil society organizations to overcome these challenges. The conclusion reinforces the urgency of persistent, collective action to create a safe environment for children in India, ensuring their access to healthcare, education, and holistic development opportunities.

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<sup>30</sup> AIR 2011 SC 3361



# EXPLORING CHILD EDUCATION ALONGSIDE A CHILD IN BROKEN FAMILY DYNAMICS

Samridhi Prakash\*

## Five random pictures of children chosen from the web



Figure 1 <https://twitter.com/DResistance2day/status/1455969365614944258>

**Feeling :** Hope

**Thought :** This image depicts a few children, answering in a class. This image gives me a sense of hope that education is being imparted to everyone.

**Feeling :** Torn Apart

**Thought :** A Child is struggling between parents who wants to hold her hand. This depicts to me the question of custody of the children. And how do they deal with such state of separation of their parents.



Figure 2: <https://www.counsellingforkids.co.uk/services/family-counselling-children/#:~:text=There%20may%20be%20raised%20voices,consultation%2C%20with%20a%20qualified%20therapist>



Figure3: <https://www.siasat.com/ktaka-pent-house-case-minors-forced-to-entertain-kerala-politicians-bureaucrats-2269481/>

**Feeling:** Helplessness

**Thought:** This picture makes me think how so many times children who are in a conflicted family or who are victims of ugly crimes are forced to shut their mouths.

**Feeling :** Worried

**Thought :** This picture shows certain children holding guns in their hands. Their faces look cold and agitated. The first thought that occurs to me is that in the age of holding crayons and colours of happiness in their hands, they hold guns and are splashed with the colour of blood amidst life and death.



Figure 4 <https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.nytimes.com%2Finteractive%2F2016%2Fworld%2Fak-47-mass-shootings.html&psig=AOvVaw3X5PgxBzn24212djOhRmWP&ust=1706793564234000&source=images&ccd=vfe&opi=89978449&ved=0CBEQjRxqFwoTCLji--Hbh4QDFQAAAAAdAAAAA>



Figure 5 <https://www.ucanews.com/news/street-children-need-shelter-not-a-jail-cell/78566>

**Feeling :** Torn Apart

**Thought :** A Child is struggling between parents who wants to hold her hand. This depicts to me the question of custody of the children. And how do they deal with such state of separation of their parents.

I have chosen to focus on exploring Child education alongside a Child in broken family dynamics.

## **CHILD EDUCATION: A PERSPECTIVE FROM THE VILLAGES OF INDIA**

This essay has been written from the perspective of our field trips as well as certain of my personal life experiences.

### **Case Study Analysis**

I, along with 3 other students, was assigned a village, Babatilka Nagar, Cuttack, Odisha, to access and collect data for UNICEF and Project Kutumb pertaining to Child rights. This village has been adopted by our university: National Law University Odisha. There were 6 to 7 visits that we did to that village to understand about the lives of the people there. The insight of these trips for me was that even being poor, where people's daily bread depended upon the daily wages work and certainly the PDS or the public distribution, the parents still sent their children to get a proper education. Having uniforms or not was the least concern, what mattered was whether the Child was educated. Certainly, to that stage where he can not only read and write but also see his/her dreams coming true. We were asked to talk to adolescent boys about Child rights.

We asked them questions related to hygiene, medical facilities, status of education, and the environment of their households. In this survey, there was one question that gave us overwhelming responses. You see, to think of a dream in a state of destitution is a big thing, and to see it fulfilling is like manifesting your innocent desires into reality. We asked them, "What do you want to be when you grow up" and without any hesitation, they replied "Police, Doctor, Teacher, Engineer, Singer and footballer etc" That instant moment made me revisit certain memories, especially the one where we asked the same question to children in a government school in Uttar Pradesh. Their replies were the same. What was important to note is that these children had the zeal to pursue them, fighting the odds. 5 years back, one of the children I had interviewed told me that he wanted to be a lawyer one day. And I was glad to hear that after completing his schooling from the government school he was studying in, he was preparing to join a law school with the help of certain NGOs and good Samaritans. Another key detail that we got to know was that there were also certain children living in the villages, who would go to school, cook for their parents, do the daily chores (especially the female children) and after doing all of that they would do labour work in that village, to earn a few rupees. Which speaks the fact

that Child labour is still a harsh reality today.

### **Right to education**

The right to education is one of the moral foundations of the Universal Declaration of Human Rights (1948). The reality today is that through the various government schemes policies and laws, the government schools and those schools run by NGOs, education has reached to almost all the villages in India. And the good fact is the shift in the mentality of the people. Most of them willingly send their children to schools and also get them tutored if need be. However, the sad reality is that there still exists a disparity between those who are educated and those who needs to be educated.<sup>1</sup>

### **Legal Framework for Education for All in India**

Compulsory primary education for children up to the age of 14 years was enshrined in Article 45 as part of the Directive Principles of State Policy in the Constitution of India. The Supreme Court of India in the *Unni Krishnan Case*<sup>2</sup> read right to primary education as a fundamental right for all children. Pursuant to this case, compulsory primary education was moved from the arena of the Directive Principle to being a fundamental right. Constitution of India was amended and Article 21A was inserted making free and compulsory primary education a fundamental right of each Child between the age of 6-14 years of age. Article 45 was also amended to provide pre-school education and care of 0-6 years old children. Pursuant to these amendments, the Right to Education Act was passed in 2009. The Right to Education Act (RTE)<sup>3</sup> obligates private schools to reserve places for economically disadvantaged pupils and guarantees free and compulsory education for children aged 6 to 14 years.

India adopted its first National Policy on Education in 1968, based on the recommendation of the Kothari Commission. The principal aims under the Policy were: universal primary education, the adoption of a new educational pattern, the use of three languages, the use of regional languages in higher education, the growth of agricultural and industrial education, and adult education. To combat the changing socio-economic needs of the country, Govt. of India announced a new National Policy on Education in 1986. The latest in the series is the New Education Policy 2020.

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<sup>1</sup>K Singh, "Right to Education" (2015) 42 India International Centre Quarterly 119

<sup>2</sup>*Unni Krishnan v State of Andhra Pradesh* AIR 1993 SC 217

<sup>3</sup>Right of Children to Free and Compulsory Education Act 2009

The Government also launched various schemes and programmes for promotion of universal primary education. The Sarva Shiksha Abhiyan (SSA) programme was aimed to universalize primary education, with a focus on marginalised and economically disadvantaged areas. To address concerns of hunger and poor attendance, the Mid-Day Meal Scheme (MDMS) was conceived to provide free meals to pupils. To make education accessible to all, the government also provides scholarships and financial support programmes based on caste, income, disability, and other factors. Vocational training programmes are being implemented to provide pupils with skills for future work prospects, and infrastructural development projects are being implemented to enhance schools in economically challenged regions.

One can say that the range of legal provisions and education policies and scheme have resulted in a positive improvement in ensuring education for all. However, there still exists certain challenges especially at the grassroots level which need to be taken care of.

### **Navigating Educational Inequality: Challenges and Solution in Rural India**

“Education is the most powerful weapon which you can use to change the world.”  
~ Nelson Mandela

Despite the implementation of numerous governmental schemes and policies and the efforts of NGOs and individuals engaged in philanthropy, various challenges persist today. It is very unfortunate that though India has the world’s largest education system, still it faces numerous hurdles that must be addressed to effectively extend education to every corner of the country. Some of the challenges faced are as follows:

#### **The need of proper infrastructure:**

Many schools in the village area lack a proper structure. Some schools do not have proper functioning of fans and lights. Moreover, in many rural schools, children study on “patta” or the mat. Despite the global emphasis on technology, certain rural schools in India face challenges due to a lack of government infrastructure. Additionally, the teachers need to turn towards solutions, such as personally purchasing speakers and projectors to facilitate digital learning for children. This digital infrastructural need was

highlighted especially during the time of Covid-19 pandemic.<sup>4</sup>

### **There is an existing shortage of qualified and quality teachers:**

It is often seen that many quality teachers wish to work at private schools are unwilling to work in remote areas. The reasoning behind the same is lack of basic infrastructure in villages, for example proper roads and lights. Moreover, there is also lack of proper transportation which leads to children having to walk on foot for long distances in order to fulfil their education. The lack of proper roads and ways to commute to the village makes it difficult for the teachers and as well as the students to continue imparting and getting education.<sup>5</sup> There are few more hindrances in the path of proper education for example, teachers turn out is often less because they are underpaid and not given the basic amenities. This has a negative impact on the quality of education at these villages. According to our survey, certain private schools were identified as lacking dedicated physical education teachers. Consequently, students enrolled in these schools were deprived of physical education classes and organized sports activities.

### **There still exists a socio-economic disparity in the quality of education provided:**

This is to my dismay that the female children are mostly allowed to study up to class 8<sup>th</sup> in the rural areas as education till 8<sup>th</sup> standard is supported by the Primary education scheme, the Sarva Siksha Abhiyaan. Moreover, female children are married off early and also made to work at home. Whereas, the male children, on the other hand, are given full freedom to complete their educate beyond 8<sup>th</sup> standard. Furthermore, there is a notable incidence of school dropouts, particularly in areas where families are economically disadvantaged. However, there are several incentives like: mid-day meals, clothing, and other complimentary provisions provided through government schemes which tempts parents to send their children to school to avail the incentives. Also, it is found that several marginalized group face discrimination and other barriers and obstacles in accessing education, leading to a lower enrolment rate. Hence such kind of socio-economic disparity should be discarded at least with respect to educational rights of.

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<sup>4</sup>'Role of School Infrastructure in Bringing Quality Education' (*S M Sehgal Foundation*, 28 January 2022) <<https://www.smsfoundation.org/role-of-school-infrastructure-in-bringing-quality-education/>> (accessed on 23 April 2023)

<sup>5</sup>MA Bhat, 'Teacher Shortages: A Problem of Distribution or Scarcity?' (*Times of India*, 23 October 2021) <<https://timesofindia.indiatimes.com/blogs/developing-contemporary-india/teacher-shortages-a-problem-of-distribution-or-scarcity/>> (accessed on 22 April 2023)

## **Conclusion**

The penetration of education into rural areas in India is apparent, signifying a shift in the mindset to prioritize the education of today's children, even in the face of economic and socio-cultural challenges. The government has made noteworthy efforts to promote education in India, employing initiatives like the Right to Education Act, Sarva Siksha Abhiyan, and the Mid-day Meal schemes. However, despite these endeavours, persistent social and economic challenges continue to exist and require eradication from society. There is a hope that such kind of initiatives can result in quality education for the children. To enhance Child education in rural India, a multifaceted strategy is required, to begin with, there should be a greater emphasis on upgrading infrastructure, such as building additional schools, classrooms, and vital utilities in rural regions such as power, water, and sanitation. Furthermore, transit infrastructure must be enhanced to provide for easier access to schools, particularly for girls. Secondly, efforts should be directed towards improving educational quality by guaranteeing a sufficient number of competent instructors, supporting new teaching techniques, and implementing curriculum that is relevant and contextual to the unique needs and ambitions of rural communities. These initiatives can contribute to securing a sustainable future for the young generation, ensuring they receive quality education for a prosperous life ahead.



# INTERPRETATION OF THE CONNECTION BETWEEN CHILD BEGGING AND THE RIGHT TO EDUCATION IN AN INDIAN SCENARIO

Nistha Sunil Hansaria<sup>1\*</sup>

## Five random pictures of children from the web



Figure 1: <https://images.news18.com/ibnlive/uploads/2016/03/coal-mines.jpg?impolicy=website&width=510&height=356>

**Feeling :** Concern

**Thought :** It is a tragic reality that children are often compelled to work in hazardous employments such as mines.



Figure 2: <https://4.bp.blogspot.com/-trOh9TCO3mE/VaP6W-gtDII/AAAAAAAAAFI/WS2CMj9hKY4/s1600/kristian-bertel-220.png>

**Feeling :** Pity

**Thought :** Children are forced to beg on streets due to poverty, abandonment or after being trafficked.



Figure 3: <https://cochins.org/wpcontent/uploads/2022/07/16a.png>

**Feeling:** Pride and Despair

**Thoughts:** I take pride in the fact that children are able to attend the school, recognizing the value of education in shaping their future. However, it is disheartening that their learning environments often lack essential resources and are inadequately equipped.

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**Feeling :** Empathy

**Thought :** Due to financial constraints in many households in India, the children of such households are deprived of their Right to Education because they are forced to work in shops or other households to earn for their family's survival.



Figure 4: <https://im.rediff.com/money/2017/jul/27child-labourer-in-india.jpg?w=670&h=900>



Figure 5: [https://www.chinadaily.com.cn/photo/att/site1/20060609/xin\\_07060309062428846983.jpg](https://www.chinadaily.com.cn/photo/att/site1/20060609/xin_07060309062428846983.jpg)

**Feeling :** Apprehension

**Thought :** It is a distressing reality that children from economically disadvantaged families find themselves compelled to forage for food in dustbins. This unfortunate circumstance not only reflects the harshness of their living conditions but also constitutes a significant detriment to their overall health and well-being.

I have chosen to focus on the connection between child begging and the right to education.

## INTRODUCTION

Children are considered to be the guiding light for the country's future. Therefore, they should be provided with all the essentials that ensure a bright future for them. Whether a person is a child or an adult, their fundamental human rights which are enshrined under our Constitution can't be denied or violated by anyone.<sup>1</sup>Children have the right to a good upbringing and education, yet a child beggar may not have access to these essentials. To have a safe place to sleep at night, millions of street children flee to underpasses, railroad stations, public parks, and sidewalks. Children, left with no alternative to sustain themselves, resort to begging. These kids beg for food out of dire hunger. Cartels compel most of them to beg. Over three lakh children in India are forced into begging.<sup>2</sup>These children endure severe mistreatment and abuse in addition to living in appalling surroundings. The children are also forced into begging to generate funds for human traffickers. Unfortunately, the money they acquire is often diverted towards substances like drugs and alcohol instead of meeting basic needs such as clothing and food. These vulnerable children are anaesthetized, further exacerbating their dire circumstances.

## CHALLENGES AND ISSUES CHILDREN FACE WHILE BEGGING

Children who rely on the kindness of strangers are frequently abused and are often treated cruelly. They are forced to beg on the streets near crowded place like traffic signals, markets, local train stations for food and shelter on the streets, and are beaten, tortured, and subjected to sexual exploitation. They could be children who are forced to earn livelihood for the family who is trying to make ends meet on a daily basis or are a caught by criminal organisations which make children beg on the streets. It is unfortunate to see the children begging on the streets due to different circumstances and loosing not only on something as important as Education but they are also loosing on the essence of life as a child, the innocence of childhood and the memories which are created during that period of a person's life.

Due to discrimination against women in India, many people choose to abandon their young daughters. Hence forcing them to live on the streets and beg. Many of them are forced into the dark world of prostitution. These

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<sup>2</sup> Constitution of India 1950

<sup>3</sup> M.A. Saleem, 'Fighting Child Beggary and Trafficking' (*Deccan Herald*, 27 June 2019)

kids are typically viewed as unclean and are mistaken for robbers. Children from affluent backgrounds experience differential treatment compared to their counterparts. Street-panhandling children, predominantly from low-income households, beg solely for sustenance. Their primary goal is to secure food for them as well as their families (typically large families) due to lack of alternative income, compelling them into begging. ’

### **POSSIBLE EXPLANATION FOR CHILD BEGGING**

- 1) Usually, the parents or guardians of children from low-income families force them to beg. Their parents either work in hazardous conditions or rely on begging to make ends meet since they are destitute. Sometimes the whole family starts begging since it seems to be the easiest way to make money, allowing them to at least get some food to feed their family. Families often compel their children to beg, a practice that extends beyond conventional forms of family dynamics and discipline.
- 2) Third parties, who are neither guardians nor parents of the children, also influence the children to beg.
- 3) Traffickers or Mafias are also engaged in forcing children to beg. There is a lot of well-organised child begging rackets which are linked to the Traffickers or Mafias.<sup>3</sup>

### **LEGAL FRAMEWORK ON CHILD BEGGING**

The Constitution of India implicitly mandates an inclusive society for everyone by guaranteeing all citizens equality, freedom, justice, and dignity. Article 21 of the Constitution guarantees the protection of the right to life. Further, Article 38 enjoins the state to create a social structure that will improve the welfare of the people. In case of unemployment, old age, illness or disability, or other unmet requirements, adequate means for ensuring the right to labour, education, and public support are outlined in Article 41.

The way that children who have been caught begging are handled varies greatly between states. According to the Juvenile Justice (Care and Protection of Children) Act of 2015, child welfare committees are responsible for dealing with children who have been found to beg as victims in need of

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<sup>4</sup>Bal Rakha Bharat, ‘How Children are forced into Begging by Cartels’ (2016) <<https://www.savethechildren.in/child-protection/how-children-are-forced-into-begging-by-cartels/>> (accessed on 12 January 2024)

care and protection. However, according to some state legislation, they are considered criminals and subject to imprisonment.

An attempt was made to establish a rehabilitation framework through the Beggars (Protection, Care, and Rehabilitation) Model Bill of 2016. The bill does not outlaw begging unless it is repeated and intentional, and does not permit the arrest of dependents. Instead, it focuses on offering protection, attention, and support. However, the bill has been withdrawn. Various legislations dealing with the practise of begging in India are as follows:

### **Juvenile Justice (Care and Protection of Children) Act, 2000<sup>4</sup>**

Under Section 76<sup>5</sup> of the Juvenile Justice (Care and Protection of Children) Act, 2015, it is a crime to employ or use a child for the purpose of begging, or to induce a child to beg. The penalty for this offense is imprisonment for a term of up to five years, as well as a fine of up to one lakh rupees. A person faces a minimum sentence of seven years in prison, with the possibility of up to ten years, as well as a fine of five lakh rupees if they amputate or maim a kid with the intent of begging.

### **Indian Penal Code, 1860<sup>6</sup>**

Section 363A<sup>7</sup> of the Indian Penal Code of 1869 stipulates that individuals who abduct or harm a child with the intent of forcing them into begging can face a maximum sentence of 10 years in prison, in addition to a fine.

### **Railway Act, 1989**

According to Section 144 of the Indian Railway Act of 1989, hawking and begging are forbidden in any railway carriage or railway property without a requisite license. In case of

any violation of the abovementioned provision, the Act provides for punishment in the form

of imprisonment up to one year or fine up to a maximum of two thousand rupees or both.

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<sup>5</sup> Juvenile Justice (Care and Protection of Children) Act, 2000, s 24(1)

<sup>6</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 76

<sup>7</sup> Indian Penal Code, 1860

<sup>8</sup> Indian Penal Code, 1860, s 363(A)

## **The Bombay Prevention of Begging Act, 1959<sup>8</sup>**

Section 4<sup>9</sup> of the Act allows any police officer or other individual authorized in this role to arrest someone for begging without a warrant. As part of an effort to discourage beggars from engaging in such activities, the legislation forbids begging and attempts to direct them toward more favourable work alternatives. According to the law, whoever is caught begging while caring for a child under the age of five would be placed in jail and the courts will be informed.

## **The Children Act, 1960<sup>10</sup>**

A person who forces a child to beg, encourages a child to beg, or employs a child to beg is punishable by up to a year in jail, a fine, or both under Section 42 of the Children Act of 1960. The nature of the crime is cognizable, and helping to commit the crime is punishable as well.

## **DO THESE CHILDREN HAVE THE RIGHT TO EDUCATION?**

Originally education was a subject in the State list and only states were to legislate on the subject. Subsequently due to the Forty Second Amendment, education became a subject under the Concurrent list as a part of the Seventh Schedule of the Constitution, in the year 1976. It was done with the intention of looking at the larger and more crucial picture of the inequalities in the system of education. The Jomtien Declaration<sup>11</sup>, the UN Convention on the Rights of the Child<sup>12</sup>, Millennium Development Goals<sup>13</sup>, the Dakar Declaration, and the SAARC SDG Charter for Children<sup>14</sup> are just a few of the international treaties that India has signed. These agreements necessitate India to keep its promise to guarantee that all children have access to education. In 2002, after parliament ratified the<sup>8</sup>6th Constitutional Amendment, education was elevated to the status of a fundamental right. More than eight years after the Constitution was changed to include education as a fundamental right, on April 1, 2010, the Indian government passed a law mandating free and compulsory education for all children

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<sup>9</sup> Bombay Prevention of Begging Act, 1959

<sup>10</sup> Bombay Prevention of Begging Act, 1959, s 4

<sup>11</sup> Children Act, 1960, s 42

<sup>12</sup> World Declaration on Education for All, Jomtien, Thailand 1990

<sup>13</sup> Convention on the Rights of the Child, 1989

<sup>14</sup> United Nations Millennium Declaration, 2000

<sup>15</sup> Charter of the South Asian Association for Regional Cooperation (Sustainable Development Goal for Children)

between the ages of six and fourteen.<sup>15</sup> The new law requires state and municipal governments to ensure that every child receives their education in a nearby school.

There are various legislations international and domestic which point out the importance of Education of Children. It not only contributes to the development of the individual but also adds to the future progress and development of the country. Post-Independence, the Government has introduced various amendments, new provisions, signed treaties and charters with the intention that education should be accessible to each and every child in India.

For implementing the lofty vision of the Constitution through the legal framework, the Government of India has come up with many education policies from time to time. New policies on education were introduced in the years 1968, 1986, 1992, the latest being that of 2020. The 1968 policy on Education<sup>16</sup> was based on the Kothari Commission. After facing various problems in aspect of restricting the education system in India, the National Policy on Education was released by the Government, as it talked about progress in the field of education by keeping in mind the basic principles like mandatory education, which is free of cost, opportunity should be given to one and all, adult education, etc.

While the policy of 1968 was focusing on education to different age groups, the policy on Education which was adopted in 1986 also known as the New Education Policy (1986)<sup>17</sup> focused more on the aspect of children as it specifically talked about how early childcare and education make a difference in an individual's life and how it is necessary for human development. It also talked about elementary education being made available to everyone. In 1992<sup>18</sup>, there were modifications made to the policy of 1986, which talked about the system of education that should not forget the traditional roots and beliefs of the forefathers about secularism, democracy and ethics in professions. It highlighted the need to modify the education policy according to the changing times and to make the educational system more flexible and diverse.

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<sup>16</sup>Vaibhav Agarwal, Hadiya Khan, 'Education of Street Child and Child Beggar in India' (2016) JETIR <<https://www.jetir.org/papers/JETIR1903717.pdf>> (accessed on 12 January 2024)

<sup>17</sup>National Policy on Education, 1968

<sup>18</sup>New Education Policy, 1986

<sup>19</sup>National Policy on Education, 1992

The National Education Policy of 2020 Aims to provide high-quality education to everyone and propelling India to the status of a global knowledge superpower. One of its objectives is to create an education system rooted in Indian culture that directly contributes to the transformation of India—a nation that is Bharat, sustainably equitable, and home to a vibrant knowledge society. According to the policy, the four institutions' curricular and pedagogy must instil in students a profound respect for the Constitutional values and the Fundamental Duties, a sense of national identity, and an understanding of their roles and responsibilities in a world that is changing. The policy seeks to foster in pupils a strong sense of pride in their Indianness in all aspects of their identity, including spirit, intellect, and deeds.

National Charter for Children, 2003<sup>19</sup>- The 7<sup>th</sup> Article in the Charter talks about access to mandatory and free of charge education to the children at elementary and secondary level. It also states that the children from less privileged families should be helped with special initiatives so that they trust the system and get enrolled in the schools, while completing their education and participate in school like children from other backgrounds have the privilege to, according to their individual interests.

Integrated Child Protection Scheme<sup>20</sup>- The scheme was launched in 2009-10. The purpose of the scheme is to protect and provide care to children who work. Due to their work life, if they are unable to enrol into traditional educational institutions they should be given access to vocational training which would help them in their development and possibly help in opening up job opportunities. The main objective of the scheme is to ensure that the children who are voluntarily working, should be protected from being exploited and at the same time should be encouraged to get education, as it is their fundamental right. This scheme was launched to cover the areas which are not covered by other policies or schemes of the government, children who are living in the slums, or the ones who dwell on pavements and children who are working as helpers in shops, eateries on the road, car mechanic shops, etc. Along with the children whose parents are lodged in prisons or work as migrant workers, sex workers, etc.

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<sup>20</sup>National Charter for Children 2003, Art. 7

<sup>21</sup>The Integrated Child Protection Scheme, 2010

Right to Education (RTE) 2019- It is also known as the Right of Children to Free and Compulsory Education Act<sup>21</sup>, it was enacted by the Indian Parliament in August 2009 and it was enforced in April 2010. The act further stipulates that no kid shall be held back, expelled, or mandated to complete a board examination until the conclusion of basic education. Additionally, in order to bring school dropouts up to come at par with kids of the same age, specific training is provided so they are not discouraged from pursuing their education altogether. Despite these provisions, these parents send their kids to beg for money instead of caring about their education.<sup>22</sup>

Some glaring gaps which have emerged after the enforcement of the RTE Act 2009 are as follows:

- The government has demonstrated its incapacity to furnish funding amounting to 1.71 lakh crores, citing a shortage of resources. Eager to involve the private sector through the Public Private Partnership (PPP) model, it raises concerns about diluting the foundational principle of primary education as a right.
- Accurate statistics on India's unschooled children, who have been deprived of formal education for decades, are lacking.
- Private unaided schools are not subject to the RTE Act's regulatory framework.
- The government chooses to create Model Schools rather than a Common School system, promoting a multi-tiered educational system for both wealthy and underprivileged children.
- The issue surrounding the quality of education is still unaddressed in the Right of Children to Free and Compulsory Education Act, 2009. (RTE Act 2009).
- The Act covers children aged 6 to 14, excluding those aged 14 to 18 at the current moment.
- The Child Labour Prevention and Regulation Act<sup>23</sup>, and the

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<sup>22</sup>Right of Children to Free and Compulsory Education Act, 2019

<sup>23</sup>Smile Foundation "Child Rights". <[https://www.smilefoundationindia.org/child\\_rights.html](https://www.smilefoundationindia.org/child_rights.html)> (accessed on 12 January 2024)

<sup>24</sup>The Child Labour Prevention and Regulation Act, 1986



Constitution of India in Article 24<sup>24</sup> differentiate between hazardous and non-hazardous child labour, permitting non-hazardous child labour for those under 14. Both the RTE Act and Article 21 A<sup>25</sup> of the Indian Constitution assert the fundamental right to free education for children up to 14 years old. Crucial amendments are necessary to classify all types of child labour as hazardous and prohibit them.

## **SOME COURT JUDGEMENTS**

*Anand Vardhan Chandel v University of Delhi 1978*<sup>26</sup>- In this case a writ petition was filed questioning whether Education is a fundamental right under the Constitution of India under Articles 19 (a), (b) and (c) and Article 21? It was answered in affirmative by the court as it held that Right to Education is included in Article 21 of the Indian Constitution.

*Unni Krishnan v State of Andhra Pradesh*<sup>27</sup>- In this case, it was held that Right to Education is a fundamental right as it is implicit to the Right to life and personal liberty under Article 21 of the Indian Constitution when it is used with the directive principle on Education under Article 41 in Part IV of the Indian Constitution.

*MC Mehta v State of Tamil Nadu*<sup>28</sup>- This case is a historic judgment in which the Apex court decided on the matter of child labour and it gave directions to the States about the Right of Education of the children involved in activities of labour, and it asked the States to take fruitful measures to make sure that the child labours get proper education so that they can contribute to the society and become active citizens.

## **CONCLUSION**

Beggary is a multifaceted problem with a complicated solution. While it is a good idea to recognize and address structural injustices in society and provide more opportunities for the poor to make a living in a growth-oriented economy, the issue of begging in India requires a coordinated response that includes consistent, long-term, and collective efforts. The laws made by Indian government is not adequate and in an organised manner to eliminate child begging in India. Despite the government and

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<sup>25</sup>Constitution of India 1950, Art. 24

<sup>26</sup>Constitution of India 1950, Art. 21A

<sup>27</sup>AIR 1978 Del 308

<sup>28</sup>1 SCC 645

<sup>29</sup> AIR 1997 SC 699

international organizations claiming to have implemented numerous programs to end begging in India, the number of beggars on our streets is growing daily. People's traditional and religious mind-sets lead them to give money to beggars; if not everywhere, then at least outside the temple, as beggars tend to frequent sacred locations. The first and most important step in resolving this issue is to cease providing money to beggars. It is not just about one country; it is the moral obligation of every citizen of every nation to do so. Actually, we could assist by providing them food instead of cash. As responsible citizens, it is our collective responsibility to assist the government in eliminating the problem of beggars rather than giving hand-outs. The legislature needs more time to change its strategy from one that is primarily punitive one to that of being only rehabilitative by repealing or amending the current laws or by enacting new ones, even though this impedes the nation's smooth economic development without endangering society as a whole.

As citizens we actively take steps to discourage child begging by informing proper authorities about them so they can take steps to ensure the children who are forced into begging are taken to care centres and given access to education. The children who are begging due to family conditions should be encouraged to get education by contacting NGOs or institutions who can help in providing loans or essentials to the family so that their children can focus on studies. As we can see, even with numerous legislative initiatives in the form of Judgements, provisions, schemes, etc, the ground reality is quite disheartening. The scenario in the urban setting is not better than the rural areas. Even if the reason for children not getting access to education varies in both the settings, the ultimate result is to the detriment of the children since they are the stakeholders who are losing their right to education. There should be provisions for a high-quality educational system with quantifiable indicators should be included in the aforementioned law so that community members and parents can monitor educational quality. Every child, despite the parents' financial status should be given an opportunity to get access to good quality education. The privatization of any kind, including P3s and corporate franchises, should be avoided since it encourages profiteering, commoditization, and deterioration of the public education system. Since few people are aware of NGO work and efforts to help the environment, it

is important to raise awareness of these organizations in order to reach out to those children who are suffering significantly.

Government should provide these child beggars and their families with essential necessities like food and shelter in order to change their habits or need to beg. Everyone deserves the right to education, and it is crucial to support these children. An educated individual is less likely to resort to begging for sustenance and shelter, as knowledge opens doors to self-sufficiency. Offering increased professional opportunities for their families is essential. Adequate funding should be allocated to NGOs supporting these young beggars, ensuring they can carry out their mission without the constant concern of running out of funds. Children who have been abused should be taken to a safe care centres. Malnourished children should receive the proper attention from authorities and non-governmental organizations. Even though there are acts which are Anti begging, there is still a need to change society's mind-set.

# ADDRESSING ACCESS TO EDUCATION AMIDST OVERCROWDING AND TOBACCO INFLUENCE: LEGAL PERSPECTIVES, CHALLENGES AND RECOMMENDATIONS

Mishra Alok Rajesh\*

## Five random pictures of children chosen from the web



Figure 1: <https://m.economictimes.com/news/politics-and-nation/why-is-making-children-turn-away-from-government-schools/articleshow/62942100.cms>

**Feeling :** Ambivalent

**Thought :** I see students of primary school studying in a classroom which is a good thing but at the same time, seeing a picture of overcrowded primary students studying in a classroom without proper desks and benches is a concerning and distressing sight.

**Feeling :** Positive, happy

**Thought :** Seeing the picture of village children playing together and having fun at home brings a smile to my face and fills me with joy. It is heartwarming to see children enjoying their childhood and each other's company.



Figure 2: <https://www.siegwerk.com/en/sustainability/people-and-community/corporate-social-responsibility/lighthouse-projects/detail/projects/india-siegwerk-continues-multi-project-approach-with-2021-lighthouse-project.html>

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Figure 3: [https://medium.com/@ASH\\_LDN/tobacco-industry-marketing-aimed-at-children-5879a5927176](https://medium.com/@ASH_LDN/tobacco-industry-marketing-aimed-at-children-5879a5927176)

### Feeling : Anger

**Thought :** Seeing a minor student in a school uniform smoking and purchasing tobacco near a school is concerning for a number of reasons. It is illegal for minors to purchase tobacco products, and smoking at a young age can have serious negative impacts on a person's health.

### Feeling : Sad

**Thought :** Seeing a child who may be abandoned receiving a food packet and water bottle brings to mind the harsh reality that for many children around the world, necessities like food and water are not a given. It is heartbreaking to see a child in need.



Figure 4: <https://m.economictimes.com/news/india/over-30000-children-orphaned-lost-a-parent-or-abandoned-due-to-covid-19-ncpr-tells-sc/articleshow/83308281.cms>



Figure 5: <https://timesofindia.indiatimes.com/city/indore/madhya-pradesh-4-kids-among-18-rescued-from-bonded-labour/articleshow/88466528.cms>

### Feeling : Sympathy

**Thought :** It is heart-wrenching to see such young children forced to engage in labour that is physically demanding and potentially dangerous.

I have chosen to focus on “Addressing Access to Education Amidst Overcrowding and Tobacco Influence”.

# OVERCROWDED CLASSROOM AND CHILD RIGHTS

## DATA

The student-teacher ratio in India varies greatly depending on the type of school and the region. According to the latest data available from the Ministry of Education,<sup>1</sup> the overall student-teacher ratio in elementary schools in India is 23:1, while in secondary schools, it is 24:1. However, these ratios can be much higher in rural areas and among marginalized communities. In government-run primary schools in rural areas, the student-teacher ratio can be as high as 40:1, while in urban private schools, it can be as low as 10:1. In some states, such as Bihar, the ratio can be as high as 50:1. The shortage of teachers is a major issue in India, particularly in rural areas. According to a report by the National Council for Teacher Education,<sup>2</sup> there is a shortage of around 1.2 million teachers in India. This shortage is due to a variety of factors, including low pay and poor working conditions, as well as a lack of incentives to attract qualified candidates. The shortage of teachers has a significant impact on the quality of education in India.

Another issue is the quality of teachers in India. While there are many highly qualified and dedicated teachers in the country, there are also many who lack the necessary qualifications and training. According to a report by the National Sample Survey Organization,<sup>3</sup> only around 50% of primary school teachers in India have completed their teacher training, and even fewer have completed a degree in education. The quality of education in India is majorly determined by the factor of credibility of teachers. When teachers lack the necessary skills and knowledge, they may be unable to effectively teach their students. This can lead to poor academic performance, a lack of interest in learning, and a high dropout rate.

## CAUSES OF OVERCROWDED CLASSROOMS

- 1 Population Growth:** With a humongous population, India is the most populous country in the world naturally leading to a corresponding increase in the number of children who need to be enrolled in schools.
- 2 Limited Resources:** Many schools in India have limited resources,

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<sup>1</sup>Ministry of Education, India. (n.d.). Educational statistics at a glance. Retrieved from <<http://mhrd.gov.in/educational-statistics-glance>> (Accessed on 15 April)

<sup>2</sup>ibid

<sup>3</sup>Dr. Jayant Gosh 'Right to Education Act 2009: Issues & Challenges' (2013) SSRN Electronic Journal

which means that they are unable to accommodate all the children who need to be enrolled. This is particularly true in rural areas, where schools may lack basic infrastructure such as classrooms, toilets, and clean water.

3. **High Demand for Education:** Education is highly valued in Indian society, and as a result, there is a high demand for schooling, particularly in urban areas. This has led to an increase in class sizes, as schools struggle to accommodate all the students who want to attend.
4. **Inadequate Infrastructure:** Many schools in India lack the physical space to accommodate smaller class sizes, while others may lack the funding necessary to build new classrooms. This is particularly true in urban areas, where land is premium and construction costs are high.

## **CONSEQUENCES OF OVERCROWDED CLASSROOMS IN INDIA**

1. **Reduced Individual Attention:** Overcrowding can lead to a lack of individual attention from teachers, making it difficult for students to get the help they need. This can lead to a lack of understanding of the material being taught, which can hurt academic performance.
2. **Lower Academic Performance:** Research has shown that students in overcrowded classrooms tend to perform worse academically than their peers in smaller classes. This is particularly true for students from disadvantaged backgrounds, who may struggle to keep up with the pace of the class.
3. **Increased Risk of Physical Harm:** Overcrowding can lead to a greater risk of physical harm or injury, particularly in cases where schools are unable to provide adequate resources for all students. For example, overcrowded classrooms may make it difficult for students to move around safely, or may lead to students being injured during activities such as sports or science experiments.
4. **High Levels of Stress:** Overcrowding can contribute to high levels of stress among students and teachers, leading to burnout and attrition. This can hurt the overall quality of education in the school.

## **LEGISLATIVE FRAMEWORK**

The Right to Education Act of 2009 has been enacted to ensure compulsory and free education for children aged 6 to 14. Noteworthy components

of the RTE Act include Section 25, establishing a fixed teacher-student ratio, and Section 31, which mandates monitoring this ratio alongside ensuring adequate classrooms and infrastructure for effective learning. However, the Act does not address the competence of national and state commissions overseeing child rights. Despite allowing complaints to be filed with local authorities, a conflict of interest arises as the same entity responsible for safeguarding rights is also the arbiter of such complaints. Additionally, the Act does not clarify which state parties bear responsibility for implementation lapses. In a 2016 case involving an overcrowded school in Sonia Vihar, the court, citing Section 6 of the RTE Act, allowed students to seek admission beyond a 3km radius due to overcrowded classrooms.<sup>4</sup> The decline in the social standing of the teaching profession, leading to teacher shortages, subpar infrastructure, insufficient training, and crowded classrooms, contributes to the existing education challenges.

## **TOBACCO CONSUMPTION AMONG STUDENTS**

### **DATA**

The escalating prevalence of tobacco use among students aged 11-18 constitutes a pressing issue in India. As per the 2019 Global Youth Tobacco Survey (GYTS),<sup>5</sup> 8% of 13-15-year-old students in the country presently engage in tobacco product consumption. This is alarming, given the potential adverse outcomes associated with tobacco use among the youth.

### **CAUSES OF TOBACCO CONSUMPTION**

There are many reasons for tobacco consumption among students aged 11-18 years in India. Some of those causes are listed below:

**Peer Influence:** A significant factor contributing to students' tobacco use is peer pressure, where young individuals are swayed by their peers to try tobacco products, ultimately leading to addiction.

**Limited Understanding:** Another reason for tobacco consumption is a lack of awareness regarding the detrimental effects of tobacco. Many youths remain unaware of the lasting health impacts associated with using tobacco.

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<sup>4</sup>Shradha Chettri 'Students of crowded Sonia Vihar school can seek admission elsewhere' < <https://www.hindustantimes.com/delhi/students-of-crowded-sonia-vihar-school-can-seek-admission-elsewhere/story-tfdTXs3QYKfJMi77kHP3iO.htm> > (accessed on 15 April)

<sup>5</sup>Global Youth tobacco Survey India Report 2019 < <https://ntcp.mohfw.gov.in/assets/document/surveys-reports-publications/GYTS%204%20Final%20Report.pdf> > (accessed on 15 April)



**Convenient Availability:** Despite regulations prohibiting the sale of tobacco to minors, students have easy access to tobacco products. This accessibility, particularly near school areas like nearby shops, facilitates students' experimentation with tobacco.

## **CONSEQUENCES OF TOBACCO CONSUMPTION**

Tobacco consumption has many short and long-term harmful consequences affecting physical and mental health, academic performance, social status and economic stability.

**Health Risks:** Tobacco consumption can lead to a variety of health risks, including lung cancer, heart disease, and respiratory problems. The younger a person starts using tobacco, the greater their risk of developing these health problems.

**Addiction:** Tobacco is highly addictive, and young people who start using tobacco products at an early age are more likely to become addicted. This addiction can have a long-term impact on their health and well-being.

**Poor Academic Performance:** Tobacco consumption can also have an impact on academic performance. Students who use tobacco products are more likely to have poor academic performance, leading to a negative impact on their prospects.

**Social Consequences:** Tobacco consumption can also have social consequences, leading to stigmatization and isolation. This can lead to a negative impact on a student's mental health and well-being.

## **LEGISLATIVE FRAMEWORK**

Sec 4 of the Cigarettes and Other Tobacco Products Act 2003 (COTPA) states that public places should be free from smoking but it has an exception as well as it allows smoking in hotels and restaurants. Sec 5 deals with prohibition of advertisement either directly or indirectly, however, it doesn't stop it from advertising tobacco on its pack or points of distribution. Section 6 prohibits the sale of tobacco to minors and the court also prohibits the sale within 100m of educational institutions but on the contrary, it is still easily available near educational institutions. Section 7 talks about pictorial health warnings. Thus, we can derive that COTPA has its share of loopholes. Also, it favours the manufacturers as it doesn't levy heavy taxes and receives exemptions through CSR.

Section 77 of the Juvenile Justice Act, 2015 also makes giving intoxicating liquor, narcotic drugs, tobacco products, or psychotropic substances to a child punishable with rigorous imprisonment of up to 7 years and a fine which may extend up to 1 lakh.

## JUDICIAL DECISION

The matter of reduction in tobacco consumption has been supported by some courts also in India. In *Karnataka Beedi Industry Association v. Union of India*,<sup>6</sup> the court increased pictorial health warnings on tobacco product packaging to 85 per cent. For example, In Kerala, the court observed that the right to life could circumscribe the right to freedom of speech and expression. Thus, ordering to crop the brand names of tobacco products in film and television programmes.<sup>7</sup>

In *K. Ramakrishnan and Anr. v State of Kerala and Ors*,<sup>8</sup> the Court noted that “Public health action by policymakers to eliminate exposure to environmental tobacco smoke (ETS) is long overdue. A total ban on smoking is preferred on various grounds. Policymakers should pursue all strategies that would help accomplish that goal, including education, legislation, regulation, litigation and enforcement of existing laws. Public smoking of tobacco in any form whether in the form of cigarettes, cigars, beedis or otherwise is illegal, unconstitutional and violative of Article 21 of the Constitution of India.”

In *Murli S. Deora v Union of India and ors*.<sup>9</sup> the Court observed that “Fundamental right guaranteed under Article 21 of Constitution of India, inter alia, provides that none shall be deprived of his life without due process of law. Then - why a non-smoker should be afflicted by various diseases including lung cancer or of the heart, only because he is required to go to public places? Is it not indirectly depriving them of his life without any process of law? The answer is obviously - yes. Realizing the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, we direct and prohibit smoking in public places and issue directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places.”

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<sup>6</sup>Special Leave Petition (C) Nos. 10119 – 10121/2016

<sup>7</sup> WP No. 38513/2012(Ker)

<sup>8</sup>AIR 1999 Ker. 385

<sup>9</sup>AIR 2002 SC

## CONCLUSION

In summary, studies have underscored the notable influence of congested classrooms and tobacco use on the rights of schoolchildren in India. Both concerns have the potential to detrimentally impact a child's physical and mental health, resulting in diminished academic achievements and overall welfare. To address the problem of overcrowding, the government needs to focus on infrastructure and technology to ensure that both teachers and students are not overburdened. Additionally, teachers' training programs need to be revamped to help them effectively handle larger classrooms. Similarly, in terms of tobacco consumption, amendments to the existing laws like COPTA are needed, such as implementing licensing for the sale of tobacco and increasing tax brackets, to make tobacco less accessible to children. Furthermore, raising awareness about the harms of tobacco among students through teachers can also help in reducing tobacco consumption among youth. It is essential to prioritize the rights of children and ensure that they are protected from all kinds of harm, including the harmful effects of overcrowded classrooms and tobacco consumption. By taking appropriate legal and policy measures, we can create a safe and healthy environment for children, enabling them to achieve their full potential in life.

# NAVIGATING THE CROSSROADS: BALANCING CHILD LABOUR CONCERNS AND THE RIGHT TO EDUCATION FOR SUSTAINABLE CHANGE

Aryaa Parulekar\*

## Five random pictures of children from the web



Figure 1: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fwww.japantimes.co>

**Feeling :** Hopeful

**Thought :** Children are considered to be innocent. Special care should be given to children who are refugees and survivors of war so that they can overcome the traumatic experience they have gone through.

**Feeling :** Helpless

**Thought :** The child in this picture is young and is entitled to education. Instead he has to work to sustain the financial needs of the family.



Figure 2: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fc8.alamy.com%2Fcomp%2FC8XKRG%2Fchildren-work>

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**Feeling :** Disappointed

**Thought :** Children who should be in school and should be having a healthy and happy childhood, are forced to take up arms to protect themselves and their families. Safeguards should be put in place to prevent children from being dragged into wars waged due to political and other reasons.



Figure 3: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fimg.dunyanews.tv%2Fnews>



Figure 4: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fimages.unsplash.com>

**Feeling :** Happy

**Thought:** The child looks happy and healthy. It seems as if he has been cared for, given love and affection, provided proper nutrition and healthcare.

**Feeling :** Hopeful

**Thought:** Right to education is protected by the Indian Constitution. The children in the picture can be seen exercising this right and receiving the education they deserve for a bright future.



Figure 5: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fstatic.toiimg.com>

I have chosen to focus on the relation between child labour and the right to education of children.

## INTRODUCTION

In this article, attempts have been made to identify a nexus between the right to education and child labour wherein child labour is identified as one of the hurdles to the children's right to education and where effective implication of this can become a solution for child labour in India.

As per the laws of India, a child below 14 years of age who is employed in any occupation or process which is hazardous or hampers their growth and development is considered to be a victim of child labour. Right to education in India extends to children up to the age of 14 years. However, this poses an important question as to whether children below 18 years but above 14 have any protection against being employed in hazardous conditions and being deprived of their right to education.

This article aims to examine the practice of child labour while keeping in mind the right to education. An attempt is made to analyse as to whether child labour can be abolished by implementing the right to education while also throwing light on the legal rights of adolescents in this respect. Further, the legislations pertaining to these two aspects will be looked into in order to understand as to whether they have actually been effective in prohibiting child labour and giving effect to the fundamental right to education for all. Finally, existing judicial decisions have been examined in this regard.

### **Education as a solution to child labour in India: The current situation and concerns**

The second selected picture pertains to the issue of child labour. As per the International Labour Organisation, child labour can be defined as, "Work that deprives children of their childhood, their potential and their dignity, and which is detrimental for their physical and mental development."<sup>1</sup> This raises the question as to who can be termed as a child. As per the Child Labour (Prohibition and Regulation) Act, 1986, a child is "a person who has not completed his fourteenth year of age."<sup>2</sup> The next pertinent question is regarding what sort of work qualifies as child labour or prohibited work for children. The Schedule to the aforementioned Act lists out several occupations and processes wherein the employment of children has been

<sup>1</sup>International Labour Organisation, 'Child Labour in India' <[https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_557089.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_557089.pdf)> (accessed on 9 January 2024)

<sup>2</sup>Child Labour (Prohibition and Regulation) Act 1986, s 2

prohibited under Section 3 of the Act.<sup>3</sup> In essence, these are all those occupations or processes which are hazardous for children or have the potential to hamper their growth and development.

An amendment to this Act was introduced in 2016 and was known as the Child Labour (Prohibition and Regulation) Amendment Act, 2016. Through this, adolescents were also brought under the ambit of the 1986 Act by inserting a new section.<sup>4</sup> However, unlike that for children, a complete ban is not imposed on the employment of adolescents. As per the 2016 amendment, there is a prohibition only on employing them in hazardous occupations or processes.<sup>5</sup> This has become a matter of concern as there is no specification on concessions given to those adolescents who pursue higher education and there are also no specified work timings. In such a scenario, there is scope for exploitation of this age group. Another matter of concern is that this amendment made an exception for the children below 14 years of age to help with the family occupation after school hours or during vacations, as long as it is not hazardous.<sup>6</sup> Additionally, it made exceptions for children in the entertainment or sports industry.<sup>7</sup> There is no specification on the hours that children can be made to work in the mentioned industries or in family occupation. This makes the clause dangerous.

The second selected picture is perceived to depict the right to education. This brings into application the Right to Education Act, 2009, hereinafter referred to as RTE Act. As per this, every child between the age group of 6 to 14 years is entitled to free and compulsory education.<sup>8</sup> This implies that the right to education stops once the child attains the age of 14 years. Such a limitation on the age detrimentally affects the children who drop out and also those children who are unable to continue their education after they attain this age. This places a limitation on the right to education which cannot be viewed as a reasonable restriction.

### **Child labour: A hurdle for children to avail the right to education**

Child labour in India is a major hurdle to the right to education. When

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<sup>3</sup>Child Labour (Prohibition and Regulation) Act 1986, S. 3

<sup>4</sup>Child Labour (Prohibition and Regulation) Amendment Act 2016, s 3A

<sup>5</sup>ibid

<sup>6</sup>Child Labour (Prohibition and Regulation) Amendment Act 2016, s 3A

<sup>7</sup>ibid

<sup>8</sup>Right of Children to Free and Compulsory Education Act 2009, s 3



children are engaged in labour activities, they are unable to attend school and receive an education. This can have long-term consequences for their development and future opportunities. Child labour is particularly prevalent in India, with an estimated 10.1 million children aged 5 to 14 engaged in some form of labour.<sup>9</sup> Many of these children come from disadvantaged backgrounds, including rural areas and marginalized communities, and lack access to education.

The financial condition of the families makes it so that even when children are enrolled in school, they may still be forced to work to support their families, which can make it difficult for them to attend classes and complete their education. Additionally, some children are forced to drop out of school entirely to work full-time, as it is impossible for the families to afford the loss of an extra pair of working hands. Further, The Child Labour (Protection and Regulation) Amendment Act, 2016 provided exceptions which allowed children to work after school hours in the family occupation and in entertainment industry or sports.<sup>10</sup> This makes it easier to employ children in jobs deeming them to be family occupation. However, if children are employed in jobs after school hours, it is unreasonable to expect them to study for their examinations and complete all their school work on time. It also leaves the child no time for other skill building activities. This only adds to the impediments that stand between the child and their development.

In the case of adolescents, although there is some level of protection, it is not sufficient. The lack of provision of specifications of work hours and no complete ban on their employment like that for children deprives them of their right to education. As their employment is not termed as child labour, they drop out of schools and take up jobs. In such a scenario, if they no longer pursue education, the primary education they have received remains of little use and defeats the purpose of the right to education.

It is essential to recognize that the right to education and the elimination of child labour are interrelated issues. The interconnection was recognized as part of the outcome document of the Special Session of the United Nations General Assembly on Children (UNGASS) held at New York in May 2002.<sup>11</sup>

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<sup>9</sup>'Child Labour in India' (SOS Children's Villages, Canada, 25 June 2018) <<https://www.soschildrensvillages.ca/news/child-labour-in-india-588>> (accessed on 9 January 2024)

<sup>10</sup>Child Labour (Prohibition and Regulation) Amendment Act 2016, s 3

<sup>11</sup>'Combating Child Labour through Education' (International Labour Organisation) <<https://www.ilo.org/ipecinfor/product/download.do?type=document&id=7850>> (accessed on 10 January 2024)



By promoting education and reducing child labour, India can create a brighter future for its children and promote economic growth and social development.

### **Right to Education: A major step towards abolition of child labour**

No access to education is a dominant reason for persistence of child labour in India. When children are not enrolled in school, they are more likely to be engaged in labour activities, especially in the informal sector.<sup>12</sup> Providing education to all children is therefore essential to reducing child labour. Not only would it increase the value of education in the eyes of the children, thus resulting in a chain of their descendants pursuing education, but would also ensure that these children grow up to become adults who are capable of at least sustaining themselves.

The right to education is a powerful tool for addressing child labour. By ensuring that all children have access to education, India can not only reduce child labour but also create a more skilled workforce, promote economic growth, and reduce poverty. Education can also help children develop critical thinking skills, which can help them make informed decisions about their lives and contribute positively to their communities.

However, simply enacting laws and policies that guarantee the right to education is not enough. It is also important to ensure that children have access to quality education and that they are able to complete their education. This requires addressing factors such as poverty, social and cultural barriers (some of the key causes of child labour), and the lack of infrastructure, and inadequate funding for education.

### **Possible strategies for implementation of right to education as a solution**

The right to education can be made a solution for child labour in India by implementing a range of policies and initiatives that promote education and reduce child labour. Here are some specific strategies which can be implemented:

1. Universal access to education: Ensuring that children have access to education is essential to reduce child labour. This requires investing in school infrastructure, teacher training, and curriculum development, and addressing barriers to enrolment, such as poverty and discrimination.<sup>13</sup>

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<sup>12</sup>ibid

<sup>13</sup>National Education Policy, 2020

2. Compulsory education by increasing the age limit under the RTE Act: India has enacted laws that make education compulsory for children between the ages of 6 and 14. However, these laws are not always enforced, and many children still drop out of school to work. Stronger enforcement of these laws can help to ensure that all children receive an education. Further, since a progressive approach has been taken by the legislature with respect to the Child Labour (Prohibition & Regulation) Amendment Act, 2016 wherein employment of adolescents in hazardous conditions has been prohibited, an extension of the age limit should also be considered within the RTE Act. Increasing the age limit under the RTE Act was also proposed by the then Minister of Primary and Secondary Education of Karnataka, Mr. Vishweshwar Hegde Kageri.<sup>14</sup> Further, the age limit also prevents those children who have previously dropped out due to some issues from seeking refuge under this Act and completing their education.<sup>15</sup> It has already been established that the effective implementation of the RTE Act can be a big step towards abolition of child labour. The proposed extension within the RTE Act would give this move towards abolition of child labour by way of the RTE Act, the much-needed push.
3. Vocational training: Providing vocational training to older children can help them develop skills that can lead to better job opportunities and reduce the likelihood that they will be engaged in hazardous or exploitative work.<sup>16</sup>
4. Awareness campaigns: Increasing awareness about the harms of child labour and benefits of education can help to change social norms and attitudes about child labour. In addition to this, raising awareness regarding the mid-day meal scheme and other such schemes for children in schools would possibly push the parents to enrol their children in schools.

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<sup>14</sup>Increase age limit for RTE: Government' The New Indian Express <<https://www.news18.com/news/india/increase-age-limit-for-rte-government-494111.html>> (accessed on 12 January 2024)

<sup>15</sup>Tanu Kulkarni, 'Age limit in RTE denies dropouts a chance to get back to school' (The Hindu, 14 November 2012) <<https://www.thehindu.com/news/cities/bangalore/age-limit-in-rte-denies-dropouts-a-chance-to-get-back-to-school/article4094532.ece>> (accessed on 12 January 2024)

<sup>16</sup>'How can India prepare its youth for the future of work?' (World Economic Forum, 26 October 2022) <<https://www.weforum.org/agenda/2022/10/report-india-improve-future-of-work-school-to-work-transition/>> (accessed on 13 January 2024)

5. Incentives for parents sending their children to school: One of the primary concerns of the parents is that they are unable to sustain due to the loss of an extra pair of hands which means more earnings. In such a scenario, vocational training can be given a more practical aspect wherein the children can be given tasks based on the skills taught to them, and get some amount of remuneration in return. For example, if there is a vocational course of graphic designing, then for making posters for school events or social causes during the timings of provision of the skill, the children can be paid by the school. This would encourage parents to not only send their children to school, but also ensure that their children take up some vocational courses.

By implementing these strategies and addressing the underlying factors that contribute to child labour, India can make significant progress towards promoting the right to education and reducing child labour.

### **LEGISLATIONS AND SCHEMES: ARE THEY REALLY EFFECTIVE?**

India has enacted several laws and policies to protect children from child labour. Here are some of the key legislations related to the protection of children from child labour in India:

1. The Factories Act 1948: This Act regulates the working conditions of workers, including children, in factories and prohibits the employment of children below the age of 14 years.
2. The Mines Act 1952: This Act prohibits the employment of children in mines and provides for the health and safety of workers, including children who may be working in mines.
3. The Bonded Labour System (Abolition) Act 1976: This Act prohibits the practice of bonded labour, which often affects children from marginalized communities who are forced to work in exploitative conditions.
4. The Child Labour (Prohibition and Regulation) Act 1986: This Act prohibits the employment of children below the age of 14 years in hazardous occupations and regulates the conditions of work of children in non-hazardous occupations.
5. The Right of Children to Free and Compulsory Education Act 2009: This applies to children between 6 to 14 years and provides

for compulsory and free education for them, and aims to reduce the number of children engaged in child labour by ensuring their access to education.

6. The Protection of Children from Sexual Offences (POCSO) Act 2012: This Act provides for the protection of children from sexual abuse and exploitation, including those who are engaged in child labour.
7. The Juvenile Justice (Care and Protection of Children) Act 2015: This Act provides for the protection, care, and rehabilitation of children in need of care and protection, including children who are victims of child labour.

These laws and policies are critical to protecting children from child labour in India and promoting education. However, there is a need to strengthen their enforcement to ensure that all children are protected from child labour and are able to realize their full potential.

The Child Labour (Prohibition and Regulation) Act 1986 and the RTE Act are the two primary legislations in consideration. In terms of practicality, both these Acts tend to fail in most cases. Identification of a child labour case is a difficult task as there is generally no proof of employment of the child. There are no documents, no contracts, and nearly nothing to point to any sort of employment. This difficulty is aggravated by the fact that children themselves feel the need to work. Since a young age, they have been made part of the shoulders that bear the financial burden of the family. As a result, when questioned, they do not admit to working anywhere. Getting IDs to determine the age of the child is also difficult as migrant children and children from socially and financially backwards backgrounds often do not possess any documentation as to their age. This becomes an issue as the entire qualification for the Child Labour (Prohibition and Regulation) Act, 1986 is that the person is below 14 years of age. This renders the Act ineffective and inaccessible for these children. Further, cases of adolescents become even more complicated as the protection of the Act does not extend to them beyond hazardous conditions. Since the Act mainly focuses on children below 14 years, the Labour Department has the practice of registering only if the child is below 14 years of age; even if there is employment in hazardous conditions.<sup>17</sup> This draws attention to the

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<sup>17</sup>Navya P K, 'Ineffective implementation of child labour laws' (India Together, 2017) <<https://indiatogether.org/ineffective-implementation-of-child-labour-laws-children>> (accessed on 13 January 2024)

need for increasing the prohibition age from 14 to 18 years so that it then goes hand in hand with the proposed extension of age limit for the RTE Act.

Moving to the RTE Act, the most critical challenge that this legislation has taken upon itself is to put an end to child labour in a country which has been held in the strongest grasp of poverty and population growth since decades.<sup>18</sup> In light of this, the Act has proved largely ineffective. One of the biggest shortcomings of this Act is the age limit. It only provides refuge to children between 6 to 14 years of age. It excludes children below 6 years and between 14-18 years, despite India being a signatory to the UN Charter requiring compulsion of free education to all children up to the age of 18 years.<sup>19</sup> This problem is graver than it seems and does not help the Act to combat child labour either. After the age of 14 years, the next 4 years of the child's life are crucial to determine how their life as adults will be. Stopping education at such a crucial point defeats the aim of the Act and leaves the task only half done. It is high time that it is realised that education only up to 14 years is inadequate to ensure that the child grows up to become an adult who can sustain himself or herself.

Although the Act has taken a major step ahead by opening up the option of private schools from weaker sections by providing for 25% reservation,<sup>20</sup> it has failed to take into the consideration the fact that there has been no provision for bearing of the deficit between the fee of the school and reimbursement provided by the government at its own decided rate, and overhead expenses of uniforms, stationery items, books, etc. For a family where the loss of even one working member of the family has a major impact of its earnings, affording all these additional expenses will be more damaging as compared to employing the children in activities which classify as child labour. While there is encouragement for parents to enrol their children in school while keeping in mind the child labour issue, the Act does very little to actually tackle this problem and discourage child labour. The lacuna in the legislation makes employment of children for struggling families more viable.

In light of all these issues, there emerges a great need for an overhauling of the existing legislations. Suggestions to this effect have been covered within the earlier portion of this article. It is also important to note the role of the judiciary

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<sup>18</sup> 'RTE Act 2009 – Issues and Challenges' (World Press, 17 July 2020) <<https://socialissuesindia.wordpress.com/2020/07/17/rte-act-2009-anomalies-and-challenges/>> (accessed on 13 January 2024)

<sup>19</sup> *ibid*

<sup>20</sup> Right of Children to Free and Compulsory Education Act 2009, s 12(1)(c)

in upholding the rights of the children and as one of the most important pillars of the country, ensuring that these rights actually make a difference for the children as was intended while they were brought into effect.

## **JUDICIAL STANDING ON CHILD LABOUR AND RIGHT TO EDUCATION**

The judiciary in India has always played a crucial role in using education as a solution to child labour. The Indian Constitution guarantees the right to education as a fundamental right, and the judiciary has been instrumental in ensuring that this right is upheld. In various case laws related to child labour, the judiciary has emphasized the importance of education in eliminating the practice. One of the landmark cases in this regard is *Bandua Mukti Morcha v. Union of India*.<sup>21</sup> In this case, the Supreme Court, in its rulings, observed that the right to education stems from Article 21 of the Indian Constitution and that the practice of child labour deprives children of this right to life encompassed under Article 21 which provides for access to food, healthcare, shelter, and education.<sup>22</sup> This case came after another landmark judgement in *Unni Krishnan, J.P. and Ors. v State of Andhra Pradesh and Ors.*,<sup>23</sup> which held that the right to education is a fundamental right enshrined as a part of right to life under Article 21.

The Supreme Court of India has ruled that education is essential for the social and economic development of the country and that child labour is a violation of a child's fundamental right to education. This can be seen from the catena judgements by the Apex Court on these issues. An important one here is the *People's Union for Democratic Rights v Union of India*,<sup>24</sup> wherein the Court held that employment of children in construction work is a violation of the child labour laws. Further, in *M.C. Mehta v State of Tamil Nadu*,<sup>25</sup> the State Government was given directions to eliminate child labour; a key direction being ensuring the education of children in appropriate institutions.

The Supreme Court has time and again directed state governments to ensure that all children are enrolled in school and receive quality education. In cases where children are found to be working, the Court has ordered their employers to pay for their education, and the employee has been

<sup>21</sup>(1997) 10 SCC 549

<sup>22</sup>Constitution of India 1950, Art. 21

<sup>23</sup>1993 AIR 2178

<sup>24</sup>1982 AIR 1473

<sup>25</sup>1997 SCC 699

pardoned.<sup>26</sup> The judiciary has also taken a proactive role in monitoring the implementation of the RTE Act and ensuring that schools provide quality education. In a landmark judgement, the Supreme Court directed all private schools in the country to reserve 25% of their seats for children from economically weaker sections and disadvantaged groups.<sup>27</sup>

This shows that the interconnection between the right to education and child labour has not gone unnoticed under the Indian judiciary's radar. It has played a critical role in using education as a solution to child labour. Through its various judgments and orders, the judiciary has emphasized the importance of education and recognised it in relation to prevention of child labour, and has also taken steps to ensure that all children have access to quality education.

## CONCLUSION

The two key legislations taken up in this article make it clear that the right to education and the issue of child labour go hand in hand. As long as child labour continues to exist, it will be an obstacle for the children. On the other hand, as long as right to education is not implemented to its full extent with the necessary changes, it will be unable to realise its potential of abolishing child labour in India.

The lacuna in the legislations continues to give room for continuation of the practice of child labour and inability of making education accessible for all children as was the legislative intent for these statutes. The Child Labour (Prohibition and Regulation) Act, 1986 and the RTE Act are both plagued by limitations of age for the children that they are applicable for and the practicality of the situation to which their respective mandates apply. A harmonisation between both these Acts when it comes to increased age limits would go a long way in ensuring that the rights of the children are protected when it comes to education and exploitation in form of child labour.

One of the major reasons for child labour and its persistence in India is poverty. Education can be a powerful solution for child labour as it helps to

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<sup>26</sup>*MC Mehta v State of Tamil Nadu* (1997) SCC 699

<sup>27</sup>'Supreme Court uphold constitutional validity of RTE Act' (The Economic Times, 12 April 2012) <<https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-uphold-constitutional-validity-of-rte-act/articleshow/12634042.cms?from=mdr>> (accessed on 16 January 2024)

break the cycle of poverty and provide children with better opportunities for their future. By providing access to quality education, children can develop the knowledge, skills, and capabilities they need to lead a productive and fulfilling life. It can help to break the cycle of poverty and prevent children from being forced into exploitative work.

Apart from the government, the judiciary also plays a major role in ensuring that the right to education is utilised as a means to abolish child labour. In its various judgements, the Apex Court has upheld the importance of education as a fundamental right and has taken a clear stand on child labour being a violation of the fundamental rights of children. However, the directions of the judiciary are not sufficient. Implementation is an area where the majority of the measures of the government and the judiciary fail. Strategies need to be worked out in order to make implementation a key and stronger front for abolishment of child labour by ensuring education for all children. There is also a need to increase awareness amongst the people regarding these issues and make them realise the importance of education and the harm that child labour can do, as they are one of the biggest decision makers when it comes to the final result of all the efforts.



# ADDRESSING THE ISSUES OF CHILD LABOUR AND HUNGER IN INDIA

Mallika Patnaik\*

## Five random pictures of children chosen from the web



Figure 1: <https://www.unicef.org/eu/stories/high-level-dialogue-action-child-labour>

**Feeling :** Sorrow

**Thought :** A longing for a normal childhood, a happy childhood. In her age of having fun and making memories, she is picking bricks to feed her growling stomach.

**Feeling :** Heartbreaking

**Thought :** Look at their eyes. Look at the stories those eyes say. How unfortunate! One can feel the helplessness in their eyes.



Figure 2: <https://medium.com/@nevaan.krishnan/how-cellular-agriculture-can-transform-the-world-hunger-crisis-2884463d2530>

**Feeling :** Despair



Figure 3: <https://www.futurelearn.com/info/courses/human-rights-and-international-criminal-law/0/steps/68741>

**Thought :** This picture rendered me speechless. The loss of innocence in his eyes. The harsh extremities of war. An innocent child is a victim of war crimes for no fault of his own.

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**Feeling : Relief**

**Thought :** A helpless child with a mask on, on the receiving end of a man’s kindness. The child is surviving, not living. It is relieving to think that the child went to bed with a full stomach.



Figure 4: <https://www.news18.com/news/buzz/telangana-government-employee-is-helping-lost-people-reunite-with-their-families-3952661.html>



Figure 5: <https://milaap.org/fundraisers/priyankasaxena94>

**Feeling : Togetherness**

**Thought :** Look at the girl’s smile while showing affection to her sibling. Even in the worst of the circumstances, their bond keeps them going.

I have chosen to focus on “Addressing the Issues of Child Labour and Hunger in India”

## PART 1: CHILD LABOUR

“The true measure of any society can be found in how it treats its most vulnerable members.”  
- Mahatma Gandhi

### INTRODUCTION

Children are undoubtedly the most vulnerable section of any society. They are dependent on others and their life is determined by the status and condition of their family. Children do not contribute to the political vote banks and so they are often forgotten about while framing policy frameworks. Mostly, children are unaware of their birth rights which is why they are highly prone to being exploited. Child labour is a significant persistent issue that ails India. Millions of children are clutched into the clasps of child labour owing to a plethora of reasons ranging from poverty, hunger, lack of awareness, etc. With hundreds of thousands of children working in dangerous and exploitative jobs, child labour is a serious issue in India. According to recent research by the International Labour Organization (ILO), 5.6 million boys and 4.5 million girls between the ages of 5 and 17 make up the estimated 10.1 million child labourers in India.<sup>1</sup> The National Statistics Office (NSO) has recently updated its estimates, which show that the number of child labourers in India has declined from 4.4 million in 2014–15 to 3.22 million in 2017–18. Yet, despite this drop, child labour continues to be a significant issue in the country, particularly in the unregulated unorganised sector.

One of the government-run project in India<sup>2</sup> which has shown some positive results is called the National Child Labour Project (NCLP) launched in 1988. This project aimed to prevent child labour and rehabilitate child labourers. The Ministry of Labour and Employment, along with state governments, non-profit organisations, and other stakeholders worked together on this project. The NCLP’s main goals were to find and rescue child labourers, provide them with education and job training, and see to it that they were rehabilitated and integrated back into society. The project also intended to raise awareness of the negative impacts of child labour and the value of education among parents and employers. Under this project, NCLP schools were established in regions with a high concentration of child labour. They were conceived as a forum to provide vocational training and non-formal

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<sup>1</sup>International Labour Organisation, *Child Labour in India*, < [https://www.ilo.org/wcmsp5/groups/public/-asia/--ro-bangkok/--sro-new\\_delhi/documents/publication/wcms\\_557089.pdf](https://www.ilo.org/wcmsp5/groups/public/-asia/--ro-bangkok/--sro-new_delhi/documents/publication/wcms_557089.pdf) > accessed 1 May 2023.

<sup>2</sup>Bhatnagar, J and Sen, G, *Child Labour in India* (Oxford University Press, 2017)

education to rescued victims of child labour. They ensured that basic skill training was being provided to them so that they could be reintegrated into society. Every child aged between nine to fourteen years who was rescued from occupations of a hazardous nature was eligible to attend these schools. The duration of education under NCLP schools was three years. While these institutions were funded by the government, non-government organisations and other stakeholders also competed in a bidding process to determine who gets to contribute to the funding.

As of March 2020, 12,880 NCLP schools have been in operation since the NCLP started in 1988. NCLP schools have been instrumental in the rehabilitation of many rescued child labourers.<sup>3</sup> The government disbursed Rupees 18-45 crores under this scheme in the year 2021-2022 as per the answer given by the Minister of State to an unstarred question in Rajya Sabha.<sup>4</sup> However, the Minister also informed that the scheme was approved to be extended till 31.03.2021. After the expiry of this period, this scheme was submerged with the Samagra Shiksha Abhiyan of the Ministry of Education to avoid duplication of efforts at the district and state levels. This shows that the Ministry of Labour washed its hands off the issues of rehabilitation of rescued child labour.

## **ANALYSIS AND WAY FORWARD**

Being a developing country, India is ever-evolving. There is no doubt that the prevalence of child labour has vastly reduced over the years. However, there is room for improvement and as per the ILO Directives that India has ratified, there should be absolute abolition of child labour in the country. The issue of child labour is always broadcasted in a negative light due to its inherent implications. We picture children working in hazardous conditions in factories and industries as soon as we hear the words 'child labour'. But there are myriads of other works that come under the purview of child labour that we subconsciously ignore. This is because we always associate child labour with a specific backdrop of innocent children being subjected to forced labour in an industrial setup. This line of thought is harmful to India as we have a huge unorganized informal sector. All the research undertaken on the topic of child labour is limited to workshops and factories rather

<sup>3</sup>Bhatty, K., 'Child Labour and Education in India: An Overview' [2017] 58 (3) Economic and Political Weekly 38

<sup>4</sup>Unstarred Question no. 566, to be answered on 21-07-2022, available at [https://sansad.in/getFile/annex/257/AU566.pdf?source=pqars#:~:text=\(a\)%3A%20National%20Child%20Labour,the%20District%20and%20State%20level.](https://sansad.in/getFile/annex/257/AU566.pdf?source=pqars#:~:text=(a)%3A%20National%20Child%20Labour,the%20District%20and%20State%20level.)

than street vending, domestic work and even agriculture. There is a huge research gap between the children employed in “non-hazardous” labour.

In a utopian country, every single child ought to go to school and have an innocent childhood unexposed to the harsh realities of poverty and hunger.<sup>5</sup> It is the country’s duty to ensure that its children are cared for. The United Nations Convention for the Rights of the Child (UNCRC) entails specific Articles that enlist the duty givers for a child - parents, teachers, society and the State.<sup>6</sup> However, when children are employed for labour by their own families to aid in earning the daily bread, these activities get missed from the radar of child labour policies. Even though these activities are not hazardous, they act as a barrier to children from accessing proper education. There is a need for policies and initiatives targeting child labour to be more inclusive. The way forward for India is not in framing new policies and implementing better initiatives, rather it is in identifying the population where child labour subsists and make the people aware of the severe implications and consequences of child labour on a child’s life.

## **PART 2: HUNGER - A CRY FOR HELP**

*“It is shocking that in a world with so much wealth, so many children still go to bed hungry every night”*

- Desmond Tutu

One does not understand the ‘pangs of hunger’ until one has felt it truly. The issue is even more alarming when children have no access to basic nutritious food. Hunger is a social problem. It transcends into the nation’s poor productivity because a nation with millions of people starving for food cannot progress. It undermines the value of human development. It perpetuates poverty. India is the most populated country in the world right now. The problem of hunger is escalated. India has ranked 107/121 in the Global Hunger Index 2022,<sup>7</sup> hence being under the label- **serious**.

Child Hunger is broadly segregated into undernourishment, micronutrient deficiency and food insecurity. Undernourishment is the most severe form wherein a child does not receive enough amounts of nutrients. It leads to

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<sup>5</sup>Sen G, ‘Child Labour and the Law’ in De Tocqueville A and Guha R (eds), Children and the Law in India (Oxford University Press 2020) 85

<sup>6</sup>Convention on the Rights of the Child

<sup>7</sup>Concern Worldwide and Welt Hunger Hilfe, Global Hunger Index (CWWHF, 2022).

stunting and a weak immune system. Micronutrient deficiency occurs due to acute deficiency of minerals and vitamins in the diet, thereby causing anemia, rickets, blindness and affecting overall cognitive development. Food insecurity is a social problem that affects the entire family of the child. There is no reliable access to a balanced diet due to imbalances in income levels, obstruction in access to the markets, etc. These categories are interconnected and children suffer from these simultaneously.

The common parameters for measuring malnutrition and undernourishment are wasting and stunting.<sup>8</sup> Wasting is a sign of acute malnutrition as is reflected by the severely low weight-to-height ratio. Their Body Mass Index plummets and the body looks emaciated. Wasting generally arises from a persistent loss of food thereby preventing the body from taking in the essential nutrients. Stunting is also a sign of chronic undernourishment wherein the ratio of height to age is checked. Stunted children's heights are affected due to non-access to basic food. A prolonged deficiency of nutrients during the first 1000 days of life of the child leads to stunting. These conditions are not mutually exclusive. Children generally suffer from both of these conditions owing to hunger, and poverty.

## **SCHEMES AND LAWS FOR ADDRESSING CHILD HUNGER**

Initially, the issue of food security to prevent hunger in India was sought to be addressed in 1980 through the Public Distribution System where every household could purchase monthly rations at the subsidized rates from PDS shops in every locality. A special scheme, namely, the Integrated Child Development Services (ICDS) specifically focused on children and pregnant mothers was introduced in 1975. It provided supplementary nutrition and regular health check-ups to pregnant women and lactating mothers as the nutrition during gestation period is crucial for a child's well-being and immunity. The National Health Mission launched in 2013 has the motto of reducing IMR and MMR - Infant Mortality Rate and Maternal Mortality Rate respectively. The mid-day meal scheme is tasked with providing cooked meals to children in government schools. The incentive behind it is (a) nutrition and (b) promoting attendance and retention at the school.

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<sup>8</sup>World health organisation , <Malnutrition in children> (*Nutrition Landscape Information System*, 2018) <<https://www.who.int/data/nutrition/nlis/info/malnutrition-in-children> > accessed 24 April 2023

Since 01.012017, the Pradhan Mantri Matru Vandana Yojana became responsible for incentivizing pregnant and lactating mothers. This maternity benefit program provides cash for the first childbirth as it aims to compensate mothers for the loss in wages that they suffer from during the pregnancy period.

The latest step in this direction is the National Food Security Act passed in 2018. This Act provides food security to the downtrodden masses of the society by way of giving subsidized food grains through the Public Distribution System (PDS).

## **GLOBAL INITIATIVES**

There are several global initiatives in place for combating the evil of child hunger. The Sustainable Development Goals adopted by the United Nations General Assembly in 2015 have Goal 2 as ending hunger and malnutrition by the year 2030. There is seven years left for the world to collectively achieve this goal. The Save the Children Program by UNICEF addresses the issues of stunting and wasting among children by working in collaboration with governments and civil society organisations and promoting breastfeeding. The Global Alliance for Improved Nutrition (GAIN) is a non-profit organisation engaged in ensuring the quality of diets served to the vulnerable sections. It partners with state governments to draft nutrition plans according to the key demographic. The World Food Program is the largest organisation invested in fighting hunger in the world. It is especially crucial as it provides relief to nations in conflict and children affected by war crimes, natural disasters and catastrophes. These are some of the large-scale initiatives drawn up by state parties and other stakeholders to battle child hunger.

## **HELPING THEMSELVES**

The 2030 agenda of the United Nations Sustainable Goals to end hunger can only be achieved when people start fetching for themselves. While most people living in the shackles of dire poverty can barely afford to get to work, some case studies have shown that farmers and agricultural prospects have helped people grow their own produce that lasted them for a whole year. The sole factor behind ensuring Zero World Hunger is making sure “No one is left behind.”



In India, the National Food Security Act formulated a cohesive plan to end hunger as a going concern, however, the implementation has to be checked at regular intervals. Moreover, India is home to millions of tribals, and the Dalits and Adivasis living here are disproportionately affected by hunger and poverty. In a study conducted by the United Nations Children's Fund (UNICEF) covering eleven states of India,<sup>9</sup> it was observed that the indigenous people of India suffer the most. One in two adivasi children are stunted and 68% of the adivasi mothers are aged below 21 years. There is also aggravated stunting between girls of 6 to 23 months and boys of the same age. One striking factor for this disparity is gender discrimination wherein boys are served more food than girls.

Meanwhile, tired of waiting for the government to take efficient action, farmers in the rural areas of the State of Odisha, India have taken it upon themselves to practice sustainable farming and secure their families' stomachs.<sup>10</sup> Living Farms is an NGO that works with marginalized farmers in Odisha. These farmers can predict the direction of the rains by looking at the positioning of a bird's nest and also predict precipitation by observing the number of beans in a single pod of the creeper plant. They manage to grow around 72 varieties of crop produce that last them for over a year.

## **SUGGESTIONS AT THE GROUND LEVEL**

The Mid-Day Meal Scheme has greatly helped in providing nutritious meals to school-going children. The benefits of the scheme are two-fold as well. Not only are the children receiving balanced diets, but also it is a pushing factor in convincing parents to enrol their wards in schools. However, the children who still do not go to school are devoid of accessing these mid-day meals. A solution for them would be to circulate mobile food pantries and establish soup kitchens. The pantries shall serve basic balanced diets rich in carbs, protein and legumes for free. These caravan-based pantries can be funded by NGOs as well as the government and go around the whole State throughout the day.

I believe that we have the manpower, we have the money, we are just misguided. Fully funded organisations that deal with matters of child health

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<sup>9</sup>UNICEF, *Stunting in tribal children aged under two years in Odisha, India*, <<https://knowledge.unicef.org/india/resource/stunting-tribal-children-aged-under-two-years-odisha-india>> accessed 2 May 2023.

<sup>10</sup>National coalition for natural farming, 'Living Farms' (Living Farms, 2018) <<https://nfcoalition.in/partners/living-farms/>> accessed 24 April 2023



and adoption surely have the resources to delegate the responsibilities and circulate food in different parts of the city. Aahaar Kendras<sup>11</sup> should be established in every district. These in turn will provide mass employment to many homeless people. Gender bias also plays an important role in matters of food security. Many girls drop out of school to aid and assist in the household work or get married off. These children are denied schooling and in turn, nutritious food as well. There are many initiatives schemes and policies in place. But how much progress is being made? Moreover, during the pandemic, access to food became a graver issue. To achieve the Zero Hunger Goal by 2030, we cannot rely on the government to make every child's life nurtured and secure. The pool of money that has been assigned to implement these broad initiatives should be delegated in a manner that every child in every district of every state in India can access it. Only then can we ensure that children are getting proper food from the moment they are born and ever after.

### **CHILD: LABOUR V. HUNGER**

Child labour is used as a negative coping mechanism to deal with severe food insecurity. Parents and families that have acute food shortages send their children off to work so they can become the breadwinners too. Poverty-stricken families face hardship in every aspect. They do not have the money or the food to sustain themselves. They admit their children to a government school hoping that the children get mid-day meals and basic education there. However, as there is no money at home for the other members, they force the children to drop out. Girls get married off so the burden can be lessened on the family. Young children are sent off to work in extremely hazardous industrial setups so they can get minimum wage and afford food.

The extremities of child labour and child hunger are interconnected. To escape the maze, the victims of this social problem have to gain regular access to food, education and health and only then will they stop surviving and start living. However, this requires a multifaceted approach at the central, state and district levels of the community. India is far off from achieving its targeted goal of 2030. The dream can become a reality when state parties stop acting individually and start acting collectively.

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<sup>11</sup>Rourkela municipal corporation, 'Aahaar yojana' (*National Urban Livelihood Mission*, 2018) <<https://rnc.nic.in/aahaar.html>> accessed 24 April 2023

## CONCLUSION

While there is a plethora of issues to be addressed regarding the welfare of children, child labour and child hunger are very prominent and need urgent attention. The legislation in India has been erratic in defining the term 'hazardous work' thereby creating a grey area for proper implementation. Family businesses have been excluded from the purview of hazardous activities. Therefore, a child employed in a bangle-making factory owned by the family for generations would not come under the protection of the Act. Besides, hazardous activities are not the only issue. Any kind of activity and profession that deters a child from going to school regularly shall be included within the meaning of child labour. Any bar to accessing fundamental rights should be understood as child labour, be it domestic work, vending work or any wage-earning job in the unorganized sector of India.

Similarly, the problem of child hunger arises from many factors besides poverty - lack of education, gender discrimination, climate change, etc. Climate change crises, especially in a country like India whose agriculture is heavily dependent on monsoons, create a ruckus on the production of food grains. Also, with the growing popularity of packaged foods and pre-processed meals, access to hot cooked meals and healthy nutritious food is becoming negligible.

Child labour and hunger cannot be solved in a year, but with increased participation and growing empathy, we will be able to achieve our Sustainable Development Goals as targeted.

# LEGAL FRAMEWORKS FOR SAFEGUARDING MENTAL AND PHYSICAL HEALTH OF CHILDREN

Ananya Gudihal\*

## Five random pictures of children from the web



Figure 1 <https://raisingchildren.net.au/school-age/health-daily-care/school-age-mental-health-concerns/mental-health-problems-in-children-3-8-years-signs-and-support>

**FEELING :** Comfort

**THOUGHT :** The child in this picture is in some distress, and his father is trying to provide him comfort by way of a hug. The warmth of a parent's love is crucial for a child to feel safe and secured. I, too, find comfort in knowing that more and more parents are prioritising the mental health of their children these days.

**FEELING :** Worry

**THOUGHT :** Little children forced to stay indoors, and required to wear masks when they step out are sights that always make me anxious and worried; just like the mother and brother of the kid getting swabbed in the image. The pandemic has put a massive strain on the health of children.



Figure 2 <https://indianexpress.com/article/cities/hyderabad/telangana-child-care-centre-covid-patients-7304015/>

At an age where they should be going to school and playing outdoors, it is shown that children have been deprived of a normal life.

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Figure 3 <https://www.theindiaforum.in/article/building-foundations-well-challenge-primary-education>

### **FEELING :** Happiness

**THOUGHT :** This picture depicts that education is an essential element of a child's life. The children in the picture radiate pure happiness as they stand holding their colourful slates in front of a blackboard.

### **Feeling :** Helpless

**THOUGHT :** Children who have experienced kidnapping often suffer from persistent fear and anxiety. The trauma of being forcibly taken away from familiar surroundings and loved ones can lead to long-lasting emotional distress. I feel an overwhelming sense of helplessness when I look at the child in the picture who is confined against his will.



Figure 4 <https://www.livemint.com/Politics/Bv4TbeToCpVS9j4IX3hJjN/The-rising-trend-of-child-abductions-in-India.html>



Figure 5 <https://www.un.org/en/global-issues/international-law-and-justice>

### **FEELING :** Traumatized

**THOUGHT :** Children growing up in war zones face numerous challenges that can have profound and long-lasting effects on their lives. War disrupts the normalcy of childhood, exposing children to violence, displacement, loss, and a lack of essential resources. The child in the picture looks traumatized, as he stands on the rubbles of what once used to be a classroom.

I have chosen to focus on legal provisions and policies regarding mental and physical health of children.

# **PART 1: PROTECTING MENTAL HEALTH OF CHILDREN**

## **INTRODUCTION**

Mental health is now being taken as seriously as physical health. Laws relating to mental health are important as they determine procedures for treatment and consent to such treatment. Treatment, such as counselling, on principle, cannot be provided to a child without consent. The legal capacity of a child to consent depends whether they understand the treatment, the reason for such treatment and the consequences of refusal of treatment. The family needs to respect the child's decision.

## **INTERNATIONAL LEGAL PROVISIONS THAT DISCUSS MENTAL HEALTH:**

International Covenant on Economic, Social and Cultural Rights (1966): Article 12<sup>1</sup> states "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

I will be examining how the right to health includes mental health in various international instruments and the progress of States in recognition of such a right.

## **THE RIGHT TO HEALTH AND MENTAL HEALTH**

The fundamental rights that children are entitled to are outlined in the United Nations' 1989 Convention on the Rights of the Child<sup>2</sup>. The absence of programmes intended to meet the mental healthcare requirements of children and adolescents directly contradicts the rights established by the Convention, which places a high priority on the right to mental healthcare. Despite the Convention being ratified by 193 nations, there hasn't been any worldwide enforcement or movement to establish mental health policy, leaving the majority of kids and teenagers without access to competent care.<sup>3</sup>

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<sup>1</sup>International Covenant on Economic, Social and Cultural Rights, ICESCR (1966), Art 19

<sup>2</sup>Convention on the Rights of the Child

<sup>3</sup>National Center for Biotechnology Information (nih.gov); see also Wall. "Human Rights in Light of Childhood", The International Journal of Children's Rights, 2008

When considering the lack of child and adolescent mental health policies, one of the most troubling findings is the enormous discrepancy between needed and available resources. Certainly, the mental healthcare available to children and adolescents is far from commensurate with the burden of need. One-half of all lifetime cases of mental illness are now recognised to begin by the age of 14, and three-quarters by the age of 24, thereby rendering children and adolescents an extremely vulnerable group but with little protection.<sup>4</sup> Worldwide prevalence rates of child and adolescent mental health disorders approximate 20% (one in every five young people), with little variation found among the types of disorders seen across various cultures.

Despite effective treatments, there are often years or even decades between the time that people first exhibit symptoms and the time that they seek and receive care. It is now known that untreated mental disorders frequently result in more severe and challenging-to-treat illnesses as well as the emergence of comorbid disorders. According to Murray and Lopez (1996), five of the top ten global causes of disability in children aged 5 and older are diagnosable mental psychopathologies. These results show that there is a significant mismatch between the services required by this severely vulnerable population and those that are offered.

It is obvious that disregarding young people's requirements for mental healthcare has a cost on both the individual and society as a whole. When healthcare resources are scarce or non-existent, it is unlikely that mentally ill children and adolescents will achieve their full potential. Sick kids are also unable to learn and develop into productive adults. Government policies addressing child and adolescent mental illness are essential in assisting nations to first recognise the burden of illness and then to start developing programmes to identify and treat these people in a methodical way.

## **GLOBAL REVIEW OF MENTAL HEALTH POLICIES**

A thorough assessment in 2002<sup>5</sup> to identify existing mental health policies on a global level was conducted. As per this Report only 35 of the 191 nations had a mental health strategy that might have an impact on children and adolescents.

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<sup>4</sup>RC Kessler et al, (2005) Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication. *Archives of General Psychiatry*, 62, 593-602

<sup>5</sup>JP Shatkin & ML Belfer, 'The global absence of mental child and adolescent mental health policy' (2004) *Child and Adolescent Mental Health*, 13, 395-401

## THE PROGRESS OF STATES IN RECOGNITION OF THE RIGHT TO HEALTH AND MENTAL HEALTH

The recognition of the right to health and mental health has advanced in many jurisdictions. The Mental Health Action Plan 2013-2020<sup>6</sup> was created by the World Health Organisation (WHO), which has designated mental health as a priority issue for action. The Action Plan seeks to enhance global mental health, with a focus on low- and middle-income nations.<sup>7</sup>

To meet the mental health needs of their populations, many nations have created mental health policies and programmes. For instance, the United Kingdom has created a mental health policy with the purpose of enhancing population mental health and lowering the prevalence of mental disease. The strategy calls for actions to increase mental health services' accessibility, lessen stigma and discrimination, and advance mental health and wellbeing.

The Mental Health Parity and Addiction Equity Act<sup>8</sup> was passed in the United States in 2008. According to the Act, health insurance companies must offer the same level of coverage for medical and surgical services as they do for mental health and substance use disorder therapies. By lowering the stigma attached to mental illness and improving access to mental health treatments, the Act intends to improve both.<sup>9</sup>

The recognition of the right to health and mental health has advanced more slowly in low- and middle-income countries. There is a scarcity of mental health experts and chronic underfunding of mental health care. People with mental illnesses frequently face stigma and discrimination, which discourages them from getting care.

## CONCLUSION AND SUGGESTIONS

There are conversations about child and adolescent mental health policies

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<sup>6</sup>Mental Health and Substance Use (MSD), "Mental Health Action Plan 2013 - 2020" *World Health Organization* (January 6, 2013) <https://www.who.int/publications/i/item/9789241506021> (accessed on 17 March 2023)

<sup>7</sup>Rattner Michel et al, "Piloting a Community-Based Psychosocial Group Intervention Designed to Reduce Distress among Conflict-Affected Adults in Colombia: A Mixed-Method Study of Remote, Hybrid, and in-Person Modalities during the COVID-19 Pandemic" (2023) 17 *International Journal of Mental Health Systems*

<sup>8</sup>Mental Health Parity and Addiction Equity Act (MHPAEA), 2008

<sup>9</sup>Knapp Martin, McDaid David and Mossialos Elias, *Mental Health Policy And Practice Across Europe* (McGraw-Hill Education (UK) 2006)

all around the world. Professionals concerned in the mental health of children and adolescents are becoming stronger advocates and more aware of the need to compete for financing as a result of the limited pool of cash provided to healthcare, especially mental healthcare.<sup>10</sup>

Infectious diseases continue to be among the leading causes of morbidity and mortality in children and adolescents around the world, but those who are mentally ill frequently receive care later than necessary and have trouble adhering to prescribed drugs like antibiotics. Adolescents and kids are not an exception. The physical health of children and adolescents will also improve by treating comorbid child and teen mental illness and by taking other steps to boost overall emotional wellness.<sup>11</sup>

The fact that some treatments, primarily medicines, involve a considerable risk of adverse effects despite ongoing improvements in their effectiveness for treating children and adolescents with mental illness has also prompted additional policy debates. Finally, recent media coverage of child and adolescent mental health has centred on disease-specific initiatives, like autism and bipolar disorder, with implications for national policy.

A worrying trend in policy discussions has emerged around the world as a result of the emphasis on privatising child and adolescent mental health services and the concurrent deployment of various forms of managed care and insurance.<sup>12</sup> Understandably, but wrongly, policies that seek to encourage privatised and managed care are motivated, at least in part, by governments' reluctance to support the costs of child and adolescent mental health services that are assumed to be unknown or unknowable. But these worries are founded on prior accounts of unmanageable expenses. The results imply that robust regulations in this area will guarantee greater access to child and adolescent mental health treatments.

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<sup>10</sup>Graeff-Martins et al, "Diffusion of Efficacious Interventions for Children and Adolescents with Mental Health Problems" (2008) 49 *Journal of Child Psychology and Psychiatry* 335

<sup>11</sup>Jane Namangolwa Mutanga, Barbee I Whitaker and Richard A Forshee, "Regulatory Considerations for Study of Infant Protection through Maternal Immunization" (2022) 40 *Vaccine* 3556

<sup>12</sup>Bernd Rechel et al, *Migration and Health in the European Union* (McGraw-Hill Education (UK) 2011)



## **PART 2: THE EFFECT OF COVID ON RIGHT TO HEALTH OF CHILDREN**

### **INTRODUCTION**

The right to health, when implemented requires that prevention and care are not withheld on “the basis of disability, age, or inability to pay; and that states devote maximum resources to health care and recovery.” In the context of COVID-19, States must examine the balancing of the right to health, in terms of providing protection and care for COVID and other health care services such as vaccine camps, people living with HIV etc, so that no essential health care service is denied to the most vulnerable.

### **WHAT DOES RIGHT TO HEALTH ENTAIL?**

In addition to upholding individual liberty, states have obligations under the rights to health and to fundamental elements of health, such as employment, social security, housing, food, water, and sanitation, to ensure effective medical and public health responses to COVID-19. States acknowledged in 1946 that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being” in the WHO Constitution.

As a result, numerous regional and global human rights treaties have expanded on the right to health. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) codifies the right to the highest attainable standard of physical and mental health, which has been authoritatively interpreted to create duties to ensure access to readily available, palatable, and high-quality healthcare as well as to provide for the fundamental elements of public health, such as access to clean water, food, shelter, and education, as well as gender equality.

### **THE RIGHT TO AVAILABLE, ACCESSIBLE, ACCEPTABLE AND GOOD QUALITY HEALTHCARE DURING COVID-19**

Many nations saw through COVID-19 that their health systems could not survive a protracted health catastrophe. Many nations, including the USA, UK, Italy, and Spain,<sup>13</sup> found it difficult to respond, in part because of years of budget cuts brought on by austerity measures. They thus had difficulty

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<sup>13</sup>Ortiz Isabel et al, “End Austerity: A Global Report on Budget Cuts and Harmful Social Reforms in 2022-25” September 2022

locating sufficient diagnostic testing and personal protective equipment (PPE) to stop the spread of disease.<sup>14</sup>

Marginalised groups like migrants and displaced people, racial and ethnic minorities, women, sexual minorities, elderly people, jailed populations, and people living with HIV were particularly vulnerable to violations of the right to health because of discrimination in healthcare settings. For instance, the UN High Commissioner for Refugees identified thousands of refugees who, in the absence of competent healthcare, were at risk of further injury. Additionally, Bosnian authorities relocated hundreds of migrants to an isolated camp without access to medical treatment in Lipa, 25 kilometres from the Croatian border.<sup>15</sup>

States must conduct human rights impact assessments to examine how healthcare disparities affect marginalised and vulnerable populations in order to comply with the right to health. States must also prioritise providing these groups with access to emergency care and COVID-related diagnostic testing. However, many nations were unable to operationalize the right to health so that PPE, diagnostic testing, contact tracing, and healthcare services were available, accessible, acceptable, and of high quality.

In nations where there were health disparities between public and private care (like Spain and the UK), private hospitals were nationalised to ensure that all citizens have equitable access to treatment. Countries like South Africa introduced a mass testing programme that was made free and available to everyone. However, people without health insurance were either refused access to care in nations like the USA or must pay exorbitant user fees for basic COVID-19 treatment, which leads to unequal mortality.

According to a global survey,<sup>16</sup> people had to overcome significant obstacles to receive healthcare services during the pandemic, including healthcare facility closures (10%), lengthy wait times at clinics that prevented patients

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<sup>14</sup>L Otero-García, Mateos et al, (2023). Austerity Measures and Underfunding of the Spanish Health System during the COVID-19 Pandemic-Perception of Healthcare Staff in Spain. *International Journal of Environmental Research and Public Health*, 20(3), 2594

<sup>15</sup>The Guardian, (27 March 2020) “Bosnia crams thousands of migrants into tent camp to ‘halt Covid-19 spread” <<https://www.theguardian.com/global-development/2020/mar/27/bosnia-crams-thousands-of-migrants-into-tent-camp-to-halt-covid-19-spread>> (accessed on 17 March 2023)

<sup>16</sup>“COVID-19 continues to disrupt essential health services in 90% of countries” *World Health Organisation* (23 April 2021) <https://www.who.int/news/item/23-04-2021-covid-19-continues-to-disrupt-essential-health-services-in-90-of-countries> (accessed on 17 March 2023)

from receiving assessments or treatment (12%), and a shortage of necessary medications at clinics and pharmacies (15%). Quarantine and isolation policies that are zone-based, facility-based, and home-based can all have a severe impact on children and their families' ability to get high-quality medical care. Concerns about potential delays in obtaining healthcare services with higher rates of morbidity and death have been highlighted as a result of a significant decrease in the use of paediatric emergency care.

These vulnerable groups need basic healthcare services as a result of the nationwide lockdown and the absence of comprehensive guidelines for maternity and child healthcare (MCH). These have caused an increase in vaccine-preventable illnesses, which have the potential to take a significant number of lives in the coming years, as well as the exacerbation of paediatric illnesses such as acute respiratory infections, diarrhoea, and other water-borne illnesses.

## **HOW INDIA DEALT WITH RIGHT TO HEALTH WITH REGARDS TO CHILDREN DURING THE PANDEMIC**

Since the lockdown began in India in March 2020, the pandemic became the attention of all healthcare professionals. One of the worst affected programmes was routine vaccination. It was estimated that as a result, 80 million children were not vaccinated after the pandemic, according to estimates. According to an analysis of data from the Health Management Information System in India,<sup>17</sup> nationwide monthly immunisation rates decreased by 70% in April 2020 before sharply increasing in May.

Regarding the continuance of critical services, such as immunisation, the Ministry of Health and Family Welfare released a guidance note in April 2020.<sup>18</sup> The defined zones, which included (a) containment and buffer zone, and (b) areas beyond buffer zone and green zone, were clearly outlined in the vaccination methods. India already had already fallen short in terms of immunising children under the age of five.

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<sup>17</sup>Ministry of Health and Family Welfare, Government of India, "Immunization services during and post COVID-19 outbreak"

<https://www.mohfw.gov.in/pdf/3ImmunizationServicesduringCOVIDOutbreakSummary150520202.pdf>. (accessed on 17 March 2023)

<sup>18</sup> *ibid*

According to the National Family Health Survey (NFHS-4)<sup>19</sup>, just 62% of children between the ages of 12 and 23 months had gotten all recommended immunisations, and only 54% had done so by the time they turned 12 months old. Comparing this ratio to other countries like China, Bangladesh, and Vietnam shows how much lower it is for India. In Rajasthan, a recent retrospective observational study<sup>20</sup> discovered a significant drop in the state's immunisation rate during the lockdown. Children living in COVID-19 red zones and coming from less affluent, less educated backgrounds experienced this drop more severely.

Due to the protracted lockdown's impact on the economy, food shortages and an increase in food prices also resulted. This made it difficult for many families to give their kids the nutrients they required for healthy physical and mental growth. Children may be affected by this for the rest of their lives. As of 2019, 14 million children under the age of five had severe wasting, while 114 million children under the age of five were stunted. In the absence of prompt action, an estimated 10,000 more children died each month during the first year of the pandemic, totalling 6.7 million more children under the age of five who were wasted (a 14.3% increase in the number of wasted children).<sup>21</sup>

In April 2020, 1,315 children were admitted across 966 Nutrition Rehabilitation Centres (NRCs), which is barely 9% of the 15,796 children hospitalised in April 2019, according to a policy brief on the effects of COVID-19 on children in India.<sup>22</sup> By the end of the fourth quarter of 2019-20, just 14.9% of children aged 6 to 59 months had received iron and folic acid supplements, and only 9.1% had done so by the end of the first quarter of 2020. In 2019–20, only 2.9% of kids in the same age range received deworming tablets. According to predictions, COVID-19 would cause a 10–20% increase in child malnutrition and would likely result in

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<sup>19</sup>Ministry of Health and Family Welfare, Government of India, "India Fact Sheet"< <https://rchiips.org/nfhs/pdf/nfhs4/india.pdf>> (accessed on 17 March 2023)

<sup>20</sup>R Jain et al, COVID-19 related immunization disruptions in Rajasthan, India: a retrospective observational study. *Vaccine*. 2021 13; 39:4343–4350

<sup>21</sup>D Headey et al Impacts of COVID-19 on childhood malnutrition and nutrition-related mortality. *Lancet*. 2020;396(10250):519–521

<sup>22</sup>*Impact of COVID 19 on Child Nutrition in India: What Are the Budgetary Implications? A Policy Brief*. Centre for Budget and Governance Accountability (CBGA) and Child Rights and You. (CRY); 2021.<<https://www.cbgaindia.org/wp-content/uploads/2021/01/Impact-of-COVID-19-on-Child-Nutrition-in-India-What-are-the-Budgetary-Implications.pdf>>

an additional 6000 children dying each day from preventable causes due to interruption in healthcare services.<sup>23</sup>

## **CONCLUSION AND SUGGESTIONS:**

Even though COVID 2019 has waned, many persons still suffer from its long-term effect. The governments should guarantee that all people have access to accessible and equitable healthcare services, giving priority to disadvantaged children and their families, particularly those who have pre-existing medical issues. It is important to enhance public health spending so that everyone can afford and have access to healthy eating. One of the key issues to be addressed in order to develop a strong and resilient public health and nutrition system as a response to any public health emergency is the scaling up of social protection schemes, the provision of information on nutrition and guidance on infant and young child feeding, the involvement of civil society organisations and communities in the monitoring of service provision, and addressing the challenges with the food system and supply.

In terms of immunisation, child health, nutrition, education, and other crucial healthcare services, the government should make sure that there are no interruptions. The respective state and local health authorities should establish precise instructions about the accessibility of routine immunisation services. In order to encourage parents to bring their children in for consultations and vaccinations, clinics and hospitals should be made safe.

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<sup>23</sup>Bhattacharyya Himashree et al, “Impact of COVID-19 on Child Health and Healthcare Services” (2022) 78 Medical Journal Armed Forces India 3

# EXAMINING LEGAL PROVISIONS AND ANALYSING THE INTERSECTION OF DISABILITY RIGHTS AND CHILD LABOUR: A COMPREHENSIVE STUDY ON SAFEGUARDING THE RIGHTS OF CHILDREN WITH DISABILITIES IN THE LABOUR MARKET

Avismrita Shyamali Mishra\*

## Five random pictures of children from the web



Figure 1 [https://www.linkedin.com/pulse/education-india-burden-anindyaa-ghosh/?utm\\_source=share&utm\\_medium=member\\_android&utm\\_campaign=share\\_via](https://www.linkedin.com/pulse/education-india-burden-anindyaa-ghosh/?utm_source=share&utm_medium=member_android&utm_campaign=share_via)

**Feeling :** Pity

**Thought :** The image depicts a financially constrained child in manual labour, devoid of education, trapped in a cycle of poverty. Malnutrition worsens their physical and psychological development, creating enduring challenges. This cycle underscores the systemic impact on vulnerable individuals, perpetuating limited opportunities and early labour.

**Feeling :** Inspired

**Thought :** The image of a girl playing football is a source of inspiration, showcasing the strength of resolute



Figure 2 <https://dailymail.co.uk/health/article-2063565/Meningitis-victim-defies-odds-play-school-football-team.htm>

choices and perseverance. Her dedication radiates energy, enthusiasm, and hope, urging us to focus on positivity and find hope amid challenges.



**Feeling:** Joyful

**Thought:** The image captures a girl's pure smile, radiating joy and inner peace, emphasizing the value of simple pleasures over material wealth. Her genuine happiness becomes a symbol of resilience and gratitude, inspiring others to face life's difficulties with a radiant smile.

Figure 3 <https://www.pinterest.com/pin/146507794117583233>

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**Feeling :** Hopeless

**Thought :** The image portrays the tragedy of child marriage, illustrating a young girl's loss of hope, childhood, education, autonomy, and freedom. Subjected to physical and psychological trauma, she faces severe consequences, underscoring the dire impact of this harmful practice.



Figure 4 <https://www.independent.co.uk/asia/india/rajasthan-child-marriage-bill-gehlot-b1923327.html>



Figure 5 <https://indianexpress.com/article/cities/mumbai/state-not-doing-enough-to-prevent-child-marriage-cag/&gt;>

**Feeling :** Desire

**Thought :** In this picture image, a destitute child expresses a longing for education, questioning the effectiveness of the right to education for orphaned individuals. Despite adversity, his hopeful gaze emphasizes the urgent need for state intervention to transform education from a theoretical right into a tangible and accessible reality for all.

I have chosen to focus on the relation between child labour and disability of children.



## INTRODUCTION

### How is Child Labour related to Disability?

There is a relationship between child labour and disability, as children with disabilities are more vulnerable to being exploited and subjected to harmful work than their peers without disabilities. Children with disabilities may face barriers to education and other opportunities, which can lead them to engage in work at a young age. In some cases, children with disabilities may also be forced to work by their families or caregivers, who may view them as less valuable or capable than their non-disabled siblings.

Moreover, children who work in hazardous or exploitative conditions are more likely to experience physical and mental health problems, including injuries, illnesses, and psychological distress, which may contribute to or exacerbate disabilities.

It is important to note that the relationship between child labour and disability is complex and that not all children with disabilities are subjected to child labour, and not all child labourers have disabilities. Nonetheless, it is crucial to address the intersection of these issues to promote the rights and well-being of all children, including those with disabilities. This can involve measures such as providing inclusive education and vocational training, enforcing laws that prohibit child labour, and supporting families and communities to prevent the exploitation of children.

## PART I : CHILD LABOUR

Child labour is a pervasive problem that affects millions of children worldwide. It refers to the employment of children in any form of work that deprives them of their childhood, interferes with their ability to attend school, and is harmful to their physical or mental well-being. Child labour is a violation of children's rights and is considered a form of exploitation.

Despite the efforts of governments and organizations to eliminate child labour, it continues to be a prevalent issue in many parts of the world, especially in developing countries. Poverty, lack of education, and cultural beliefs are some of the factors that contribute to child labour. Children are often forced to work in dangerous conditions, such as in mines, factories, and agriculture, risking their health and safety.<sup>1</sup>

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<sup>1</sup>Britannica, 'Child Labour' (8 March 2023) <<https://www.britannica.com/topic/child-labour>> (accessed on 15 March 2023)



Child labour not only deprives children of their childhood but also affects their long-term development and prospects.<sup>2</sup> Children who work are less likely to attend school, which limits their education opportunities and hinders their ability to escape poverty. Furthermore, child labour perpetuates the cycle of poverty as it often leads to low wages and limited job prospects in adulthood.

Child labour has been a problem for centuries, but it became particularly prevalent during the Industrial Revolution in the 19th and early 20th centuries.<sup>3</sup> However, the movement to regulate child labour began in Great Britain at the close of the 18th century, showing early recognition of the issue.

It is essential to address the root causes of child labour and ensure that children are protected from exploitation. Governments, organizations, and individuals must work together to eliminate child labour and promote the rights and well-being of children worldwide.

### **The Impact of Child Labour and Disability on Children**

Child labour can have negative physical and psychological effects on children. Physically, child labour has been associated with poor growth, malnutrition, and exposure to dangerous working conditions, chemicals, and pollutants, which can lead to serious health issues such as cancer, infertility, and chronic back pain. Hazardous work can also cause death, serious illness or injury, or permanent disability. Psychologically, children who are forced to work may experience stress, depression, and trauma, which can have long-lasting effects on mental health. Moreover, factors of early child labour that contribute to developing mental illness can range from insufficient nurture during childhood to exposure to hazardous work. The long-term consequences of child labour on a child's life can be severe. The International Labour Organization (ILO) provided an estimate in 2016 that about 152 million children worldwide were subjected to child labour, out of which 73 million were engaged in hazardous labour.<sup>4</sup>

The 2011 Census report showed that India had a child population of 259.6 million between the ages of 5-14 years. Out of these, 10.1 million, which represents 3.9% of the total child population, are engaged in some form

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

<sup>3</sup>J. Hansan, 'The American era of child labor' (*Social Welfare History Project*, 2011) <<https://social-welfare.library.vcu.edu/programs/child-welfarechild-labor/child-labor/>> (accessed on 15 March 2023)

<sup>4</sup>International Labour Organization, 'Global Estimates of Child Labour: Results and Trends, 2012-2016' (2017)

of work as either a ‘main worker’ or a ‘marginal worker’. Moreover, the number of children who are out of school in India is over 42.7 million.

	2001	2011	2001	2011
	Percentage of Working Children (5-14)	Percentage of Working Children (5-14)	Total number of working children (5-14) (in millions)	Total number of working children (5-14) (in millions)
<b>Rural</b>	5.9	4.3	11.4	8.1
<b>Urban</b>	2.1	2.9	1.3	2.0
<b>Total</b>	2.9	3.9	12.7	10.1

Source: Census 2001 and 2011.

Children who are forced to work may miss out on education, leading to limited job opportunities and reduced earning potential in adulthood. Additionally, the physical and psychological effects of child labour can persist into adulthood, with some studies suggesting that child labour is associated with higher rates of mental illness, such as depression and anxiety.<sup>5</sup> Child labour can also perpetuate the cycle of poverty, making it difficult for families to break free from economic hardship. Addressing child labour requires a multi-faceted approach that includes policies to protect children’s rights, provide education and resources, and address the root causes of poverty.

The States of Uttar Pradesh, Bihar, Rajasthan, Maharashtra, and Madhya Pradesh make up approximately 55% of all child labourers in India.

States	Percentage	Numbers (In millions)
<b>Uttar Pradesh</b>	21.5	2.18
<b>Bihar</b>	10.7	1.09
<b>Rajasthan</b>	8.4	0.85
<b>Maharashtra</b>	7.2	0.73
<b>Madhya Pradesh</b>	6.9	0.70

Source: Census 2011

<sup>5</sup>Bo Ryung Lee, ‘Child Labour: What are the Health and Social Implications’ (*Baylor College of Medicine*, 19 October 2021) <<https://blogs.bcm.edu/2021/10/19/child-labor-what-are-the-health-and-social-implications/>> (accessed on 16 March 2023)

Children with disabilities who are forced to work may face additional physical and mental stress, which can exacerbate their existing conditions. Children with disabilities are more likely to be subjected to child labour, and labour can cause or exacerbate disabilities. Child labour can lead to injuries, illnesses, and psychological trauma that can have long-lasting effects on children's health and well-being. Additionally, children who work are often denied access to education and healthcare, which can further harm their overall well-being. Child labour can also perpetuate the cycle of poverty, making it difficult for children with disabilities to access the resources they need to thrive.<sup>6</sup> Therefore, it is important to address both child labour and disability to ensure that all children have access to education, healthcare, and a healthy childhood.

## **An Analysis of Child Labour Laws: Examining the Efficacy of Legal Frameworks and Regulatory Bodies**

### ***International Conventions and Standards on Child Labour: A Comparative Analysis***

The International Bills of Human Rights, which include the Universal Declaration of Human Rights,<sup>7</sup> the International Covenant on Civil and Political Rights,<sup>8</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>9</sup> prohibit slavery and servitude and require countries to protect children. Although the Universal Declaration of Human Rights does not explicitly mention child labour, it states that “everyone has the right to education, which should be free and compulsory for elementary school.”<sup>10</sup> The International Covenant on Civil and Political Rights guarantees children the right to protection from their families, society, and the state.<sup>11</sup> These provisions collectively establish a clear international ban on the exploitation of children through their labour.

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<sup>6</sup>Ibrahim A, Abdalla SM, Jafer M, Abdelgadir J, de Vries N, ‘Child labor and health: a systematic literature review of the impacts of child labor on child’s health in low- and middle-income countries’ (2019) 41(1) J Public Health (Oxf) 18, 26

<sup>7</sup>Universal Declaration of Human Rights, 1948

<sup>8</sup>International Covenant on Civil and Political Rights 1966 (ICCPR)

<sup>9</sup>International Covenant on Economic, Social and Cultural Rights, 1966

<sup>10</sup>Universal Declaration of Human Rights 1948, art 26

<sup>11</sup>ICCPR, (n 9)

The United Nations Convention on the Rights of the Child (UNCRC), adopted by the UN General Assembly in 1989, is considered to be one of the most significant conventions related to child rights.<sup>12</sup> It has been ratified by almost all countries in the world, making it the most widely ratified human rights treaty in history. As of today, 196 countries have ratified this convention.<sup>13</sup>

The ILO has developed several Conventions related to child labour, including the Worst Forms of Child Labour Convention, 1999 (No. 182)<sup>14</sup> and the Minimum Age Convention, 1973 (No. 138).<sup>15</sup> These Conventions set out minimum standards for the elimination of child labour, including measures to prevent and eliminate the worst forms of child labour, such as slavery, forced labour, and trafficking.<sup>16</sup> ILO Minimum Age Convention No. 138 establishes 18 years as the minimum age for work.<sup>17</sup> These Conventions are “fundamental” Conventions which implies that all member States of the ILO are obliged to respect, promote and achieve the elimination of child labour, regardless of whether they have ratified the Conventions or not.

Many countries have their laws regarding child labour in addition to international regulations, considering their cultural differences. These laws aim to prohibit child labour and align with the conventions and standards mentioned above. For instance, the UK Modern Slavery Act<sup>18</sup> and the U.S. Tariff Act.<sup>19</sup>

## **Child Labour Laws in India: An Overview of Legal Framework and Enforcement Mechanisms**

The legal framework for child labour in India consists of various laws and policies at both the national and state levels. The Constitution of India provides for the right to education and prohibits forced labour, including child labour as it is against the tenets of the Constitution.<sup>20</sup> The Child Labour (Prohibition

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<sup>12</sup>Convention on the Rights of the Child, 1989

<sup>13</sup>HRW, ‘25th Anniversary of the Convention on the Rights of the Child’ (*Human Right Watch*, 17 November 2014) <<https://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child#>> accessed on 17 March 2023

<sup>14</sup>Worst Forms of Child Labour Convention, 1999 (No. 182)

<sup>15</sup>Minimum Age Convention, 1973 (No. 138)

<sup>16</sup>Worst Forms of Child Labour Convention, 1999 (No. 182), art 3

<sup>17</sup>Minimum Age Convention, 1973 (No. 138), art 2

<sup>18</sup>Modern Slavery Act, 2015

<sup>19</sup>Tariff Act of 1930

<sup>20</sup>*People’s Union for Democratic Rights v Union of India* (1982) 3 SCC 235

and Regulation) Act, of 1986, is the primary law governing child labour in India, and it has been amended several times to strengthen its provisions.<sup>21</sup>

The Child Labour (Prohibition and Regulation) Act 1986 prohibited the employment of children under the age of 14 in hazardous occupations and processes, such as mining, bidi-making, and carpet weaving.<sup>22</sup> With its amendments in 2016, children below the age of 14 years of age cannot be employed in any kind of labour. It prohibits the employment of even 14-18-year-old adolescents in hazardous work. Although children can be involved in packing, the packing location must be separated from the manufacturing location to prevent them from being exposed to any hazardous processes.<sup>23</sup> It also regulates the working conditions of children between the ages of 14 and 18, setting limits on their working hours and ensuring that they receive education and health services.<sup>24</sup>

It is pertinent to note here that the National Commission for Protection of Child Rights (NCPCR) has played a key role in recent years in terms of protecting children from exploitation. The NCPCR has the power to take Suo moto cognizance in matters related to violation and deprivation of child rights.<sup>25</sup> Non-Governmental Organizations (NGOs) have also played a crucial role in preventing children from being subjected to bonded labour. During my internship with the Child Labour division of the NCPCR in November 2021, I encountered several challenges. One of the major issues I saw was that NCPCR was actively engaged in rescuing children from hazardous places. After the rescue process, compensation was provided and the children were handed over to their parents. The shocking part was that these same children were found working again in the hazardous place. Later it was found that the parents themselves sent their children to the labour field. This act was justified by parents because of their destitution. However, it would be incorrect to say that laws are not in place to safeguard the rights of children, Situations like these problems of implementation, and lack of resources become obstacles to achieving goals. Moreover, there is still much work to be done to effectively address child labour in India. One key area for future focus is improving the enforcement of child

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<sup>21</sup>The Child Labour (Prohibition and Regulation) Act, 1986

<sup>22</sup>Child Labour (Prohibition and Regulation) Act 1986, s 3

<sup>23</sup>*M.C. Mehta v State of Tamil Nadu* (1991) 1 SCC 283

<sup>24</sup>Child Labour (Prohibition and Regulation) Act 1986, s 13

<sup>25</sup>Commissions for Protection of Child Rights Act 2005, s 13(1)(j)

labour laws, which remains a significant challenge due to a range of factors, including corruption, lack of resources and capacity among enforcement agencies, and inadequate awareness and understanding of the laws among stakeholders. Another important area for future focus is addressing the root causes of child labour, such as poverty and lack of education.

## PART II : DIASABILITY

### INTRODUCTION

Disability refers to any physical or mental impairment that limits an individual's ability to engage in everyday activities. It can be the result of a congenital condition, an injury, or an illness. Disability is a complex issue that affects millions of people worldwide. It can impact individuals of any age, gender, race, or socioeconomic background. Disabilities can range from physical impairments such as blindness or deafness to mental health conditions such as anxiety or depression. Disability rights and inclusion have gained significant attention in recent years, and it is essential to ensure that individuals with disabilities have equal rights and access to opportunities in society.

Disability is a complex issue that has been studied and explored by scholars and researchers worldwide. According to the World Health Organization (WHO), over one billion people globally live with disabilities, representing around 15% of the global population<sup>26</sup>. Disabilities can have a profound impact on an individual's daily life, limiting their ability to participate in social and economic activities<sup>27</sup>. Disability rights and inclusion have gained significant attention in recent years, with international organizations and governments working towards promoting equal opportunities and access to resources for individuals with disabilities.<sup>28</sup> However, challenges still exist, highlighting the need for continued research and efforts to address disability-related issues.<sup>29</sup>

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<sup>26</sup>World Health Organization 'Disability and Health' <<https://www.who.int/news-room/fact-sheets/detail/disability-and-health>.> (accessed on 15 March 2023)

<sup>27</sup>United Nations Convention on the Rights of Persons with Disabilities, 1989

<sup>28</sup>World Bank, 'Disability Inclusion' <<https://www.worldbank.org/en/topic/disability>.> accessed on 16 March 2023

<sup>29</sup>Dan Goodley, Bill Hughes, Lennard Davis, *Disability and Social Theory: New Developments and Directions* (Palgrave Macmillan 2012)

## OVERVIEW OF DISABILITY LAW: FRAMEWORK AND POLICIES



According to the 2011 Census, there are 2.68 crore people with disabilities in India, which amounts to 2.21% of the total population. Concerning the children, there are about 20.42 lakh children in the age group of 0-9 years who have some form of disabilities, i.e., either congenital or acquired.

The implementation of the Rights of Persons with Disabilities Act, 2016, which recognizes 21 types of disabilities, is likely to result in a substantial increase in the number of disabled individuals in the country.

### Legal Framework for Persons with Disabilities: An Analysis of Statutory Provisions

All individuals, including children, have the right to live with dignity.<sup>30</sup> The right to equality ensures that no one is discriminated against based on any personal characteristic. However, it also allows for the creation of special laws to protect the rights of women and children. The principle of equity holds that everyone should have equal access to opportunities, resources, and benefits, regardless of differences. Nevertheless, special provisions are necessary to protect the rights of disabled individuals.

Disability law in the context of children refers to a set of legal provisions and policies that are designed to protect the rights of children with disabilities. These laws are created to ensure that children with disabilities have equal opportunities in life and are not discriminated against because of their disabilities. The importance of disability law lies in its ability to promote

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<sup>30</sup>*Maneka Gandhi v Union of India* (1978) AIR 597; *Francis Coralie v Union Territory of Delhi* (1981) AIR 746

inclusivity and eliminate discrimination against children with disabilities.

In India, the legal framework for disability rights for children is comprised of several laws and policies. The Constitution of India is based on the principles of social justice and human rights, with the Preamble, the Directive Principles of State Policy, and the Fundamental Rights serving as evidence of the State's dedication to its citizens. The Constitution envisions a proactive role for the State in improving the status of marginalized communities.<sup>31</sup>

From 1983 to 1992, the United Nations declared a decade for disabled people,<sup>32</sup> which was further followed by the Asian and Pacific Decade of Disabled Persons from 1993 to 2002. These decades played a significant role in creating awareness about the issues faced by people with disabilities. During this period, India passed the Mental Health Act of 1987, which recognized that mental illness can affect individuals of all ages, including children. It provided for the treatment and care of mentally ill children. This Act recognized the importance of protecting the rights of mentally ill children and ensuring their welfare. The Persons with Disabilities Act was enacted in 1995.<sup>33</sup> This Act was a significant step forward as it recognized and ensured that individuals with disabilities were entitled to fair and equal opportunities and complete participation, with the backing of the legal system.

Apart from these, two other significant laws were passed to protect the rights of individuals with disabilities in India. These are the National Trust Act 1999 which plays a crucial role in protecting the rights of children with developmental disabilities, namely, mental retardation, cerebral palsy, autism and multiple disabilities and ensuring that they have access to adequate support and services;<sup>34</sup> the Rehabilitation Council of India Act of 1992 which establishes the Rehabilitation Council of India, which is responsible for regulating and standardizing training programs for professionals in the field of rehabilitation and special education.<sup>35</sup> This Act is particularly relevant for children with disabilities as it ensures that

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<sup>31</sup>Constitution of India 1950, art 41, 46

<sup>32</sup>United Nations, General Assembly resolution 37/52

<sup>33</sup>Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

<sup>34</sup>National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

<sup>35</sup>Rehabilitation Council of India Act, 1992



professionals working with them are trained and qualified to provide them with the necessary support and services.

The Government of India also adopted a National Policy on Disability in February 2006.<sup>36</sup> These laws and policies demonstrate the commitment of the Indian government towards ensuring the full participation and inclusion of people with disabilities in all aspects of society.

### **Recent Developments in Disability Law, including Court Decisions and Legislative Changes**

Since the adoption of the National Policy for Persons with Disabilities in 2006, there have been significant developments in the disability sector in India. These include the signing of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) by India in October 2007,<sup>37</sup> the enactment of the Rights of Persons with Disabilities Act in 2016 in alignment with this Convention, and the adoption of the National Education Policy in 2020, which advocates for inclusive education.<sup>38</sup> These developments signify a strong commitment towards ensuring equal opportunities and rights for persons with disabilities in India.

Despite the existence of these legal frameworks and policies, there are still challenges in the implementation and enforcement of disability rights, such as inadequate infrastructure and limited awareness among stakeholders. It is important to ensure that these laws and policies are effectively implemented and that all children with disabilities have access to the resources and opportunities they need to fully participate in society.

### **Government Schemes and Policies Addressing Child Labour and Disability among Children**

The National Child Labour Project (NCLP) was launched by the Indian government in 1988 to address the issue of child labour in a focused and holistic manner. The NCLP is a centrally sponsored scheme implemented by the Ministry of Labour and Employment, in collaboration with state governments, NGOs and other stakeholders.<sup>39</sup> Under the ICPS, various

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<sup>36</sup>National Policy for Persons with Disabilities, 2006

<sup>37</sup>United Nations Convention on the Rights of Persons with Disabilities, 2007

<sup>38</sup>National Education Policy, Ministry of Education, 2020 <[https://www.mhrd.gov.in/sites/upload\\_files/mhrd/files/NEP\\_Final\\_English\\_0.pdf](https://www.mhrd.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf)> (accessed on 20 March 2023)

<sup>39</sup>Ministry of Labour and Employment, National Child Labour Project, 1988

services and programs are provided such as counselling, shelter, medical aid, education, and vocational training to ensure the holistic development of the child.<sup>40</sup>

The National Policy for Children, 2013 is another important policy in this area that aims to ensure the protection, survival, development, and participation of all children in India. The policy focuses on the need to provide every child with access to education, healthcare, nutrition, and protection from all forms of exploitation and abuse.<sup>41</sup>

Moreover, regarding child disability, the National Policy for Persons with Disabilities is one of the most important initiatives of the government which has been already discussed above. The other two most crucial schemes are Inclusive Education for Disabled at Secondary Stage (IEDSS),<sup>42</sup> and the Scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids and Appliances (ADIP).<sup>43</sup> Integrated Child Development Services (ICDS) includes special provisions for children with disabilities, ensuring their inclusion in the program and provision of appropriate services for their development.<sup>44</sup>

## **RESEARCH ANALYSIS AND SUGGESTIVE MEASURES**

It is important to acknowledge that the issue of child labour and disability has been recognized by various national and international organizations, and efforts have been made to address these issues. The ratification of international conventions such as the UNCRC, Worst Forms of Child Labour Convention, and the UN Convention on Rights of Persons with Disabilities, along with the enactment of domestic legislation like the Child Labour (Prohibition and Regulation) Act and the National Education Policy, reflect the commitment of government to tackle these challenges.

However, despite the presence of legal frameworks and the efforts of various stakeholders, the problem persists. As mentioned earlier, challenges in implementation, lack of resources, and inadequate awareness and understanding of the laws among stakeholders pose significant obstacles to

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<sup>40</sup>Ministry of Women and Child Development, Integrated Child Protection Scheme, 2009

<sup>41</sup>The National Policy for Children, 2013

<sup>42</sup>Inclusive Education for Disabled at Secondary Stage, 2009-10

<sup>43</sup>Assistance to Disabled Persons for Purchase/Fitting of Aids and Appliances, 1981

<sup>44</sup>Integrated Child Development Services, 1975

achieving the goals of eradicating child labour and promoting the rights of children with disabilities.

Children with disabilities are particularly vulnerable to exploitation and discrimination in the workforce due to societal stigmas and a lack of accessible education and training opportunities. To effectively address this issue, it is crucial to improve awareness and understanding of disability rights, provide inclusive education and training opportunities, and increase access to healthcare and rehabilitation services. Additionally, there needs to be greater collaboration between government, civil society organizations, and the private sector to ensure the enforcement of laws and policies and to create sustainable solutions for eradicating child labour.

In addition, greater efforts should be made to promote awareness and understanding of disability issues, with a particular focus on reducing stigma and discrimination towards disabled individuals. This can be achieved through targeted public awareness campaigns, as well as through initiatives aimed at improving access to healthcare and other essential services.

Another key area for intervention is the provision of support and assistance to disabled children and their families. This can include access to counselling and therapy services, as well as financial support for families who may be struggling to provide care and support for their disabled children.

## **CONCLUSION**

Child labour and disability are two issues that have a significant impact on the lives of children around the world. Child labour is a global crisis that perpetuates the cycle of poverty and can have serious physical and psychological effects on children, while children with disabilities face additional challenges and barriers to accessing education, healthcare, and other basic needs. We must address these issues through a multi-faceted approach that includes policies to protect children's rights, provide access to education, and address the root causes of poverty. By working together, we can ensure that all children have the opportunity to thrive and reach their full potential, regardless of their circumstances.

While there have been significant developments in the disability sector in India, there is still much work to be done to ensure equal opportunities and

rights for people with disabilities. This includes addressing issues such as accessibility, education, employment, and social inclusion.<sup>45</sup>

This research paper calls for greater attention to disability rights and continued progress in this area, highlighting the need for collaboration between government, civil society, and the private sector to achieve meaningful change. Ultimately, the goal is to create a society that is truly inclusive and accessible for all individuals, including those with disabilities.

Furthermore, there is a need to better understand the intersectional experiences of children with disabilities who are engaged in child labour and to develop more effective policies and programs that respond to their unique needs. This could be achieved through increased research and data collection on the issue, as well as through the development of more inclusive and accessible programming. Efforts should focus on improving access to education, healthcare, and vocational training for children with disabilities, while also strengthening the enforcement of existing child labour laws.

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<sup>45</sup>*Sheela Barse v Union of India*, (1995) 5 SCC 654

# AUTISM AND ADOPTION: LEGAL CHALLENGES IN INDIA

Supriya\*

## Five random pictures of children from the web



Figure 1 <https://raisingchildren.net.au/autism/behaviour/understanding-behaviour/challenging-behaviour-asd>

**Feeling :** Safe

**Thought :** The picture depicts the love between an autistic child and a caring adult. Children with autism are often at the receiving end of social stigma and ostracization. However, they require and deserve a safe and nurturing environment like any other child. I feel glad seeing that the boy in the picture looks like he is safe, secure, and in good hands.

**Feeling :** Resignation

**Thought :** The children in this picture seem distant and at an age when they should be enjoying a carefree existence with family, orphaned children have to deal with the loss of parents, or abandonment, while fighting for the limited resources available in India's overcrowded orphanages.



Figure 2 <https://www.google.com/imgres?imgurl=x-raw-image%3A%2F%2F9d8c9f99ddad1cb920f1fa8f30cd05e03a77e5273f4adcc6e49a1381e84185c&tbid=y9HanZ-fj0DTM&vet=12ahUKewim5pezzaDAX7rmMGHFQ1CGEQMygAegQIARBL..i&imgrefurl=https%3A%2F%2Fnhrc.nic.in%2Fsites%2Fdefault>



Figure 2 <https://www.businessinsider.in/this-is-syrias-third-largest-city/articleshow/35034370.cms>

**Feeling :** Chaos

**Thought :** This picture is a depiction of how war and strife leaves behind distressing collateral damage, the most terrifying of which is a generation of broken children who have seen too much terror and grief at too young an age.

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**Feeling : Caged**

**Thought :** I feel that the Child in the picture is longing to be set free from the cage. We can never understand what a Child feels when caged in a tiny room with no amenities. Efforts to address the plight of incarcerated children involve advocating for juvenile justice reforms, emphasizing rehabilitation over punishment.



Figure 4 <https://depositphotos.com/photo/hands-of-a-young-child-clutching-prison-bars-victim-child-with-289537526.html>



Figure 5 <https://irannewswire.org/widespread-iran-poverty-will-lead-to-regimes-downfall/?amp>

**Feeling : Hungry**

**Thought :** The picture depicts what hunger looks like and for these children, food is a luxury, not a basic human right. Children facing food insecurity are malnourished, which in turn affects their physical and mental development.

I have chosen to focus on the legal challenges surrounding autistic individuals, and adoption in India.

# PART 1: EXPLORING THE LEGAL RIGHTS OF AUTISTIC INDIVIDUALS IN EDUCATION: CHALLENGES AND SOLUTIONS

## INTRODUCTION

“Autism is a complex neurodevelopmental condition. It manifests through distinct differences in social skills, communication, and behaviour.”<sup>1</sup> People with autism often experience difficulties in communication and social interactions, and may engage in repetitive or highly focused behaviour patterns. They may also have sensory differences that can impact their perception and responses to their environment. Autism is not an illness, but rather a neurodevelopmental disorder.

“Autism is also referred to as autism spectrum disorder (ASD), which encompasses a wide range of characteristics, skills, and abilities. Each individual with autism experiences the condition uniquely, with different support needs.”<sup>2</sup> While the core characteristics of autism can present challenges, they can also give rise to exceptional skills and talents.

Although autism is a lifelong condition, individuals with autism can make significant progress and lead fulfilling lives with appropriate and tailored support. Therefore, it is essential to provide access to specialized services that understand their needs and can help them develop their strengths and abilities.

The current classification system for Autism Spectrum Disorder (ASD) is designed to provide more clarity than the previous system. While the previous system had subtle distinctions between different types of autism, this often led to confusion and varied interpretations. To address this, ASD is now categorized into three levels based on the level of support a patient needs.

ASD Level 1 is the most basic categorization and needs some assistance with interpersonal relationships, organisation, and organisational skills. Children in this group may struggle in certain areas, yet they may still operate quite autonomously.

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<sup>1</sup>“What Is Autism?” (*Autism Association of Western Australia*, July 23, 2016) <[https://www.autism.org.au/what-is-autism/?gclid=CjwKCAjwov6hBhBsEiwAvrvN6GEZn\\_A0\\_wceaLOCwVN6zMSJs0DCiTEvbLvcmkbQhkhvV02OptA7BoCwW4QAvD\\_BwE](https://www.autism.org.au/what-is-autism/?gclid=CjwKCAjwov6hBhBsEiwAvrvN6GEZn_A0_wceaLOCwVN6zMSJs0DCiTEvbLvcmkbQhkhvV02OptA7BoCwW4QAvD_BwE)>

<sup>2</sup>ibid

ASD Level 2 is in the middle of the continuum and needs extensive care. These people might experience more visible difficulties with verbal interaction, limited pursuits, and routine behaviours.

ASD Level 3 is the most extreme end of the continuum and needs extensive care. Children in this group struggle with interactions, social contact, and repeated behaviours, together with other challenges.

## **CHALLENGES FACED BY AN AUTISTIC CHILD**

Autistic children face a range of challenges that can impact their daily lives and social interactions. Some of the challenges faced by them include:

**Difficulty with communication:** Many autistic children struggle with communication and social interaction. They may have difficulty with language development, understanding social cues, or engaging in conversation.

**Sensory processing difficulties:** Autistic children may be sensitive to certain sounds, textures, or stimuli, which can be overwhelming and lead to sensory overload. Alternatively, some autistic children may seek out certain types of sensory input to help regulate their emotions and behaviour.

**Executive functioning difficulties:** Autistic children may have difficulty with executive functioning, which includes skills such as planning, organization, and self-regulation. This can make it difficult for them to complete tasks, manage their time, or regulate their emotions and behaviour.

**Difficulty with change and transitions:** Autistic children may have difficulty with changes in routine or transitions, which can be stressful and overwhelming for them.

**Social isolation and stigma:** Due to their difficulty with social interaction, some autistic children may struggle to form relationships with peers and feel socially isolated. Additionally, there can be a stigma attached to autism, which can lead to discrimination and exclusion.

It is important to note that every autistic child is unique and may face different challenges based on their individual needs and strengths. By understanding and accommodating their needs, however, we can help ensure that autistic children can live fulfilling lives and achieve their full potential.



## LEGAL FRAMEWORK PROVIDED IN INDIA

### Statutes

*The Rehabilitation Council of India Act, 1992:* This law establishes the Rehabilitation Council of India, a statutory body that regulates and promotes rehabilitation education and services for individuals with disabilities, including autism.

*The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999:* This law establishes the National Trust, a statutory body that provides legal guardianship, support services, and financial assistance to individuals with autism, cerebral palsy, mental retardation, and multiple disabilities.

*The Rights of Persons with Disabilities Act, 2016:* This law recognizes autism as a disability and provides for non-discrimination, accessibility, and the right to education, employment, and social security.

*The Mental Healthcare Act, 2017:* This legislation protects and promotes equality of those suffering from cognitive illnesses, specifically autism. It calls for the availability of mental health services, such as community-based recovery and assistance services, for those suffering from mental illnesses.

### Schemes, Policies, and Guidelines

The Sarva Shiksha Abhiyan (SSA), 2001: This initiative intends to make education accessible and obligatory for all children aged 6 to 14, and even those with impairments. For children with impairments, the SSA provides measures for integrated educational opportunities and the formulation of individualised schooling plans.

The National Policy for Persons with Disabilities, 2006: This policy provides a framework for the protection and empowerment of persons with disabilities, including autism. It recognizes the need for early intervention, education, vocational training, and rehabilitation services for individuals with disabilities.

The Guidelines for the Home-Based Intervention of Young Children with Autism Spectrum Disorders in India: These guidelines were developed by the Indian Council of Medical Research and provide recommendations for the early identification and intervention of young children with autism.

The Inclusive Education for Children with Disabilities Scheme: This scheme provides financial assistance to states and union territories for the development of infrastructure, teacher training, and support services for inclusive education of children with disabilities, including autism.

It's important to note that while these laws and policies provide important protections and support for individuals with autism in India, there may still be challenges in ensuring that these rights are fully realized. Advocacy and education efforts are ongoing to promote greater awareness and inclusion for individuals with autism in India.

### **TESTIMONY OF AN AUTISTIC CHILD:**

In India, children, including autistic children, can be called as witnesses in court proceedings. However, their testimony may be subject to certain limitations and accommodations to ensure that their unique communication and cognitive needs are met.

The *Indian Evidence Act of 1872* regulates the admission of testimony in Indian judicial trials. Any individual who has the capacity of fully comprehending each question posed to him and providing logical replies to those questions can be called as a witness under Section 118 of the Indian Evidence Act. This includes children, including those with autism, who are able to communicate effectively and provide evidence.

However, as the testimony of autistic children may be subject to interpretation or misunderstanding, it is important that the court takes certain accommodations and considerations to ensure that the child is able to provide their testimony in a way that is clear and understandable. This may include allowing the child to testify in a comfortable and familiar setting, using visual aids or communication devices, or allowing an expert witness to interpret or clarify the child's testimony.

Overall, while autistic children can be called as witnesses in Indian court proceedings, it is important that the court takes appropriate accommodations to ensure that their testimony is given in a way that is accessible and fair to them.

If an autistic child is non-verbal or has difficulty communicating through spoken language, their testimony can still be recorded through alternative communication methods.

For example, the child may use a communication device, such as a tablet or picture board, to convey their testimony. The device may have pre-programmed images or symbols that the child can point to in order to answer questions. The court may also allow an expert witness, such as a speech-language pathologist, to assist in interpreting the child's communication.

It is important to note that the child's testimony may take longer to obtain, as it may require more time and patience to communicate with them effectively. However, it is the court's responsibility to ensure that the child's testimony is recorded accurately and without prejudice.

## **CASES RELATED TO AUTISTIC CHILDREN IN INDIAN COURTS**

*G. Arunachalam v The Commissioner of Police Coimbatore City*,<sup>3</sup>

Master Abhijith was an autistic child of the petitioner and respondent and they were filing for divorce, the petition was disposed of by both of them agreeing that the petitioner will pay Rs. 10000/- monthly for the therapy of the autistic child. *Mst. Akshaj Ojha (Through Guardian) v Govt. of NCT of Delhi and Ors*<sup>4</sup>

An autistic child had filed for admission in the Delhi Public School and was denied the same. The court directed that the petitioner will be examined for their condition and if they produce the requisite disability certificate, they should be allowed admission in the said school.

## **THE PRIVILEGES AND AMENITIES AVAILABLE TO INDIVIDUALS WITH AUTISM**

### **Special Legislation:**

A national law has established a specialized institution for individuals with autism. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act<sup>5</sup> (Act 44 of 1999) has created the National Trust, which is a statutory body under the Ministry of Social Justice and Empowerment.

### **Health Coverage:**

Individuals with autism, cerebral palsy, and other disabilities can receive up

<sup>3</sup>[2018] SCC OnLine Mad 2509

<sup>4</sup> W.P(c) 7504/2018

<sup>5</sup>Elementary Education Government of India, Ministry of Human Resource Development 2016  
<http://mhrd.gov.in/rte>

to Rs. 1,00,000 in health insurance coverage through the Niramaya Health Insurance Policy, which is administered by The National Trust.

### **Housing:**

The GHARAUNDA program established by the National Trust offers affordable housing and basic care for individuals with autism.<sup>6</sup>

### **Education:**

DISHA Centres<sup>7</sup> provide early intervention and support for children with autism and their families. The program covers children between the ages of 0 and 10, with the goal of preparing them for school. All children between the ages of 6 and 18 are entitled to free education under the Rights of People with Disabilities Act.

### **Training and Education:**

Under the Right of Children to Free and Compulsory Education Act (2009),<sup>8</sup> a child with a disability is considered part of the “disadvantaged group” and is entitled to free and compulsory elementary education across the country like all other children in that age group. This means that children with disabilities have the right to admission in schools, and are eligible for special assistance and support. Additionally, the Act also allows children with “multiple disabilities” and “severe disabilities” to choose home-based education as an alternative to attending a traditional school.<sup>9</sup>

### **Jobs:**

According to Sections 62(1) and 68(1) of the Rights of Persons with Disability Act, a person who has been declared by a competent court to be of unsound mind is not eligible to become a member of the Central and State Advisory Boards, respectively. The fact that a disproportionately low number of jobs (1% for all five taken together) are reserved for individuals with mental illness, intellectual impairment, autism, specific learning disability, and multiple disability suggests that there is an assumption that these individuals are incapable. The education, vocational, and self-

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<sup>6</sup>“National Portal of India” (*National Portal of India*) <https://www.india.gov.in/gharaunda-scheme>

<sup>7</sup>“The National Trust” <https://thenationaltrust.gov.in/content/scheme/disha.php>

<sup>8</sup>Right of Children to Free and Compulsory Education Act 2009

<sup>9</sup>GundugurtiPrasad Rao, VemulokondaSri Ramya and MathSuresh Bada, “The Rights of Persons with Disability Bill, 2014: How ‘Enabling’ Is It for Persons with Mental Illness?” (2016) 58 *Indian Journal of Psychiatry* 121.

employment chapters do not provide specific measures to ensure that the rights of individuals with mental illness are realized, further perpetuating this assumption of incapacity. Given the attitudinal and environmental barriers faced by individuals with mental illness, there should be special emphasis and social welfare measures to integrate them into mainstream society.

## **CONCLUSION AND SOLUTIONS:**

Life can be very hard and challenging for children diagnosed with autism if proper care and assistance is not provided at an early age. While there is no cure for autism, there are many interventions and treatments available that can help improve outcomes and quality of life for children with autism and their families. Some of them can be:

**Timely detection and assistance:** Early detection of autism can result in early therapies and enhanced results for children. This can include periodic autism testing and evaluations during wellness visits for kids, as well as outreach programmes for parents and medical professionals to raise understanding of autism's indicators and behaviours.

**Individualised care plans:** Because each autistic kid is special, the treatment they receive should be customised to their particular requirements. This can include a variety of therapies such as behavioural therapy, speech therapy, occupational therapy, and medication.

**Enhanced facility accessibility:** Many families battle to find the assistance and guidance they require to help their autistic kid. Increasing access to resources such as medical care, treatment, and education can assist families in better managing the problems of autism and boosting their child's results. Continuous studies on the origins of autism, as well as the creation of innovative therapies and measures, can help autistic children and their families achieve better results. This might include research funding and encouraging partnership among researchers, physicians, and community people.

## **PART 2: EXPLORING THE INDIAN ORPHANAGES: LEGAL FRAMEWORKS AND CHALLENGES**

### **INTRODUCTION**

According to United Nations figures, India has surpassed China to claim the title of the world's most populated country. India has a population of 1.41 billion people, including 158.8 million children under the age of six.

As a third-world country, over fifty percent of the country's population is impoverished, preventing many parents from adequately caring for their children.

In India, there are roughly about 30 million orphaned and neglected kids, accounting for over 4% of the younger generation. Countless more became orphaned after the Covid-19 pandemic broke out in 2020, with their real numbers still remaining uncertain. The pandemic was assumed to have orphaned 1,000 children in Uttar Pradesh alone, but the actual count might be significantly greater.<sup>10</sup>

A child relies on his or her parents for protection and attention, but millions of youngsters are forced to live with no family. Orphaned children's medical concerns can be complicated and are closely related to the living circumstances of the organisation that houses them. <sup>11</sup>An orphanage is a household institution where an orphaned kid stays since his or her parents are no longer present or have no way to care for him or her.

An orphan kid is mistreated and isolated from society as a whole, and he or she requires specific physical, mental, and social care in order to grow into a well-rounded citizen. Sadly, children residing in orphanages are prone to being victims of oral illness linked to financially poor families, which can contribute to starvation, anaemia, and development delays.<sup>12</sup>

The intricate combination of socioeconomic, cultural, and ethnic influences shapes and establishes children's behaviours and attitude throughout their lives. This intricate system influences their knowledge of health and illness reduction, especially mouth hygiene. However, because oral and dental treatments are costly, orphaned children who are economically or otherwise marginalized have no access to oral health care due to lack of access and unaffordability, making them more prone to oro-dental disorders.

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<sup>10</sup>Khan S, "Oral Health Status and Treatment Needs among Children and Adolescents in Orphanages of Bhopal Madhya Pradesh: A Cross-Sectional Study" [2017] *Journal of Applied Dental and Medical Sciences*

<sup>11</sup>Mary Dozier and others, "Institutional Care for Young Children: Review of Literature and Policy Implications" (2012) 6 *Social Issues and Policy Review* 1

<sup>12</sup>Abhinav Sinha and others, "Dental Caries Status among Orphans and Parented Children in North India: A Comparative Study" [2017] *Journal of Advanced Medical and Dental Sciences Research*

## **LIFE AT AN ORPHANAGE**

Growing up in orphanages has a profound effect on a child's development, and the detrimental impact of institutional care extends far beyond the realms of physical growth and cognitive development. Institutionalisation also has a deleterious impact on children's neurobiological and socio-emotional development, well-being and behavioural functioning, and attachment bonds.

Child abuse is one of the most common problems that orphaned children face in India. Both boys and girls are vulnerable to abuse across the country, especially in poorly controlled orphanages and shelters.

It should be noted that most children enter institutional care with significant delays because they are orphaned or originate from impoverished households. Childhood malnutrition is widespread in India. Because most orphans are not in shelters or orphanages, many orphaned children in India are either facing an imminent danger of malnutrition or are already suffering from it. Malnutrition can cause a variety of health problems, including poor eyesight, delayed muscle and bone growth, impaired brain development, and so on. Many children originate from incredibly tough backgrounds, implying that they may have had considerable delays while entering institutional care. Adequate child care and healthcare services would alleviate at least part of the physical development delays.

Most orphaned children in India lack access to needs such as food, housing, and clean water, resulting in a lack of education. With orphans on the streets doing everything they can to survive, education becomes a distant goal for many.

Many variables may lead to orphanages facing structural neglect. Large groups, inadequate caregiver-child ratios, high staff turnover rates, and a lack of knowledge among carers may be some of the causes of insufficient child care. In addition, changing career practices in institutions is difficult.

Children raised in orphanages are intended to be weaned off at the age of 18 unless the institution decides to keep the kid owing to the additional support they require. Orphans fail to function in society, according to study findings from many institutions throughout the world, with antisocial behaviours, illegality, and weak assertive abilities. Some are ill-prepared to meet the

new environment and live on their own, and they lack the institutional support structure. According to specialists, the major issue is not being raised in an orphanage, but that youngsters who grow up in these facilities are completely unprepared for real life. Leaving a house is like landing on the moon, where no one knows who you are. And this is how they will spend the rest of their lives, in a spacesuit, because no one is interested in them.

## **CUMBERSOME PROCESS OF ADOPTION**

Adoption is a process through which a child becomes a legal member of a family that is not their biological family. Adoption is a common practice in India, with thousands of children being adopted every year from orphanages. However, there are various legal issues and challenges associated with adoption in India, which can make the process difficult for prospective adoptive parents. In this research-oriented essay, we will explore the legal issues prevalent in India regarding the adoption of kids from orphanages in detail.

### **LEGAL FRAMEWORK IN INDIA:**

The legal framework for adoption of orphans in India is primarily governed by the Juvenile Justice Act, 2015 (JJ Act).<sup>13</sup> The JJ Act provides a comprehensive legal framework for the care, protection, and rehabilitation of children in need of care and protection. The Act recognizes adoption as one of the means of rehabilitation of orphan and abandoned children. The JJ Act provides for the establishment of a Central Adoption Resource Authority (CARA) to regulate the adoption process in India.

#### **Central Adoption and Research Authority:**

CARA<sup>14</sup> is the statutory body established under the JJ Act to regulate the adoption process in India. CARA is responsible for the maintenance of a central database of children in need of care and protection, prospective adoptive parents, and agencies involved in the adoption process. CARA also plays a crucial role in the selection of prospective adoptive parents and the matching of children with them. The authority is also responsible for monitoring the post-adoption progress of the child.

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<sup>13</sup>Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>14</sup>“CARA- Central Adoption Resource Authority”



## CHALLENGES IN THE ADOPTION PROCESS:

Despite the legal framework and the establishment of CARA, there are various challenges in the adoption process in India. Some of the significant challenges are discussed below.

**Lengthy and time-consuming process:** The adoption process in India is often lengthy and time-consuming. The process involves various stages, including registration, home study, matching, and placement. Each stage of the process can take several months, if not years, to complete.

**Lack of awareness:** Many people in India are not aware of the legal provisions for adoption, which can make the process difficult for prospective adoptive parents. There is a need to create awareness about the legal framework and the adoption process to enable more people to adopt.

**Bureaucratic hurdles:** The adoption process in India involves various bureaucratic hurdles, which can delay the process. There are instances where the process has been delayed due to the lack of coordination between different agencies involved in the process.

**Preference for boys:** One of the significant challenges in the adoption process in India is the preference for boys. Many people prefer to adopt boys rather than girls, which has resulted in a skewed gender ratio in adoption. A child must be in an adoptive home or orphanage in order to be eligible for adoption under the JJA and needs to be declared as a child “legally free for adoption” by the Child Welfare Committee. This system is extremely problematic, as only 370,000 orphans live in orphanages or adoption centres, leaving more than 29 million orphans unadoptable.

To make problems even worse, as reported by DW (Deutsche Welle, commonly shortened to DW, is a German public, state-owned international broadcaster funded by the German federal tax budget), 91% of orphanages that are not operated directly by the government are not linked to adoption institutions, leaving them practically inaccessible to the general public.<sup>15</sup> However, The JJ Act allows institutional facilities for children to be set up by both government and non-government organisations (NGOs) and as per law, all CCIs, whether they are for CNCP or for CCL, are required to be compulsorily registered under JJ Act 2015 within six months of the JJ Act 2015 having been enacted.

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<sup>15</sup>David Keenan, ‘The Situation of Orphans in India’ (*The Borgn Project*, 13 Mrch 2023) <<https://borgenproject.org/orphans-in-india/>> accessed on ( 21 January 2023).

Adoption can be an exhausting and deterring experience for parents who are considering adoption. Adoptive parents have complained about “a lack of assistance from services while pursuing adoption,” according to DW, prospective parents are frequently subjected to “delays and ambiguity of referrals,” as well as a “lack of information and transparency from the Central Adoption Resource Authority (CARA).”

However, The JJ amendment Act, 2021 provides strength to the provision of protection and adoption of children. There are many adoption cases pending before the court and to make proceedings of the court faster now the power is transferred to the district magistrate.

The amendment provides that the district magistrate has the authority to issue such adoption orders.

The issue of maltreatment of children in orphanages and child care institutions has been taken up by the Hon’ble Supreme Court also, In *Re Exploitation of Children in Orphanages in State of Tamil Nadu v Union of India*,<sup>16</sup>

A public interest petition was filed based on an article titled “Orphanage or Places of sexual abuse” published in Hindustan newspaper by Anjali Sinha. The article stated that government and non-government orphanages in Mahabalipuram, Tamil Nadu were involved in systemic child sexual abuse. The process of recording levels of child sexual abuse was also mentioned in the article. A.S. Choudary was the one who passed on the article to the court and on the basis of the article, the Court had taken up the Public Interest litigation.

After hearing both sides, the Court directed the governments of the Union territories and the States to ensure that the orphanages are registered and legally functional by December 31, 2017. This would help secure the rights of the children. Additionally, the State Commission for Protection of Child Rights was ordered to annually publish a report to increase awareness of all activities being carried out.

The National Commission for the Protection of Child Rights and each State Commission were directed to take up the important task of conducting a social audit, which is vital for the protection of children’s rights. Overall, the Court issued a detailed direction regarding the incapability of the States in securing the rights of children, and these measures were taken to address the issue of child sexual abuse in orphanages.

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<sup>16</sup>[2017] Manupatra SC 0577

*Jacob John v State of Manipur and Ors*,<sup>17</sup> is another case in which the petitioner who ran a registered Children's Home in Jaipur was arrested in connection with three separate FIRs related to alleged trafficking and sexual abuse of children. One FIR was quashed by the Gauhati High Court, and the petitioner argued that the other two FIRs were based on the same set of allegations and thus not maintainable. However, the State argued that the accused persons and dates of the offences are different, and thus, the petitioner has to face trial for both FIRs. The complaint lodged against the petitioner alleged that the children rescued from the Children's Home had been trafficked and confined illegally in deplorable conditions.

The case concerns child trafficking, which violates the human rights of children and deprives them of proper development. Children are especially vulnerable targets for traffickers, as they have less developed mental capacity to understand right from wrong. The court ruled that the petitioner cannot seek to have one of the FIRs quashed on the grounds of unfair trial, as the cases involve different victims and offenses. The court dismissed the criminal petition filed by the petitioner to quash an FIR against him and stated that the petitioner must face trial in both cases.

Child trafficking is a serious crime against society, and there is a need to raise awareness about it and implement strict laws to prevent it. The case highlights the importance of protecting vulnerable children and punishing those involved in Child trafficking and sexual abuse. It also emphasizes the need for proper regulation and monitoring of orphanages and other institutions housing children to prevent such heinous crimes.

## **CONCLUSION AND SOLUTIONS:**

The above discussion shows that the orphaned kids go through a lot with no proper care and education and no one to look after them, and how they are subjected to inhumane activities and are abused in the institutions. Hence this scenario requires immediate attention as they are the future.

Some steps the government can take are:

**Enhance administrative control:** The governing body should enhance its control of orphanages in order to guarantee that they adhere to all child welfare legislation and norms. This might incorporate frequent staff and volunteers' evaluations, audits, and checks on records.

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<sup>17</sup>[2022] Manupatra 0008

**Ensure appropriate financing:** The government must ensure appropriate financing to orphanages in order to offer basic requirements such as food, housing, clothes, and education to children. This reduces the possibility of youngsters being coerced into labour or prostitution to fund the orphanage.

**Improve Adoption Rates:** Government agencies need to make it easy for qualified parents to adopt orphans. This might be accomplished by expediting the procedure for adoption, cutting red tape, and offering monetary benefits to adoptive families.

**Promote Public Awareness:** The authorities should educate the public about the necessity of orphanages and the situation of abandoned kids. This might be accomplished through public events, media campaigns, and instructional programmes at schools and universities.

**Make the adoption process a bit easier:** Not all the parents opting for adoption know the process involved in it and therefore the cumbersome process can act as a deterrent to adoption.

# CO-RELATION BETWEEN MALNUTRITION AND DISABILITY AMONG CHILDREN

Bhagyashree Behera\*

## Five random pictures of children chosen from the web



Figure 1: <https://www.dailyexcelsior.com/>

**Feeling :** Sad

**Thought :** I am feeling helpless by looking at the child as it can be seen from the picture that the child is helping on a construction site. Many children irrespective of their age used to work in various manual labour sites and the picture is one of them.

**Feeling :** Despair

**Thought :** This picture shows how the child is malnourished. This entirely breaks my heart as this shows that there are many children who do not get enough nutrition leading to various disorders and diseases.



Figure 2: <https://myrepublica.nagariknetwork.com/>



Figure 3: <https://www.independent.co.uk/>

**Feeling :** Angry

**Thought :** This picture is an example of certain places where child marriages still happen. The children might be forced to get married without being given the chance of completing their education. This frustrates me as the act of child marriage is punishable offence but there are still some people who does not follow it.

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**Feeling : Hurt**

**Thought :** The child is getting bullied by his batch mates. Some people find this okay but some people find it entirely traumatic and suffer through various anxiety issues and mental stress throughout their life. Sometime these bullying can become in form of harassment which can also lead the victim to commit suicide.



Figure 4: <https://www.shutterstock.com/>



Figure 5: <https://www.borgenmagazine.com/>

**Feeling : Helpless**

**Thought :** This child is physically disabled. He is unable to walk because he is using a wheel-chair to move from one place to another. Some of the disabled children find it really difficult for them to adjust with other children

who are not disabled. They sometimes lack behind due to their disability. There are various provisions which exist for these children, to give them the rights which they deserve in order to have a normal dignified life like other children.

I have chosen to focus on correlation between malnutrition and disability among children.

## INTRODUCTION

Malnutrition and disability are long-standing concerns. Malnutrition is one of the leading causes of disability. Malnutrition among children has increased during the Covid-19 pandemic. Between 1990 and 2020, the number of children under the age of five who suffered from chronic malnutrition fell considerably, from 253 million to 144 million, allowing 109 million children to reach their potential. However, it was anticipated that the COVID-19 pandemic will cause an extra 2.6 million children to suffer from chronic malnutrition by 2022, reversing the beneficial trend shown over the previous three decades.

Disability among children can be a significant problem as it can impact their physical, cognitive, and social development. Children with disabilities may face challenges in accessing education, healthcare, and other essential services, which can limit their opportunities for growth and development. They may also endure stigma and prejudice, lowering their self-esteem and mental health. Furthermore, children with disabilities may require particular care and support, putting a financial strain on their families and communities. Therefore, it is essential to address the issue of disability among children and promote their rights and well-being.

The COVID-19 pandemic has had a significant impact on children with disabilities. With schools closed and access to support services disrupted, many children with disabilities have been left without the resources they need to thrive. Additionally, the pandemic has highlighted existing inequalities and gaps in healthcare systems, leaving many children with disabilities at risk of infection and unable to access essential medical care.

The lockdowns and social distancing measures have also led to social isolation and disrupted routines, which can be particularly challenging for children with disabilities who rely on structure and routine. Access to therapy and rehabilitation services has also been limited, which can have a negative impact on their development and quality of life.

Furthermore, children with disabilities are at a higher risk of experiencing abuse and neglect, and the pandemic has further exacerbated this issue, as children have been spending more time at home with their caregivers, sometimes in stressful and challenging circumstances.

The right to health of children is an essential component of their overall



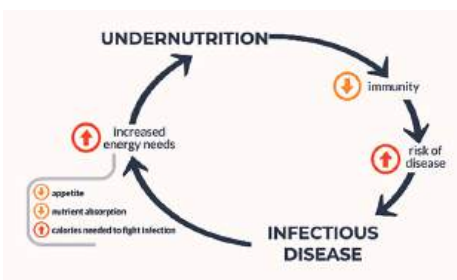
well-being and development. Children are vulnerable members of society who require special protection and care, and their right to health is critical to ensuring that they can grow and develop to their full potential. There are several reasons why the right to health of children is crucial. Firstly, good health is essential for children to learn and thrive. Children who are healthy are more likely to attend school regularly, perform well academically, and have better social and emotional outcomes. Conversely, children who suffer from illness or poor health are more likely to miss school, struggle academically, and experience social and emotional difficulties.

Good health is critical to children’s long-term health outcomes. Childhood illnesses and health issues can have long-lasting effects on a child’s physical and mental health throughout their life. Ensuring that children have access to healthcare services and a healthy environment can help prevent or manage illnesses, which can reduce the likelihood of long-term health complications.

From the standpoint of human rights, children’s health is vital. The United Nations Convention on the Rights of the Child guarantees every child the right to the best possible level of health. This right includes having access to safe environments, wholesome food, clean water, and medical treatment. We can assist guarantee that kids can reach their full potential and have healthy, happy lives by making sure they have access to these fundamental needs.

## IMPORTANCE OF NUTRITION

Nutrition plays a critical role in the development and growth of children. Adequate nutrition is essential for children to reach their full potential and achieve optimal physical and mental development. Adequate nutrition provides children with the energy they need to engage in physical activity, play, and learn. A balanced diet that includes carbohydrates, proteins, and fats can help sustain a child’s energy levels throughout the day.



Source: <https://immunizationevidence.org/>

Proper nutrition provides the building blocks necessary for physical growth



and development. Nutrients such as protein, calcium, and vitamin D are essential for bone and muscle development, while vitamins A, C, and E are critical for healthy skin, hair, and nails. Nutrition is essential for the development of the brain and nervous system. Nutrients such as omega-3 fatty acids, iron, and zinc are critical for cognitive function, memory, and learning.

Good nutrition supports the immune system, which can help prevent illness and infection. Nutrients such as vitamin A, C, E, and zinc help support the immune system, which is particularly important for children who are more susceptible to illness. Proper nutrition can support mental health and well-being. Nutrients such as vitamin B12, folate, and omega-3 fatty acids have been shown to improve mood and reduce the risk of depression and anxiety.

Nutrition plays a crucial role in a child's growth and development. Poor nutrition can lead to a variety of health problems, including stunting, wasting, and micronutrient deficiencies. Inadequate nutrition is a major reason for disability among children, particularly in developing countries.

Malnutrition can result in both physical and cognitive disabilities. For example, stunting which occurs when children do not receive sufficient nutrients for growth, can lead to physical disabilities such as impaired skeletal development, reduced muscle mass, and weakened immune systems. Stunting can also cause cognitive disabilities, such as impaired brain development, reduced IQ, and poor academic performance.

Micronutrient deficiencies can also result in disability. For example, iron deficiency anaemia can lead to fatigue, decreased physical performance, and impaired cognitive development. Vitamin A deficiency can cause blindness and increase the risk of infectious diseases. And iodine deficiency can lead to goitre and impaired cognitive development.

In addition to the direct impact of poor nutrition on a child's health, malnutrition can also increase the risk of other diseases and infections, which can further contribute to disability. For example, children who are malnourished are more susceptible to diarrhoea, respiratory infections, and other illnesses, which can lead to long-term health problems and disability.

Therefore, addressing malnutrition is critical to reducing the burden of disability among children. This includes improving access to nutritious foods, promoting breastfeeding and appropriate complementary feeding,

and addressing underlying issues such as poverty, lack of education, and inadequate healthcare.

## **MALNUTRITION AND DISABILITY**

Malnutrition and disability are major public health concerns, particularly in developing countries, where resources for healthcare and social welfare are limited. The intersection of malnutrition and disability exacerbates these challenges, leading to poorer health outcomes and reduced quality of life for affected individuals.

According to the World Health Organization (WHO)<sup>1</sup>, malnutrition contributes to about 45% of all deaths in children under the age of 5. Additionally, malnutrition can cause stunting, wasting, and micronutrient deficiencies, which can lead to long-term health problems and disability. In India, for example, malnutrition is a major contributing factor to disability among children<sup>2</sup>. The National Family Health Survey (NFHS) 2019-21 reported that 36.2% of children under 5 years old in India are stunted, which is a form of malnutrition that can cause lifelong physical and cognitive impairments.<sup>3</sup>

The COVID-19 pandemic has further compounded the challenges faced by malnourished children with disabilities. Lockdowns and disruptions to healthcare services have made it difficult for families to access essential medical care and nutritional support. School closures have also disrupted access to free meals and educational support, which can further exacerbate the risk of malnutrition and developmental delays.

In addition to these challenges, malnourished children with disabilities may face additional barriers to accessing healthcare and social services due to their disability. This can lead to further marginalization and reduced opportunities for growth and development.

Overall, the intersection of malnutrition and disability presents a complex public health challenge that requires a multi-faceted approach to address. This includes improving access to healthcare and social services, increasing awareness and education around nutrition and disability, and addressing the underlying social determinants of health, such as poverty and inequality.

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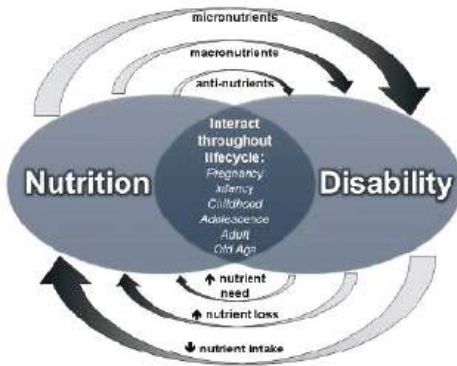
<sup>1</sup>World Health Organization, 'Infant and Young Child Feeding' (2023) < <https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding> > (accessed on 9 March 2023)

<sup>2</sup>World health Organization, 'Malnutrition' (2023) < <https://www.who.int/health-topics/malnutrition> > (accessed on 9 March 2023)

<sup>3</sup>National Family Health Survey, *National Family Health Survey* (2019-21)

## CORRELATION OF MALNUTRITION AND CHILDREN WITH DISABILITY

According to a report by the World Health Organization (WHO)<sup>4</sup>, malnutrition is the underlying cause of 45% of child deaths under the age of five worldwide. Malnutrition can also lead to long-term disabilities such as stunted growth, cognitive impairment, and weakened immune systems, which can impact a child's development and well-being throughout their life. In 2020, it was estimated that 149 million children under the age of five were affected by stunted growth, which is often caused by chronic malnutrition. The highest burden of stunted growth was found in South Asia and sub-Saharan Africa. Additionally, it is estimated that 1 in 4 children globally are affected by anaemia, which is often caused by a lack of iron in the diet and can lead to cognitive impairment and developmental delays.



Source: <https://www.frontiersin.org/>

Disability and malnutrition go hand in hand, and nations with high rates of malnutrition also tend to have greater rates of developmental delay and disability. In addition to impairments being a cause or effect of malnutrition, malnutrition may also be a result of disability. It will mostly address how under nutrition results in disability as well as how disability either causes or contributes to under nutrition. However, it's crucial to remember that diseases like diabetes and stroke that are linked to over nutrition are becoming more and more significant causes of disability in older age groups.

Poor nutrition, whether due to feeding difficulties or energy imbalance, can lead to growth impairment, reduced muscle strength, bone density, metabolic and endocrine problems, cardiovascular and respiratory issues, weakened immune function, and delayed wound healing, all of which can affect surgical outcomes. The severity of malnutrition is strongly linked

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<sup>4</sup>Ibid (n. 2)

to an increased risk of postoperative complications, as surgical stress can further worsen the catabolic processes.<sup>5</sup>

There is a link between malnutrition and disability since both conditions are correlated with poverty and poor health, which are factors that lead to impairment. According to research, a number of issues, including feeding difficulties in children with disabilities, maltreatment, and their exclusion from school-based feeding initiatives, are directly linked to malnutrition and developmental impairment. According to a paradigm put forward by Groce et al., malnutrition can happen when there is a rise in the requirement for nutrients, a fall in nutrient intake, and an increase in nutrient loss.

A child may require longer feeding durations due to physical limitations such as cerebral palsy or cleft palate, which make it difficult for carers to offer the infant proper attention during feedings. Furthermore, some disabilities—like cerebral palsy, for example—may increase a child’s susceptibility to nutrient loss due to increased sickness frequency or vomiting episodes. As a result, these children may require greater nutritional support. Moreover, malnutrition can cause impairment by raising the chance of contracting potentially incapacitating diseases like rickets or meningitis. The link between disability and malnutrition is likely to be strongest where public health systems are weakest.<sup>6</sup>

Due to the increased risk of physical, sensory, and cognitive impairment caused by deficits in macronutrients and micronutrients, malnourished newborns and early children are more prone to experience impairments. For instance, vitamin A deficiency can cause blindness, while thiamine, niacin, and pyridoxine deficiencies are associated with various disabling conditions. Malnutrition can also lead to underweight or wasting, impair the immune system, and increase susceptibility to infections like meningitis, which can cause disability. Another sign of malnutrition that affects both physical and cognitive development is stunting. Infants who are malnourished are more likely to experience hearing loss; the risk is further increased in cases of severe-to-profound malnutrition.

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<sup>5</sup>Wagner KH, Brath H, ‘A global view on the development of non-communicable diseases’ (2011) < <https://pubmed.ncbi.nlm.nih.gov/22178469/> > (accessed on 10 March 2023)

<sup>6</sup>Walker SP, Wachs TD, Gardner JM, Lozoff B, Wasserman GA, Pollitt E, et al., ‘Child development: risk factors for adverse outcomes in developing countries’ (2007) < [https://www.academia.edu/78460567/Child\\_development\\_risk\\_factors\\_for\\_adverse\\_outcomes\\_in\\_developing\\_countries](https://www.academia.edu/78460567/Child_development_risk_factors_for_adverse_outcomes_in_developing_countries) > (accessed on 10 March 2023)

Obesity is becoming a major public health concern in many countries, including those with limited resources. Early-life under-nutrition can further increase the risk of obesity in societies undergoing transition. Being obese raises the risk of metabolic illnesses and stroke, the third largest cause of disability globally. Elderly people who are malnourished or undernourished are more likely to suffer from hip fractures, among other bone fractures, which can limit their range of motion. Older persons may find it more difficult to get or prepare meals for themselves due to reduced physical mobility, particularly after sickness or injury. This might result in changes in eating habits that may exacerbate their impairment.

Extended stress and metabolic disorders have been linked to an unhealthy cardiovascular system. Certain conditions associated with intellectual or developmental disabilities during childhood are also strongly correlated with cardiovascular risk factors during adulthood. Predictive signs of cardiovascular problems have been reported in disabled children, including hypertension present in over 15% of non-ambulatory children and thicker epicardial fat measurement, an independent predictor of coronary atherosclerotic burden, compared to age-matched controls.<sup>7</sup>

## **LEGAL PROVISIONS FOR MALNOURISHED CHILDREN**

There are several provisions for the children who are malnourished under UNCRC<sup>8</sup>. Some of the provisions are under articles 6, 19, 27, 24, and 28 which tries to include protection rights from mental and physical abuse, education and healthcare rights, survival and development rights<sup>9</sup>. Lastly, the right to have a standard of living adequate for their development. In the following analysis, I have placed a greater emphasis on Article 24 of the UNCRC as healthcare is the most crucial aspect of a child's life, which needs to be prioritized.

According to Article 24 of the United Nations Convention on the Rights of the Child (UNCRC)<sup>10</sup>, every child has the right to the best possible level of health as well as access to facilities for disease treatment and health rehabilitation. The article also recognizes the importance of preventive

<sup>7</sup>Murray CJ, Vos T, Lozano R, Naghavi M, Flaxman AD, Michaud C, 'Disability-adjusted life years (DALYs) for 291 diseases and injuries in 21 regions:a systematic analysis for the Global Burden of Disease Study' (2012) < [https://www.thelancet.com/article/S0140-6736\(12\)61689-4/fulltext](https://www.thelancet.com/article/S0140-6736(12)61689-4/fulltext) > (accessed on 10 March 2023)

<sup>8</sup>United Nation, Convention on Rights of the Child, 1989

<sup>9</sup>Ibid

<sup>10</sup>Nations, Convention on Rights of the Child, 1989, Art. 24

healthcare and the need for healthcare services to be available and accessible to all children, without discrimination.<sup>11</sup>

Here are some key points and details related to Article 24 of UNCRC:<sup>12</sup>

1. **Right to healthcare:** Article 24 recognizes that children have the right to healthcare services that promote their physical and mental well-being. This includes access to preventive and curative healthcare services, such as immunizations, regular check-ups, and treatment for illnesses or injuries.
2. **Facilities for treatment:** In addition to access to healthcare services, Article 24 recognizes the right of children to facilities for the treatment of illness and rehabilitation of health. This includes hospitals, clinics, and other medical facilities that are equipped to provide care to children.
3. **Preventive healthcare:** Article 24 emphasizes the importance of preventive healthcare, such as immunizations and health education, in promoting the health of children. It also recognizes the importance of addressing environmental and social factors that can affect the health of children, such as access to clean water, sanitation, and adequate nutrition.
4. **Access to healthcare:** Article 24 emphasizes that healthcare services should be available and accessible to all children, without discrimination. This includes children from marginalized or vulnerable groups, such as those living in poverty, those with disabilities, or those from minority ethnic or cultural groups.
5. **Role of parents and caregivers:** Article 24 recognizes that parents and caregivers have a primary role in ensuring the health and well-being of their children. It emphasizes the importance of providing parents and caregivers with appropriate information, guidance, and support to promote the health of their children.

Article 24 of the UNCRC recognizes the importance of promoting the health and well-being of all children, and emphasizes the need for healthcare services to be available and accessible to all children, without discrimination. It also recognizes the importance of preventive healthcare, and the role of parents and caregivers in promoting the health of their children.

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<sup>11</sup>Ibid

<sup>12</sup>Ibid

## **In what ways have other nations attempted to apply Article 24?**

Many countries have taken steps to implement Article 24 of the UNCRC, recognizing the importance of promoting the health and well-being of children. Here are some examples of how different countries have enacted this article:

**South Africa:** South Africa has implemented various policies and programs to address child malnutrition and improve nutrition outcomes, such as its National School Nutrition Program. The program provides daily meals to school children from poor households, with a focus on nutritious foods.<sup>13</sup>

**Cuba:** Cuba has implemented various interventions to address child malnutrition, such as its “Maternal and Child Health Program<sup>14</sup>,” which provides education and support to mothers and caregivers on topics such as breastfeeding and infant and young child feeding. The country also provides free healthcare services, including access to paediatric care, to all citizens.<sup>15</sup>

**Norway:** Norway has implemented various policies and programs to address child malnutrition and promote proper nutrition, such as its “Healthy Eating in Schools” program. The program aims to improve children’s access to healthy foods in school settings, and includes initiatives such as establishing school gardens and promoting locally sourced foods.<sup>16</sup>

**Brazil:** Brazil’s “Zero Hunger” program<sup>17</sup> includes initiatives such as providing nutritious meals in schools, improving access to healthcare services, and promoting breastfeeding. The program also provides food assistance to vulnerable populations, such as pregnant women and children under the age of five.<sup>18</sup>

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<sup>13</sup>Department of Basic Education, National School Nutrition Programme (2019) <[https://www.education.gov.za/Programmes/NationalSchoolNutritionProgramme\(NSNP\).aspx](https://www.education.gov.za/Programmes/NationalSchoolNutritionProgramme(NSNP).aspx)> (accessed on 15 March 2023)

<sup>14</sup>Rodriguez-Garcia, R., Schaefer, L., & Yunes, J. *Lactation Education for Health Professionals*. Washington, DC: Pan American Health Organization. Research Gate. (1990), 152

<sup>15</sup>Pan American Health Organization (2018), Cuba’s Health System. <<https://www.paho.org/salud-en-las-americas-2017/?p=870>> (accessed on 15 March, 2023)

<sup>16</sup>Norwegian Directorate of Education and Training (2021). Healthy Eating in Schools. <<https://www.udir.no/kvalitet-og-kompetanse/skoléfag/kroppsoptdrag/healthy-eating-in-schools/>> (accessed on 15 March 2023)

<sup>17</sup>Kitaoka k. *The National School Meal Program in Brazil: A Literature Review*. Research Gate. (2018), 118

<sup>18</sup>Brazilian Government, ‘Zero Hunger’, <<http://www.fomezero.gov.br/english-version>> (accessed on 17 March 2023)

Ethiopia: Ethiopia has implemented various interventions to improve child nutrition, including providing vitamin A supplements, promoting exclusive breastfeeding, and improving access to clean water and sanitation. Additionally, the government has set up community-based nutrition initiatives to educate and assist mothers and other carers.<sup>19</sup>

Ghana: Ghana’s national nutrition policy includes initiatives such as promoting breastfeeding, providing vitamin A supplements, and improving access to clean water and sanitation. The government has also established community-based nutrition programs and implemented school feeding programs to ensure that children have access to nutritious meals.<sup>20</sup>

Nepal: Nepal’s “Multi-Sector Nutrition Plan”<sup>21</sup> and the “Integrated Management of Acute Malnutrition” program<sup>22</sup> aim to improve nutrition and health outcomes among children by providing access to nutritious foods, healthcare services, and community-based nutrition programs. The government has also implemented school feeding programs and established nutrition centres to provide support and education to mothers and caregivers.<sup>23</sup>

Thailand: Thailand’s “Universal Coverage Scheme”<sup>24</sup> provides access to healthcare services for all citizens, including children. The government has also implemented school feeding programs and established community-based nutrition programs to provide education and support to mothers and caregivers.<sup>25</sup>

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<sup>19</sup>Ethiopian Public Health Institute, National Nutrition Program (2018) <<https://www.ephi.gov.et/index.php/public-health-programs-en/nutrition-program>> (accessed on 18 March 2023)

<sup>20</sup>Ghana Health Service, Ghana National Nutrition Policy (2016) <<https://www.moh.gov.gh/wp-content/uploads/2016/02/Ghana-National-Nutrition-Policy.pdf>> (accessed on 18 March 2023)

<sup>21</sup>Government of Nepal, Ministry of Health and Population, ‘Multi-Sector Nutrition Plan for Accelerating the Reduction of Maternal and Child Undernutrition in Nepal’ (2013-2017). <[https://scalingupnutrition.org/wp-content/uploads/2013/03/Nepal\\_MSNP\\_2013-2017.pdf](https://scalingupnutrition.org/wp-content/uploads/2013/03/Nepal_MSNP_2013-2017.pdf)> (accessed on 20 March 2023)

<sup>22</sup>Ibid

<sup>23</sup>Government of Nepal, Ministry of Health and Population, ‘Multi-Sector Nutrition Plan for Accelerating the Reduction of Maternal and Child Undernutrition in Nepal’ (2018-2022). <<https://www.nepalnutrition.org/resource/multi-sector-nutrition-plan-msnp-for-accelerating-the-reduction-of-maternal-and-child-undernutrition-in-nepal-2018-2022/>> (accessed on 20 March 2023)

<sup>24</sup>Tangcharoenathien, V., Tisayaticom, K., Suphanchaimat, R., Vongmongkol, V., Viriyathorn, S. and Limwattananon, S., *Financial risk protection of Thailand’s universal health coverage: results from series of national household surveys between 1996 and 2015*. Research Gate. (2020), 6

<sup>25</sup>Ministry of Public Health, Thailand, Universal Coverage Scheme (2019) <<https://www.ucsthai.or.th/en/>> (accessed on 18 March 2023)



## How did India implement this and what is the current data of malnutrition causing disabilities among children?

While malnutrition can lead to disabilities, the exact number of children with disabilities due to malnutrition or the non-enforcement of Article 24 of the UNCRC is not available. However, according to the World Health Organization (WHO), malnutrition is a leading cause of disability among children worldwide. In India, the National Family Health Survey-5 (2019-2020) <sup>26</sup> gives information on the prevalence of malnutrition among kids under five. Here are some important conclusions:

- In India, 34.7% of children under five have stunted growth, or low height for age, which is a sign of ongoing malnutrition.
- Acute malnutrition is indicated by the low weight-for-height (17.3%) of children under the age of five.
- 33.4% of kids under five have low weights for their age, or underweight.<sup>27</sup>

These figures highlight the extent of the malnutrition problem in India, which can have serious long-term consequences for children's health and well-being. Malnutrition can also contribute to the development of disabilities, including physical and cognitive impairments.

India has implemented several initiatives to promote the health and well-being of children, particularly those from marginalized or vulnerable groups, in order to enforce Article 24 of the UNCRC.

1. The Indian government's flagship programme, the Integrated Child Development Services (ICDS) project<sup>28</sup>, intends to offer integrated early childhood development services to children under the age of six as well as pregnant and lactating mothers. The programme offers a number of services to support children's health and wellbeing, such as growth tracking, nutrition education, and vaccinations.
2. National Health Mission (NHM): The NHM is a government program<sup>29</sup> that aims to improve access to healthcare services in rural and underserved areas of the country. The program provides financial support to states to

<sup>26</sup>Ibid (n. 3)

<sup>27</sup>Ibid

<sup>28</sup>Sachdev Y, Dasgupta J., 'Integrated Child Development Services (ICDS) scheme, Med J Armed Forces India' (2001), Research Gate, 22

<sup>29</sup>Ministry of Health and Family Welfare, India (2016-18). National Health Mission. <<https://nhm.gov.in/>> (accessed on 24 March 2023)

strengthen healthcare infrastructure, including the provision of essential drugs and diagnostics, and the recruitment of healthcare personnel.

3. Janani Shishu Suraksha Karyakram (JSSK): The JSSK is a government scheme <sup>30</sup>that provides free maternity and newborn healthcare services to all pregnant women and newborns in government health facilities. The scheme covers all costs related to delivery and postnatal care, including drugs, diagnostics, and transportation.
4. Rashtriya Bal Swasthya Karyakram (RBSK): The RBSK is a government initiative <sup>31</sup>that aims to provide comprehensive healthcare services to all children in the age group of 0-18 years. The program provides free health check-ups, including screening for common diseases and disabilities, and referral services for specialized care.

Despite these initiatives, there are some challenges in enforcing Article 24 of the UNCRC in India. One of the major challenges is the high burden of malnutrition among children in the country. The data had been mentioned above.

Another challenge is the inadequate healthcare infrastructure in many parts of the country, particularly in rural areas. While the government has implemented several programs to improve access to healthcare services, there are still many areas where healthcare facilities are understaffed and lack basic equipment and supplies. It's important to note that while malnutrition is a major contributing factor to disability, there are many other factors that can also lead to disability among children, such as genetic and environmental factors.

In conclusion, while India has taken several steps to enforce Article 24 of the UNCRC, there are still some challenges in ensuring that all children have access to the highest attainable standard of health. The government will need to continue to invest in healthcare infrastructure, as well as nutrition and education programs, in order to ensure that all children in the country have the opportunity to grow up healthy and thrive.

## **LEGAL PROVISIONS FOR CHILDREN WITH DISABILITIES**

There are several provisions for the children with disabilities under UNCRC.

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<sup>30</sup>Ibid

<sup>31</sup>Ministry of Health and Family Welfare, India, Rashtriya Bal Swasthya Karyakram (2013) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=106931>> (accessed on 24 March 2023)

Article 2, 7, 23, 24, 28, 29 and 30 give rights to the children with disabilities which includes having a non-discriminatory life, along with proper health care facilities and education goals for them. It also includes participation in socio-cultural activities as well. In the following analysis, I have placed a greater emphasis on Article 23 of the UNCRC as these children with special needs have the equal right to have a full and decent life like that of other children. The children with disabilities might get discriminated against by society because people feel that they don't have the potentiality to do anything. However, it is the care and non-discriminatory attitude which would help them develop in life.

Every child with a disability has the right to a complete and decent existence, with dignity, and the best available support to reach their full potential, according to Article 23 of the UNCRC. It acknowledges that children with disabilities have a right to extra support, instruction, and training so they can live independent lives. States parties must also guarantee that children with disabilities get equitable treatment, rehabilitation, and social assistance, and that they are not subjected to discrimination. The purpose of Article 23 is to advance and safeguard the welfare and rights of children with disabilities.<sup>32</sup>

### **How have other countries tried to implement Article 23?**

In order to help children with disabilities reach their full potential, appropriate care, education, and training must be provided, according to Article 23 of the UNCRC. Numerous nations have taken action to put Article 23 into practise and advance the rights and welfare of kids with disabilities. Here are some examples:

Germany: Germany has a comprehensive legal framework to support children with disabilities, which includes a requirement for inclusive education. It is mandatory for all educational institutions to furnish children with disabilities with appropriate accommodations and assistance so they may engage fully in the learning process. Additionally, the German government provides financial support to families with children with disabilities, and various programs and services are available to support their care and well-being.<sup>33</sup>

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<sup>32</sup>United Nation Convention on Rights of Children 1989, Art. 23

<sup>33</sup>European Agency for Special Needs and Inclusive Education, 'Disability and Education in Germany' <<https://www.european-agency.org/country-information/germany/national-overview/disability-and-education-germany>> (accessed 24 March 2023)

Norway: Norway has established a comprehensive rehabilitation system to provide support and care for children with disabilities. This includes medical, social, and educational support, as well as assistive technology and equipment to help children with disabilities live independently. The Norwegian government also provides financial support to families with children with disabilities and has implemented policies to promote equal opportunities and non-discrimination.<sup>34</sup>

Canada: Canada has implemented the Accessible Canada Act, which aims to make Canada barrier-free for persons with disabilities. This includes measures to improve accessibility in public spaces, transportation, and employment. Additionally, Canada has developed policies and programs to support families of children with disabilities, such as the Canada Child Benefit and the Disability Tax Credit.<sup>35</sup>

Japan: Japan has implemented the Act for the Elimination of Disability Discrimination, which prohibits discrimination against individuals with disabilities in education, employment, and other areas of society. Japan has also established programs and services to support the inclusion of children with disabilities in education and society, such as special education classes, sign language interpretation, and disability employment support.<sup>36</sup>

Australia: Australia has implemented the National Disability Insurance Scheme, which provides funding for services and support to individuals with disabilities, including children. The scheme aims to improve the quality of life of individuals with disabilities and promote their independence and participation in society. Additionally, Australia has developed policies and programs to promote inclusive education, including the Disability Standards for Education.<sup>37</sup>

### **How did India implement Article 23? What is the data showing the beneficiary under this article?**

Malnutrition is a major public health issue in India, and it has significant

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<sup>34</sup>Nordic Welfare Centre, “Children with disabilities in Norway” <<https://nordicwelfare.org/en/publikationer/children-with-disabilities-in-norway/>> (accessed 25 March 2023)

<sup>35</sup>Government of Canada, “Accessible Canada Act” <<https://www.canada.ca/en/employment-social-development/programs/accessible-people-disabilities/act.html>> (accessed 25 March 2023)

<sup>36</sup>Japan Society for the Rehabilitation of Persons with Disabilities, ‘Disability in Japan’ <<https://www.jsrd.or.jp/en/about/disability/>> (accessed on 25 March 2023)

<sup>37</sup>Australian Government Department of Social Services, ‘National Disability Insurance Scheme’ <<https://www.dss.gov.au/disability-and-carers/programmes-services/for-people-with-disability/national-disability-insurance-scheme>> (accessed on 25 March 2023)

consequences for child development and wellbeing. According to the Global Nutrition Report 2020, India has the highest number of children affected by stunting (low height-for-age) in the world, with an estimated 34% of

children under five years of age affected. According to the World Health Organization, around 10-15% of the Indian population has a disability, and malnutrition is a significant problem among children with disabilities. The National Sample Survey data for 2016-17 showed that 38% of children with disabilities in India were malnourished.

Malnutrition can cause a range of disabilities among children, including cognitive and physical disabilities. According to the National Family Health Survey (NFHS) 5, conducted in 2019-20, 31% of children under five years of age in India are underweight, which is a major indicator of malnutrition. The survey also found that 38.4% of children under five years of age are stunted, and 9.3% are wasted (low weight-for-height), indicating acute malnutrition.<sup>38</sup>

The consequences of malnutrition on child development are significant. Malnutrition can lead to stunted growth, cognitive impairment, inadequate academic achievement and a higher chance of developing chronic illnesses in later years. Malnutrition also increases the risk of infections and can lead to higher mortality rates among children.

The Indian government has implemented various programs and initiatives to address malnutrition among children, including the National Nutrition Mission (Poshan Abhiyaan), which aims to reduce malnutrition by 2% annually and address the issue through a multi-sectoral approach. Additionally, the government provides supplementary nutrition through the Integrated Child Development Services (ICDS) scheme, which targets children under six years of age and pregnant and lactating women. Some other initiatives include:

1. National Health Mission: This government programme aims to enhance access to healthcare in both urban and rural regions. Its main objectives are to lower the rates of newborn and maternal death and to offer everyone, including children with disabilities, access to high-quality healthcare services.
2. Mid-Day Meal Scheme: Children enrolled in government and

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<sup>38</sup> Ibid (n. 3)

government-aided schools are eligible for free lunches under this government programme. The programme seeks to enhance children's nutritional status and motivate frequent attendance at school.

3. Swachh Bharat Abhiyan: Also known as the Clean India Mission, this government initiative aims to raise the nation's standards for hygiene and cleanliness.
4. The campaign focuses on improving sanitation facilities in rural and urban areas, which can help prevent diseases caused by poor sanitation and hygiene.
5. National Food Security Act: The National Food Security Act is a government initiative aimed at ensuring food security for all citizens of the country, especially those living in poverty. The act provides subsidized food grains to eligible families and ensures that they have access to adequate food.

Additionally, in order to guarantee the protection of the rights and entitlements of people with disabilities, including children, the Indian government established the Rights of Persons with Disabilities Act, 2016. The Act seeks to offer equal opportunity for the growth and education of children with disabilities, acknowledging that they have the same rights as other children.

Under the Act, children with disabilities have access to free and compulsory education, and the government is required to ensure that reasonable accommodations are made to facilitate their learning. This includes provisions for assistive technology, accessible infrastructure, and trained teachers who can provide specialized support to children with disabilities.

The Act also mandates that children with disabilities have the right to participate in cultural and recreational activities, as well as the right to access healthcare services, rehabilitation, and vocational training. It further provides for the establishment of a National Fund for Persons with Disabilities, which is intended to support research, development, and implementation of policies and programs for the benefit of persons with disabilities.

## **CONCLUSION**

While it is essential to have laws and policies in place to address malnutrition and disability among children, it is equally important to ensure that these

policies are effectively implemented and enforced. A wide range of stakeholders, including governmental organisations, medical professionals, academic institutions, and local authorities, must be involved in this.

The COVID-19 pandemic has highlighted the need for a more comprehensive approach to addressing the challenges faced by malnourished children with disabilities. Lockdowns and disruptions to healthcare services have made it difficult for families to access essential medical care and nutritional support. School closures have also disrupted access to free meals and educational support, which can further exacerbate the risk of malnutrition and developmental delays.

To address these challenges, there is a need for a coordinated effort to provide support and assistance to the most vulnerable children. This includes ensuring that families have access to nutritious food, healthcare, and other essential services, as well as providing educational and developmental support for children with disabilities.

In addition to these measures, there is a need for increased awareness and education around nutrition and disability. This entails encouraging a balanced diet, teaching families and care takers the value of early identification and intervention for developmental delays, and offering educators and healthcare professionals assistance and training.

Finally, tackling the fundamental socioeconomic determinants of health, such inequality and poverty, is also essential for ensuring that all children have access to the resources and opportunities they need to thrive. All children, regardless of their skills or origins, can have the chance to realise their full potential if these issues are addressed in a coordinated and all-encompassing manner.

# NAVIGATING THE LEGAL LANDSCAPE: A CRITICAL ANALYSIS OF LEGAL PROVISIONS AND THEIR IMPLICATIONS FOR CHILDREN IN REFUGEE CAMPS AND ORPHANAGES

Karshana Agarwal\*

## Five random pictures of children from the web



Figure 1: <https://www.bbc.com/news/world-asia-india-41154846>

**Feeling :** Heartbroken

**Thought :** The child of the couple is probably very sick or unfortunately no more as there is a medical assistance apparatus attached to the child visible on his head. The healthcare facilities of the country were probably unequipped or unprepared to deal with the ailment of the child, and the parents appeared to be helpless and clueless.

**Feeling :** Uncertain

**Thought :** The picture is set in the background of a refugee camp. The life of a migrant or refugee child, especially if displaced at a young age, is filled with hardships and uncertainty. Moreover, a sense of homelessness is also instilled in most refugee children, whose futures appear to be unclear due to the perils of circumstances.



Figure 2: <https://www.biomedcentral.com/collections/minorityandmigranthealth>



Figure 3: <https://www.istockphoto.com/video/granddaughter-with-grandfather-on-his-piggyback-gm176032123-24612927>

**Feeling :** Hopeful

**Thought :** The children shown in this picture are from different backgrounds (race or nationality). However, they are being held by the same person. It appears to be a case wherein a person has adopted the child(ren), and now all three children are leading a happy life as siblings.

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**Feeling :** Comforted

**Thought :** The children are getting a medical check-up which shall provide them with a better understanding of their body. It will also be helpful as it could identify any ailments which need to be treated immediately. There is a sense of comfort in knowing that these children, who appear to be of an underprivileged background are cared for and looked after.



Figure 4: <https://chlss.org/blog/lot-love-give/>



Figure 5: <https://www.dreamstime.com/photos-images/asian-rural-doctor.html>

**Feeling :** Inquisitive

**Thought :** Children from the northeastern part of India, identifiable by their features, engage with a tablet, potentially a novelty due to accessibility challenges. Despite being citizens of a tech-savvy nation, the device symbolizes new opportunities, sparking their excitement.

I have chosen to focus on Child refugee camps and orphanages.

## INTRODUCTION

### ORPHAN

Firstly, orphaned children are those who have lost one or both parents and as a result, are left without any means of support, care or protection.<sup>1</sup> They may be living with extended family members or guardians, but their situation is deemed unsafe or unsustainable, leading to the need for alternative care arrangements. The definition of orphaned children for adoption purposes may vary by country or jurisdiction. In some cases, children who have lost one parent may be considered orphans, while in others, both parents must be deceased or their parental rights terminated for a child to be eligible for adoption.<sup>2</sup>

As per Indian laws, an orphan is defined as “a child who is without parents or willing and capable legal or natural guardian”.<sup>3</sup>

### ABANDONED

Abandoned children are those who have been “deserted” or “relinquished by their parents or legal guardians”, and as a result, are “left without any means of support, care or protection.”<sup>4</sup> They may be found in public places such as hospitals, railway stations, or streets, or may be left with a person or organization without any provision for their care and welfare.

The definition of abandoned children, like orphan children, for adoption purposes, may vary by country or jurisdiction. In some cases, a child may be considered abandoned if they are found in a public place without any identification or means of tracing their family, while in others, a child may be considered abandoned if they are left with a person or organization without any provision for their care and welfare.

As per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, “abandoned child means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry.”<sup>5</sup>

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<sup>1</sup>Donald Skinner, N. Tshenko, S. Mtero-Munyati, M. Segwabe et al., ‘Towards a Definition of Orphaned and Vulnerable Children’ [2006] AIDS Behav 619-626

<sup>2</sup>*Ibid*

<sup>3</sup>“The Juvenile Justice (Care and Protection of Children) Rules 2007, s 2(k)

<sup>4</sup>Juvenile Justice (Care and Protection of Children) Act 2015, s 2(1)

<sup>5</sup>Juvenile Justice (Care and Protection of Children) Act 2015, s 2(1)

## **SURRENDERED**

Surrendered children are those who are voluntarily relinquished by their parents or legal guardians to an authorized person or institution, to permanently place the child for adoption.<sup>6</sup> The action of giving up a child is carried out with the agreement of the biological parents or legal guardians and is frequently a consequence of their incapacity or reluctance to look after the child due to different factors like financial limitations, social disapproval, or individual situations.

In India, the understanding of surrendered children is under Section 2(60) of the which states that a surrendered child “means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee.”<sup>7</sup>

## **ORPHAN, ABANDONED AND SURRENDERED v/s MIGRANT REFUGEES**

Children who are termed as orphaned, surrendered, or abandoned are different from refugee children in the eyes of the law for adoption.

Orphaned, surrendered, or abandoned children are typically considered to be under the jurisdiction of the country where they are found and may be subject to the laws and regulations of that country regarding adoption. These children may be eligible for adoption by individuals or families who meet the legal requirements for adoption within that country.

In contrast, youngsters who are refugees are those who have left their home country due to persecution, war, or violence and have received asylum or refugee status in another nation. These minors are frequently detached from their families and are deemed to be especially at risk.

The laws governing the adoption of refugee children are intricate and vary from nation to nation. In general, international laws and agreements, such as the “Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,”<sup>8</sup> and the “United Nations Convention on the Rights of the Child (UNCRC),”<sup>9</sup> govern the adoption of refugee children.

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<sup>6</sup>*Ibid*

<sup>7</sup>“Juvenile Justice (Care and Protection of Children) Act 2015, s 2(60)“

<sup>8</sup>“Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993

<sup>9</sup>“United Nations Convention on the Rights of the Child 1989

According to the UNCRC, refugee children have the right to special protection and assistance to ensure that their rights are protected, including the right to family reunification.<sup>10</sup> The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption establishes procedures for the adoption of children across national borders, to ensure that the best interests of the child are protected.<sup>11</sup>

Overall, while orphaned, surrendered, and abandoned children are typically subject to the laws and regulations of the country where they are found, refugee children are subject to a more complex legal framework that involves international laws and conventions. The goal of this legal framework is to ensure that the best interests of refugee children are protected and that they are not subjected to further harm or exploitation through the adoption process.

### **Legislative Framework**

Adoption of refugee children is a complex and sensitive issue that involves several legal frameworks, both at the national and international levels. In India, the adoption of refugee children is governed by various laws, rules, and regulations that are aimed at protecting the rights and welfare of these children. Additionally, international laws and conventions also play a crucial role in shaping the legal framework for the adoption of refugee children. A brief overview of the laws, both in our country as well as on the international platform is given below.

#### **Indian Laws**

The adoption of refugee children in India is governed by the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter “**The JJ Act**”) which provides for the care, protection, and rehabilitation of children in need of care and protection.<sup>12</sup> The JJ Act defines a child in need of care and protection as “a child who is found without any home or settled place of abode and without any means of subsistence or a child who is found begging, or a child who resides with a person (whether related or unrelated to the child) and such person has threatened to kill or injure the child or abused or neglected the child or violated any law or any condition of care and protection.”<sup>13</sup>

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<sup>10</sup>United Nations Convention on the Rights of the Child 1989, art 22

<sup>11</sup>Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993, ch. IV

<sup>12</sup>Juvenile Justice (Care and Protection of Children) Act 2015

<sup>13</sup>Juvenile Justice (Care and Protection of Children) Act 2015, s 2(14)

The JJ Act also calls for the establishment of Child Welfare Committees (CWCs) at the district level. These are in charge of providing care, protection, and rehabilitation for children who need it, including those who are refugees.<sup>14</sup> The CWCs have the authority to issue orders for the care, rehabilitation, and adoption of children as well as other child-related matters.<sup>15</sup>

Apart from the JJ Act, the adoption of refugee children in India is also subject to the guidelines set by the Central Adoption Resource Authority (CARA). This authority serves as the main governing body responsible for overseeing adoptions in India and has the authority to register, supervise, and manage all adoption organizations operating in the country.<sup>16</sup>

### **International Scenario**

In addition to the Indian laws, the adoption of refugee children is also governed by international laws and conventions. A few have been highlighted below.

#### **UNCHR POLICY ON THE ADOPTION OF REFUGEE CHILDREN**

The Office of the United Nations High Commissioner for Refugees, Geneva adopted the policy on the adoption of refugee children in August 1995.<sup>17</sup> The commission upholds that “most unaccompanied children are not orphans” and they only require interim care. They do not intend to uproot the child completely and thus are not in favour of adoption.

Additionally, it is imperative to note that the policy indicates that steps must be carried out in the “best interests of the child.” If the child is not reunited with his/her family and/or a period of two years has lapsed and no trace of the child’s parents has been found, then adequate action could be taken.

#### **THE HAGUE CONVENTION**

The Hague Convention includes the Convention on the Rights of the Child and is in line with UNHCR policy. It puts policies in place to ensure that international adoptions are carried out in the best interests of the child and respect for their fundamental rights.<sup>18</sup>

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<sup>14</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 27 “

<sup>15</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 29 “

<sup>16</sup> Juvenile Justice (Care and Protection of Children) Act 2015, s 68

<sup>17</sup> UNHCR Policy on Adoption of Refugee Children 1995

<sup>18</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993, art 1

The Hague Convention establishes a collaboration framework among the countries involved to ensure specific safeguards are upheld, preventing child abduction, trafficking, or sale. According to the Convention, each Contracting State must select a Central Authority that will handle all intercountry adoptions. Furthermore, when a foreign adoption is certified by the Central Authority of one of the contracting states, it shall be acknowledged in another contracting state.<sup>19</sup> It should be mentioned that intercountry adoptions of refugee children are extremely rare.

Articles 4 and 16 of the Hague Convention are very crucial for enhancing protection. According to Article 4, before approving an international adoption, the relevant authorities must determine if it is in the child's best interests and get all necessary authorizations.<sup>20</sup> Article 16 stipulates, among other things, that "the child's upbringing as well as his or her ethnic, religious, and cultural background" be taken into account.<sup>21</sup>

#### CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child operates to reaffirm the faith of humanity in fundamental human rights and the dignity of a person. A child requires a full and harmonious family environment fostering love, happiness and understanding for his/her personality development.

Article 20 of the Convention provides that, "a child deprived of his family environment cannot be allowed to remain in that environment," i.e., adequate protection and assistance must be provided to ensure that the child's life can be restored to normalcy.<sup>22</sup> Adoption could be one way to ensure care and protection for the child wherein the continuity of the child's upbringing can be ensured. The same is given under Article 21 which provides for intercountry adoption supervised by competent authorities to ensure safeguards for the child.<sup>23</sup>

Additionally, Article 22 specifically deals with refugee children who require "appropriate protection and humanitarian assistance in the enjoyment of applicable rights outlined in the present Convention and in other

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<sup>19</sup>Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993, art 9 "

<sup>20</sup>Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993, art 4 "

<sup>21</sup>Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993, art 16 "

<sup>22</sup>Convention on the Rights of the Child 1989, art 20

<sup>23</sup>Convention on the Rights of the Child 1989, art 21 "

international human rights or humanitarian instruments to which the said States are Parties.”<sup>24</sup> The Article states that cooperation is hence required between the United Nations and other intergovernmental organizations or non-governmental organizations to assist the child and ensure that he/she starts a new life as soon as possible.

Every child, irrespective of his status or circumstances has the right to have a family. The question to be raised therefore is that in the case of children seeking the status of an unaccompanied refugee, why can't his/her right to have a family be fulfilled using providing the child with a new family via adoption?

### **Critical Analysis**

While India has implemented various laws and regulations to govern the adoption process, there are still several challenges and gaps in the existing legal framework that need to be addressed.

One of the major challenges in the adoption of refugee children in India is the lack of clarity regarding their legal status. Under Indian law, refugees are not recognized as a distinct category of individuals and are instead considered migrants or foreigners. This can create confusion and uncertainty regarding the legal status of refugee children and can make it difficult to determine their eligibility for adoption.

Another challenge is the lack of a clear and streamlined adoption process for refugee children. There exists a lack of clarity regarding the procedures and requirements for adopting refugee or migrant children who are faced with a crisis. This uncertainty and lack of knowledge and clarity can create delays and barriers in the adoption process and can make it difficult for prospective adoptive parents to navigate the system.

Furthermore, there is a lack of coordination and cooperation between different government agencies and stakeholders involved in the adoption process. This can create confusion and inefficiencies in the adoption process and can lead to delays and errors in the determination of the eligibility and suitability of prospective adoptive parents.

Another challenge is the lack of a comprehensive legal framework that addresses the unique needs and challenges faced by refugee children. Even though adoption is governed by several laws and regulations in India, there

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<sup>24</sup>Convention on the Rights of the Child 1989, art 22

is no special legal framework that addresses the needs and rights of refugee children. This can make it difficult to ensure that the best interests of these children are protected and promoted during the adoption process.

In addition to these challenges, there are also ethical concerns regarding the adoption of refugee children in India. One of the key concerns is the risk of exploitation and trafficking of children, particularly in the absence of a clear and streamlined adoption process. There is also a risk that children may be separated from their families and communities, and may lose their cultural identity and heritage as a result of adoption.

Moreover, in addition to the issues which can be flagged in the legislation, or rather lack of one, there also exist several other issues which are more along the lines of hurdles existing on the field, which create additional hindrances in achieving the goal of successful adoption of refugee children. These include:

1. Limited availability of information: One of the challenges in the adoption of refugee children in India is the limited availability of information on these children. Due to the nature of their displacement, many of these children do not have access to proper identification and documentation, making it difficult to determine their legal status and eligibility for adoption. This lack of information can also make it difficult to locate family members and other individuals who may be able to provide care and support for the child.
2. Language barriers: Many refugee children may come from communities where the primary language is not Hindi or English, which can create barriers to communication and understanding. This can make it difficult to assess the needs and preferences of the child and to make sure that their welfare is being considered in the adoption process.
3. Cultural differences: Another challenge in the adoption of refugee children is the cultural differences that may exist between the child and prospective adoptive parents. This can include differences in religion, language, and customs, which can make it difficult to provide a supportive and nurturing environment for the child. It is important to ensure that the prospective adoptive parents are aware of these cultural differences and can provide a culturally appropriate environment for the child.
4. Legal challenges: The legal framework governing adoption in India is



complex and can be challenging to navigate, particularly for refugee children who may have a unique legal status. It is important to ensure that the legal process is clear and streamlined and that all parties involved are aware of their rights and responsibilities.

5. Lack of resources: Many refugee children may come from communities that have been affected by conflict and displacement, and may have limited access to basic resources such as food, water, and shelter. It is important to ensure that adequate resources are available to support these children, both during the adoption process and afterwards.
6. Stigma and discrimination: Refugee children may face stigma and discrimination based on their refugee status, which can create barriers to adoption and can impact their overall well-being. It is important to ensure that these children are treated with dignity and respect and that their rights and needs are protected.

One of the primary challenges is the lack of a uniform legal framework across different countries. There is no international standard for adoption, and each country has its laws and regulations governing the process. This can lead to confusion and inconsistencies, as well as disparities in the treatment of refugee children from different countries. Another challenge is the issue of legal status and documentation. Many refugee children lack proper documentation, which can make it difficult to determine their legal status and eligibility for adoption. Furthermore, there is a concern that adoption may be used as a tool for trafficking and exploitation. There have been instances where unscrupulous individuals or organizations have exploited the vulnerabilities of refugee children and families for financial gain.

### **Suggestions**

The issue of adoption of refugee children in India poses several challenges, primarily due to the lack of a uniform legal framework and the unique circumstances surrounding these children's situations. While there are existing laws and regulations in place to govern adoption, they are not always equipped to handle the specific needs and challenges that arise when dealing with refugee children.

To address these challenges, it is important to consider suggestions for how Indian laws can be made more equipped to deal with the adoption

of refugee children. These suggestions aim to provide a framework that prioritizes the “best interests of the child” and ensures that the adoption process is consistent with international standards and best practices. By implementing these suggestions, we can ensure that refugee children are given the opportunity to have a safe and nurturing environment and a chance at a better life through adoption.

To ensure that Indian laws can be made equipped to deal with the adoption of refugee children in India, the following suggestions can be considered:

1. Establish a uniform legal framework: The government should consider establishing a uniform legal framework that ensures consistency and transparency in the adoption process. This can include establishing a central adoption authority that oversees the process and ensures that all necessary safeguards are in place.
2. Simplify documentation requirements: Many refugee children lack proper documentation, which can make it difficult to determine their legal status and eligibility for adoption. The government should consider simplifying the documentation requirements and providing support to families and children who may lack the necessary documentation.
3. Increase awareness and training: Prospective adoptive families may not be aware of the cultural differences and challenges involved in adopting refugee children. The government should consider increasing awareness and providing training to prospective adoptive families to ensure that they are aware of these challenges and are prepared to provide a supportive and nurturing environment for the child.
4. Collaboration with international organizations: The government should consider collaborating with international organizations, such as UNHCR and the Hague Convention, to ensure that the adoption process is consistent with international standards and best practices.
5. Ensure that the child’s best interests come first: The government should make sure that the child’s best interests come first in all adoption decisions and that measures are taken to prevent abuse and exploitation. This can include establishing a mechanism for regular monitoring and evaluation of the adoption process to ensure that it is functioning effectively.
6. Support for post-adoption integration: Adopted refugee children may face challenges in integrating into their new families and communities.

The government should consider providing support to families and children to ensure a smooth transition and integration.

By implementing these suggestions, Indian laws can be better equipped to deal with the adoption of refugee children in India and ensure that the process is carried out in a manner that is consistent with international standards and best practices.

When looking at it from an international perspective, to address these challenges, several international organizations have established guidelines and recommendations for the adoption of refugee children. For example, the United Nations High Commissioner for Refugees (UNHCR) has developed guidelines for the protection of refugee children, which include recommendations on adoption. These guidelines emphasize the importance of ensuring that adoption is carried out in the best interests of the child and that safeguards are in place to prevent exploitation.

Similar rules are provided for international adoption under the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. The Convention emphasizes the significance of creating safeguards to prevent abuse and exploitation as well as the significance of guaranteeing that the best interests of the child are given priority in all adoption choices.

Additionally, a few additional pointers which can be incorporated in the laws dealing with the adoption of refugee children, as a checklist to ensure that the process is more effective may include:

1. The adoption agency should have prior permission from the concerned embassy or consulate of the country of origin of the child;
2. The adoption agency should ensure that the child is a bona fide refugee and has been recognized as such by the Government of India;
3. The adoption agency should ensure that the child is legally free for adoption and that the adoption is in the best interests of the child;
4. The adoption agency should ensure that the adoptive parents meet the eligibility criteria for adoption, as per the Adoption Regulations, 2017.<sup>25</sup>

Overall, the existing laws governing the adoption of refugee children internationally face several challenges and issues. It is essential to establish a uniform legal framework that ensures consistency and transparency in the

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<sup>25</sup>Adoption Regulations 2022

adoption process. Additionally, safeguards must be put in place to prevent exploitation and make sure that adoption is being carried out keeping in mind the welfare of the child. Finally, there is a need to address cultural differences and ensure that prospective adoptive families are aware of these differences and are willing and able to provide a supportive and nurturing environment for the child.

## **CONCLUSION**

In conclusion, the issue of the adoption of refugee children in India requires attention from policymakers, practitioners, and society as a whole. The inadequacy of the law and the nonexistence of a standardized legal structure have resulted in various obstacles for those participating in the adoption process, and the unavailability of post-adoptive support has made it challenging for refugee children to adapt to their new surroundings.

This paper has provided a critical analysis of the existing laws governing the adoption of refugee children in India and internationally, highlighting the need for a more comprehensive legal framework that prioritizes the best interests of the child. The paper has also proposed several suggestions to ensure that Indian laws can be made equipped to deal with the adoption of refugee children, including the need for more specialized adoption agencies, streamlined legal procedures, and enhanced post-adoptive care measures.

Policymakers, practitioners, and society as a whole must recognize the importance of providing refugee children with a safe and nurturing environment, where they can grow and develop to their fullest potential. This requires a concerted effort to address the challenges and gaps in the current legal framework and to develop a comprehensive framework that prioritizes the welfare of the child.

In conclusion, by implementing the suggested measures and working together as a society, we can ensure that refugee children in India are allowed to have a better life through adoption and that they receive the necessary post-adoptive care measures to thrive in their new environment.

# BURDENED BONDS: UNRAVELLING THE DYNAMICS OF PARENTIFICATION AND THE PLIGHT OF CHILDREN IN ARMED CONFLICTS

Madhulika Tripathy\*

## Five random pictures of children chosen from the web



Figure 1: <https://franceleclerc.com/>

**Feeling :** Heart-wrenching

**Thought :** It appears that the picture portrays a child who is looking after their younger siblings. In families where both parents have to work, the responsibility of taking care of the children often falls on the older child.

**Feeling :** Sorry

**Thought :** The child depicted in the picture appears to be sad, and possibly yearning for a different life. The child is likely in a refugee camp, having fled from a war-ravaged area.



Figure 2: <https://www.mefe.org/home/>



Figure 3: <https://www.unicef.org/press-releases/massive-data-gaps-leave-refugee-migrant-and-displaced-children-danger-and-without>

**Feeling :**  
Sad

**Thought :** The child depicted in the picture appears to be sad, and possibly yearning for a different life. The child is likely in a refugee camp, having fled from a war-ravaged area.

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**Feeling :** Distressed

**Thought :** From the picture, it can be inferred that the child could have been separated from the parents in a war-stricken region. Such a situation can lead to a humanitarian crisis where there is a shortage of necessities like food, clean water and medical aid due to the ravages of war, including heavy shelling and destruction.



Figure 4: <https://unicrio.org.br/2014-um-ano-devastador-para-as-criancas-do-mundo-diz-unicef/>



Figure 5: <https://www.unicef.org/press-releases/massive-data-gaps-leave-refugee-migrant-and-displaced-children-danger-and-without>

**Feeling :** Crestfallen

**Thought :** The children in the picture seem to be lost in thought, possibly imagining a different life from the one they are currently living. The surroundings suggest that they may be residing in a refugee camp, having fled from a region affected by war.

I have chosen to focus on the Dynamics of Parentification and the Plight of Children in Armed Conflicts.

# PART 1: PARENTIFICATION

## INTRODUCTION

Parentification refers to a situation where parents rely on their children for emotional or practical support instead of providing it themselves, burdening the elder child with the responsibility of taking care of the younger siblings at a young age.<sup>1</sup> This phenomenon, coined by psychiatrist Ivan Boorman-Nagy, involves a reversal of traditional parent-child roles, disrupting the normal developmental process for the child.<sup>2</sup> Unfortunately, children who experience parentification often undertake adult responsibilities without receiving appreciation or encouragement, leading to potential long-term negative effects on their physical and mental well-being.<sup>3</sup>

## TYPES OF PARENTIFICATION

**INSTRUMENTAL PARENTIFICATION** occurs when children are entrusted with practical responsibilities such as running errands, preparing meals, handling financial matters,<sup>4</sup> and managing household chores. This subtype is prevalent in family dynamics where one or both parents are unable to fulfil these tasks due to illness or other constraints, such as the need to work for the family's financial stability. While this form of parentification is considered the least harmful of the two, as it can instil a child's sense of competence, its positive impact depends on the provision of daily parental affirmation and gratitude.<sup>5</sup>

**EMOTIONAL PARENTIFICATION** is a more detrimental form where children are expected to meet their parent's specific emotional or psychological needs.<sup>6</sup> In

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<sup>1</sup>B Barnett and G Parker, 'The parentified Child: Early competence or childhood deprivation?' [1998] 3(3) *The Child Psychology and Psychiatry Review* <<http://dx.doi.org/10.1111/1475-3588.00234>> (accessed on 22 March 2023)

<sup>2</sup>I Boorman-nagy and GM Spark, 'Invisible loyalties: reciprocity in intergenerational family therapy' [1973] New York (NY): Harper and Row

<sup>3</sup>J Bowlby and GM Spark, 'The nature of the Child's ties to his mother' [1958] 39 *International Journal of Psychoanalysis* <<https://pubmed.ncbi.nlm.nih.gov/13610508/>> (accessed on 22 March 2023)

<sup>4</sup>ND Chase and GM Spark, 'Parentification: An overview of theory, research, and societal issues' [1999] 39(3) *Sage Publications* <<https://sk.sagepub.com/books/burdened-children/n1.xml>> (accessed on 22 March 2023)

<sup>5</sup>GJ Jurkovic and A Thirkield, 'Parentification Questionnaire' [1998] Department of Psychology, Georgia State University, University Plaza, Atlanta, GA 30303

<sup>6</sup>PS Fry and RJ Trifiletti, 'An exploration of the adolescent's perspective: Perceptions of major stress dimensions in the single-parent family' [1983] 5 *Journal of Psychiatric Treatment and Evaluation* 101-111



instances of mental distress, the Child becomes the go-to source for gauging and tending to the parent's emotional well-being, offering unwavering support, and providing assistance.<sup>7</sup> This type of parentification is often observed in families where one or both parents grapple with serious mental illnesses, such as attachment disorders, which frequently coincide with instrumental parentification. In these scenarios, the parent consistently relies on the Child for emotional and psychological support, creating a challenging environment for the Child to navigate their emotional development.<sup>8</sup>

## **CARETAKING, FAMILY PROCESS, AND CHILD DEVELOPMENT**

Researchers have highlighted that parentification, while often associated with disruptions in family functioning, can be viewed as a distortion of a normal caregiving process that includes reciprocal interactions within supportive family systems.<sup>9</sup> It's noteworthy that concerns for parents, requests for children to contribute to household responsibilities, and involvement in the upbringing of younger siblings are prevalent in various familial contexts.<sup>10</sup> The extent to which children are expected to assist their parents may vary based on cultural factors, and occasional involvement in caregiving responsibilities might be a well-intentioned,<sup>11</sup> adaptive response to a family crisis. In situations where expectations for children to contribute to domestic tasks or the care of younger siblings coexist with a supportive family structure that offers acknowledgement, these responsibilities may foster the development of self-esteem, empathy, and a sense of altruism, rather than being inherently detrimental.<sup>12</sup>

## **DIFFERENTIAL RISKS ASSOCIATED WITH DIFFERENT DIMENSIONS OF CARETAKING**

Additionally, distinct caregiving approaches pose different risks for less-than-optimal developmental outcomes, implying that some forms of

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<sup>7</sup>NL Galambos and LC Tilton-weaver, 'Adolescents' psychosocial maturity, problem behaviour, and subjective age: In search of the adultoid' [2000] 4(0) Applied Developmental Science 178-192

<sup>8</sup>LM Hooper and LC Tilton-weaver, 'The application of attachment theory and family systems theory to the phenomena of parentification' [2007] 15 The Family Journal: Counselling and Therapy for Couples and Families <Doi: 10.1177/1066480707301290> (accessed on 25 April 2023)

<sup>9</sup>EM Hetherington, *Coping with divorce, single parenting, and remarriage: A risk and resiliency perspective* (1st edn, NJ: Lawrence Erlbaum Associates 1999) 93-116

<sup>10</sup>Jurkovic GJ (n 5)

<sup>11</sup>Hooper L M (n 4)

<sup>12</sup>Jurkovic GJ, Kiperman GP, Perilla J, Murphy A, Ibanez G, Casey S., 'Ecological and ethical perspectives on filial responsibility: Implications for primary prevention with Latino adolescents', [2004] 25 Journal of Primary Prevention



caregiving may be more detrimental to children than others. Clinicians and researchers have expressed concerns about the potential distortion of parent-child roles, particularly when children are compelled to provide emotional care for their parents. Consequently, while extensive participation in various caregiving responsibilities can negatively impact children's well-being, situations, where children are expected to take on the role of a parent, spouse, or peer in caregiving, may lead to more significant issues.

Moreover, it is essential to recognize that diverse caregiving styles carry varying degrees of risk when it comes to suboptimal developmental outcomes for children. In essence, not all caregiving practices are equally detrimental, and clinicians and researchers have long voiced apprehensions regarding scenarios where children are compelled to shoulder emotional caregiving responsibilities for their parents.<sup>13</sup>

While it is acknowledged that excessive involvement in any form of caregiving can have adverse effects on children's well-being, the potential challenges seem to intensify in situations characterized by role reversal. In these instances, children are not merely participating in caregiving activities but are instead expected to assume adult roles, whether as a parent, spouse, or peer. This unique form of parentification, where children take on responsibilities typically reserved for adults, has been identified as particularly concerning in terms of its impact on children's overall development and emotional health.<sup>14</sup>

## **PSYCHOSOCIAL CONSEQUENCES OF PARENTIFICATION**

Over the years, professionals in the fields of clinical psychology and academia have consistently asserted that an excess of caregiving responsibilities is associated with suboptimal developmental outcomes.<sup>15</sup> Intriguingly, limited understanding exists regarding the emotional and behavioural consequences of the caregiving burden during the stages of childhood and adolescence, despite the widely held notion that such involvement may compromise psychosocial adjustment.<sup>16</sup>

<sup>13</sup>Chase ND (n 4)

<sup>14</sup>LM Hooper, 'Expanding the discussion regarding parentification and its varied outcomes: Implications for mental health research and practice' [2007] 19 *Journal of Mental Health Counseling* 373–380

<sup>15</sup>MA Karpel, 'Intrapsychic and interpersonal processes in the parentification of children' [1976] 38 *Dissertation Abstracts International* 365

<sup>16</sup>Earley L and Cushway D, *The parentified Child*, [2002] 7 *Clinical Child Psychology and Psychiatry*, 163–178

Presently, a considerable portion of research exploring the potential effects of parentification has focused on identifying the psychological correlates within retrospective accounts of childhood caregiving strain provided by adults, particularly young adults in college. However, investigations involving children indicate that assuming excessive responsibility for others during these formative years can lead to emotional, behavioural, and social challenges.<sup>17</sup>

Illustratively, Koerner and her colleagues demonstrated that in the context of divorce, teenagers assigned the role of parental confidante exhibited higher levels of emotional distress compared to those who were not given such responsibilities. Similarly, Godsell et al. found that among children affected by parental alcoholism, parentification—characterized by involvement in both instrumental and emotional caretaking—was negatively correlated with concurrent measures of a positive self-concept.<sup>18</sup> More recently, Jurkovic, Kiperman, Sarac, and Weisshaar discovered that in a sample of middle school students who had experienced the Bosnian War,<sup>19</sup> the extent of caring and the perceived fairness of caregiving were both linked to concurrent measures of self-efficacy, emotional distress, and academic achievement.<sup>20</sup> These findings underscore the nuanced impact of caregiving responsibilities on the psychological well-being and developmental trajectory of children and adolescents.

## **THE NEGATIVE AND POSITIVE EFFECTS OF PARENTIFICATION**

### **Established Negative Effects**

Multiple unfavourable outcomes connected with adolescent parentification have been explained by the longitudinal study undertaken over the past 25 years. In 2009, it was discovered that teens may lack the social and cognitive abilities needed to be an effective carers and may find it challenging to handle the role effectively. According to some experts, teens have more negative effects as a result of their potentially more important and protracted

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<sup>17</sup>Fullenwider-Bush N, Jacobite DB, The transition to young adulthood: Generational boundary dissolution and female identity development [1993], 32 *Family Process* 87–103

<sup>18</sup>Godsell RE, Jurkovic GJ, Emshoff J, Anderson L, Stanwyck D, Why some kids do well in bad situations: Relation of parental alcohol misuse and parentification to children's self-concept [2004], 39 *Substance Use and Misuse*, 789–809

<sup>19</sup>Jurkovic GJ, Kiperman GP, Sarac T, Weisshaar D, Role of filial responsibility in the post-war adjustment of Bosnian young adolescents [2005] 5 *Journal of Emotional Abuse*, 219–235

<sup>20</sup>Koerner SS, Wallace S, Lehman SJ, Lee SA, Escalante KA, Sensitive mother-to-adolescent disclosures after divorce: Is the experience of sons different from that of daughters? 18 [2004] *Journal of Family Psychology*, 46–57

responsibilities. Others assert that when caregiving responsibilities are demanding, unsupervised, unappreciated, or inappropriately timed,<sup>21</sup> the adolescent may mature prematurely or become too independent too soon, a condition called “pseudo-maturity.”<sup>22</sup>

### **Potential Positive Effect**

Recent research has examined the link between adolescent parentification and successful outcomes in adulthood. Parentification can be used to promote competence, according to Jurkovic and Casey. Additionally, they suggested that a favourable outcome following parentification could depend on how much the youngster thought parentification was fair. Children who said their parentification process was “fair” in their family agreed that their adult-like behaviours and responsibilities were not disregarded and that they occasionally carried them out. Age and instrumental performance showed a favourable association in another study by Thirkield from 2002.<sup>23</sup> The findings of this research,<sup>24</sup> offer some evidence that the parentification process can result in advantages that can continue for a very long time. Parentification among teenage immigrants has also been studied, and results show a positive correlation with outcomes including increasing levels of individualization and dissociation from the family structure.<sup>25</sup> When teenagers see their responsibilities as acceptable and equitable, a good outcome includes a sense of competence and supremacy. They concluded that the availability of adult-like responsibilities among teenagers led to individual autonomy, self-mastery, and family harmony. An important, persistent link between parentification and bad results, for instance, was not discovered by researchers in their sample of underprivileged children.<sup>26</sup>

### **CONCLUSION**

In conclusion, addressing parentification requires a multifaceted approach encompassing legal, educational, and supportive measures. By establishing clear legal definitions, providing professional training, offering support

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<sup>21</sup>McMahon TJ and Luthar SS Defining characteristics and potential consequences of caretaking burden among children living in poverty [2007] *American Journal of Orthopsychiatry*, 77(2), 267-281

<sup>22</sup>Chase ND (n 4)

<sup>23</sup>Jurkovic GJ (n 5)

<sup>24</sup>ibid

<sup>25</sup>S Walsh and others, ‘The role of parentification and family climate in adaptation among immigrants in Israel’ [2006] 16(0) *Journal of Research on Adolescence* 321-350

<sup>26</sup>RS Weiss and others, ‘Growing up a little faster: The experience of growing up in a single parent household’ [1979] 35 *Journal of Social Issues* 97-111

services, and promoting awareness, societies can protect children from the negative consequences of parentification. Implementing these strategies fosters a collective commitment to safeguarding children's rights and well-being. The steps that can be taken are:

**LEGAL DEFINITION AND RECOGNITION:** Introduce a clear legal definition of parentification, acknowledging it as a form of Child abuse or neglect. Recognizing parentification in legal terms will help in identifying and addressing cases effectively.

**TRAINING FOR PROFESSIONALS:** Provide training for professionals like social workers, teachers, and healthcare providers to recognize signs of parentification. This training should include protocols for reporting suspected cases and providing appropriate support for affected children.

**SUPPORT SERVICES:** Allocate funds to establish support services such as counselling, therapy, and mentorship programs specifically designed for children who have experienced parentification. These services should be easily accessible and free of charge to ensure that every Child in need can receive help.

**AWARENESS CAMPAIGNS:** Launch public awareness campaigns to educate communities about the harmful effects of parentification. These campaigns can help reduce the stigma associated with seeking help and encourage reporting of cases.

**CHILD HELPLINES:** Set up dedicated helplines where children can anonymously report instances of parentification or seek advice and support. Trained counsellors should be available to assist children in crisis.

**LEGAL CONSEQUENCES:** Impose legal consequences on parents or guardians found guilty of subjecting their children to parentification. Penalties should be severe enough to deter such behaviour and protect the rights of children.

**EDUCATION AND PREVENTION PROGRAMS:** Integrate age-appropriate education about healthy family dynamics and child rights into school curricula. Prevention programs should focus on building strong family relationships and parenting skills to prevent situations leading to parentification.

**CHILD PARTICIPATION:** Ensure that children have a voice in matters concerning them. Establish platforms within the legal system where

children can express their concerns and opinions, especially in cases related to family issues and Child welfare.

**RESEARCH AND DATA COLLECTION:** Allocate funding for research on the prevalence and impact of parentification in different communities. Collecting comprehensive data will enable policymakers to make informed decisions and tailor support programs accordingly.

**INTERNATIONAL COLLABORATION:** Collaborate with international organisations and neighbouring countries to share best practices, research findings, and resources for combating parentification. Learning from global experiences can enrich domestic efforts to address this issue effectively.

By implementing these legislative measures, societies can work towards protecting children from the detrimental effects of parentification and ensure that they grow up in nurturing environments where their rights and well-being are safeguarded.

## **PART 2: CHILDREN IN ARMED CONFLICTS**

### **INTRODUCTION**

The legal framework addressing the rights of children in situations of armed conflict is primarily established by International Humanitarian Law, with a focus on the 1949 Geneva Conventions and their Additional Protocols, along with the 1989 United Nations Convention on the Rights of the Child. These legal provisions are designed to safeguard children from the profound impacts of armed conflict, ensuring the preservation of their fundamental rights, encompassing the right to life, education, and protection from all forms of violence.

Specific stipulations within these laws include

Prohibition of the recruitment or use of children in hostilities, as outlined in the Optional Protocol to the Convention on the Rights of the Child. This protocol sets the minimum age for recruitment into the armed forces at 18, emphasizing the obligation of states to take all feasible measures to prevent the recruitment and utilization of children under 18 in armed conflicts.<sup>27</sup>

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<sup>27</sup>Nowak Manfred, 'United Nations Global Study on Children Deprived of Liberty' (*Omnibook*, 2019) <<https://omnibook.com/Global-Study-2019>> (accessed on 24 March 2023)

The mandate for the dignified and respectful treatment of children involved in armed conflict necessitates the provision of appropriate care, encompassing medical and psychological support.<sup>28</sup>

Obligation to avoid attacks on schools and hospitals, as well as the use of explosive weapons in populated areas, with the overarching goal of safeguarding children and minimising harm to civilians.<sup>29</sup>

The requirement to assist with the reunification of children separated from their families due to armed conflict, ensuring protection from exploitation and abuse during this period.<sup>30</sup>

Protection of the rights of children who become refugees or internally displaced due to armed conflict, including their entitlement to education, healthcare, and protection from violence and exploitation.<sup>31</sup>

Facilitation of humanitarian access by parties involved in the conflict to guarantee that children and other civilians have access to essential services such as food, water, and healthcare.<sup>32</sup>

While these laws are crucial for the well-being of children affected by armed conflict, regrettably, they are not consistently adhered to or enforced. Collaborative efforts among governments and relevant stakeholders are imperative to uphold these laws and ensure the protection of children during times of war.

## **LEGAL ISSUES IN LAWS RELATING TO CHILDREN IN ARMED CONFLICTS**

**CHILD RECRUITMENT:** Enlisting or utilising individuals under the age of 18 in armed conflict constitutes a war crime. The Optional Protocol to the Convention on the Rights of the Child about children's involvement in armed conflict establishes 18 as the minimum age for recruitment, yet

<sup>28</sup>OSRSG CAAC, UNICEF and the Department of Peacekeeping Operations. FIELD MANUAL – Monitoring and Reporting Mechanism (MRM) on Grave Violations Against Children in Situations of Armed Conflict, (2014) <[https://childrenandarmedconflict.un.org/wp-content/uploads/2016/04/MRM\\_Field\\_5\\_June\\_2014.pdf](https://childrenandarmedconflict.un.org/wp-content/uploads/2016/04/MRM_Field_5_June_2014.pdf)> (accessed on 24 March 2023)

<sup>29</sup>ibid

<sup>30</sup>United Nations. Impact of Armed Conflict on Children: Report of the Expert of the Secretary-General, Ms. Graça Machel, submitted under General Assembly resolution 48/157, 1996, A/51/306 <[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/51/306&Lang=E&Area=UNDOC](https://www.un.org/ga/search/view_doc.asp?symbol=A/51/306&Lang=E&Area=UNDOC)> (accessed on 24 March 2023)

<sup>31</sup>United Nations Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict [2000] (A/RES/54/263)

<sup>32</sup>United Nations Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict [2000] (A/RES/54/263)

states retain the option to voluntarily enlist individuals over the age of 16 into their armed forces.

**PROTECTION OF CHILDREN:** Armed conflict disproportionately affects children, exposing them to vulnerabilities such as displacement, family separation, physical and psychological trauma, and exploitation. International humanitarian law (IHL) offers specific safeguards for children, encompassing provisions addressing the treatment of Child detainees, family reunification, and ensuring access to education.

**CHILD SOLDIERS:** Children involved in armed conflict may be erroneously treated as perpetrators rather than recognized as victims by authorities. The Rome Statute of the International Criminal Court (ICC) identifies conscription, enlistment, or use in hostilities of children under the age of 15 as a war crime.

**ACCOUNTABILITY FOR VIOLATIONS:** International and national judicial entities, including the International Criminal Court, have prosecuted individuals for war crimes committed against children. These offences include the recruitment and utilization of Child soldiers, as well as the egregious acts of killing and maiming children.

**REHABILITATION AND REINTEGRATION:** Children who have been enlisted or exploited in armed conflict necessitate special attention to ensure their physical and psychological well-being, along with facilitating their social reintegration. International legal frameworks acknowledge the entitlement of children affected by armed conflict to receive appropriate assistance and support, fostering their recovery and seamless social integration.

## **CASES AND LEGAL PRECEDENTS RELATING TO CHILDREN IN ARMED CONFLICT**

**THE ROME STATUTE:** The foundational treaty of the International Criminal Court (ICC), known as the Rome Statute, explicitly recognizes the enlistment or conscription of children below the age of 15 into armed forces or groups as a war crime.

**LUBANGA CASE:** In the notable case of Prosecutor v. Thomas Lubanga Diol, the ICC convicted Lubanga for the enlistment and conscription of children under the age of 15 into his militia group in the Democratic Republic of

Congo. This landmark case marked the first conviction by the ICC.<sup>33</sup>

**KONI CASE:** The Lord's Resistance Army (LRA), led by Joseph Koni in Uganda, gained infamy for abducting children as soldiers and sex slaves. The ICC issued a warrant for Koni's arrest in 2005, charging him with war crimes and crimes against humanity, specifically including the use of Child soldiers.<sup>34</sup>

**AL MAHDI CASE:** In the Al Mahdi case, the ICC convicted Ahmad Al Faqi Al Mahdi for intentionally directing attacks against historic and religious buildings in Timbuktu, Mali, in 2012. This case also shed light on the forced recruitment and use of Child soldiers by Islamist militant groups in Mali.<sup>35</sup>

**THE SPECIAL COURT FOR SIERRA LEONE:** Established to prosecute individuals responsible for war crimes during the Sierra Leone civil war, this court rendered judgments against several individuals for the recruitment and utilization of Child soldiers. The court's inaugural verdict in 2007 found three individuals guilty of involving children in armed conflict.

## **IMPACT OF CHILDREN IN ARMED CONFLICT**

Children endure the ravages of war in multifaceted ways that extend beyond the impact on adults. Primarily, disruptions in familial bonds occur due to the demise of parents, their preoccupation with familial defence, or emotional unavailability during the conflict. Children, often termed "unaccompanied children" in refugee settings, lose crucial adult protection when placed in alternative care arrangements like relatives or orphanages.

Furthermore, the negative repercussions of childhood experiences during armed conflict can be more profound than those of adults. Consider children denied the opportunity for education during conflict or compelled to endure dire conditions in refugee or displaced person camps. War-inflicted injuries not only result in physical trauma but also disrupt normal social lives and educational pursuits, perpetuating a cycle of disadvantage.

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<sup>33</sup>Situation in the Democratic Republic of the Congo, in the case of the Prosecutor v. Thomas Lubanga Diol, ICC-01/04-01/06, International Criminal Court (ICC)

<sup>34</sup>Gould, L. M. (2014). The Politics of Portrayal in Violent Conflict: The Case of the Koni 2012 Campaign. *Alternatives: Global, Local, Political*, 39(4), 207–230. <http://www.jstor.org/stable/24569466>

<sup>35</sup>International Federation for Human Rights, Q&A: The Al Mahdi case at the ICC, 17 August 2016



The catalogue of impacts on children in armed conflict is distressingly comprehensive:

**DEATH:** Every year, hundreds of thousands of children succumb to conflict, whether as innocent bystanders, intentional targets, or victims of ethnic cleansing.

**INJURY:** Children are disproportionately affected by various war injuries, especially from specific weaponry. Landmine explosions pose a greater threat to children, resulting in thousands of injuries annually.<sup>36</sup>

**DISABILITY:** War has left millions of children disabled, with limited access to rehabilitative treatments, leading to prolonged periods without prosthetic limbs.

**ILLNESS:** Conflict compromises nutrition, water safety, sanitation, and access to healthcare, heightening the risk of infectious diseases for displaced children.

**RAPE AND PROSTITUTION FOR SUBSISTENCE:** Widespread during the conflict, these activities have lasting effects on both physical health and mental well-being.

**PSYCHOLOGICAL SUFFERING:** Exposure to terrifying conditions during conflict can lead to posttraumatic stress disorder, anxiety, and sadness in children.

**MORAL AND SPIRITUAL IMPACTS:** Children may face a loss of moral principles, forced to compromise their values to survive, especially when recruited into military units.

**SOCIAL AND CULTURAL LOSSES:** Conflict can strip children of their culture and community, which may be challenging to rebuild in refugee or diaspora settings.

**CHILD SOLDIERS:** Estimates suggest tens of thousands of minors are involved in militias in approximately 60 nations, making them especially vulnerable to the negative effects outlined above.<sup>37</sup>

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<sup>36</sup> US Fund for UNICEF. Landmines pose the greatest risk for children <<http://www.unicefusa.org/site/apps/nl/content2.asp?c=duLRI800H&b=279482&ct=307827>> (accessed on 24 March 2023)

<sup>37</sup>Coalition to stop the use of Child soldiers. Child Soldiers Global Report (2004) <<http://www.eldis.org/static/DOC16469.htm>> (accessed on 24 March 2023)

## CONCLUSION

In conclusion, the plight of children in armed conflicts demands urgent attention and comprehensive action from the international community. Despite established legal frameworks aimed at protecting the rights of these vulnerable individuals, the persistent violations and challenges they face remain significant. Efforts to enforce existing laws, prosecute perpetrators, and provide necessary support for affected children are crucial. Legal precedents, such as those set by the International Criminal Court, underscore the global commitment to holding individuals accountable for the recruitment and exploitation of child soldiers. However, the profound and enduring impacts of armed conflict on children, ranging from physical injuries to psychological trauma, necessitate sustained international collaboration to address the root causes and promote lasting solutions. The multifaceted consequences of children's involvement in armed conflicts underscore the urgency of prioritizing their protection, rehabilitation, and reintegration into society. By acknowledging the pervasive challenges and building on legal precedents, societies can strive to create a future where children are shielded from the devastating effects of armed conflicts and afforded the opportunity for a stable, secure, and nurturing environment conducive to their overall well-being and development.

# ANALYSIS OF CHILD LABOUR IN INDIA & THE STATUS OF CHILDREN DURING WAR AND CONFLICTS

Kanishk Kaushik\*

## Five random pictures of children chosen from the web



Figure 1: <https://www.bbc.com/news/in-pictures-52453683>

**Feeling :** Happy

**Thought :** A caring elder brother taking care of his siblings, playing with them, and acting like a person who is grown up even though he is a child. I mean who will not smile after seeing this picture?

**Feeling :** Concerned

**Thought :** These children are living in a war-like situation. They are not aware of whether they will be able to see the next morning or not. But despite the hardships, the smile on their face is pure and genuine; enough to motivate a person.



Figure 2: <https://medium.com/@parah/the-source-of-true-happiness-19f1f51a1163>

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Figure 3: <https://www.bbc.com/news/in-pictures-52453683>

**Feeling : Sad**

**Thought :** These children, who are supposed to be living their happiest life during their childhood, are standing in a queue, half naked to get a meal. However, there is also a ray of hope that they are not dying from hunger and getting something to eat, there is a hope that the conditions will change and they will have a better life

**Feeling : Pity**

**Thought :** Every child deserves to enjoy their childhood to the fullest, but here these children are doing intense labour which will affect them physically, mentally, and emotionally.



Figure 4: <https://www.theguardian.com/sustainable-business/2015/jan/13/businesses-eradicate-child-labour-live-chat>



Figure 5: <https://www.lowyinstitute.org/the-interpreter/india-guiltless-children-prison>

**Feeling : Worried**

**Thought :** The children who are born in prison are one of the unluckiest ones. These children will suffer a lot of difficulties including social stigma and lack of opportunities.

I have chosen to focus on “Analysis of Child Labour in India & the Status of Children during War and Conflicts”.

# **PART 1: CHILD LABOUR IN INDIA**

## **INTRODUCTION**

Child labour, a pervasive issue globally, is characterised by work that robs children of their childhood, potential, and dignity while posing risks to their physical and mental development. This form of labour is detrimental when it is physically, mentally, socially, or morally hazardous for children, hinders their school attendance and participation by compelling early departure, or demands an excessive balance between school and arduous work. It not only impairs children's physical and intellectual well-being but also jeopardizes their future, making it a critical worldwide concern. India, among other developing nations, grapples with the significant challenge of Child labour, often fuelled by poverty. This issue is especially alarming as children represent the future and hope of a nation.

The International Labour Organization (ILO) highlights the escalating problem of Child labour in India, where an estimated 10.1 million children aged 5 to 14 engage in labour, in violation of legal provisions.<sup>1</sup> Despite its illegality, Child labour persists in both formal and informal sectors. This Part of the article delves into the issue of Child labour in India, exploring its causes, consequences, and the existing safeguards and legal measures designed to protect children from exploitation and abuse.

## **CAUSES OF CHILD LABOUR IN INDIA**

**Poverty:** It is often found that Child labour in India is mostly caused by poverty. Children in low-income families are frequently required to labour to supplement the family income. Children may be employed in domestic labour, brick kilns, factories, mining, and other jobs. Parents frequently overlook the long-term effects of Child labour and may see it as a vital survival tactic.

**Lack of education:** Another factor that fuels Child labour in India is lack of education. Children who are not enrolled in school are more likely to be working because they might not have access to alternative possibilities or might not have the qualifications necessary to find other types of jobs.

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<sup>1</sup>'Child labour in India' (ILO) <[https://www.ilo.org/wcmsp5/groups/public/---Asia/---Ro-Bangkok/-sro-new\\_delhi/documents/publication/wcms\\_557089.pdf](https://www.ilo.org/wcmsp5/groups/public/---Asia/---Ro-Bangkok/-sro-new_delhi/documents/publication/wcms_557089.pdf)> (accessed on 14 April 2023)

Since children from poor homes may not be able to attend school owing to financial restrictions, poverty and illiteracy are frequently linked.

**Culture and Gender Discrimination:** Another element that fuels Child labour in India is gender inequality. Girls are more likely than boys to work in home environments or in unregulated industries, which puts them at greater risk of exploitation and abuse. Girls may be forced to leave school early to look after younger brothers and sisters or help around the house.

**Weak legal system:** Finally, insufficient social protection programs and lax enforcement of Child labour regulations also contribute to the frequency of Child labour in India. Although it is against the law to use children as labourers, enforcement is frequently lax, especially in the unregulated sector. Without sufficient protection or recompense, children may work in dangerous jobs or for long hours for little money. Additionally, social safety programs for low-income families may be ineffective or insufficient, leaving kids open to exploitation and abuse.

## **CONSEQUENCES OF CHILD LABOUR**

Children's well-being, education, and health in India are significantly impacted by Child labour. The physical and psychological damage caused by Child labour can have a long-lasting impact on kids, limiting their potential to lead successful lives. In India, some effects of Child labour include:

**Health Issues:** Children who work face hazards to their physical and mental health since they frequently work in hazardous conditions. They might be with dangerous machinery or poisonous chemicals, which could cause lung damage, breathing difficulty, and other health concerns. Physical harm, such as fractures, cuts, and bruises, can occur to children working in mines, quarries, or on construction sites. They may not receive enough food or nourishment while working, which results in malnutrition.

**Impact on Education:** Children who work typically do not have as much access to education since they do not have the time, money, or energy to go to school. Many kids are compelled to leave school early to find work, and many of them never go back. This restricts their ability to move up the economic ladder and find jobs in the future.

**Hindered Overall Growth:** The social and emotional growth of kids may suffer as a result of Child labour. Children who work for hours might not have time for playtime or peer interaction, which limits their chances for emotional and social development. Due to the strain and pressure of their jobs, they may also experience anxiety, sadness, and other psychological issues.

**Exploitation:** Children who work are frequently targets of exploitation and abuse. They might be made to work in dangerous or cruel conditions, and they might be abused physically, sexually, or emotionally. Due to their potential isolation and lack of social or legal protection, children who work as domestic helpers may be especially vulnerable to abuse.

**Economical loss to the nation:** Additionally damaging to the economy, Child labour perpetuates a cycle of poverty and underdevelopment. Children who labour frequently are not able to realize their full potential, which reduces their potential economic value to society in the future. Child labour may also lower pay and working conditions, which could result in a race to the bottom in terms of labour standards.

## **LEGAL PROVISIONS TO STOP CHILD LABOUR**

Various safeguards against the exploitation and abuse of children, particularly in the context of Child Labour, are enshrined in the Indian Constitution. India has enacted several laws and regulations aimed at preventing and regulating Child labour. Here are some key legal provisions in India addressing Child labour, along with additional details:

### **Indian Constitution**

*Article 24:* Explicitly prohibits the employment of children below 14 years in hazardous occupations such as factories and mines, emphasizing the need for protective measures to ensure their well-being.

*Article 39(e):* Directs the state to ensure that economic necessity does not force children into occupations unsuitable for their age or strength, underscoring the constitutional commitment to shielding children from exploitative circumstances.

*Article 39(f):* Instructs the state to provide children with opportunities for healthy development, freedom, and dignity, emphasizing the constitutional duty to safeguard childhood and youth against exploitation and abandonment.

## Acts/Treaties

Child Labour (Prohibition and Regulation) Act (1986): Besides forbidding the employment of children under the age of 14 in hazardous industries, the Act place an explicit responsibility on employers to ensure the overall welfare and health protection of those aged 14 to 18.<sup>2</sup>

The Child Labour Act 1986 was amended in 2016 and has been renamed as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The primary features of this Act are: It tightens the original Act's restrictions by making it unequivocally illegal for children under 14 to work in any occupation, with specific exceptions for certain sectors such as entertainment or family businesses. It also prohibits employment of adolescents in the age group of 14-18 years in any hazardous work. Introduces provisions for robust assistance and rehabilitation programs for rescued Child Labourers, showcasing a comprehensive approach towards addressing the needs of affected children.

## International Labour Organization Conventions

India's ratification of conventions such as the Worst Forms of Child Labour Convention (No. 182) and the Minimum Age Convention (No. 138) signifies a commitment to aligning national legislation with globally recognized standards against Child labour.

## Case Laws

Some important judgements by the Supreme Court dealing with the issues around Child labour are given below.

*MC Mehta v. State of Tamil Nadu*<sup>3</sup>: In this case, the Supreme Court mandated the closure of hazardous businesses employing children under the age of 14. It also issued a directive to establish educational and rehabilitation facilities, emphasizing a holistic approach to addressing Child labour.

*Union of India v. People's Union for Democratic Rights*<sup>4</sup>: In this case, the court's assertion that hazardous businesses cannot employ children under 14 years of age, underscores the imperative for government intervention to actively eradicate Child labour.

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<sup>2</sup>Child Labour (Prohibition and Regulation Act) 1986

<sup>3</sup>(1997) 1 SCC 122

<sup>4</sup>(1982) 3 SCC 235



*Bachpan Bachao Andolan v. Union of India (2011)*<sup>5</sup>: The Supreme Court's mandate for the identification, rescue, and rehabilitation of children in perilous occupations, including domestic work, demonstrates a proactive judicial stance towards child protection.

*Vishal Jeet v. Union of India*<sup>6</sup>: The court's ruling, penalizing employers engaging minors in hazardous occupations with imprisonment and fines, establishes a precedent for stringent consequences to deter Child labour practices.

## CONCLUSION

Addressing the complex issue of Child labour in India necessitates a comprehensive strategy that encompasses legal, social, and economic dimensions. A multifaceted approach is crucial to effect meaningful change and improve the overall situation. **Strengthening Legal Framework:** To safeguard children's rights and combat Child labour, the government must bolster the judicial system. This involves not only upholding existing laws like the Child and Adolescent Labour (Prohibition and Regulation) Act of 1986 but also creating effective mechanisms to address the evolving challenges associated with Child labour in India. **Legal measures should be proactive and responsive to the dynamic nature of this issue.** **Enhancing Access to Education:** A key element in preventing Child labour is ensuring universal access to quality education. The government should intensify efforts to decrease school drop-out rate, particularly focusing on children from economically disadvantaged backgrounds. A proactive approach is required to guarantee that all children, irrespective of their social or economic status, have the opportunity to pursue education and break the cycle of Child labour. **Promoting Awareness and Advocacy:** Raising awareness about the detrimental impact of Child labour and advocating for the protection of children's rights are integral components of any effective strategy. Public campaigns, media initiatives, and social mobilization efforts are essential in fostering a collective understanding of the issue and garnering support for protective measures. **Addressing Poverty:** Recognizing poverty as a major driver of Child labour, providing support to economically vulnerable families becomes imperative. Social welfare programs, micro-credit initiatives, and the creation of employment opportunities are vital components of a holistic

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<sup>5</sup>(2011) 8 SCC 481

<sup>6</sup>(1990) 3 SCC 318

approach. By alleviating economic hardships, these measures aim to reduce the prevalence of Child labour and create a more sustainable and equitable environment for children in India.

## **PART 2: IMPACT OF WAR ON CHILDREN**

### **INTRODUCTION**

The impact of war on children extends beyond the repercussions faced by adults, affecting them in distinctive ways. Primarily, children heavily depend on the love, compassion, and care provided by the adults in their lives. However, during times of conflict, disruptions in relationships occur due to factors such as the loss of parents, the intense focus of parents on securing and providing for their families, and the emotional unavailability of depressed or preoccupied parents. This often leads to children being placed in substitute care, either with relatives or in orphanages, where their care may be inadequately supervised.

Children victimized by war, often termed “unaccompanied children” in refugee settings, experience a profound loss of adult protection. This vulnerability exacerbates the challenges they face in coping with the harsh realities of conflict. Additionally, the negative impact of childhood experiences tends to be more pronounced for children compared to adults. Instances include children being denied the opportunity to attend school during conflict or being compelled to reside in refugee or displaced person camps, subjecting them to deplorable conditions<sup>7</sup>. These conditions persist for extended periods, as they endure years of uncertainty, waiting for a return to normalcy that may or may not materialize. The cumulative effect is a profound disruption in the developmental trajectory of children affected by war, imposing enduring challenges on their well-being and prospects<sup>8</sup>.

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<sup>7</sup>UNICEF, “27 million children out of school in conflict zones” <<https://www.unicef.org/press-releases/27-million-children-out-school-conflict-zones>> (accessed 21 April 2023)

<sup>8</sup>Joanne Santa Barbara, “Impact of war on children and an imperative to end war” (2006) 47(6) *Croat Med J* 891

## **CLASSIFICATION OF CHILD VICTIMS ENGAGED IN WARS**

### **Civilians**

In situations of war or conflict, schools and hospitals are commonly targeted by military forces, making innocent individuals in these locations susceptible to strikes. Weapons such as antipersonnel mines, cluster bombs, and other remnants of war continue to pose threats even after the cessation of combat, claiming numerous lives each year, especially among children. Moreover, a substantial number of children are forcibly separated from their families or caregivers, falling into various categories of displaced children. Many endure the loss of both parents, rendering them orphaned.

### **Child Soldiers**

Any individual below the age of eighteen involved with the armed forces of a government or any regular or irregular armed group is deemed a child soldier.<sup>9</sup> This includes those affiliated with such forces, irrespective of the presence of a declared war. In regions where terrorist and militant organizations are active, the enlistment of children as soldiers is a prevalent practice. The rationale behind this is their perceived utility as active shields during anti-terrorism operations, coupled with their vulnerability, making them more susceptible to recruitment.

### **Imprisoned Children**

Children are often detained during times of conflict, with various reasons leading to their imprisonment, primarily stemming from their involvement in a state's armed forces.

### **Children Subjected to Exploitation**

Children become frequent targets of sexual abuse during periods of conflict, with a notable increase in sexual violence. Additionally, children may be forced into labour without their consent and compelled to participate in armed conflicts

## **IMPACT OF WARS ON CHILDREN**

### **Direct Consequences**

Whether they met their demise as child soldiers engaged in conflict or as

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<sup>9</sup>International Encyclopaedia of the Social and Behavioural Science (2nd edn) <<https://www.sciencedirect.com/science/article/abs/pii/B9780080970868641132>> (accessed 21 April 2023)

civilian targets, since 2005, around 1.2 lakh children lost their lives during wars and other conflicts.<sup>10</sup> The toll extends further, with three times as many children sustaining injuries or enduring disabilities. Additionally, a higher number grapple with diseases, starvation, sexual assault, and the myriad challenges associated with refugee status. Many children undergo the profound anguish of losing not only their homes and possessions but also the people they hold dear. In such upheavals, virtually every constant essential for a child's development is severely disrupted, leading to immense psychological costs. While wars undoubtedly impact adults, children all too often emerge as the direct yet vulnerable victims of the atrocities inflicted upon their families. Countless children fall victim to violence, injury, or exploitation, becoming slave labour in every conflict. Some find themselves captive or compelled to flee their homeland for survival, while others are coerced into becoming "child soldiers" in the armed forces, leaving them defenceless orphans. The consequences extend to severe mental trauma, leaving indelible scars that prove challenging to overcome and significantly impact their future.

### **Indirect Consequences**

Numerous children experience the indirect fallout of conflict as family members are taken hostage or killed in battle. Some are forcibly separated from their families and coerced into military service, while others lose their parents while escaping violent circumstances. Psychologists emphasize the substantial stress children face when a family member dies, emphasizing the critical role of a strong family bond in their resilience. Children recruited into the armed forces often contend with societal stigma. Simultaneously, adverse environments hinder certain children from ethnic minorities from completing their education and prevent their parents from contributing to family support through employment.

### **IMPACT OF WARS ON GIRL CHILD**

While the repercussions of war apply to both boys and girls, there are distinct challenges that girls confront, often overlooked amidst broader discussions. One such challenge involves the heightened vulnerability to gender-based violence during conflicts. Girls frequently endure sexual violence, encompassing rape, sexual slavery, and coerced marriages, resulting in

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<sup>10</sup>More than 300,000 grave violations against children in conflict verified worldwide in past 18 years' (UNICEF) <<https://www.unicef.org/press-releases/more-300000-grave-violations-against-children-conflict-verified-worldwide-past-18> > (accessed 21 April 2023)

enduring physical, emotional, and psychological trauma. Additionally, prevailing cultural norms that prioritize male education and employment opportunities over female autonomy can force girls into early marriages and motherhood, constraining their prospects and exposing them to further violence. Another specific challenge for girls in times of war is restricted access to healthcare. Conflict zones often witness damage to hospitals and clinics, coupled with shortages of medical supplies, disproportionately affecting girls who may struggle to access reproductive health services, leading to unwanted pregnancies and sexually transmitted infections.

Statistics from the United Nations indicate that most of the conflict-displaced individuals are women and children, with girls facing heightened vulnerability to displacement, abuse, and exploitation. In specific instances, such as Syria, out of 2.8 million refugee who fled the nation due to civil war, nearly four in five of them were women and children<sup>11</sup>. Sexual violence against girls is a prevalent issue in conflict-affected regions, exemplified by a study revealing that nearly 1.80 million women and girls in the Democratic Republic of Congo experienced sexual violence<sup>12</sup>, including rape and sexual slavery, during the prolonged conflict.

In conclusion, while the impact of war affects both genders, girls contend with distinct challenges requiring targeted attention. Prioritizing girls' education and health, advocating for gender equality, and addressing the underlying causes of gender-based violence are crucial steps toward enabling girls in conflict-affected areas to lead secure, healthy, and empowered lives.

## **PROTECTION UNDER THE LAWS**

### **Statutory Protection**

The United Nations Convention on the Rights of the Child (UNCRC) plays a vital role in providing legal protection for children affected by armed conflict. This comprehensive framework outlines children's rights, ensuring their protection from violence, abuse, and exploitation, as well as securing their access to education, healthcare, and other basic needs. States that are parties to the convention are obligated to implement its provisions, guaranteeing the well-being of children within their jurisdiction.

<sup>11</sup>'Women Alone' (UNHCR) <<https://www.unhcr.org/sites/default/files/legacy-pdf/53bb8d006.pdf> > (accessed 21 April 2023)

<sup>12</sup>European Parliament, "Sexual violence in the Democratic Republic of Congo" <<https://www.europarl.europa.eu/EPRS/EPRS-AaG-542155-Sexual-violence-in-DRC-FINAL.pdf> > (accessed 21 April 2023)

The Geneva Convention<sup>13</sup> and their Additional Protocols<sup>14</sup> also include provisions addressing the protection of children in armed conflict. Protocol II explicitly prohibits the recruitment and use of children under 15 in hostilities<sup>15</sup>, while Common Article 3 mandates compassionate treatment for children, shielding them from violent acts. The 2nd Additional Protocol emphasizes the right of children to protection during and after armed international conflicts. Furthermore, the Convention on the Rights of the Child (1989) safeguards a child's essential rights, with Article 38 extending the application of Article 77 Additional Protocol to domestic armed conflicts.

In India, the Indian Armed Forces Act of 2007 prohibits the recruitment of children under 18 into the armed forces and emphasizes the discharge and rehabilitation of any identified child soldiers.

### **Protection via Judicial Pronouncements**

The International Criminal Court (ICC) made a historic precedent by convicting the accused in *Prosecutor v. Lubanga*<sup>16</sup> for war crimes related to the recruitment and deployment of child soldiers in the Democratic Republic of the Congo. Another case, *Prosecutor v. Bemba*,<sup>17</sup> resulted in the ICC finding the defendant guilty of war crimes and crimes against humanity, including rape and sexual slavery committed by his forces in the Central African Republic.

### **CONCLUSION**

In summary, the issues of Child labour and the impact of war on children are urgent matters that require immediate attention from policymakers, civil society organizations, and individuals. The prevalence of Child labour in India is concerning, necessitating stricter provisions and the effective enforcement of existing laws. Despite the numerous regulations and policies in place, the persistence of Child labour in India is attributed to ineffective implementation, insufficient resources, and a lack of public awareness. Therefore, continuous monitoring, stricter penalties for violators, and increased investment in education and skill development programs are crucial to reduce the demand for Child labour.

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<sup>13</sup>Geneva Convention relative to the Protection of Civilian Persons in time of War 1950

<sup>14</sup>1997 Additional Protocol I, Article 77(2)

<sup>15</sup>1997 Additional Protocol II, Article 4(c)(3)

<sup>16</sup>ICC-01/04-01/06

<sup>17</sup>ICC-01/05-01/08

Similarly, the repercussions of wars on children, especially girls, are significant concerns. Children, being among the most vulnerable victims of conflict, face enduring consequences such as physical and psychological trauma, displacement, loss of education, and an increased vulnerability to exploitation, including Child labour. The international community must prioritize the protection and well-being of children in conflict zones, ensuring their access to essential services like healthcare, education, and psychosocial support. While legal protections exist for child victims of war, consistent implementation is essential to bring about tangible change in the lives of those affected. The international legal framework, including instruments like the Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict, provides a comprehensive foundation for the protection of children during armed conflicts. Governments and other stakeholders must ensure the enforcement of these laws and hold perpetrators accountable for violations.

The interconnection between Child labour and the impact of war on children is evident, with one issue exacerbating the other. Children forced into Child labour are at an elevated risk of recruitment into armed groups, while exposure to violence and conflict can result in displacement, setbacks in education, and increased susceptibility to exploitation. Addressing these issues concurrently is crucial to creating a world where all children have the opportunity to thrive and realize their full potential. Urgent action is imperative, requiring a collaborative effort from governments, civil society organizations, and individuals. By investing in education, implementing skill development programs, and strengthening protective measures, we can collectively contribute to a better world for children, ensuring the protection of their rights and fostering an environment where they can flourish.

# THE INTERPLAY OF POVERTY, HUNGER AND EXPLOITATION: A STUDY OF CHILD MALNUTRITION AND CHILD BEGGING IN INDIA

Zear Tudu\*

## Five random pictures of children from the web



Figure 1: <https://en.shafaqna.com/330118/millions-of-yemenis-still-struggling-to-survive-as-food-prices-rise-300/>

**Feeling :** Woeful

**Thought :** The child appears to be malnourished, which makes me think of the condition of the family and the fact that the child is suffering from various health conditions. I am worried whether the child will be able to survive if proper nutrition is not provided.

**Feeling :** Helpless

**Thought :** At the age when children should play house game with dolls, this child is getting married and will now have to handle a household and a family.



Figure 2: <https://www.indiatoday.in/education-today/gk-current-affairs/story/child-marriage-india-1293581-2018-07-23>



Figure 3: <https://wunrn.com/2010/09/bangladesh-girl-child-acid-attack-victim-sheema/>

**Feeling :** Hopeful

**Thought :** The child embodies hope for the world, serving as a resilient example to others. She does not differentiate herself from others and is leading a good life even after she went through so much pain

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### Feeling : Sorry

**Thought :** It gets me worried about the future of both the children. Instead of getting proper education, they are working hard to earn some money to satisfy their hunger. There might be more members of their family back at home for whose sustenance they are working.



Figure 4: <https://www.businesstoday.in/latest/economy-politics/story/modern-day-slavery-human-trafficking-child-labour-bondage-workers-child-marriage-india-slavery-anti-slavery-law-uk-govt>



Figure 5: [https://miro.medium.com/v2/resize:fit:720/format:webp/1\\*YiURHv7vZw12\\_FMLqjs-5g.jpeg](https://miro.medium.com/v2/resize:fit:720/format:webp/1*YiURHv7vZw12_FMLqjs-5g.jpeg)

### Feeling : Despair

**Thought :** It is concerning to see such a young girl is sitting with a child, probably begging. There is uncertainty regarding whether she has any family, and there is a concern that she might be at risk of human trafficking. There is also the possibility that she has already been trafficked and is being compelled to beg.

I have chosen to focus on the interplay between malnutrition in children and child begging.

## INTRODUCTION

Among the five different pictures of children illustrated above, the focus of this research paper would be on two arenas i.e. Malnutrition and Child begging. The reason for choosing them as the topic primarily stems from various motivations which include social relevance, humanitarianism, interdisciplinary inquiry, and educational purpose.

Malnutrition and begging among children are significant social issues that affect the well-being and development of millions of children worldwide. Children with malnutrition and begging often live in challenging circumstances that is difficult for us to comprehend. By researching their experiences, we can enhance our understanding of their needs and struggles and explore ways to alleviate their suffering.

Malnutrition, as defined by the World Health Organization, denotes an individual's inadequate or imbalanced intake of nutrients and energy. The critical role of maternal-infant care and child nutrition in determining proper development and future socio-economic status is undeniable. Unfortunately, reports from esteemed organizations such as the National Health & Family Survey, the United Nations International Children's Emergency Fund, and the World Health Organisation (hereinafter the "WHO") reveal alarmingly high malnutrition rates in India, especially among adolescent girls, pregnant and lactating women, and children. Factors such as maternal nutrition, lactation practices, women's education, and sanitation contribute to malnutrition, leading to stunting, childhood illnesses, and hindered growth. While nominal progress has been made in India over the past decade, effective implementation of research findings is still crucial to combat under nutrition, a persistent barrier to socio-economic development.

Child begging and other such impulsive behaviours, poverty and lack of education are the predominant causes. Although the society and the lawmakers disapprove of this practice, it persists due to inadequate law enforcement and implementation. Child begging has a detrimental impact on the lives of thousands of children, robbing them of their innocent childhood and forcing them into the role of beggars.

Studies and data from NGOs have shown that children from economically disadvantaged backgrounds are more likely to be subject to abuse because of parental poverty. As a result, they may be compelled to beg to supplement their family's income. People often exploit disabled children for begging,

as it elicits sympathy from the public. Unfortunately, some children are even beaten and physically harmed for this purpose. These children are also exploited by criminal organizations which engage in deceptive practices and mistreat innocent children, even drugging them for this purpose.

Child malnutrition and child begging are two pervasive issues affecting millions of children globally. Child malnutrition, a complex and widespread problem, persists as a major public health challenge, particularly in low-income and middle-income countries, despite significant progress in reducing malnutrition rates. It not only hampers physical health and growth but also has long-term consequences on cognitive development, educational attainment, and overall well-being. This research paper aims to explore the causes, consequences, and possible solutions to child malnutrition, shedding light on the key factors driving its persistence and interventions to improve the health and well-being of affected children. Through a comprehensive analysis of existing literature, the paper seeks to provide insights into effective strategies to tackle this critical issue.

Simultaneously, child begging remains a distressing problem affecting vulnerable children worldwide. These children, often from impoverished backgrounds, are forced to beg on the streets, exposing them to significant risks such as physical and emotional abuse, exploitation, and neglect. Despite ongoing efforts to address the issue, child begging persists as a widespread problem, with many children still living on the streets and facing the dangers associated with begging. This research paper delves into the underlying causes of child begging, its impact on children, families, and communities, and potential solutions to this critical problem. Through an in-depth analysis of existing literature, the paper aims to offer a comprehensive understanding of child begging and provide insights into effective strategies for prevention and mitigation.

## **INTERCONNECTION BETWEEN MALNUTRITION IN CHILDREN AND CHILD BEGGING**

Malnutrition in children is closely linked to the occurrence of child begging. Malnutrition is one of the leading causes of child begging, as children from poor families often resort to begging to meet their basic food needs. The following are some of the ways in which malnutrition and begging are interconnected:

**Poverty:** Malnourished children often come from impoverished families who do not have access to enough food or resources to meet their basic needs. These families may send their children to beg on the streets to earn money for food.

**Lack of education:** Malnourished children are often unable to attend school due to their poor health or the need to work in order to earn money. This lack of education further limits their opportunities and increases their likelihood of resorting to begging.

**Vulnerability:** Malnourished children are often found to be more vulnerable to exploitation and abuse, as they may be too weak to defend themselves or escape dangerous situations. This vulnerability makes them more likely to be forced into begging by unscrupulous individuals or groups.

**A Cycle of Poverty:** The poverty cycle is a recurring pattern wherein individuals or families undergo persistent poverty and encounter challenges breaking free from it. This cycle encompasses a blend of economic, social, and psychological elements, establishing obstacles that hinder individuals from escaping poverty, often extending the impact across multiple generations. Malnutrition and begging can create a vicious cycle of poverty, as malnourished children are often unable to break out of the cycle of poverty and may be forced to beg to survive. This cycle can perpetuate for generations unless effective interventions are put in place.

Overall, addressing malnutrition and begging is crucial for breaking the cycle of poverty and improving the well-being and health of children. Children who beg and those who are underweight are primarily interconnected to one another. When their families are unable to meet their basic requirements, such as food, children frequently turn to begging as a method to increase their family's income or as a means of survival. Children who are malnourished may also be more susceptible to sickness and disease, which further reduces their capacity to develop and flourish.

Children experiencing malnutrition are at a higher risk of stunted development and cognitive deficits, impacting their ability to learn and achieve academic success. As a result, children might be more inclined to quit school and engage in begging, offering immediate relief from hunger but often perpetuating the cycle of poverty.. Children may occasionally be compelled to beg by adults who use them for their advantage. These kids'

physical and emotional health is further harmed by the frequent abuse and neglect they endure during the process.

Implementing interventions that address both the immediate needs of children and understanding essential factors like access to food and healthcare, along with addressing the underlying causes of poverty and malnutrition, such as insufficient education and economic opportunities, is crucial for addressing the link between malnourished children and children engaged in begging. To do this, it may be necessary to tighten child safety laws, provide education and job training initiatives, and give financial aid to the families.

### **MALNUTRITION- PARAMETERS AND MEASUREMENTS**

The premise of this paper is based on certain globally accepted standards and definitions of malnutrition as given by world authorities such as UNICEF and WHO. As mentioned earlier in this article, the WHO defines malnutrition as “deficiencies or excesses in nutrient intake, imbalance of essential nutrients or impaired nutrient utilization.” This section explains the various criteria or parameters that are used on a global scale to identify the vulnerable sections of the population who are actively struggling with the issue of malnutrition. Children across the globe who are stuck in a perpetual cycle of poverty and desolation are the group that are at maximum risk of the same.

The following are various measurements usually employed to examine malnutrition:

1. **Underweight:** Being underweight means that a child’s weight is below the standard growth expectations for their age, as defined by the WHO. Specifically, if a child’s weight-for-age Z-score falls below -2 standard deviations (SD) from the median of the WHO/NCHS Child Growth Standards or References, they are considered underweight. This means that the child’s weight falls outside the normal range of weight-for-age for their specific age group.
2. **Wasting:** Wasting, also referred to as acute malnutrition, is a condition where there is a rapid decline in a child’s nutritional status over a short period, typically affecting children under the age of 5. The measurement of wasting in children can be done using the weight-for-height nutritional index or mid-upper arm circumference (MUAC). Acute malnutrition can be classified into two levels of severity: moderate acute malnutrition (MAM) and severe acute malnutrition (SAM). Specific thresholds of

weight-for-height or mid-upper arm circumference determine the various levels of acute malnutrition, with severe acute malnutrition representing the more severe form of the condition.

3. Stunting: Stunting, also known as chronic under nutrition, is a state in which a child's height is more than 2 standard deviations below the median height established by the World Health Organization's child growth standards. To be specific, a child is considered stunted if their height-for-age Z-score is less than -2 standard deviations from the median of the WHO/NCHS Child Growth Standards or References. Stunting is attributed to multiple underlying causes. Cognitive impairments, including delayed motor development, impaired brain function, and subpar school performance, are frequently associated with stunting. These adverse effects are often linked to the chronic nature of stunting and the potential for long-term harm to a child's growth and development.

## GLOBAL SCENARIO

Stunting affects approximately 149 million children under the age of five worldwide. In 2018, over 49 million children under the age of five experienced wasting, and nearly 17 million of them suffered from severe wasting. The number of overweight children has now surpassed 40 million globally, with an increase of 10 million since 2000. These statistics, depicted in Figures 1-3, are alarming. Estimates suggest that by 2050, the number of malnourished children will increase by 25 million compared to the current figure.

## LEGAL PROVISIONS FOR CHILDREN WITH MALNOURISHMENT



Figure 6 <https://www.semanticscholar.org/paper/Childhood-Malnutrition-in-India-Singh/23ed5aa070df382c2b0aeeac724a5df6f09815a2>

### Fig: Comparison of burden of malnourished under-5 Asian and African children

The UNCRC recognises that proper nutrition is critical for children's

survival, growth, and development. It therefore includes many provisions that address the issue of childhood malnutrition.

Article 24 of the UN Convention on the Rights of the Child states that “States Parties recognise the right of the child to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties must work to ensure that no child is denied the right to such healthcare services.”<sup>1</sup>

This clause acknowledges the right of all children to receive adequate health care, including treatment and rehabilitation services, to safeguard their physical and emotional well-being. Given the potentially serious consequences of malnutrition on a child’s health and development, ensuring access to proper healthcare services is crucial in addressing this issue.

Other UNCRC provisions pertinent to combating malnutrition, in addition to Article 24, include Articles 6, 18, 19 and 27.

The UNCRC recognises malnutrition as a serious threat to children’s life, growth, and development, and requires States Parties to take steps to ensure that children have access to appropriate nutrition and healthcare services. This includes aiding parents and families, as well as formulating policies and programs that tackle the underlying causes of malnutrition, such as poverty and resource scarcity.

Under the National Food Security Act, 2013 children who are suffering from malnutrition will be provided food by the local anganwadi workers free of charge. Other important programmes initiated by the Government of India to reduce malnutrition are as follows:

- ‘Integrated Child Development Services (ICDS) Scheme’ - A bundle of six services is offered, which includes additional nutrition, non-formal pre-school education, education on health and nutrition, immunization, health check-ups, and referral services.
- ‘Mid-Day Meal Scheme’ - It states that all children between the ages of six and fourteen who are enrolled in classes one through eight and attend school will receive one free, hot, cooked meal every day, except on school holidays.

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<sup>1</sup>United Nation Convention on Rights of the Child, 1989, Art. 24



- ‘Supplementary Nutrition Programme (SNP)’ - The Supplementary Nutrition Programme (SNP) was launched in 1970-71 to target the same group as the Integrated Child Development Services (ICDS), which includes children under the age of six and expectant and nursing mothers. The program is limited to tribal areas and slums and focuses primarily on providing supplementary feeding for 300 days each year. Some states have implemented additional services alongside the provision of supplementary feeding through individual initiatives.
- ‘CARE Assisted Nutrition Programmes’ - According to the Indo-CARE Agreement of 1950, CARE-India provides food aid to support the provision of supplementary nutrition to preschool children under six years of age, as well as expectant and nursing mothers. The CARE assistance is now incorporated into Integrated Child Development Services (ICDS) projects, and some ICDS projects use this aid for the nutrition component of the program.
- ‘Wheat Based Supplementary Nutrition Programme’ - The scheme was initiated with two goals: to provide additional nutrition to children and to promote the consumption of wheat. The Ministry of Food allocates approximately 100,000 tonnes of wheat from the central reserves each year to the Department of Women and Child Development. The department then distributes this wheat to the states, which mostly use it to produce wheat-based nutritional supplements that are ready to eat.<sup>2</sup>

## LEGAL PROVISIONS FOR CHILD BEGGING

The United Nations Convention on the Rights of the Child (UNCRC) is an international convention that specifies children’s basic human rights where child labour is specifically addressed in Article 32 of the UNCRC, which states that “States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.”<sup>3</sup>

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<sup>2</sup>Food and Agriculture Organization, ‘Other important programmes to combat malnutrition in India’ <[<sup>3</sup> United Nation Convention on Rights of Children 1989, Art. 32](https://www.fao.org/3/x0172e/x0172e08.htm#:~:text=CARE%20Assisted%20Nutrition%20Programmes,years%20and%20expectant%2Fnursing%20mothers>” (accessed on 10 November 2023)</a></p>
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The act of child begging, where children solicit money or other items on the streets, constitutes a form of child labour and a breach of the UNCRC. The following provisions of UNCRC are particularly pertinent to child begging which are Articles 19, 27, 34, 36 and 29.

In addition to the principles listed above, the UNCRC requires States Parties to take steps to avoid child labour, including child begging. This may involve enforcing penalties for those who exploit or abuse children, enacting laws and regulations against child labour, providing education and vocational training for children and their families.

Overall, the UNCRC recognises child begging as a kind of child labour that breaches children's basic rights. States Parties must take steps to avoid and address this issue to protect children's well-being and overall development.

While there is no targeted nationwide legislation against begging in India, it is considered a punishable offence in various states and union territories across India. These states and union territories are responsible for implementing measures to prevent begging and ensuring that beggars are reintegrated into society through various rehabilitation programmes. About 22 states, including some union territories, have implemented anti-begging laws, which are based on the Bombay Prevention of Begging Act of 1959.<sup>4</sup> Some of the legislations are as follows:<sup>5</sup>

### **A. The Bombay Prevention of Begging Act, 1959**

The Bombay Prevention of Begging Act of 1959 defines begging as soliciting or receiving alms, entering private premises to solicit alms, displaying deformities or diseases to obtain alms, being without means of subsistence and wandering in public, or allowing oneself to be used for soliciting alms. The Act allows for up to one to three years in prison for offenders and up to 10 years in prison for future convictions. Under the Act, children under the age of 16 for boys and 18 for girls are deemed minors. Under the Children

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<sup>4</sup>Jangam Shashidhar, 'An analysis of begging as an offence in India' (Prime Legal, 3 September 2023) <<https://primelegal.in/2023/09/03/an-analysis-of-begging-as-an-offence-in-india/>> (accessed on 10 January 2023)

<sup>5</sup>Kunal Debnath and Tanmoy Saha, 'The Beggars During the COVID-19 in India: Marginality, (In) visibility and the Role of Civil Society' (Sage Journals, 24 August 2023) <[https://journals.sagepub.com/doi/10.1177/2455328X231186249#:~:text=Despite%20this%2C%2022%20states%20\(including,Jammu%20and%20Kashmir%20Prevention%20of](https://journals.sagepub.com/doi/10.1177/2455328X231186249#:~:text=Despite%20this%2C%2022%20states%20(including,Jammu%20and%20Kashmir%20Prevention%20of)> (accessed on 12 November 2023)

Act of 1960, if a kid under the age of five is seen begging, the case will be sent to a children's court.

## **B. Indian Penal Code, 1860**

In 1959, the Indian Penal Code was modified to make exploiting minors for begging a crime, according to 'Section 363A of the Code'. This clause also defines begging and specifies who is considered a minor.<sup>6</sup> Furthermore, it is prohibited to hire or exploit a youngster for begging if the individual is not the minor's legal guardian.

Section 268 of the Code deals with public nuisance and specifies that causing hurt, danger, or irritation to the public constitutes a public nuisance. This clause can be used in situations when begging persons are deemed a public nuisance.<sup>7</sup>

## **C. The Children Act, 1960**

Section 42 of this Act states that anybody who employs or involves a kid in begging or forces them to beg, faces up to a year in prison, a fine, or both. Aiding and abetting such an offence is equally criminal, and the offence is cognizable.<sup>8</sup>

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

Section 76 of the Juvenile Justice Act, 2015, defines the criminal act of employing a child for begging. This Section states that anyone who hires or induces a child to beg will face imprisonment for a maximum of five years and a fine of up to one lakh rupees. If someone amputates or injures a child for begging purposes, they will face even harsher punishment with imprisonment for a minimum of seven years, extendable up to ten years, and a fine of up to five lakh rupees.<sup>9</sup>

## **E. The Indian Railway Act, 1989**

According to Section 144 of the Indian Railway Act of 1989, begging and hawking are not allowed. The act prohibits the sale of any item on a railway

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<sup>6</sup>Indian Penal Code, 1860, s 363A

<sup>7</sup> Indian Penal Code, 1860, s 268

<sup>8</sup>The Children Act, 1960, s 42

<sup>9</sup>Juvenile Justice Act, 2015, s 76

carriage or railway property without obtaining a government license, and violators can face a maximum of one year imprisonment and/or a fine.<sup>10</sup>

In addition to the abovementioned legislations, the Persons in Destitution Model Bill was introduced in October, 2016. It aimed to change the focus of India's begging law from punishment to rehabilitation<sup>11</sup>. However, the law did not include a provision to prohibit arrests. In late 2017, a government spokesperson informed the High Court that the Bill had been abandoned.

## **UTILIZATION OF POLICE AUTHORITY FOR DETAINING INDIVIDUALS INVOLVED IN BEGGING**

Several states in India have legislation against begging, granting qualified police officers the authority to detain individuals indulging in the act of begging without the need for a warrant. A person can only be taken into custody if the owner of the property makes a formal complaint if they are discovered panhandling within private property.

The police officer oversees transporting the detained beggar to court. The state government mandates that a beggar who is detained must be kept in a licensed facility. The defendant will be released if the court finds that begging was not his involvement. The court will impose the appropriate sentence if it is determined that the accused engaged in begging.

## **DIFFICULTIES FACED BY CHILD BEGGARS**

The child beggars endure a lot of difficulties during their daily lives, most of which go unchecked by the appropriate authorities. A few are mentioned below:

- **Torture and abuse**

Children who beg on the streets often experience a significant amount of abuse and mistreatment from various individuals, including their parents, guardians, traffickers, and others. This can include sexual abuse, physical

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<sup>10</sup> Indian Railway Act, 1989, s 144.

<sup>11</sup> Ministry of Social Justice and Empowerment, 'Issue of begging (14 December 2021) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1781363>> (accessed on 26 January 2024)

violence, emotional torment, and being forced to beg for necessities like food and shelter.

- **Gender-based Discrimination**

In India, there is a common practice of abandoning girl children due to the prevailing gender inequality favouring males. Consequently, these girls are often left to fend for themselves on the streets, where they resort to begging or even prostitution to survive. Unfortunately, society often misjudges and stigmatizes these children, labelling them as dirty and possibly even delinquents.

- **Homelessness**

Homeless children who end up on the streets as beggars may have come from families living in poverty or may have been orphaned. Finding a safe place to stay is a major challenge for these vulnerable children. They often spend their days begging for money and then struggle to find a suitable place to sleep at night. They are forced to live in public places such as train stations, streets, and other open areas, hoping to secure enough food and shelter to provide for their basic needs and those of their families.

- **Deprivation**

Children who are forced to beg on the streets often come from families living in extreme poverty. In many cases, they beg not only for themselves but for their entire families, as there may be no other means of securing food or necessities. These children's primary motivation for begging is simply to obtain enough food to survive. They are driven to beg because their families are often large, and they have no other sources of income or support to rely on.

## **CONCLUSION**

We can prevent children from begging by reporting them to authorities or through NGOs. If a youngster is seen begging on the street or in a train station, the first step is to inform the proper authorities, such as the police or the railway department. Authorities can save their lives by assuring a bright future for them. The second step is to report to a NGO working for

the rehabilitation of child beggars that will identify their relatives and give financial support. These NGOs, in many cases, also strive to educate and offer food and shelter to the child beggars.

The Government of India has implemented various community-based nutrition programs to combat malnutrition and address the issue of inadequate nutrition. Despite notable advancements in tackling hunger and under nutrition in India over the past two decades, progress has been gradual and inconsistent, leaving many individuals underserved. Yet, through ongoing prioritization, enhanced resource allocation, and a comprehensive, well-coordinated strategy encompassing effective governance and collaboration with civil society, India holds the potential to eliminate all forms of malnutrition and attain the Sustainable Development Goals for the entire population. Achieving this goal demands a persistent and all-encompassing effort, but the aspiration to eradicate malnutrition is attainable.

# BEGGARED OR BARRED: A STUDY ON CHILDREN FORCED INTO BEGGARY, AND THE STRUGGLES OF CHILDREN BORN IN PRISONS

Anuska Rath\*

## Five random pictures of children from the web



Figure 1 <https://assets.thehansindia.com/h-upload/2022/07/07/1301757-begging.webp>

**Feeling :** Helpless

**Thought :** A little girl and her younger sibling are seen receiving a coin. Due to circumstances and forces beyond their control, numerous children in India are forced to beg. It is unfortunate that at an age where they should be frolicking about, these children have no choice but to beg in

order to fend for themselves and their families.

**Feeling :** Happy

**Thought :** Observing a contented family with happy kids remind me of the value of affection, encouragement, and quality time spent together, in fostering an atmosphere where kids can grow and develop.



Figure 2 <https://everyfamilyforward.org/stories/story-bank>



Figure 3 <https://images.app.goo.gl/5tKjNM8pgNVPBB6R6>

**Feeling :** Sad

**Thought :** These children are growing up within the confines of a jail. The lack of proper care and insufficient access to prenatal services for mothers exacerbate the challenges, increasing to health issues for the children.

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**Feeling :** Despair

**Thought :** The plight of these children, burdened with the responsibility of caring for younger siblings despite their own youth, evokes a profound sense of despair in me. They have to live in unsanitary surroundings, and beg for food, or collect it from disposed dumps.



Figure 4 <https://images.squarespace-cdn.com/content/v1/593ef400d2b85780fbc82544/7cd65975-2481-41f7-8c8e-08c9be7f62f0/poverty-june.jpg?format=1500w>



Figure 5 <https://www.change.org/p/narendra-modi-abusive-parenting-has-to-stop-we-need-to-protect-our-children>

**Feeling :** Fear

**Thought :** When I consider that the child is being abused and no one is around to rescue her from the situation, I cannot help but feel terrified.

I have chosen to focus on forced beggary among children, and the struggles of children born in prisons.

## PART 1: CHILD BEGGARY

### INTRODUCTION

Children begging on the streets is a concerning issue that can sometimes be linked to the situation of children of prisoners in jail. A parent's imprisonment can have a substantial effect on the welfare and well-being of the child, thereby creating vulnerabilities that could culminate in street begging. Begging is a widespread phenomenon that is frequently seen in underdeveloped nations. Children may beg on their own or in company with adults who are begging on the streets. In addition to being against the law, this practise puts the children's health and prospects at serious risk. Therefore, it is crucial to investigate the study issues of kids who beg on the streets and assess their legal implications.

Begging in public places carries several serious concerns. Street beggars are subject to a variety of forms of exploitation, including as physical and psychological abuse, human trafficking, and exploitation by organised criminal gangs.<sup>1</sup> Hazardous situations, including exposure to extreme weather, unsafe settings, and health hazards, can befall them. Children who beg may be exposed to diseases, malnutrition, and other health risks, which can have a detrimental influence on their physical and mental health<sup>2</sup>.

It is significant to highlight that International and National legislation, such as the United Nations Convention on the Rights of the Child and the Juvenile Justice (Care and Protection of Children) Act, 2015 in India, recognise that children's begging is a violation of their rights. These laws place a strong emphasis on every child's right to social, educational, and medical support as well as protection against exploitation, abuse, and neglect.<sup>3</sup>

### STATISTICAL DATA ON CHILD BEGGARY

According to statistics released by the Ministry of Women and Child Development in 2016, there are around 30,000 child beggars in India. In India, almost 3 lakh kids are made to beg. The National Crime Records

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<sup>1</sup>Neela Dabir and Naina Athale, 'From Street to Hope, New Delhi: Sage. Datta, Sandeep, Child begging: The bane of modern India' (2011) <<http://www.merineews.com/article/child-begging-the-bane-of-modernindia/125190.shtml>> (accessed on 10 August 2023)

<sup>2</sup>Kounteya Sinha, 'Every Three Seconds One Child Dies in India: UNICEF' (The Times of India, 24 January 2008) <<https://m.timesofindia.com/india/every-three-seconds-one-child-dies-in-india-unicef/articleshow/2722552.cms>> (accessed on 10 August 2023)

<sup>3</sup>MR Ansari, (2006) Protecting Human Rights (Max Ford Books, 2012)



Bureau (NCRB) reports that a total of 63,407 children were reported missing in 2016, 63,349 in 2017<sup>4</sup>, and 67,134 in 2018. Only half of these missing children are ever discovered, according to Ministry of Home Affairs data. In 2018, Madhya Pradesh (10038), West Bengal (8205), Bihar (6950), Delhi UT (6541), and Tamil Nadu (4271) were the top five states with the largest number of missing children.

## **FACTORS COMPELLING CHILDREN TO BEG ON THE STREETS AND PATHWAYS LEADING TO THEIR VULNERABILITY**

Children who beg on the streets are some of the most vulnerable members of society. Numerous elements that contribute to their hazardous status have been found through research studies. Children who wind up begging on the streets are frequently blamed on homelessness and poverty. These kids frequently come from deprived regions without access to necessities like healthcare, education, and sanitation. They might also be the product of families that disintegrated because of social, economic, or political issues<sup>5</sup>.

Children who end themselves begging on the streets also experience prejudice and social deprivation, which might increase their susceptibility to abuse. They might be viewed negatively or as a threat by other people in the community, which could lead to violence, abuse, or harassment against them. This can make their precarious condition even worse.

Local gangs operate trafficking cartels that kidnap children and use violence and narcotics to push them into beggary. Drug addiction is a common means of luring kids into poverty. The kids are given tiny doses of drugs at first, which turns them into addicts who will labour to meet their daily needs.

Overall, there are many different and complicated factors that lead to kids begging on the streets. A comprehensive strategy that addresses the underlying causes of poverty and homelessness, ensures access to essential services and education, and defends the rights of children who are at risk of exploitation and abuse will be needed to solve this issue.

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<sup>4</sup>S Datta, 'Child Beggars: India's Invisible Citizens of Tomorrow' (Delhi Post, 24 February 2020) <<https://delhipostnews.com/child-beggars-indias-invisible-citizens-of-tomorrow/>> (accessed 10 November 2023)

<sup>5</sup>Mohammed Fahad, 'Poverty Leading to Child Beggary By Seizing Their Rights' (2023) 9(3) IJARIE <[https://ijarjie.com/AdminUploadPdf/Poverty\\_leading\\_to\\_child\\_beggary\\_by\\_seizing\\_their\\_rights\\_ijarjie20983.pdf](https://ijarjie.com/AdminUploadPdf/Poverty_leading_to_child_beggary_by_seizing_their_rights_ijarjie20983.pdf)> (accessed 10 November 2023)

## **EFFECTS ON CHILDREN**

Begging is a prevalent problem around the world, and kids are frequently especially susceptible to its detrimental effects. Children who beg on the streets face several hazards and difficulties every day that can have a significant influence on their health, education, and general development. Malnutrition is among the most important effects of begging on children's health. Children who beg frequently struggle to obtain enough food to eat, and their diets may be deficient in important nutrients. Developmental delays, immune system deterioration, and stunted growth are just a few of the health issues that might result from this.

Children who beg run the danger of suffering from hunger as well as respiratory conditions like asthma and TB. Their immune systems may be weakened and they may be more vulnerable to various illnesses due to the difficult living conditions on the streets, which include exposure to pollutants and unhygienic living situations. Children who beg frequently run the danger of suffering physical injury. They frequently navigate through hazardous and chaotic settings, such crowded markets, and busy streets, which can lead to mishaps and injuries. In addition, they could experience abuse and aggression from others, which can hurt them physically and psychologically. Additionally, begging often deprive children their right to an education, which is essential to their general development. Children who beg could find it difficult to develop fundamental literacy and numeracy abilities, restricting their possibilities for future work and personal development. The act of begging itself might potentially have an adverse effect on a child's mental health.

## **PREVAILING LAWS AGAINST CHILD BEGGARY**

- (i) Indian Penal Code, 1860: The Indian Penal Code underwent an amendment in the year 1959 to criminalize the exploitation of children for begging. Section 363A<sup>6</sup> explicitly forbids the kidnapping or maiming of a minor for begging, detailing the definition of begging and criteria for identifying minors. It also criminalizes hiring or using a child for begging by individuals not the rightful guardians.
- (ii) The Children Act, 1960: Section 42<sup>7</sup> declares anyone employing, encouraging, or making a child beg liable to imprisonment for up to one

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<sup>6</sup> Indian Penal Code 1860, s 363(A)

<sup>7</sup> The Children Act 1960, s 42

year, a fine, or both. Abetment of such an offense is also punishable, and the offense is considered cognizable.

- (iii) Juvenile Justice (Care and Protection of Children) Act, 2015: Section 76<sup>8</sup> of the Juvenile Justice Act explicitly defines the act of employing a juvenile or child for begging. Those employing or inducing a child to beg face imprisonment for up to five years and a fine of up to one lakh rupees. Severe penalties are outlined for those amputating or maiming a child for begging, with imprisonment ranging from seven to ten years and a fine of five lakh rupees.
- (iv) The Reform of the Bombay Prevention of Begging Act (BPBA) in Delhi, 2018: Effective in Delhi, the BPBA underwent significant changes on August 8, 2018. Sections criminalizing begging arbitrarily and violating the Indian Constitution's Article 14 guarantee to equality were struck down. Consequently, begging has been largely decriminalised in Delhi.

## **LEGAL SCHEMES**

- (i) The Integrated Child Protection Scheme (ICPS): The Government of India introduced this programme in 2009 to offer a wide range of services to children in need of care and protection, including those who are begging and trafficking victims. The plan helps with the rescue, treatment, and reintegration of young victims.
- (ii) National Policy for Children: The Government of India established this policy in 2013, and it offers a framework for the safety, survival, and growth of kids. The policy emphasises the need for efficient ways to prevent and handle issues like street begging and human trafficking as important difficulties.
- (iii) The Swadhar Greh Scheme: To provide shelter and rehabilitation assistance to women and children who are victims of abuse, including trafficking, the Ministry of Women and Child Development started this programme in 2016. The programme offers short-term lodging, meals, clothing, and counselling services.
- (iv) The National Action Plan for Children, 2016: To establish a comprehensive framework for the protection, development, and engagement of children in India, the Ministry of Women and Child

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<sup>8</sup> Juvenile Justice Act 2015, s 76

Development launched this plan. The strategy calls for acting against and preventing child street begging and human trafficking.

- (v) The Central Sector Scheme on Assistance to Victims of Trafficking: The Ministry of Women and Child Development introduced this programme in 2017 to offer financial support to trafficking victims. The programme helps with medical care, legal representation, rehabilitation, and reintegration.

## **CONCLUSION AND SUGGESTIONS**

The legal framework pertaining to child begging in India has been examined in this study, along with the several laws and rules put in place to deal with the problem. Important pieces of legislation, including as the Children Act, the Juvenile Justice Act, and the Indian Penal Code, are vital in defining and outlawing child begging-related exploitative activities.

The research highlights the severity of the issue by exploring the startling data related to child begging in India. Given the risks that homeless children confront and the incidence of child beggarhood, immediate action and preventative measures are necessary. Children who turn to begging suffer negative consequences on their general development, education, and health, which emphasizes how urgent it is to address this problem in its entirety.

The following steps can be taken to ensure the safety of vulnerable children:

- (i) Raising awareness: It is essential to increase awareness of the issue among the general population, the government, and non-governmental organisations. People can be prevented from committing crimes like trafficking and begging by being made aware of the risks involved and the harm it causes to both children and society.
- (ii) Strengthening laws and policies: Governments should enforce and reinforce the rules and regulations relating to begging and human trafficking. This entails strengthening law enforcement, stiffening penalties for criminals, and giving victims aid and protection.
- (iii) Education, and employment opportunities: Giving children and their families access to education and employment possibilities will help shield them from begging and human trafficking. Additionally, it can lessen their susceptibility to exploitation and raise their overall socioeconomic position.

(iv) Forming victim support networks: It is crucial to offer assistance and rehabilitation programmes to victims of begging and human trafficking. This can include providing medical attention, counselling, job training, and financial assistance.

These ideas are not all-inclusive, but they might be a good place to start when attempting to stop and deal with child begging and child trafficking. To stop these acts of violence and defend children who are disadvantaged, every stakeholder must work together.

## **PART 2: CHILDREN BORN IN JAIL**

### **INTRODUCTION**

Family stability and structure can be affected by a parent's imprisonment, which can make things difficult financially for the family. The death of a key provider or income can put financial hardship on the family, making it challenging to satisfy necessities like food, shelter, and healthcare. Children may be left without the required care and supervision due to this economic volatility, which can be very difficult for them. Financial hardships are made more difficult when a primary provider passes away or loses their job due to jail. This makes it difficult to satisfy necessities like food, shelter, and medical care. The subsequent instability in the economy might exacerbate the difficulties faced by children by depriving them of critical care and supervision.

Due to their parent's being imprisoned children of prisoners may also experience social stigma and prejudice, which can lead to isolation, ostracism, and restricted access to social assistance. They could endure mental pain because of being away from their parent and the difficulties they deal with daily, including anxiety, sadness, and trauma. Children may occasionally be required to leave school early to work or begging on the streets to support themselves or their families.

An arrestee's legal proceedings are an essential place to start when trying to comprehend their family's circumstances. As such "Children of Incarcerated Parents" refers to several subgroups:

- (i) Children born to mothers in custody.
- (ii) Minors permitted to stay with their mothers while they are in police or prison custody, including nursing babies.
- (iii) Children taken outside (either before or after they reach the legal age restriction) while their mother is behind bars.
- (iv) Children placed in detention facilities alongside their mothers.
- (v) Children who are brought into custody alongside their mothers and are later freed on bond, exonerated, or when their sentences are served.
- (vi) The adult, occasionally married children of prisoners.
- (vii) Minors left outdoors when one or both parents are arrested.
- (viii) Children of individuals in custody who are adults or minors from a prior marriage. children who grow up while their parent is behind bars.

Among these, minor in prison are particularly vulnerable. Whether convicted or awaiting sentencing, a female prisoner is lawfully allowed to have her very small children with her. This usually pertains to kids under five, though there may be exceptions depending on local administrative laws. These facilities typically do not hold male inmates, underscoring the notion that newborns and young children need their mothers' presence. Children are typically only admitted to and housed in prison for a certain amount of time.

It is commonly accepted that a male prisoner may have a wife or female relatives who can care for young children. However, there have been rare cases where jail administrations allowed a widower to bring his young son into prison. When detained men in need of help with their young children are shown to magistrates, some of them express sympathy. The length of the children's stay varies according to how long their mother has been imprisoned. Some just stay for a short while, while others might stay for a longer amount of time. Amazingly, there are instances where children were conceived while incarcerated, meaning that their upbringing was not typical of "normal" life.

## LEGAL IMPLICATIONS ON CHILDREN BORN IN JAIL: NAVIGATING COMPLEX CHALLENGES

During the ten years before 2019, the issue of children in India who have mothers who are imprisoned was of great concern. An average of 1,586 women prisoners, or 9% of the total, had children living with them. Three quarters of these moms were undertrials, according to a study of data from the National Crime Records Bureau (NCRB)<sup>9</sup>. There were 1,543 female inmates with their kids in 2019 alone. Of note, fifteen Indian states and union territories have thirty-one women’s jails, whilst twenty-one states and union territories do not have distinct facilities for female inmates. About one in ten of the women undertrial in 2019 were mothers. It is important to note that seven in ten of the 478,600 inmates in Indian jails were awaiting trial.

According to the most recent Prison Statistics India Report 2020<sup>10</sup>, of the 20,046 women prisoners in the nation as of December 31, 2020, 1,427 had 1,628 children.

Of these, 1,184 of the female inmates were undertrial detainees who had 1,345 kid companions, and 214 of the male inmates were convicted of a crime and had 246 child companions. The largest number of women incarcerated with children is found in Uttar Pradesh (397 women with 452 children), followed by West Bengal, Madhya Pradesh, and Bihar.

According to Indian law, children born in jail are regarded as being “under trial” with their mothers until the mother’s trial is over. The same rules and regulations that apply to adult inmates apply to them as well, making them essentially incarcerated alongside their moms<sup>11</sup>. Currently, mothers can be detained inside the jail with their children up to the age of six. If no one in the prisoner’s family is willing to care for the child, those over the age of six are sent to facilities managed by state departments of women and child welfare.

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<sup>9</sup>S Paliath and P Acharya, ‘Living with Imprisoned Mothers, Children Struggle for Normal Childhood’ (Indiaspend, 7 October 2020) <<https://www.indiaspend.com/8-women-prisoners-children-live-with-them-heres-how-the-system-fails-them/>> accessed 10 November 2023

<sup>10</sup>G Panda and S Chachra, ‘Why Children of Incarcerated Parents Need Special Attention’ (Down To Earth, 19 April 2022) <<https://www.downtoearth.org.in/blog/governance/why-children-of-incarcerated-parents-need-special-attention-82451#:~:text=Odisha%20guidelines&text=Children%20in%20the%20age%20group,with%20integrated%20child%20protection%20schemes.>> (accessed 17 November 2023)

<sup>11</sup>S Joy, ‘Babies Born in Jail Should Stay with Mothers for 12 Years: Parliament Panel to Govt’ (Deccan Herald) <[Babies born in jail should stay with mothers for 12 yrs: Parliament panel to govt \(deccanherald.com\)](https://www.deccanherald.com/)> accessed 10 November 2023

It is recognized by the Convention on the Rights of the Child that a child cannot be unlawfully deprived of her freedom. According to Article 37<sup>12</sup> of the Convention, incarcerating minors is a measure of last resort. Additionally, India has ratified the Convention, which gives it a global duty to guarantee that the human rights of every child in its care are realized. It places an obligation on India to ensure that the norms and values of the International Convention are reflected in its domestic legislation.

Furthermore, the State is required by Article 39(f)<sup>13</sup> of the Indian Constitution to provide a healthy environment that allows children to be free, live with dignity, and not be exploited.

Following their release from custody, these kids can have legal challenges that will make it challenging for them to reintegrate into society. For example, they may struggle to obtain government identification documents such as birth certificates and Aadhaar cards, which are essential for accessing education, healthcare, and other basic services. Due to their past, they could also experience prejudice and stigma, which might restrict their options for work and upward social mobility.

Children born in jail may also experience long-term repercussions due to their criminal record in addition to these legal obstacles. Even if they were not involved in their mother's crime, they can still be referred to as "children of criminals" and subject to prejudice from the public. Indian legislators and legal authorities have put various steps into place to handle these legal implications and protect infants born in prison. The Juvenile Justice (Care and Protection of Children) Act of 2015, for instance, calls for the construction of specific houses for kids who have run afoul of the law, including those who were born in jail. To assist these kids in reintegrating into society, these homes offer counselling services, educational and vocational training, and other sorts of support.

All things considered, the legal consequences for children born in jail in India are complicated and multifaceted, necessitating a coordinated and multidisciplinary response from policymakers, the legal system, and civil society.

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<sup>12</sup>Convention on the Rights of the Child 1989, Art 37

<sup>13</sup>Constitution of India, Art 39(f)



## **STRATEGIES FOR POLICYMAKERS AND PRISON ADMINISTRATORS IN INDIA FOR CHILDREN BORN IN PRISON**

A comprehensive approach involving policymakers, prison administrators, civil society organisations, and other stakeholders is necessary to improve the living circumstances and prospects of children born in jail in India. Here are some tactics to consider:

- (i) **Facilitating access to both education and employment training:** Giving children born in prison access to school and skill training which will help them in employment is one of the most crucial things one can do to help them out. Their chances of finding jobs and assimilating into society can be improved by giving them the knowledge and skills needed to thrive in life.
- (ii) **Addressing health and nutrition needs:** Children born in jail may not have access to proper healthcare, nutrition, and hygiene facilities. To enhance these kids' general health and wellbeing, policymakers and jail officials can cooperate to give them access to these necessities<sup>14</sup>.
- (iii) **Creating child-friendly environment:** It is important for children who are born in prison to have access to environments that support their development. Along with secure and comfortable sleeping arrangements, this can also feature areas for entertainment and play.
- (iv) **Addressing legal barriers:** Legal obstacles may exist for children born in prison, which may make it difficult for them to reintegrate into society. Providing access to identifying documents and addressing concerns with criminal histories are two ways that policymakers and legal authorities might attempt to remove these obstacles.
- (v) **Promoting family-based care:** When practicable, family-based care should be chosen over institutional care for children born in prison. This can assist in giving children the love, security, and support they require to prosper and flourish in life.

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<sup>14</sup>CJ Children et al, 'Mothers and Children in Prison: NGOs Help, but Better Implementation of Policies Needed – the Leaflet' (TheLeaflet, 14 December 2023) <<https://theleaflet.in/mothers-and-children-in-prison-ngos-help-but-better-implementation-of-policies-needed/>> (accessed 20 December 2023)

## **COMPARATIVE PERSPECTIVES: EXPERIENCES OF INDIAN CHILDREN BORN IN PRISON VERSUS OTHER INSTITUTIONAL SETTINGS**

Children born in refugee camps, orphanages, and Indian prisons are three examples of vulnerable populations that encounter difficulties and hardships. Although these groups share certain commonalities, they also significantly differ from one another.

Children in India who are born in prison frequently grow up in a difficult and stigmatised environment. After birth, they might not be reunited with their mothers, and they might encounter social and legal obstacles to reintegrating into society. They might also have trouble accessing fundamental services like healthcare, education, and other necessities. In addition, their experiences in jail may put them at risk for developing psychiatric and behavioural problems.

Children born in camps for refugees confront a special set of difficulties. They might have gone through trauma and displacement, and they might not have access to needs like shelter, food, and water. Overall, despite certain similarities, each group of children faces difficulties that call for specialised support and solutions. This is especially true with children born in refugee camps, orphanages, and Indian prisons. When creating interventions to assist a group's growth and well-being, policymakers, practitioners, and civil society organisations must take that group's unique needs and experiences into account.

### **IMPACT OF INCARCERATION ON EXPECTANT MOTHERS AND UNBORN CHILDREN IN INDIA**

In India, jail can have a severe negative effect on expectant mothers and their unborn children. Several difficulties confront women in prison, such as poor housing conditions, insufficient access to healthcare, and little help from family and friends<sup>15</sup>. The health and wellbeing of the mother and the unborn child may suffer because of these difficulties.

In India, incarceration can have the following specific effects on expectant mothers and their unborn children:

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<sup>15</sup>Centre For Mental Health Law, 'Becoming a Mother behind Bars' (The Citizen, 24 December 2021) <[https://www.thecitizen.in/index.php/en/NewsDetail/index/15/21252/Becoming-a-Mother-Behind-Bars?infinite\\_scroll=1](https://www.thecitizen.in/index.php/en/NewsDetail/index/15/21252/Becoming-a-Mother-Behind-Bars?infinite_scroll=1)> (accessed 10 November 2023)

- (i) Inadequate prenatal care: Pregnant women who are incarcerated could not have access to the necessary prenatal care, which raises the risk of difficulties during pregnancy and childbirth. The health of the unborn kid may potentially be affected by this.
- (ii) Nutritional deficiencies: Pregnant women who are incarcerated could not have access to a healthy diet, which could influence the health of both the mother and the foetus. Low birth weight, early birth, and other issues may result from this.
- (iii) Anxiety and stress: Being imprisoned can negatively affect a pregnant woman's mental health, which can then influence the health of the unborn child. Preterm labour, low birth weight, and other issues are made more likely by stress and worry during pregnancy.
- (iv) The separation of mothers and babies: Frequently, mothers who are incarcerated are split up from their infants soon after they are born. This may hinder the bonding process between mother and child and may be detrimental to both the mother's and the child's emotional health<sup>16</sup>.
- (v) Limited postnatal care access: Women incarcerated might not have access to sufficient postnatal care, which could affect their ability to recover after childbirth and the wellbeing of their infants.

Overall, prison can have considerable negative effect on expectant mothers and their unborn children. To solve these issues and guarantee that pregnant women in prison have access to proper medical treatment, nutrition, and support, it is crucial for politicians and prison administrations to act. This can enhance successful family outcomes by enhancing the health and well-being of both the mother and the child.

Begging puts children in dangerous situations and is frequently a last alternative for survival; therefore, it's important to look closely at the problems that these children confront and the legal ramifications that follow. For these children, the instability of family structures brought about by a parent's incarceration adds still another level of difficulty.

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<sup>16</sup>A study of condition of women prisoners & their children in Eastern UP' <A\_Study\_of\_condition\_of\_Women\_Prisoners\_and\_Their\_Children\_in\_Eastern\_UP\_Jails.pdf (ncwapps.nic.in)> (accessed 10 November 2023)

## CONCLUSION

The situation of children who are born into jail or are made to beg on the streets emphasizes how urgently comprehensive legal, social, and policy remedies are required. The legal ramifications for Indian jail-born children create a complicated environment that need concerted measures to address the special issues they face both during and after their confinement. To improve the lives of these kids, legislators and prison officials need to work together to guarantee that they have access to healthcare, education, and a nurturing environment.

The connections between the situations of children compelled to beg and those of children incarcerated underscore the fragility of these impressionable lives. Human trafficking, exploitation, and a variety of physical and mental health problems can result from any scenario. In addition to targeted policies that emphasize family-based care, health, and education, efforts to ameliorate the situation should also include legal measures.

To tackle the problem of street begging by minors, it is imperative to implement awareness campaigns, enhance law enforcement, and provide appropriate legal frameworks. For these at-risk kids, safety and rehabilitation can be greatly aided by the execution of current legislative programs and the development of cooperative projects. Preventing and combating child begging and trafficking requires bolstering job and educational options as well as establishing collaborations between governmental and non-governmental organizations.

To stop the cycle of vulnerability and exploitation that these children experience, a multifaceted strategy incorporating legal, social, and legislative elements is crucial. It is essential for society, legislators, law enforcement, and civil society organizations to work together to guarantee every kid, no matter what their circumstances, the protection, rights, and well-being they deserve.

# INTERPLAY OF CHILDREN IN POVERTY, HOMELESSNESS AND CHILD LABOUR

Priyal Palak\*

## Five random pictures of children chosen from the web



Figure 1 <https://www.parentcircle.com/effects-of-beating-hitting-slapping-a-child/article>

**Feeling :** Anger

**Thought :** When I initially saw this picture, I was angry rather than depressed. They are sitting on piles of rubbish and debris, their small bodies barely making a dent in the mountains of waste but their passion to study is impressive.

**Feeling :** Happy

**Thought :** He is a working child, but he has a genuine smile which shows that he is happy and satisfied. It could be a possibility that he is going to school, plays properly, and has a happy childhood but he is doing the job in the evening just to support his parents' economic condition. However, the only good thing is that the work he is doing here is non-hazardous.



Figure 2 <https://thesociologicalcinema.tumblr.com/post/82897240638/children-study-in-a-yard-with-scrap-collected-for>



Figure 3 <https://www.smilefoundationindia.org/blog/pandemic-inverts-movement-against-child-labour/>

**Feeling :** Sad

**Thought :** The child is a victim of child abuse. The father needs therapy to learn how to raise a child. The child would also require attention to resolve the traumas inflicted by the abuse that he faced.

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**Feeling :** Satisfied

**Thought :** The children look underprivileged, but they are happy and satisfied. It looks like they are playing and enjoying themselves during the break hours of their school. It could also be possible that they bunked school despite the government and their guardians ensuring they have the benefit of going to school.



Figure 4 <https://www.indianyouth.net/indians-discourage-children-playing-sports/>



Figure 5 <https://scroll.in/article/727922/one-child-dies-every-minute-of-severe-acute-malnutrition-how-can-india-save-them>

**Feeling :** Hopeless

**Thought :** The child is malnourished. The possible ways to save him from dying seems to be urgent medical attention and providing the child with basic nutrition.

I have chosen to focus on the interplay of children in poverty, homelessness, and Child labour.

## INTRODUCTION

The first picture depicts the legal issues regarding the homelessness of children who are eager to learn and get an education. According to research by the Institute of Global Homelessness,<sup>1</sup> there are three main types of homelessness: those who are homeless due to a lack of housing, those who are homeless due to temporary or crisis housing, and those who are homeless due to extremely insufficient or unsafe housing.

The Office of the United Nations High Commissioner for Human Rights<sup>2</sup> has also stated that “Being homeless means not having stable, safe, and adequate housing, nor the means and ability to obtain it.” The author further elaborated on the causes of homelessness like poverty, displacement, and family breakdown as some of the key factors. The author feels that such a situation is multifaceted and complex. There are several instances when many children end up on the streets after being abandoned by their families or fleeing abuse and neglect. Homeless children in India face a range of challenges, including a lack of access to education. They are also at a higher risk of exploitation, including forced labour, trafficking, and sexual abuse. Homeless children are also more vulnerable to health problems due to exposure to unsanitary conditions, malnutrition, and lack of access to healthcare.

In 2011, a census report<sup>3</sup> indicated that approximately 1.77 million people in India were without homes. This included over one million males, over 700,000 females, and nearly 270,000 children. An NGO called Rainbow Homes,<sup>4</sup> which has worked with impoverished children in Ten Indian Cities for more than 20 years, has calculated that there are around 18 million street children. Save the Children conducted a census survey called “Spotlight on The Invisibles” across 10 cities, and identified that 202,765 children in “street situations.”<sup>5</sup>

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<sup>1</sup>Institute of Global Homelessness, ‘A Global Framework for Understanding Homelessness’ < <http://ighomelessness.org/wp-content/uploads/2019/10/globalframeworkforunderstanding.pdf> >(accessed on 17 March 2023)

<sup>2</sup>OHCHR (Office of the United Nations High Commissioner for Human Rights), ‘Homelessness and Human Rights’ < <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights> >(accessed on 17 March 2023)

<sup>3</sup>Census 2011 India, ‘Houseless Population 2011’ (Houseless, Population without homes) < <https://www.census2011.co.in/houseless.php> >(accessed on 18 March 2023)

<sup>4</sup> Rainbow Homes Program < <https://website.rainbowhome.in/> > (accessed on 17 March 2023)

<sup>5</sup>“Spotlight on Street Children Provided by Bal Raksha Bharat’s Study across 10 Cities, Bal Raksha Bharat (November 27th 2019) < <https://balrakshabharat.org/blog/news/spotlight-on-street-children-provided-by-save-the-children-study-across-10-cities/> >(accessed on 17 March 2023)

Surprisingly, there is a large disparity between the figures provided by these two NGOs, which highlights the need for a centralised database (either done by the Central government or by all the State Governments). This is especially crucial as the number of street kids varies a lot because of their nomadic lifestyle.

Child labour is the new problem that is depicted in the next image. Does this youngster's job truly qualify as Child labour? The phrase "Child labour" is often used to describe employment that stunts children's physical and mental development and robs them of their youth, potential, and dignity. The question of whether a given type of "work" qualifies as "Child labour" depends on several variables, such as the age of the child, the type and length of the job, the working environment, and the objectives of distinct countries. It is inappropriate to refer to every labour by children as Child labour. Most people see it favourably when kids or teenagers who are older than the legal working age pursue jobs that do not endanger their health, development, or education.<sup>6</sup> A Child under the age of fourteen who works in dangerous conditions is said to be engaged in child labour in India.<sup>7</sup> According to the 2011 Indian national census, the total number of children between the ages of 5 and 14 who work as child labourers is estimated to be 10.12 million. This number is a fraction of the 259.64 million children in the same age bracket. It is important to remember that child labour is not only a problem in India; there are almost 217 million youngsters working worldwide, and many of them work full-time.<sup>8</sup> The issue of child labour remains a persistent challenge for the country. The government has implemented various proactive measures to address this problem. Nonetheless, given the scale and complexity of this socio-economic issue, which is closely intertwined with poverty and illiteracy, it necessitates collective action from all segments of society to effect meaningful change.

A child under the age of fourteen who works in dangerous conditions is said to be engaged in Child labour in India. According to the 2011 Indian national census, the total number of children between the ages of 5 and 14 who work as child labourers is estimated to be 10.12 million. This number is a fraction

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<sup>6</sup>International Labour Organization, 'ILO-IPEC: Child Labour Facts' < <https://www.ilo.org/ipec/facts/lang--en/index.htm> > (accessed on 17 March 2023)

<sup>7</sup>Constitution of India 1950, Art 24

<sup>8</sup>Ministry of Labour & Employment, 'श्रम एवं रोजगार मंत्रालय' (About Child Labour Ministry of Labour & Employment) < <https://labour.gov.in/childlabour/about-child-labour> > (accessed on 17 March 2023)



of the 259.64 million children in the same age bracket. It is important to remember that child labour is not only a problem in India; there are almost 217 million youngsters working worldwide, and many of them work full-time.<sup>9</sup> This progress has been supported by important laws, policies, and programs. However, there are still challenges that need to be addressed which would be discussed later. While an estimated 6.1 million children were not in school in 2014, this number has decreased from 13.46 million in 2006. Dropout rates remain high, with 29% of boys and girls leaving school before completing elementary education, especially among marginalized children.<sup>10</sup> Furthermore, around 20 million children do not attend preschool, and nearly 50% of teenagers do not complete their secondary education.<sup>11</sup> Furthermore, around 50 million primary school students, or nearly half of the student body, are not meeting grade-appropriate learning standards.<sup>12</sup> Additionally, children's preparedness for school at age five has not been up to par.<sup>13</sup>

## LEGAL PROVISIONS

The main issue in these pictures is poverty. Poverty is more of a socio-economic issue rather than a legal issue. However, poverty results in inability to access basic needs such as shelter. Further it limits an individual's ability to access education which has a long-term impact such as reduced employment opportunities and decreased income.

There are several articles in the Indian Constitution that protect the education and well-being of homeless children. The Indian Constitution's Article 19(1)(e)<sup>14</sup> read in conjunction with Article 21 of the Constitution of India recognises the right to shelter as a basic right<sup>15</sup>. Article 19(1)(e) of the Indian Constitution guarantees all citizens the right to live and settle anywhere in the country.<sup>16</sup> This implies that children who are homeless also have the freedom to live wherever in the country and have access to necessities like food, housing, and medical treatment. Every person, including homeless

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<sup>9</sup> "Child Labour – ILO," United Nations 2011

<sup>10</sup> SRI-IMRB Surveys, 2009 and 2014

<sup>11</sup> Rapid Survey of Children 2013-2014 MWCD

<sup>12</sup> National Achievement Survey, NCERT 2017

<sup>13</sup> UNICEF India, 'Education' < <https://www.unicef.org/india/what-we-do/education> > (accessed on 18 March 2023)

<sup>14</sup> Constitution of India 1950, Art 19(1)(e)

<sup>15</sup> (2022) SCC OnLine Del 1875

<sup>16</sup> Constitution of India 1950, Art 19(1)(e)

children, is guaranteed the right to life and personal liberty under Article 21 of the Indian Constitution.<sup>17</sup> This implies that everyone has the right to a decent existence and defence against violence and other forms of harm, including homeless children. Everybody has the right to a decent, safe place to live that is equipped with enough room, is in excellent repair, and has access to necessities like power and sanitary facilities. This privilege is a component of the larger right to life.<sup>18</sup>

Furthermore, the right to education is strongly protected by Indian laws and legislation. Article 21A<sup>19</sup> guarantees children the Right to Education. It says that every child between the ages of six and fourteen has a basic right to free and compulsory education, which the state may offer in whatever manner it deems appropriate by law. An essential freedom, the right to education was established by the 86th amendment to the Indian Constitution in 2002, which altered Part III of the document. Article 24 of the Indian Constitution further forbids the employment of minors younger than 14 in any dangerous job, including mines and industries. With the help of education and the chance to grow up in a secure and healthy environment, this provision seeks to shield children from emotional and physical abuse.<sup>20</sup> Article 39 also requires the state to make sure that workers—regardless of gender—are not abused in terms of their health and strength and that, as a result of financial hardship, minors are not compelled to work at positions that are too old or too skilled for them. It acknowledges the significance of safeguarding society’s most vulnerable citizens, advancing their well-being, and avoiding exploitation.<sup>21</sup>

The problem of homelessness and education is not just limited to India. As such, India is subject to several international regulations. India has ratified or is a state party to several international agreements and conventions that uphold and defend children’s rights to education and housing, such as the Universal Declaration of Human Rights 1948 (UDHR 1948), the International Covenant on Economic, Social, and Cultural Rights 1966 (ICESCR 1966), and the United Nations Convention on the Rights of the Child 1989 (UNCRC 1989).

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<sup>17</sup>Constitution of India 1950, Art 21

<sup>18</sup>*Chameli Singh v State of UP*, (1996) 2 SCC 549

<sup>19</sup>Constitution of India 1950, Art 21A

<sup>20</sup>Constitution of India 1950, Art 24

<sup>21</sup>Constitution of India 1950, Art 39

India is a signatory to the United Nations Declaration of Human Rights 1948 (UDHR 1948), which upholds the rights to sufficient living conditions and education. The UDHR 1948 affirms that every individual has the right to a living standard sufficient for their own and their families' health and well-being, which includes housing.<sup>22</sup> No one shall be kept in slavery or servitude, according to Article 4 of the Universal Declaration of Human Rights 1948, and everyone has the right to work under fair and comfortable circumstances, including protection against exploitation, according to Article 23 of the same document.<sup>23</sup>

With few exceptions for developing countries, the minimum age for work is established at 15 years old, as stipulated in the International Labour Organisation (ILO) Convention 138, 1973. According to the treaty, employers that hire children younger than the legal age must take action to prevent and end Child labour. According to the treaty, employers that hire children younger than the legal age must take action to prevent and end Child labour.<sup>24</sup>

The Factories Act of 1948 prohibits the employment of children who are under 14 years of age in any factory. Moreover, this legislation regulates the employment of young people between the ages of 15 and 18 in factories by establishing specific rules about who can work, when they can work, and for how long.<sup>25</sup> Similarly, the Mines Act of 1952 prohibits the employment of children under the age of 18 in mines.<sup>26</sup>

India ratified the ICESCR 1966 in 1979, and Articles 10, 13, and 14 guarantee the right to education.<sup>27</sup> The 'covenant's Article 13 also contains guidelines for further education, secondary education, and basic education. To achieve sustainable development by 2030, the United Nations General Assembly approved the Sustainable Development Goals (SDGs), of which India is a signatory. The SDGs are a collection of 17 global goals. The Sustainable Development Goals (SDGs) contain a goal on high-quality education (Goal 4) and a goal on sustainable cities and communities (Goal 11), which includes a target to guarantee that everyone has access to basic

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<sup>22</sup>Universal Declaration of Human Rights 1948, Art 25

<sup>23</sup>Universal Declaration of Human Rights 1948, Arts 4 and 23

<sup>24</sup>International Labour Organization Convention 138, 1973

<sup>25</sup>The Factories Act 1948

<sup>26</sup>The Mines Act 1952

<sup>27</sup>International Covenant on Economic, Social, and Cultural Rights 1966, Arts 10, 13, and 14

services and appropriate, safe, and affordable housing.<sup>28</sup>

The UNCRC 1989, which acknowledges the right to education and the right to a living standard sufficient for a child's "physical, mental, spiritual, moral, and social development," was ratified by India in 1992. The agreement also acknowledges a child's right to appropriate shelter and the best possible quality of health.<sup>29</sup> The issue of Child labour has also been discussed in UNCRC 1989. According to Article 32 of the United Nations Convention on the Rights of the Child 1989, countries must safeguard children from economic exploitation and prevent them from working in jobs that could endanger their health or interfere with their education, mental, spiritual, moral, or social development.<sup>30</sup>

ILO Convention 182, 1999 addresses the worst forms of child work, including forced labour, slavery, human trafficking, and hazardous employment. According to the treaty, countries must take action to end these cruellest types of Child labour and to protect and rehabilitate the children who have engaged in it.<sup>31</sup>

Every one of these international treaties highlights the value of safeguarding children's rights and welfare, including their right to health care, education, and protection from exploitation, in addition to these specific provisions.

Apart from the previously mentioned provisions under various laws, there are further legislations, policies and schemes that discuss the protection of homeless children, their access to education and protection from being employed in dangerous activities.

Since 1997, the Ministry of Housing and Urban Poverty Alleviation (MHUPA) has been running this centrally sponsored program called Swarna Jayanti Shahari Rozgar Yojana (SJSRY), which was later rebranded as Deendayal Antyodaya Yojana - National Urban Livelihoods Mission in September 2013. From September 24, 2013, the NULM has been in operation in all district headquarters regardless of population size, as well as in all cities with a population of at least 100,000.<sup>32</sup> Further, The Sarva

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<sup>28</sup>United Nations, 'The 17 Goals | Sustainable Development' < <https://sdgs.un.org/goals> > (accessed on 17 March 2023)

<sup>29</sup>United Nations Convention on the Rights of the Child 1989, Arts 27, 28, and 29

<sup>30</sup>United Nations Convention on the Rights of the Child 1989, Art 32

<sup>31</sup>International Labour Organization Convention 182, 1999

<sup>32</sup>Deendayal Antyodaya Yojana-National Urban Livelihoods Mission < <https://nulm.gov.in/> > (accessed on 20 March 2023)

Shiksha Abhiyan 2001 program of the government of India aims to provide universal elementary education to all children in the age group of 6-14 years in a time-bound manner.<sup>33</sup> The Mid-Day Meal Scheme provides free meals to children in government schools to encourage regular attendance and improve nutrition. This benefits homeless children who may not have access to regular meals.<sup>34</sup>

Right of Children to Free and Compulsory Education Act (RTE) 2009 mandates that every child between the ages of 6 and 14 years has the right to free and compulsory education.<sup>35</sup> The Right to Education (RTE) Rules, 2010 provide for the implementation of the RTE Act and set out the guidelines for the admission and retention of children in schools. They also provide for the provision of free uniforms, textbooks, and mid-day meals to children from economically weaker sections.<sup>36</sup>

The Juvenile Justice (Care and Protection of Children) Act of 2015 addresses the needs of homeless children as well as those children in need of care, protection, and rehabilitation. It also establishes a framework for the juvenile justice system and sets out procedures for the rehabilitation and reintegration of children into society. The Chapter six, seven and eight specifically deals with such children.<sup>37</sup>

The government has established a National Policy on Child Labour, which was announced in August 1987.<sup>38</sup> This strategy presents a thorough approach to dealing with the problem of Child labour. A component of the strategy was the passage of the Child Labour (Prohibition and Regulation) Act of 1986, which defines a “Child” as a person under the age of fourteen and forbids the employment of minors in any capacity, including domestic help, except for non-hazardous occupations within their own family. Employing a Child for any work is a serious criminal offence under this law. However, those who fall between the ages of 14 and 18 are categorised as “Adolescents,” and they are permitted to work in non-hazardous jobs provided they are not involved in any of the hazardous processes listed,

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<sup>33</sup>Sarva Shiksha Abhiyan < <https://web.archive.org/web/20111004220502/http://ssa.nic.in/> > (accessed on 20 March 2023)

<sup>34</sup>Pradhan Mantri Poshan Shakti Nirman < <https://pmposhan.education.gov.in/> > (accessed on 20 March 2023)

<sup>35</sup>Right of Children to Free and Compulsory Education Act, 2009

<sup>36</sup>Right to Education (RTE) Rules, 2010

<sup>37</sup>The Juvenile Justice (Care and Protection of Children) Act 2015

<sup>38</sup>National Policy on Child Labour 1987

which include mining, work involving flammable materials and explosives, and other dangerous procedures as specified by the Factories Act of 1948.<sup>39</sup> This Act was revised in 2016 to outright forbid hiring minors under the age of 14. Additionally, youngsters might only work during breaks from school or after school under specific guidelines. Under this amendment, minors under the age of 14 will only be permitted to work in family businesses or enterprises provided they pose no risk to others. The contravention of the provisions has been further made to be cognizable and non-bailable.<sup>40</sup>

## JUDICIAL PRECEDENTS

The Indian judiciary has been vigorous in enforcing legislation that benefits disadvantaged children.

In the *Chameli Singh v State of UP*,<sup>41</sup> it upholds the right to shelter as a basic right. Again, the *Mohini Jain v State of Karnataka case*<sup>42</sup> is a seminal work in the development of the basic right to education. The court noted that although the Right to Education is not specifically mentioned in the Constitution as a fundamental right, the Directive Principles and Preamble make it clear that the state has a responsibility to educate its citizens, and that the state's ability to do so is based on its financial resources.

In *Dr. Ashwani Kumar v Union of India and Ors*,<sup>43</sup> According to a ruling by the Indian Supreme Court, the right to life includes the right to live with human dignity, which involves having access to basic amenities such as enough food, clothes, and shelter as well as educational materials that allow people to express themselves freely and engage with others. *The Unni Krishnan v State of A.P.*<sup>44</sup> instances shown that every child has a basic right to free education up until the age of 14, and that the right to education is implicit in Article 21.

In *M.C. Mehta v State of TN*,<sup>45</sup> the use of Child labour in hazardous industries was declared unlawful, and the Supreme Court issued directives to that end. The lawsuit began in 1991 when M.C. Mehta, an Indian attorney, filed a

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<sup>39</sup>The Child Labour (Prohibition and Regulation) Act 1986

<sup>40</sup>The Child Labour (Prohibition and Regulation) Amendment Act 2016

<sup>41</sup>(1996) 2 SCC 549

<sup>42</sup>(1992) AIR 1858

<sup>43</sup>(2020) 13 SCC 585

<sup>44</sup>(1993) 1 SCC 645

<sup>45</sup>AIR (1997) SC 699

Public Interest Litigation (PIL) petition asking the court to act to outlaw hazardous Child labour in the country. The case brought attention to the tragic plight of children working in dangerous environments and compelled the government to acknowledge the problem and take steps to address it. In the end, the Supreme Court's decision in this case has significantly contributed to protecting children's rights in India and reducing the use of Child labour in dangerous sectors.

In the case of *Oriental Insurance Co. Ltd. v Rathnamma*,<sup>46</sup> It was ruled that employers who hire children will be held accountable and subjected to punishment under section 14 of the Child Labour (Prohibition and Regulation) Act, 1986. The court's decision in this case is significant because it strengthens the legal protections for children and ensures that employers who exploit them are held accountable for their actions.

## CONCLUSION

Laws are already in place to protect the rights of underprivileged children. The implementation is where the work is to be done. Capacity building of the government agencies responsible for implementing these laws can help to ensure that they have the knowledge, skills, and resources needed to carry out their responsibilities effectively. This could include training, mentoring, and providing access to resources and tools. Regular monitoring and evaluation of the implementation of these laws can further help to identify areas where improvements are needed and ensure that they are being implemented effectively. This could include conducting surveys, collecting data, and conducting regular audits. Collaboration between government agencies, NGOs, and other stakeholders can help to ensure that resources are being used effectively and efficiently. By working together, these groups can share information, resources, and expertise to develop effective strategies for implementing these laws. It could also involve community leaders, parents, and other stakeholders in the development and implementation of programs and policies. Holding government agencies and other stakeholders accountable for the effective implementation of these laws can help to ensure that they are being taken seriously. This could include establishing mechanisms for reporting violations of these laws, providing incentives for compliance, and enforcing penalties for non-compliance.

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<sup>46</sup>(2000) (86) FLR 330

Furthermore, improving the infrastructure of schools, particularly in rural and low-income areas, can make education more accessible. This could include building new schools, providing electricity, and ensuring that schools have adequate classrooms, libraries, and playgrounds. Increasing funding for education can also help to ensure that schools have the resources needed to provide quality education. This could include increasing the budget for education, providing scholarships to students from low-income families, and providing financial support to schools in underprivileged areas. Raising awareness about the negative effects of Child labour on children and society can help change social attitudes towards it. This can be done through public awareness campaigns and media coverage. Collaboration between governments, NGOs, and other stakeholders can help to address the issue of Child labour more effectively. This can be done by sharing resources and expertise and working together to implement effective solutions.

Governments should enforce and strengthen laws that prohibit Child labour, especially in hazardous industries. This can be done by increasing penalties for employers who employ children and by improving the monitoring and enforcement of existing laws. Governments and NGOs should also create alternative opportunities for families who rely on the income of their children. This can be done by providing vocational training, microfinance programs, and job placement services for adults.



# HIDDEN VICTIMS: EXPLORING THE INTERSECTION OF CHILD PORNOGRAPHY EXPOSURE AND THE DEVELOPMENTAL CHALLENGES FACED BY CHILDREN WITH INCARCERATED MOTHERS

Kanishtha Daswani\*

## Five random pictures of children chosen from the web



Figure1 <https://twitter.com/Morbidful/status/1745914770677502002>

**Feeling :** Hopelessness

**Thought :** The picture of the vulture and the little girl is a haunting and powerful image that can evoke various emotions. I'm sad, emphatic, and depressed because of the stark contrast between the child's vulnerability and the natural world's apparent indifference.

**Feeling :** Happiness

**Thought :** This is a photo from my childhood of me performing at my school's annual day. It takes me back to when my self-expression was more spontaneous and uninhibited.



Figure 2 My own Picture



Figure 3 <https://www.shutterstock.com/image-photo/y-ty-lao-cai-province-viet-334424960>

**Feeling :** Content

**Thought :** This image depicts children riding on a plank of wood. I admire and respect children who can find joy and happiness despite having very few resources. This image reminds me to be content and find happiness in the smallest of things.

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**Feeling :** Disgust

**Thought :** This image evokes a series of different emotions. I feel guilty and disgusted by the present state of affairs wherein we have failed miserably in our duty towards protecting children around the world.



Figure 4  
<https://m.timesofindia.com/india/377-websites-hosting-child-porn-material-taken-down/articleshow/72274294.cms>



Figure 5  
<https://criminallawstudiesnluj.wordpress.com/2020/07/14/open-jails-for-women-the-disguised-discrimination/>

**Feeling :** Discomfort

**Thought :** This picture invokes a feeling of sheer sadness as it reminds me of my previous encounter with such children during my visit to Jharpada Jail as a part of my legal aid visit. As they are not seen as victims when their parents are behind bars, children of incarcerated parents are a group that suffers from severe emotional, behavioural, and psychological suffering.

I have chosen to focus on hidden victims: exploring the intersection of Child pornography exposure and the developmental challenges faced by children with incarcerated mothers.

# PART 1: CHILD PORNOGRAPHY

## INTRODUCTION

One of the acknowledged definitions of pornography in today's society is sexually apparent information (verbal or visual), which is primarily intended to arouse viewers' sexual urges. When evaluative judgements are applied to this concept, pornography is seen as sexually explicit content that is bad in a particular way and intended to arouse customers' desire for sexual activity.<sup>1</sup>

Child pornography is the publication and electronic transmission of children's pornographic material. The easy availability of the internet and online films has led to an upsurge in Child pornography in the past few years. Child pornography has motivated numerous other crimes including sex tourism, Child sexual assault, etc.

In practically all Western cultures, there are harsh penalties for Child pornography creators and suppliers, often involving imprisonment, with lesser sentences for non-commercial dissemination based on the volume and nature of the content that is released.<sup>2</sup> Prison penalties are typically imposed on people found guilty of having Child pornography, but for first-time offenders, those sentences are frequently commuted to probation.<sup>3</sup>

Although popularity of Child pornography has shifted more recently to Southeast Asia, the Netherlands and the United States still ranks among the areas with the highest consumption.<sup>4</sup> The invention and accessibility of house videos, video cameras, laptops and programmers, thereby rendering the manufacturing of Child pornography comparatively affordable, and secondly, the advancement of Internet technology, which has raised the convenience of making and distributing of this content to astounding extremes, are the primary factors behind the growth of Child pornography.<sup>5</sup>

Governments and law enforcement agencies from all over the world have made several attempts to restrict the accessibility of pornographic

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<sup>1</sup>Robert M Helfend, 'What Is Child Pornography' (Justia, 2021) <<https://www.robertmhelfend.com/criminal-defense/sex-crimes/what-is-child-pornography/>>(accessed on 10 April 2023)

<sup>2</sup>ibid.

<sup>3</sup>Dr Samir Bhadury, 'Child Pornography in India: Issues and Challenges' (2022) 6 JPSP <<https://journalppw.com/index.php/jpsp/article/download/8639/5646/9974>> (accessed on 10 April 2023)

<sup>4</sup>'The Annual Report' (IWF 2022) <<https://annualreport2022.iwf.org.uk/>> (accessed on 11 April 2023)

<sup>5</sup>ibid

information on the Internet. Cyber pornographic material on internet sites is a problem that has not been adequately addressed by sociological frameworks of aberrant behaviour.

Making laws does not equate to having them enforced. Although there are many nations which have appropriate anti-child pornography legislation, they are rarely enforced. Additionally, maintaining order in a worldwide operation like the Internet requires monitoring users from nations with wildly diverse domestic legal systems, cultures, and social mores. Notwithstanding the seemingly insurmountable nature of these obstacles, it is crucial to remember that Child pornography is a crime that has victims and is a significant global problem. Technology such as computers is currently being used by more Child abusers to set up, manage, and grow their collections of Child pornography. On the web, specially created illicit photos of minors are very lucrative, and molesters frequently trade pictures of their sexually explicit antics.<sup>6</sup>

### **Legal Provisions in India**

The occurrence of Child sexual assault in India has been on the rise, and it is alarming to learn that a recent survey conducted by the Ministry of Women and Child Development of the government indicates that over 50% of children have experienced abuse.<sup>7</sup> The issue of Child sexual exploitation is not new; it has been prevalent for a very long period of time. Nevertheless, there have been few measures to stop this tendency, which has increased Child sexual abuse.

### **The Indian Penal Code<sup>8</sup>**

The Indian Penal Code is silent on Child pornography, although section 293 of the code forbids the sale, etc., of obscene books to young person. A young individual in this setting would be someone who has not yet reached the age of twenty. Therefore, sharing, disseminating, exhibiting, selling, or renting out any obscene content (as defined in section 292 IPC) to any youth would be illegal under Section 293 of the Code.

### **Protection of Children from Sexual Offences Act, 2012<sup>9</sup>**

<sup>6</sup>“Study on Child Abuse India’ (CRRC 2007) <<https://resourcecentre.savethechildren.net/pdf/4978.pdf/>> (accessed on 11 April 2023)

<sup>7</sup>ibid

<sup>8</sup>Indian Penal Code 1860, s 293

<sup>9</sup>Protection of Children from Sexual Offences Act 2012

The 2012 Protection of Children from Sexual Offences Act was designed to protect minors from crimes pertaining to sexual assault, harassment, and pornography. It also established special courts for the trial of these crimes and any issues that may arise in connection with or as a result of them. Article 15(3) of the Indian Constitution gives the State the authority to enact specific rules for children, gives the Act its authority. According to Article 39(f) of the Indian Constitution, the State is required to direct its policies towards safe guarding children while they are still young to prevent abuse and to protect their childhood and youth from exploitation.

The POCSO Act criminalizes the use of children for pornographic purposes. Now, section 13 of the Act explains what actions are considered to be the usage of a kid for pornographic purposes. The aforementioned provision states that anyone who exploits a Child for sexual enjoyment through any printed or electronic medium, regardless of if it was intended for public consumption or merely for private consumption, is considered to have exploited the Child for pornographic activities. This includes showing a kid's sexual organs, portraying a Child in an offensive way, and involving a youngster in actual or simulated sexual behaviour without first forcing them to be penetrated. Anyone violating Section 13 of the POCSO Act is subject to a minimum 5-year prison sentence as well as a fine under Section 14.

Additionally, the POCSO Act's Section 15 imposes penalties for keeping or having pornographic content involving children.

The act of releasing, disseminating, making, gathering, surfing, downloading, marketing, encouraging, trading, dispersing documenting, etc. of any electronic media that depicts a sexually explicit activity involving a minor is punishable under Section 67B of the IT Act. It also penalizes the development of ties with any Child on the internet for sexually explicit acts and online Child abuse.

## **International Instrumentalities**

Child pornography is a multi-jurisdictional issue that requires an international solution. Uniform laws are required for effectively tackling Child pornography and Child abuse on an international level; laws that differ from nation to nation compromise the fight against Child sexual abuse and allow Child predators to focus their efforts in nations where they understand they can most effectively exploit children.<sup>10</sup>

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<sup>10</sup>Child Pornography: Model Legislation & Global Review' (ICMEC, 2016) <<https://www.icmec.org/wp-content/uploads/2016/02/Child-Pornography>> (accessed on 10 April 2023)

Since it enables uniformity in criminalization and punishment, enhances public awareness of the issue, expands the resources that are available to aid victims, and enhances in general security efforts at the national and international levels, a comprehensive and consistent approach is the most efficient means to address Child sexual exploitation. An early stage in tackling Child pornography is compliance with international legal norms, which should be followed by national implementing legislation and the development of a national legislative programme to combat Child pornography.

India ratified the Convention on the Rights of the Child on December 11, 1992.

In general, the Convention focuses on the actions that the State must take to prevent children from being used for sexual exploitation in pornographic films and materials (1), prostitution, and other illegal sexual practices (2), as well as from being forced to engage in any illegal sexual activity (3).

### **Major International Legal Instrumentalities That Address Child Pornography:**

The Optional Protocol to the (U.N.) Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.<sup>11</sup>

The Council of Europe's Convention on Cybercrime<sup>12</sup>

The Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.<sup>13</sup>

All three of these laws contain explicit definitions of offences as well as clauses demanding penalty for criminal behaviour, enabling for more successful prosecution of offenders. As a result, they are all powerful weapons for preventing the sexual exploitation and abuse of children. The Convention on the Rights of Children and the Optional Protocol are two more thorough examples of legislative frameworks that oblige governments to adopt and fund services to support child victims and their families.

A Regulation on preventing Child pornography and sexual misconduct of minors has been adopted by the European Union as a supplement to

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<sup>11</sup>The Optional Protocol to the (U.N.) Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)

<sup>12</sup>The Council of Europe's Convention on Cybercrime (Budapest Convention 2001)

<sup>13</sup>The Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention 2007)

these three internationally recognized legal mechanisms. By the end of 2013, each member nation of the EU must comply with the Directive. The directive offers more detailed recommendations for criminal legislation concerning exploitation and abuse of children sexually than does the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Abuse.<sup>14</sup>

### **Other International Legislations**

India has ratified numerous international agreements and declarations concerning children's rights to safety, protection, and integrity. It ratified the UNCRC in 1992, affirming its prior ratification of the UN Declaration on the Rights of the Child from 1959, and is completely dedicated to putting all of the UNCRC's stipulations into practice. The Indian Government approved both of the Optional Regulations to the UNCRC, which address the sale of children, child prostitution, and Child pornography in 2005.

India is stepping up its state policies and protections for kids against these risky types of abuse and exploitation. India, being a part of the International Covenants on Civil and Political Rights recognizes that children's human rights are just as important as those of adults.

*Prajwala v Union of India*<sup>15</sup> : This lawsuit dealt with the issue of online pornography and Child sex abuse material. Guidelines were formulated by the Supreme Court to combat the problem of online Child pornography and sex abuse. The Central Government was ordered by the court to establish a specialized agency to look into and prosecute cases of online Child abuse and pornography.

*Bachpan Bachao Andolan v Union of India*<sup>16</sup> - In the absence of stricter guidelines the Apex Court referred guidelines to the Law Commission of India on Child pornography and sexual abuse.

*Rehana Fatima v State of Kerala*<sup>17</sup>— In a recent matter where a mother posted a video of her minor children painting over her naked body, the Kerala High Court held that such acts would amount to Child pornography and people engaging would be strictly dealt with.

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<sup>14</sup>ibid

<sup>15</sup>2018 SCC 434

<sup>16</sup>2011 SCC 674

<sup>17</sup>2021 CrI 992 SC



*Kamlesh Vaswani v Union of India*<sup>18</sup> – The apex court, in this case, directly directed the Central Government to make the laws more stringent in the Information and Technology Act so as to prevent Child pornographic content from being transmitted and going viral.

Child pornography acts as a hindrance in an attempt to protect children from exploitation and abuse. Stringent laws and initiatives are required in order to create a safe haven for children around the world. Below are some recommendations for the same.

Education- Raising awareness about Child pornography would be the first step towards creating a safe environment. Children and their parents need to be aware of the possible ways their innocent children can be roped into the clutches of Child pornography. With the advancement of technology and the increase in accessibility, children need to be taught about online safety and the perils of sharing private information on social media platforms.

Reporting- People should be encouraged to report instances of Child pornography. Around them in order to prevent further occurrences of similar instances. It will also ensure that people who are involved in such heinous offences do not go scot-free and are held accountable for their actions.

Technology- The advancement of technology has not just led to increased access but has created more ways to prevent crimes that used to go undetected before. If technology has led to an increased rate in Child pornography, it can also be used to prevent it. It is suggested that more stringent and better technological advancements are used to detect and prevent such instances from occurring.

Laws and Legislations- While there exist laws to prevent Child pornography, better implementation of such laws is required. Procedural lacunas can be addressed in order to have speedy redressal.

Support- we need to create a society where the victims of Child pornography are not stigmatized and are supported in their fight to recover from such brutal experiences.

Collaboration- the fight against Child pornography is not bound by any geographical limitations. Countries from all over the globe need to come together for better cooperation and implementation of laws to prevent Child pornography.

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<sup>18</sup>2016 7 SCC 592



## **PART 2 : CHILDREN WHO GREW UP WITH IMPRISONED MOTHERS**

### **INTRODCUTION**

Children who grow up with imprisoned mothers can face a wide range of challenges, including emotional and behavioral difficulties, social stigma, and economic hardship.

According to research, these children are more likely to have emotional and behavioral issues like anxiety, depression, and aggression. Additionally, they might encounter issues with relationships, social interaction, and school. They might also be more susceptible to social marginalization, homelessness, and poverty.<sup>19</sup>

Children growing up with imprisoned mothers endure a variety of difficulties as they grow up, including social, educational, financial, psychological, and environmental issues. Such children include those who are either born to mothers who are incarcerated or those who go to prison with their mothers after they are sentenced to life in prison for heinous offences.<sup>20</sup>

Children living in such hostile environments are exposed to all sorts of offenders and crimes at such a tender stage. Although they were a mostly unnoticed population for a long time, children of jailed mothers have recently come to the attention of academics, traditional social service providers, and government agencies. A growing number of people are concerned about the more than 2 million children incarcerated globally; others fear that this will increase the likelihood that these children will end up behind bars as adults; and still, others are motivated by a desire to better understand and support the welfare of children who are dealing with challenging situations in their lives.

Children living in jail witness fights, abuses which would have a negative impact on their overall development. Witnessing such behavior at such tender age can make them aggressive and hostile and would substantially affect their lives even after getting out of prison.

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<sup>19</sup>Shreehari Paliath, 'With Imprisoned Mothers, Children Struggle for Normal Childhood' (Indiaspend 2021) <<https://www.indiaspend.com/author/shreehari>> (accessed on 10 April 2023)

<sup>20</sup> ibid.

## Challenges faced by Children in Prison

A child in its development years require extra care and attention. Prisons in India or around the world are not equipped to cater to the basic needs of children. Even though the ratio of women in prison to that of men in prison is comparatively less, women's jails are overcrowded, with, at times, twenty-five women living in a single ward.<sup>21</sup> Children have to share such already cluttered jails with their mothers. There is no special arrangement for mothers and children which worsens the situation in jail.

On papers, children and lactating women are supposed to be given special diet which fulfils the nutritional requirement of a growing child.<sup>22</sup>

It is very difficult to tell a Child that he/she is entitled to a fixed amount of food, only at a fixed time in a day. Majority of women incarcerated are abandoned, stigmatized and as a result destitute. They don't have the money to buy the food sold in canteens. As a result, children often have to let go of their longing for good food.

**No Access to Games and Recreational Activities** - Children, more often than not do not have access to games or recreational activities in prison. It has been observed that children are often seen playing games like captivity or other games on similar lines. This is due to the environment they have been exposed to. It tarnishes their perspective and imagery of the world around them. Prison may not be a part of their lives forever but the scars it leaves never fades.<sup>23</sup>

**Manual Physical Inspections** - common prison drills include cavity checks, pat-down searches, and strip searches. Prison officials frequently do not spare minors and closely monitor all inmates coming in and going out of the prison. On the flip side, sometimes children are used by their mothers as a shield to escape authorities. In an interview, a woman prisoner enunciated an agonizing tale of her 4-year daughter being checked and striped each time on their return from the court visit. Subjecting children to such brutality would have a deplorable effect on their well-being.

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<sup>21</sup>Rekha Sharma, 'A Report on Improving the Conditions of Women Inmates in Prisons' (Ministry of Women and Child Development 2018) <[http://ncw.nic.in/sites/default/files/JAIL%20REPORT\\_NCW\\_English\\_0.pdf](http://ncw.nic.in/sites/default/files/JAIL%20REPORT_NCW_English_0.pdf)> (accessed on 12 April 2023)

<sup>22</sup>Shivangi Gupta 'Orphans of Justice: Growing Up With a Parent in Prison' (The Wire, 2018) <<https://thewire.in/society/orphans-of-justice>> (accessed on 11 April 2023)

<sup>23</sup> ibid.

Lack of Parental Guidance - Children may not receive the direction and support that a parent would ordinarily give, which can cause them to feel lost and alone.

Separation - The issue of separation continues to wreck children's lives after they turn 6 as children after the age of six can no longer stay with their incarcerated mothers. Children may find it challenging to cope up with the feeling of loss and abandonment due to their mothers' absence for the duration for her sentence.

The vast majority of women prisoner fear abandonment on incarceration, unlike the male inmates. The situation is even worse for pregnant women. Women typically decide to have an abortion if they are pregnant at the time of the arrest because they fear being abandoned and enduring more difficulties. However, getting an abortion is not a simple decision. She loses her bodily autonomy the moment she enters a facility, the state and the legal system take control.

The terrible effects of the carceral system continue to ruin the lives of children and their mothers even after leaving prison. It becomes nearly impossible to evade the stigmatized prison stamp, particularly for those who are born in prison.

### **Judicial Decisions**

*RD Upadhyay v State of Andhra Pradesh*<sup>24</sup>, never should a Child be brought up in a prison. However, without parental supervision, young children under the age of six often end up living in imprisonment alongside their mothers. In this 2006 ruling, the Supreme Court mandated that all States and Union Territories allow children to live with their mothers until they are six years old.

The court reasoned that taking a Child away from their mother at such an early age could have terrible consequences. But after the age of six, children must be sent to a suitable surrogate or placed in a home for protective care, where they must have at least weekly contact with the mother.

This separation, which is based primarily on the child's physical age with very little consideration of the mental state, causes both the Child and the mother great mental agony.

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<sup>24</sup>2006 SCC 234

The ruling complied with international standards like the UN Minimum Standards for Treatment of Prisoners (the Mandela Rules)<sup>25</sup> and the UN Bangkok Rules for the Treatment of Women Prisoners<sup>26</sup>, which highlight 15 important factors like a child's health, education, and general physical and mental development while they are in prison. However, there is a lot that can be done to improve how this guideline is put into practice.

The Supreme Court had mandated in the aforementioned ruling that a nursery or crèche be established separately outside of the jail. *“There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after... the prison authorities shall preferably run the said crèche and nursery outside the prison premises”*

The court had also stated that *“such children should not be treated as undertrials/convicts while in jail with their mother. Such a Child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.”*

*Bachchey Lal v State of U.P* <sup>27</sup>- In this case, the Allahabad High Court ordered the State to make sure that female doctors employed under the State Health Services Schemes make a weekly visit whenever necessary to address the medical, dietary, and basic safety needs of female prisoners and their minor children in their prison wards.

## **International Laws**

There are international laws and treaties around the world which outline the rights of children residing in prison.

United Nations Convention on the Rights of Child.

African Committee of Experts on the Rights and Welfare of the Child (ACERWC) Article 30, (General Comment 1)<sup>28</sup>

The 2010 UN Rules on the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the ‘Bangkok Rules’)

Canada Correctional Services Rules to accommodate a MCP (Mother-Child Programme)

UN Minimum Standards for Treatment of Prisoners (the Mandela Rules)<sup>29</sup>

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<sup>25</sup>UN Minimum Standards for Treatment of Prisoners (The Mandela Rules)

<sup>26</sup>UN Bangkok Rules for The Treatment of Women Prisoners

<sup>27</sup>2014 SCC 547

<sup>28</sup>Ashley, ‘Children of imprisoned parents’ (Penal Reform International 2018) <<https://www.penalreform.org/>> (accessed on 13 April 2023)

<sup>29</sup>UN Minimum (n 25)

## Suggestions

**Anganwadi-** Government of India, as a part of the Integrated Child Development Services Programme, introduced Anganwadi as a childcare problem for children living with their imprisoned mothers. However, there has not been proper implementation of the same. At times, NGOs and some private entities make arrangements, but such initiatives must be taken care of by the respective governments to increase the accessibility of such basic needs required for the survival and development of a Child living in prison.

**Parental Seminar and Workshops-** Offering parenting seminars and support groups can assist incarcerated mothers in developing these abilities and upholding strong relationships with their children because they may not have had the opportunity to acquire adequate parenting skills. Having a more dependable and caring parental figure can be advantageous for children.

**Access to Mental Health Services and Therapies-** can be helpful because children with imprisoned parents are more vulnerable to have a variety of mental health problems. This may entail giving mothers and their children counselling and therapy, as well as introducing support groups where they may interact with others in a similar setting.<sup>30</sup>

### **For children visiting their mothers in prison-**

**Allow More Frequent and Longer Visits:** Allowing a Child to frequently visit his/ her incarcerated mother for a longer duration of time can solve the challenge of abandonment and separation issues to an extent. Frequent contact with their mothers would give them a sense of attachment and belonging and would not deprive them of a mother in their lives. This can be facilitated through policies such as extended visiting hours, overnight visits, and video visitation options.

**Provide Child-Friendly Visitation Areas:** Prisons in India do not have adequate

visitation area specially maintained and designed for children. As a result, visits to prison can be traumatizing, intimidating and overwhelming for a child. Creating child- friendly visitation areas with age-appropriate toys, games, and activities can help children feel more at ease and improve their overall experie

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<sup>30</sup>Garishma Pande, 'Why children of incarcerated parents need special attention' (Downtoearth, 2022) <<https://www.downtoearth.org.in/>> (accessed on 24 April 2023)

# LEGAL REMEDIES FOR INCARCERATED JUVENILES AND GROWING PATTERNS OF SEXUAL ABUSE AGAINST CHILDREN

Pragya Agrawal\*

## Five random pictures of children from the web



Figure 1: <https://www.hindustantimes.com/india-news/india-has-over-5-600-techies-in-prisons-27-37-inmates-illiterate-govt-data-101613301444242.html>

**Feeling :** Distressed

**Thought :** The picture depicts a child behind bars in prison. This is very distressing to me as imprisonment can be very detrimental to the child's physical, mental and emotional well-being. The focus should be the reintegration of these children into society with proper support.

**Feeling :** Helpless

**Thought :** The little girl in the picture is being forced to keep quiet. It seems like the child is a victim of sexual, physical and mental abuse. I get a feeling of helplessness after seeing this picture as there is an immense impact on the child's well-being after such events Sexual abuse is perhaps the worst violation of one's bodily autonomy.



Figure 2: <https://childsafety.losangelescriminallawyer.pro/family-abduction.html>

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Figure 3: <https://www.telegraph.co.uk/news/worldnews/asia/india/12020734/Schoolchildren-in-India-made-to-wear-colour-coded-wristbands-to-show-caste.html>

### Feeling : Hopeful

**Thought** : Seeing children get educated makes me feel hopeful as for most Indians from a lower socio-economic background, education is the key to breaking out of the trap of poverty. Education will give them the power to break through this cycle of poverty and illiteracy. It is enshrined as a fundamental right in our constitution, and every government at the helm of the nation has attempted to foster the spirit of education, for a nation is only as progressive

as its youth. However, there is still a long way to go before it achieves satisfactorily high literacy and low dropout rates.

### Feeling : Misery

**Thought** : The four children in this picture are engaged in manual labour when they should be in school. Efforts should be made to enforce laws for child protection so that children can receive education and develop in a supportive environment.



Figure 4: <https://www.barandbench.com/news/litigation/child-trafficking-karnataka-high-court-personal-presence-bengaluru-city-police-commissioner>



Figure 5: <https://www.slic.org.in/training/east-medinipore-district-meeting-6152e3b8dcfe7>

### Feeling : Sorrow

**Thought** : This picture depicts a child in the arms of their mother who seems to have lost their home. Children are ones majorly displaced by armed conflict and wars, resulting in their separation from family, loss of a home and traumatic disruptions. Hence children should be protected and relocated as a priority.

I have chosen to focus on juvenile incarceration and sexual abuse against children.



# PART 1: THE PLIGHT OF INCARCERATED CHILDREN

## INTRODUCTION

This first picture may represent children in conflict with the law. Essentially, children are not supposed to be put in jail if they commit a crime. UNICEF chooses to define ‘children in contact with law’ instead of ‘children in conflict with law’. The phrase denotes both - victims and the children who have been accused of a crime<sup>1</sup>. In the Indian context, ‘children in conflict with law’ have been described as children who have committed or are alleged to have committed a crime and have not completed the age of eighteen years on the date of commission of the offence.<sup>2</sup>

## CURRENT LEGAL SYSTEM IN INDIA

In the Indian legal system, the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter the “JJ Act, 2015”) governs the laws relating to children in conflict with law and children who need care and protection. The legislation makes a clear distinction between the two categories. While the former has been defined above, the latter are children who have no families, or those who have been abandoned, etc.<sup>3</sup> The children in conflict with the law are not tried in a court but have a separate board that hears and decides cases about them. This board is a judicial body known as the Juvenile Justice Board. It deals with protection, care, inquiry, and final orders relating to children who have been in contact with the law. The Juvenile Justice Board is charged with evaluating the aforementioned criteria within various time limits provided by the JJ Act, 2015.

The JJ Act, 2015, in exceptional circumstances, permits the trial of children between the ages of 16 to 18 years as adults who are alleged to have committed heinous crimes. This change was influenced by the complications and outrage following the infamous Nirbhaya rape case of 2012.<sup>4</sup> One of the six accused, in that case, was a minor when he committed the crime and hence was tried by the laws applicable to minors in such cases. While this accused had turned major when the case went to trial, he was a minor

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<sup>1</sup>‘Justice for Children’ (UNICEF, 14 November 2021) <<https://www.unicef.org/protection/justice-for-children>> (accessed 19 April 2023)

<sup>2</sup>Juvenile Justice (Care and Protection of Children) Act 2015, s 2(13)

<sup>3</sup>Juvenile Justice (Care and Protection of Children) Act 2015, s 2(14)

<sup>4</sup>Mukesh v State for NCT of Delhi [2017] 6 SCC 1



when the brutal gangrape took place, and as such, was sentenced to only three years in a special home. This was as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter the "JJ Act, 2000). The uproar by the public was what led to the repeal of the JJ Act, of 2000 which focused more on rehabilitation by way of counselling rather than punishing the accused children. However, the JJ Act, 2015 is severely criticised mainly because the determination of the fact that whether an accused should be tried as a minor or as an adult is decided even before the trial starts when it is not possible to have all the facts. If the court decides to transfer the child inappropriately, it would be highly detrimental to the minor's mental health.

Other Indian legislations that deal with children and crimes against them are the Protection of Children against Sexual Offences Act, 2012 (POCSO)<sup>5</sup>, the Child Labour (Prohibition and Regulation) Act, 1986<sup>6</sup>, and the Indian Penal Code, 1860<sup>7</sup>. In India, it is considered that children below the age of seven years do not have any knowledge of the consequences of their actions and hence should not be punished for the same. The same is mentioned under the provisions of the IPC. Therefore, children, between the ages of seven to eighteen, who have committed a crime are referred to the Juvenile Justice Board. The POCSO Act is similar to the Juvenile Justice Act, 2015 as it establishes a special court and lays down special procedures for the trial of offenders committing sexual offences against children. However, any child alleged to have committed an offence under the POCSO Act is to be transferred to the Juvenile Justice Board to be dealt with under the provisions of the JJ Act, 2015.

## **CURRENT INTERNATIONAL LAWS**

The Convention on the Rights of the Child was signed in 1989 by many countries to protect the rights of children all around the world. It was believed that everyone, including children, should have equal rights and equal access to justice and resources without any discrimination on any grounds whatsoever. Children are considered an important component of the family structure who need to be protected and encouraged to take their place in the world. In Article 37 of the Convention on the Rights of the Child (hereinafter the "Convention"), it is mentioned that the state should

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<sup>5</sup>Protection of Children from Sexual Offenses Act 2012

<sup>6</sup>Child Labour (Prohibition and Regulation) Act 1986

<sup>7</sup>Indian Penal Code 1860

ensure that a child is not tortured or subjected to inhuman treatment. The state is advised to not deprive the child of their liberty without the mandate of the law and even then, institutionalisation should be taken as a measure of last resort. These children should also have access to legal assistance in cases where they have been deprived of their liberty. They should be treated respectfully and with dignity by the respective authorities. Unfortunately, in the Indian scenario, this is followed at a low scale. The children are detained without access to legal assistance and they are not aware of the rights available to them in such instances. The concerned authorities are usually not bothered about the well-being of these children and do not treat them respectfully. Hence, the children suffer dearly due to the incompetency of the authorities, which includes the police, judiciary, etc. This might also be the reason for overcrowding in childcare homes. Additionally, Article 40 of the Convention talks about how the final intention should be to reintegrate these children back into society. The child's best interest needs to be taken into account, and even if they are convicted, the decision should be reviewed by an independent body. All of the proceedings should also remain confidential as the main intention is to let the children lead a normal life after they have been rehabilitated.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty is another international treaty for the protection of juveniles adopted by the United Nations General Assembly in 1990. These Rules are also called the Havana Rules. They deal with how to treat children who have been deprived of their liberty by either detention or imprisonment. The detained children should be treated with dignity and provided with all the basic fundamental rights. The health and well-being of these children are also a concern that needs to be taken into account when they are being detained or imprisoned. Apart from the basic rights to be provided, these Rules also provide that the children have the right to retain recreational material, subject to the approval of the court. Educational and vocational studies should be provided to the children and it must be ensured that all appropriate efforts are being taken to educate the children. In addition to this, the children would have a choice of choosing their vocation and the training they would need for the same. The main aim remains that the children should eventually reintegrate into society after their time in prison, detention homes, or in custody. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which was adopted by the

General Assembly in 1985 follows similar principles. It states that children who conflict with the law be treated with dignity and they should also have access to and requisite knowledge about their rights. The treaty also aims to provide fair and equal justice to these children and provide them with the required care and protection.

According to a UNICEF report<sup>8</sup>, 12 out of every 1 lakh children are in detention in South Asia (where the report only contains data for eight South Asian countries). While other countries and sub-continent have a worse number of children in detention, that is not to say that South Asia is free from issues against children. India still has to go a long way to make justice accessible to children, raise awareness, sensitize officials, fix legal loopholes, etc.

The pandemic was also a contributing factor to the lack of access to justice for children. In a report prepared by UNICEF<sup>9</sup>, it is shown that approximately 74% of countries in South Asia have released children from detention since the inception of the pandemic. Additionally, approximately 40% of countries in the whole world have released children in detention during COVID-19. However, it needs to be noticed here that most of these children don't have a place to go when they are released from detention. Many of the children have no family or relatives to live with, and no source of income to sustain themselves. This leads to a vicious cycle of them committing crimes to survive. They might fall into bad companies where they have to work in hazardous conditions. Additionally, due to the extreme medical conditions in the country, it becomes dangerous for these children to have a healthy environment to survive. They cannot have access to basic healthcare and would be exposed to the virus which could lead to severe medical issues and, in some cases, even death. Sadly, these children do not have any other option but to either commit crimes or work in dangerous conditions for a meagre earning. It can be inferred that after this time, the children even though have been out of detention, would find it hard to lead a life as there was a dearth of work and income during that time. This could be another reason for the increased death of children, crimes committed by children, and even poverty amongst children. Hence it should have been made sure that even though the government was trying to reduce the overcrowding of

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<sup>8</sup>'Estimating the number of children deprived of liberty in the administration of justice' (UNICEF, 14 November 2021) < <https://data.unicef.org/resources/children-in-detention-report/> > (accessed on 20 April 2023)

<sup>9</sup>'The impact of COVID-19 on children's access to justice' (UNICEF, 27 January 2021) < <https://data.unicef.org/resources/the-impact-of-covid-19-on-childrens-access-to-justice/> > (accessed on 21 April 2023)

children in detention, other provisions be made for them so that they could sustain themselves during a difficult time.

## **CONCLUSION**

It needs to be understood that children are not always the ones who wish to commit a crime. Sometimes, they are influenced by an adult or are forced to commit crimes due to their circumstances. Even with the multiple laws dictating the welfare and prevention of the crimes committed by children, there remain many loopholes and the crimes continue. One of the major problems that are a cause and an abettor to these crimes are poverty and lack of knowledge and awareness on the part of the children. They do not know the consequences of their actions, their rights, or access to necessary resources. Many times, the protectors of these rights are the ones who fail to fulfil their obligations and duties of protecting these children and ensuring that they are not being misled. Other times, the children fall prey to peer pressure and commit crimes and are of the view that they won't be penalized as they are children. These crimes might range from petty crimes to assault to even high-degree crimes such as rape, grievous hurt, etc. These children might also not be aware that some of their actions would be considered crimes for which there are laws punishing the offenders. The best example of the same would be sharing pornographic materials with others on online platforms.

Another problem that arises is the inadequacy of the reformation homes, the understaffing of the same and the abuse and violence that the children face in such institutions.

## **PART 2: SEXUAL OFFENCES AGAINST CHILDREN**

### **INTRODUCTION**

Child sexual abuse is defined by the World Health Organisation as “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society”<sup>10</sup>. Children long have been encountering sexual harassment from strangers and even known people such as family friends and relatives. There were only approximately 3% of cases where

<sup>10</sup>Report of the consultation on child abuse prevention, Geneva (World Health Organization, 1999), p 15

the victim didn't know the offender. According to estimates, 4–41% of girls and 10–55% of boys in school and college in India have been exposed to some form of child sexual abuse, whether it be forced, non-contact, or contact<sup>11</sup>. Hence these cases are even more important as the children are the building blocks of a family as well as the country.

According to a report released by NCRB<sup>12</sup>, it is shown that around 3000 cases have been registered for rape of girls, and another 200 cases for attempt to rape girls below the age of 18 years under IPC. In addition to this, approximately 3900 cases were reported for assault on girls under 18 years old with the intent to outrage her modesty in 2021. While all of these were reported under IPC, there were approximately 53,000 cases registered under the POCSO Act for the offences of sexual assault, child rape, and sexual harassment. It is also shown that there were 53 rape cases of girls below the age of six. It needs to be noted that this data is just restricted to the cases that have been reported. There are still many cases that go unreported and continue over long periods.

### **The Protection of Children against Sexual Offences Act 2012**

The Protection of Children against Sexual Offences Act, 2012 (POCSO Act) is the primary statute that deals with sexual offences against children. The POCSO Act applies to sexual offences against both girls and boys and doesn't restrict itself just to girls. This is something that is lacking in the Indian Penal Code where the statute just considers sexual harassment and assault of women, and doesn't explicitly mention children. The only provision that existed where boys could get some relief under the IPC would be Section 377 which penalises unnatural sexual intercourse. Additionally, the POCSO Act has different categories of offences that the other legislations do not take into consideration. Different categories of offences have different periods of imprisonment. Ten years of imprisonment is the minimum punishment given under the POCSO Act for rape which is higher than the minimum punishment provided under the IPC. The POCSO Act also provides for more severe punishments for aggravated offences as compared to the punishments provided under the IPC.

As the POCSO Act is made for the protection of children, it is made sure that the children are treated with dignity and respect, and are provided with

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<sup>11</sup>Vikas Choudhry and others, 'Child Sexual Abuse in India: A Systematic Review' (2018) 13(10) PLoS ONE

<sup>12</sup>Crimes in 2021 (National Crime Records Bureau, 2022)

their rights. The most pertinent step that is taken when dealing with cases of sexual assault and children is that it is ensure that they do not come face-to-face with the accused. This is done to protect the child and not cause them any more trauma, making it a child-friendly process. While there are certainly plenty of good factors that are covered under the Act, there are certain criticisms that exist. These include the fact that there is no preliminary rehabilitation for these children under the Act before the trial is finished. The children are also not provided with enough rehabilitation and support through their management of the trauma. Along with this, while the Act endorses that the cases be disposed of within the year, it is estimated that there is a delay in justice where the cases are disposed of in approximately double the time that has been prescribed. Another component that has brought forward criticism is the fact that even consensual intercourse between minors is being punished. This has led to the misuse of the Act.

The POCSO Rules, 2020 talk about setting up Special Courts, making the whole system child-friendly, setting up compensation funds for child victims, etc. It also lays down a proper procedure for dealing with child victims and the period within which everything needs to be completed.

The Juvenile Justice (Care and Protection of Children) Act, 2015 when discussing children in need of care and protection would include children who have encountered sexual abuse and are no longer safe in their parental home. The Act tries to make required provisions for the welfare of these children.

Along with this, the Child Welfare Committee (CWC) is the statutory body that is responsible for making provisions for the care of child victims of sexual offences as they are children in need of care and protection. This would include not just finding a place for the child to stay during the investigation but also providing assistance to the child in case they feel that they are not being treated with respect in their household and are victims of sexual harassment or violence. Another important component that needs to be ensured is the anonymity of the child while dealing with sexual harassment cases in court. The children should be able to lead a safe and fulfilling life after the case is over and disposed of. The Ministry of Women and Child Development (MoWCD) is a government body that frames legislation relating to children and women and coordinates their implementation.

## CURRENT INTERNATIONAL LAWS

Article 19 of the Convention for Rights of Children<sup>13</sup> (CRC) provides that the signatories States should have proper laws for dealing with children encountering sexual abuse in a dignified and respectful way. Along with that, they should ensure that the children are protected and taken care of. It is also suggested that there should be appropriate authorities that support these children and provide assistance to them through various methods. Apart from that, Article 34 of the Convention talks about how the States should prevent the sexual exploitation of children by way of inducement, coercion, etc. This can be for prostitution, pornography, etc.

International Children's Rights Day is celebrated on 20<sup>th</sup> November as it was on that date in 1989 that the CRC was adopted by the United Nations General Assembly. This day is used as a way of bringing attention to children's rights worldwide.

Similar to the CRC, the European Council signed the Protection of Children against Sexual Exploitation and Sexual Abuse Convention<sup>14</sup> in 2007 with members and non-members alike. It recommended that child sexual abuse be made an offence in their penal code and be punished accordingly. It also suggested different offences that might be included and dealt with including producing and distributing pornographic images. The basic aim remains to get preventive measures as well as train and make the officials and children alike of their rights and obligations.

## CONCLUSION

While it remains true that most children do not speak up due to fear as they know their offenders personally and fear the repercussions, other factors also contribute to the non-registration of cases of sexual abuse. Many times, children might not even be aware of the fact that they are being sexually abused over time. Many of the offenders make sure to make the children comfortable and tell them that their actions are normal. Other times the children are too scared to speak up, sometimes they self-blame for their abuse and feel that this information will disappoint their parents and they do not raise their voices. Hence, they continue to bear the assaults as they think they would anger or hurt their parents. On the other hand, there are

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<sup>13</sup>Convention on the Rights of the Child, Art 19

<sup>14</sup>Protection of Children against Sexual Exploitation and Sexual Abuse Convention (Council of Europe) (adopted on 25 October 2007)

also cases where even if the child talks to their parents about the incidents, the same is swept under the carpet and the parents themselves tell the child not to tell anyone about the same. They believe that this would lead to a bad reputation for the family. Hence, due to the increased mental trauma that these children face due to various factors<sup>15</sup>, it becomes important that the victims have access to mental health professionals who will help them understand the situation.

It is also important that the officials who deal with such cases be sensitized and made aware of their duties towards all the parties involved. Many a time, the officials are not aware of the next course of action or how to deal with such cases. Some officials are also insensitive to the plight of the children and make no effort to comply with their obligations in such cases. Especially during COVID-19, the children had no access to schools and other places of knowledge and recreation. This resulted in isolation and restriction of access to places which might have provided solace to them. This is because most of the children who face sexual assault in their own homes were not able to get the required help as they weren't allowed to go out of their homes during that time.

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<sup>15</sup>Math, Suresh Bada, Naveen C. Kumar, and Sydney Moirangthem, 'Child Sexual Abuse: Issues & Concerns' (2015) 142 Indian Journal of Medical Research 1



# PROTECTING VULNERABILITY: LEGAL APPROACHES ADDRESSING CHILD PROSTITUTION AND SPECIALLY-ABLED CHILDREN

Sakshi Pritam Das\*

## Five random pictures of children chosen from the web



Figure 1: <https://www.newsclick.in/India-Ranks-Poor-Wellbeing-Children-Among-Neighbours>

**Feeling :** Sad

**Thought :** From the picture, it's evident, that the children are not able to get proper and adequate goods and also highlights the responsibility the elder kids have towards the younger siblings. In the picture, the elder sibling is feeding the young one and there isn't sufficient food.

**Feeling :** Despair

**Thought :** A young girl child is cooking food for her younger siblings, instead of playing games in which she is expected to play games, and watch cartoons.



Figure 2: <https://www.nationalheraldindia.com/opinion/freedom-from-hunger-is-ultimate-fundamental-right-any-nation-unable-to-ensure-this-is-a-failed-state>



Figure 3: <https://www.firstpost.com/living/viral-video-on-child-prostitution-in-india-says-dont-look-away-1248735.html>

**Feeling :** Seeking help and hope

**Thought :** The girl child is having a helpless expression and my thoughts go to the most vicious crime prevailing in our country i.e., Child prostitution.

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**Feeling :** Helplessness

**Thought :** The picture depicts Child labour. At the age of playing with toys, she is working to earn money.



Figure 4: <https://www.gandhiforchildren.org/world-child-labor/>



Figure 5: <https://www.alamy.com/stock-photo-india-agra-child-in-school-uniform-using-smartphone-wearing-bluetooth-53235807.html>

**Feeling :** Inspiration

**Thought :** Even with certain disabilities, children derive pleasure from their studies and demonstrate proficiency in leveraging technology to discover information and enhance their learning.

I have chosen to focus on protecting vulnerability: legal approaches addressing Child prostitution and specially-abled children.

## **INTRODUCTION**

Within the complex and multifaceted landscape of child rights and welfare in India, there exist critical issues that demand urgent legal scrutiny and comprehensive analysis. This legal research paper seeks to shed light on the intersecting challenges faced by vulnerable children in the Indian context. Child prostitution, an egregious violation of child rights and dignity, remains a deeply entrenched issue in India. Through a legal lens, this paper examines the existing legislative and judicial measures designed to combat child prostitution, emphasizing the need for more robust legal mechanisms to prevent, punish, and rehabilitate victims of this abhorrent practice. Additionally, this research underscores the rights and unique challenges faced by children with disabilities within the Indian legal framework. It delves into the legal provisions aimed at protecting the rights of these children, ensuring their access to education, healthcare, and equal opportunities. Moreover, it addresses the gaps in implementation and highlights the legal imperative to create an inclusive society that accommodates the diverse needs of children with disabilities. By scrutinizing child prostitution and the rights of children with disabilities within the legal context, this paper aims to contribute to a nuanced understanding of the existing legal framework and identify areas for legal reform to better protect and uphold the rights of the most vulnerable among us --the children of India.

## **PART 1: CHILD PROSTITUTION**

Child prostitution, also known as commercial sexual exploitation of children (CSEC), refers to the sexual exploitation of minors for financial gain. It is a serious violation of children's human rights and is considered a form of Child abuse. Child prostitution is prevalent in many parts of the world, particularly in developing countries, but it also occurs in developed countries.

The history of child prostitution can be traced back to ancient times when children were often sold or traded for sexual purposes. In the modern era, child prostitution is often linked to poverty, family dysfunction, and other social problems. Children who are victims of child prostitution may suffer physical and psychological harm, including sexually transmitted infections, unwanted pregnancies, and mental health problems.

To address the issue of child prostitution, there are international and national laws in place that aim to protect children from sexual exploitation. At the international level, the United Nations Convention on the Rights of the Child (UNCRC) and other international agreements provide a framework for protecting children's rights, including the right to be free from sexual exploitation. However, enforcing these laws and standards can be difficult, especially in countries where child prostitution is prevalent and there is limited law enforcement capacity.

Even though India has ratified various international conventions and agreements related to the protection of children's rights, including the UNCRC and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, child prostitution remains a serious problem in India, where poverty, gender inequality, and other social factors make children vulnerable to sexual exploitation.

## **LATEST DATA**

### *International Level*

According to the International Labor Organization (ILO), an estimated 4.8 million people are victims of forced sexual exploitation globally, including children.<sup>1</sup> The United Nations Office on Drugs and Crime (UNODC) estimates that there are about 1.2 million child victims of trafficking worldwide, and more than half of them are girls.<sup>2</sup>

### *India*

1. According to the National Crime Records Bureau (NCRB), in 2019, there were 7,277 cases of human trafficking, including 2,022 cases of trafficking for prostitution, and 5,345 cases of trafficking for other forms of exploitation.<sup>3</sup>
2. As per a study conducted by the National Human Rights Commission (NHRC) in 2019, it is estimated that there are around 60,000 Child prostitutes in India.<sup>4</sup>

## **GLOBAL INSTRUMENTS**

There are several global instruments available for combating child prostitution. Here are some of the most important ones:

The United Nations Convention on the Rights of the Child (UNCRC):

1. The UNCRC is a human rights treaty that sets out the civil, political,

economic, social, and cultural rights of children. Article 34 of the UNCRC specifically calls on States Parties to take measures to protect children from sexual exploitation and sexual abuse, including child prostitution.<sup>5</sup>

2. The Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography: This protocol was adopted in 2000 and requires States Parties to prohibit the sale of children, child prostitution and Child pornography. It also mandates measures to prevent these crimes, protect the victims, and prosecute the offenders.<sup>6</sup>
3. The International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour: This Convention, adopted in 1999, calls on States to prohibit and eliminate the worst forms of Child labour, including child prostitution. It also requires States to take measures to protect children from economic exploitation and to provide them with access to education and training.<sup>7</sup>
4. The United Nations Global Plan of Action to Combat Trafficking in Persons: This global plan, adopted in 2010, provides a framework for preventing and combating human trafficking, including trafficking for sexual exploitation, such as child prostitution.
5. The Sustainable Development Goals (SDGs): The SDGs, adopted in 2015, include a specific target (SDG 8.7) to end all forms of Child labour by 2025, including the worst forms of Child labour, such as child prostitution.<sup>8</sup>

These global instruments provide a framework for countries to prevent and combat child prostitution and protect the rights of children.

## **LEGISLATIONS TO CURB CHILD PROSTITUTION**

The Indian Constitution, which serves as the country's fundamental legal framework, is essential in guiding its development. Acting as the principal instrument enshrining the basic laws, it is duty-bound to defend the rights of every segment of the populace, especially the weaker ones. The Indian Constitution highlights a commitment to equality and individual liberty by

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<sup>5</sup>United Nations Convention of Child Rights, Art 34

<sup>6</sup>Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography (2000)

<sup>7</sup>International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour (1999)

<sup>8</sup>UNODC, 'Target 8.7' <<https://www.unodc.org/roseap/en/sustainable-development-goals.html#:~:text=Target%208.7%20%2D%20Take%20immediate%20and,labour%20in%20all%20its%20forms>> (accessed on 23 March 2023)

including specific safeguards for the protection of women and children within its provisions. Interestingly, Article 14<sup>9</sup> outlines the right to equality, while Article 15(3)<sup>10</sup> permits for creation of legislation specifically beneficial to women and children. Article 21<sup>11</sup>, which encompasses the rights to life and personal liberty, is a fundamental component of this safeguarding structure. Furthermore, by Article 23<sup>12</sup>, trafficking in women for immoral reasons is prohibited under Article 23.<sup>13</sup>

The Directive Principles of State Policies (DPSP), including provisions such as Article 38<sup>14</sup>, 39 (a) (d) and (e)<sup>15</sup>, Art 42, 44 and Art 45<sup>16</sup> encompassed within the Constitution gives power and support to draft legislations that uphold the welfare and development of women and children. not only offer guidance for legislation to support the welfare and development of women and children. DPSP is a progressive organisation that works to protect women and children from being exploited in all areas of life. States are urged under Article 39(e) to stop abusing the power of workers, especially women and children. As highlighted in *State of Rajasthan v Om Prakash*<sup>17</sup>, citing Article 39(f)<sup>18</sup> the Supreme Court emphasised a particular judicial approach in child rape cases, recognising the seriousness of such crimes and stressing the necessity for strong legal protection for these vulnerable set of children.

According to the Indian Penal Code of 1860, the State has a vital role in upholding law and order, security, and tranquillity. Together with the procedural law provided in the Code of Criminal Procedure, it functions as a substantive law. The IPC works in tandem with special regulations to combat the threat of child prostitution in particular. While Section 366B<sup>19</sup> concentrates on the penalties for importing young girls, Section 366A<sup>20</sup> penalises the act of obtaining females from one location to another. The IPC's Sections 372 and 373<sup>21</sup> make it illegal to purchase or sell females for

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<sup>9</sup>Constitution of India 1950, Art 14

<sup>10</sup>Constitution of India 1950, Art 15(3)

<sup>11</sup>Constitution of India 1950, Art 21

<sup>12</sup>Constitution of India 1950, Art 23

<sup>13</sup>*Raj Bahadur v Legal Remembrancer* (1953) AIR 522 (Cal)

<sup>14</sup>Constitution of India 1950, Art 38

<sup>15</sup>Constitution of India 1950, Art 39 (a), (d) & (e)

<sup>16</sup>Constitution of India 1950, Art 42,44 & 45

<sup>17</sup>(2002) AIR 2235

<sup>18</sup>Constitution of India 1950, Art 39(f)

<sup>19</sup>Indian Penal Code 1860, s 366B

<sup>20</sup>Indian Penal Code 1860, s 366A

<sup>21</sup>Indian Penal Code 1860, s 372 & 373

prostitution or trafficking, regardless of age. Protecting kids from the illegal actions related to prostitution is the main goal of these sections.

Simultaneously, safeguards against sexual exploitation of girls are provided under the Code of Criminal Procedure.<sup>22</sup> For example, Section 98<sup>23</sup> attempts to give redress to girls and women who have been kidnapped or wrongfully held. It requires the District Magistrate, upon receiving a report of abduction or unlawful imprisonment, to order the immediate restoration of any girl under the age of majority to her parents or legal guardian.

The Suppression of Immoral Traffic in Women and Girls Act of 1956 was the first piece of law aimed at preventing immoral trafficking in women and girls. But this Act had flaws, and it was changed in 1970 and again in 1986 before being renamed the Immoral Traffic Prevention Act, 1956. Remarkably, prostitution as an act is neither criminalised nor punished by the Act. Rather, its main goal is to stop the exploitation, trafficking, and commercialization of child sex abuse for the benefit of those who engage in these illegal activities. The Act aims to rescue and rehabilitate the victims of such operations in addition to punishing those involved in the exploitative trade. The Act emphasises the inclusiveness of its purview by acknowledging that males may become victims of human trafficking. The Act's Section 9 lays out the penalties for those who commit these abhorrent offences when a person is in custody.<sup>24</sup> The Act also gives the Central Government the power to designate trafficking officials to perform a range of tasks in furtherance of its goals.

To have legal backing for the Convention on the Rights of the Child, the Indian government enacted the Juvenile Justice (Care and Protection of Children) Act of 2000. Regarding children in need of care or protection, this act aimed to alter and combine many existing statutes. The Act provides a thorough framework that includes specific requirements for the education, training, care, treatment, and protection of children who have been rescued from the sex trade's exploiters. A public interest lawsuit in *Gaurav Jain v Union of India*<sup>25</sup> addressed the issue of separate schools and dormitories for the offspring of prostitutes should be established. It was feared that these kids would turn to prostitution if they weren't kept apart from their moms, which might exacerbate their juvenile criminality.

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<sup>22</sup>Code of Criminal Procedure, 1973

<sup>23</sup>Code of Criminal Procedure 1973, s 98

<sup>24</sup>Immoral Traffic Prevention Act 1956, s 9

<sup>25</sup>(1990) AIR 292 (SC)



In the case of *Upendra Bakshi v State of U.P.*<sup>26</sup>, it was found that the Agra Protective Homes' prisoners were subjected to cruel and dehumanising living circumstances, which was against Article 21 of the Constitution. The main objective of the Act is to meet children's needs by using strategies that are optimal for the kid. The Act prioritises the fair and child-friendly adjudication and resolution of cases, with many institutions formed under its purview serving as the final resort.

### **Support Services Available to the Victims**

In India, there are several support services available to the victims of child prostitution, including:

1. Counselling and rehabilitation services: Victims of child prostitution require counselling and rehabilitation services to help them cope with their trauma, build their self-esteem, and reintegrate into society. These services are offered by government and NGO-run centres.<sup>27</sup>
2. Medical care: Victims of child prostitution often suffer from physical and mental health problems. Medical care is provided by government hospitals as well as those run by NGOs.<sup>28</sup>
3. Legal aid: Victims of child prostitution require legal aid to access justice and receive compensation. Legal aid services are provided by NGOs as well as government-run legal aid clinics.<sup>29</sup>
4. Education and skill development: Victims of child prostitution require education and skill development programs to help them become financially independent and reintegrate into society.

It is important to note that while these services are available, there are challenges in ensuring that they reach all victims of child prostitution, especially those in remote areas or those who are not able to access these services due to various reasons.

### **CONCLUSION**

In conclusion, child prostitution is a grave violation of human rights and is a serious concern in India. It is a complex issue that requires a comprehensive

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<sup>26</sup>(1983) 2 SCC 308 (SC)

<sup>27</sup>ILO, Rehabilitation of the Victims of Child Trafficking: A multidisciplinary Approach < [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_bk\\_pb\\_63\\_en.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_63_en.pdf) > (accessed on 24 January 2024)

<sup>28</sup> ibid

<sup>29</sup>Debraj Mitra, 'Free Legal Aid Eludes Trafficking Survivors' (The Telegraph India, 5 November 2022) <<https://www.telegraphindia.com/my-kolkata/news/free-legal-aid-eludes-trafficking-survivors/cid/1896290>>(accessed 24 January 2024)



approach involving law enforcement, prevention, awareness campaigns, rehabilitation, reintegration of victims, and collaboration between different stakeholders.

India has two major laws in place to address the issue of child prostitution, namely, the Immoral Traffic (Prevention) Act, of 1956 and the Juvenile Justice (Care and Protection) Act, of 2015. However, the implementation of these laws faces many challenges, including inadequate resources, weak law enforcement, and a lack of awareness among the public.

Efforts to combat child prostitution need to be intensified, and new measures need to be introduced to address this issue effectively. These measures may include strengthening law enforcement agencies, launching awareness and prevention campaigns, using technology, collaboration between stakeholders, rehabilitation, reintegration, strengthening legal frameworks, and international cooperation.

## **Part 2: SPECIALLY ABLED CHILDREN**

Children with disabilities face significant challenges in their lives, ranging from discrimination and stigma to limited access to basic services and opportunities. In India, the number of specially-abled children is estimated to be around 21 million<sup>30</sup>, and they constitute one of the most vulnerable and marginalized groups in society. Recognizing the urgent need to protect and promote the rights of specially-abled children, the Indian government has enacted several laws and policies to safeguard their interests and ensure their full participation in society.

This research paper aims to provide a bird's eye view of the legal provisions for specially-abled children in India, analysing the effectiveness of the existing laws and policies, and identifying the challenges and opportunities for further action. The current picture of specially-abled children in India is complex and multifaceted. While there have been some positive developments in recent years, such as the introduction of laws and policies to protect the rights of children with disabilities, there are still many challenges that need to be addressed.

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<sup>30</sup>Registrar General Office, Census of India: Disabled Population by Type of Disability, Age, Sex and Type (New Delhi, 2003)

## LATEST DATA

Latest data on the number of children with disabilities both at the international and Indian levels:

1. World Health Organization (WHO) Disability Report: In 2021, the WHO released a report on disability, which estimates that over 1 billion people globally live with some form of disability and highlighted the significant impact of disability on children, with an estimated 93 million children (0-14 years) living with a moderate or severe disability worldwide.<sup>31</sup>
2. UNICEF Data: UNICEF’s data portal provides comprehensive data on the situation of children worldwide, including children with disabilities. According to the latest data available on the portal, there are an estimated 15 million children with disabilities in India<sup>32</sup>

### Understanding the term “Specially Abled Children”

Different terms have been used over the years to refer to children who have physical, mental, intellectual or sensory impairments that substantially limit their abilities to participate in various activities. Initially, they were referred to as handicapped children. The UN Convention on the Rights of Persons with Disability referred to the person with disability thereby shifting the focus from the handicap to the person who had the handicap. The term “specially abled children” is used to emphasize the abilities and potential of these children rather than focusing on their limitations. It is also a more positive and inclusive term than “disabled” or “handicapped.”

The impairments that specially-abled children may have can be congenital (present at birth) or acquired later in life due to illness, injury, or other causes. Examples of impairments that may affect children include visual impairments, hearing impairments, physical impairments such as cerebral palsy or muscular dystrophy, intellectual or developmental disabilities such as Down syndrome or autism, and mental health conditions such as depression or anxiety.

It is important to note that the definition of specially-abled children may vary depending on the context, culture, and language. In India, for example, the term “divyang” is sometimes used instead of “specially abled” to refer to persons with disabilities. Regardless of the terminology used, the focus

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<sup>31</sup>World Health Organization, ‘Disability and Health Fact Sheet’ (WHO, 2021) <<https://www.who.int/news-room/fact-sheets/detail/disability-and-health>> (accessed on 23 April 2023)

<sup>32</sup>UNICEF, ‘India Statistics’ (UNICEF, 2021) <<https://data.unicef.org/country/ind/>> (accessed on 23 April 2023)

should be on providing support, accommodation, and opportunities for these children to achieve their full potential and lead fulfilling lives.

The Rights of Persons with Disabilities Act, 2016 (RPWD Act) is the key legislation in India that governs the rights and entitlements of persons with disabilities, including specially-abled children. The RPWD Act defines a “person with disability” as “a person with long-term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders their full and effective participation in society equally with others.”<sup>33</sup>

The RPWD Act also defines “child with benchmark disability” as a child with “not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.”<sup>34</sup> The Act further provides for the establishment of a National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, which provides various schemes and programs for the welfare of persons with disabilities, including children.

### **Difference between the Terms “Specially Abled Children” and “Children with Special Needs”**

The terms “specially abled children” and “children with special needs” are often used interchangeably to refer to children who require special support and accommodation due to disabilities or developmental challenges. However, there may be some subtle differences in the way these terms are used. Overall, both terms convey a similar message of recognizing the unique needs and strengths of children with disabilities and promoting their inclusion and well-being. However, the choice of terminology may vary depending on personal preference, cultural norms, and the specific context in which the terms are used.

### **LEGAL PRECEDENTS**

In a significant stride toward securing the rights of children with special needs, recent judicial precedents in India have reshaped the landscape of educational inclusivity. These pivotal cases shed light on the challenges faced by children requiring special attention and underscore the imperative for tailored educational approaches.

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<sup>33</sup>Rights of Persons with Disabilities Act, 2016, s 2

<sup>34</sup> *ibid*

*Lalit and Others v Govt. of NCT and Another*<sup>35</sup>, Hon'ble Mr Justice Muralidhar, the Delhi High Court delved into the challenge of insufficient accommodation for children with disabilities. Recognizing the mandates of the Persons with Disabilities Act, of 1995, and the Convention on the Rights of Persons with Disabilities (CRPD), the court underscored the state's obligations in providing comprehensive access to education, housing, and medical facilities for children with disabilities. The judgment underscored the need to strike a balance in safeguarding the rights of disabled children, emphasizing the principles of reasonable accommodation and the right to education as per CRPD guidelines. This case acted as a catalyst, prompting government vigilance over institutions dedicated to the welfare of disabled individuals.

*Rajneesh Kumar Pandey and Ors. v Union of India*<sup>36</sup>, a groundbreaking judgment from the Indian Supreme Court tackled establishing an appropriate pupil-teacher ratio for institutions admitting children with special needs (CwSN). This case challenged the traditional notion that mainstream schools suffice for the educational needs of these children, emphasizing the indispensable role of specialized schools.

Together, these cases mark a substantial progression in the legal framework governing the education and rights of children with special needs in India. The judiciary's dedicated focus on ensuring adequate facilities, support, and an inclusive educational environment reflects an unwavering commitment to upholding the constitutional rights of these children.

## **SCHEMES FOR CHILDREN WITH DISABILITIES**

The Government of India has launched several schemes for the welfare of children with disabilities. Some of the relevant schemes are:

1. **Sarva Shiksha Abhiyan (SSA):** SSA is a flagship programme of the Government of India aimed at universalizing elementary education. It focuses on providing inclusive education to children with disabilities. It provides for the appointment of special teachers, the provision of assistive devices, and the creation of barrier-free environments in schools.
2. **Rashtriya Bal Swasthya Karyakram (RBSK):** RBSK is a child health screening and early intervention programme aimed at identifying health issues in children, including disabilities. It provides free health check-ups, treatment, and referral services to children aged 0-18 years.

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<sup>35</sup> (2010) SCC Del 1882

<sup>36</sup> (2021) SCC 1

3. Inclusive Education for Disabled at Secondary Stage (IEDSS): IEDSS is a scheme aimed at providing inclusive education to children with disabilities in secondary schools. It provides financial assistance for the creation of infrastructure, the appointment of special teachers, and the provision of assistive devices.
4. Deendayal Disabled Rehabilitation Scheme (DDRS): DDRS is a scheme aimed at providing rehabilitation services to persons with disabilities, including children. It provides financial assistance for the establishment of special schools, vocational training centres, and the provision of assistive devices.
5. National Handicapped Finance and Development Corporation (NHFDC): NHFDC is a non-profit organization set up by the Government of India to promote self-employment and entrepreneurship among persons with disabilities, including children. It provides financial assistance through loans, subsidies, and grants to eligible beneficiaries.

## **CHALLENGES FACED BY CHILDREN WITH DISABILITIES**

Children with disabilities face various challenges that can hinder their development and limit their opportunities in life. Some of the major challenges faced by children with disabilities are:

1. Accessibility: Children with disabilities often face physical barriers that make it difficult for them to access public spaces, buildings, and transportation limiting their participation in educational, social, and recreational activities.
2. Discrimination: Children with disabilities often face discrimination and stigma, which can lead to exclusion, isolation, and a lack of opportunities like admission to schools or bullying and harassment from their peers.
3. Education: Children with disabilities may face challenges in accessing education and receiving appropriate accommodations and support to succeed academically, for instance, they'll require specialized instruction or assistive technology to access the curriculum.
4. Healthcare: Children with disabilities may require specialized healthcare services and treatments, which may be unavailable or inaccessible in their communities. They may also face barriers in accessing healthcare due to a lack of transportation or financial resources.
5. Employment: Children with disabilities often face challenges in finding employment due to discrimination, a lack of accessible work

environments, and a lack of training and education opportunities.

Law and policies alone are not enough to ensure the real care of specially-abled children. Addressing these challenges requires a concerted effort from all stakeholders, including the government, civil society organizations, and the community at large, to ensure that children with disabilities receive the support and opportunities they need to thrive.

## **CONCLUSION**

In conclusion, the issues of child prostitution and specially-abled children in India are complex and multifaceted, with both challenges and opportunities for progress. While there have been some positive developments in recent years, such as the introduction of laws and policies keeping in view such children, there are still many challenges that need to be addressed, including lack of access to education, healthcare and employment opportunities, and social stigma and discrimination.

To improve the situation, there is a need for a multi-pronged approach that involves policy and programmatic interventions, community engagement and awareness raising, and collaboration between government, civil society organizations and other stakeholders. With sustained efforts and a focus on inclusion and empowerment, it is possible to create a more equitable and inclusive society for all, including children with disabilities.

# PROTECTING INNOCENCE: ADDRESSING CHILD SEX TRAFFICKING, SEX WORK, AND LEGAL CHALLENGES IN THE LIVES OF VULNERABLE CHILDREN

Nivedita Shaktawat\*

## Five random pictures of children chosen from the web



Figure 1: <https://zeenews.india.com/india/no-data-available-on-migrant-deaths-due-to-covid-19-lockdown-government-tells-parliament-2309749.html>

**Feeling :** Distress

**Thought :** This picture reminds me about the time when lockdown was imposed and labourers, along with their children, were brought onto the streets by the government.

**Feeling :** Discomfort

**Thought :** This picture makes me think of the dark reality of human trafficking and slavery, which is still being present amidst the democratic setup. The realities of life vary for certain individuals.



Figure 2: <https://www.scoopwhoop.com/life/perna-community-forcing-women-to-prostitution/>



Figure 3: <https://www.indiatodayne.in/assam/story/five-minor-children-rescued-bonded-labour-assam-399254-2019-06-17>

**Feeling :** Hopelessness

**Thought :** This picture not only reflects the bonded child labour but the deep class and caste inequalities. It reflects that by virtue of being born in a certain environment grants you numerous privileges.

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**Feeling : Anger**

**Thought :** This picture might be an intersection of child trafficking, migrant children and child sex workers. This picture portrays childhood being taken away from this picture.



Figure 4: <https://www.globalgiving.org/projects/empowerment-of-300-street-children-in-vellore>



Figure 5: <https://www.patrika.com/bhopal-news/child-rehabilitation-children-are-struggling-with-serious-mental-disor-3548307/>

**Feeling : Despair**

**Thought :** Sometimes individuals forget the human side of the person who has committed the crime. The impact it has on the children in conflict of law is daunting. It takes away not only their childhood but their whole life.

I have chosen to focus on protecting innocence: Addressing Child sex trafficking, sex work, and legal challenges in the lives of vulnerable children.



## PART 1 : CHILD SEXUAL ABUSE

### INTRODUCTION

Children who participate in commercial sex work suffer harmful effects. Sex workers are discriminated against globally because they are the key group for increasing cases of HIV/ AIDS and STDs. Children are mainly pushed into commercial sex because of reasons such as running away from home, child abuse and neglect, psychological and emotional difficulties, specific risk factors pertaining to families and children, poverty, individual lifestyle choices, socioeconomic factors, environmental risks, and illiteracy.

There are risks of variety of negative outcomes, such as physical violence like assault, rape, or murder; involvement in criminal activity; health problems like HIV infection and other STDs; psychological disorders like depression; and risks of drug abuse and suicide.<sup>1</sup> In Bangladesh's cities, especially Dhaka, the problem of children being the victims of "committal sexual exploitation" (CSE) is growing at a startling rate.<sup>2</sup> Many young people leave rural areas in search of better economic opportunities, only to fall victim to the trade in commercial sex labor. There are many different ways to perform this labor, such as working in chat rooms, pharmacies, bars, the streets, rented homes, or beds. International NGOs note that child prostitution is becoming more common, especially in cities. Widespread poverty, urban migration, early marriage, and a lack of job and educational opportunities all contribute to the escalation of child sexual exploitation. According to an NGO report, a sizable percentage of people who are exploited in prostitution—60% of them—are in the 16–25 age range.<sup>3</sup> Children frequently blame unplanned pregnancies, inadequate education, and family deaths for their involvement in prostitution. Many children who work in commercial sex have suffered physical and sexual abuse, as well as health and hygiene risks. Almost half of these children admit to being sexually assaulted on the streets, which resulted in pregnancies, with some resorting to unsafe abortions, which were frequently performed illegally. It

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<sup>1</sup>H Montgomery, "Are Child Prostitutes Child Workers? A Case Study" (2009) 29 *International Journal of Sociology and Social Policy* 130

<sup>2</sup>Md Hakim, "Prostitution Going Spiral: The Myth of Commercial Child Sex" [2016] 1 *British Journal of Social Work* (2004) 34, 181

<sup>3</sup> SC Egbert and EC Lamont, "Factors Contributing to Parents? Preparation for Special-Needs Adoption" (2004) 21 *Child and Adolescent Social Work Journal* 593

is worth noting that a significant number of females who enter prostitution have a history of sexual abuse as children. Furthermore, sex workers face global discrimination as a result of their role in the spread of HIV/AIDS and STDs.

One of the most major sources of the growth of child sex work across the world is child pornography. child pornography is illegal in almost all countries but pirated websites, dark web and various illegal websites make it possible for users to not only access child pornography but make one and upload it. The reasons for the surge include:

**Globalization:** Cases involving child pornography frequently involve suspects or evidence located abroad, which can make conducting an investigation and bringing charges difficult, time-consuming, or even impossible.<sup>4</sup>

**Mobile technology** can be used to stream videos of child abuse, access child pornography stored in remote locations, and photograph or record children being sexually abused.

**Encryption:** Accessible, easily navigable, and frequently pre-installed encryption makes obtaining and analyzing vital evidence in child sexual exploitation cases more difficult. Even with proper legal procedure, law enforcement agencies frequently fail to obtain evidence on an encrypted device, allowing a criminal to avoid detection and carry out their crimes.

**The Dark Internet:** Traditional IP addresses can be obscured by networks of technologies and platforms, making it very challenging to track down offenders. Because of their anonymity, users are more likely to perpetrate heinous crimes than on conventional Internet platforms.

**Offender Communities:** Online communities devoted to child sexual abuse have exploded in private, well-protected online forums. Members who were hand-selected urge one another to act on their abnormal sexual desires and normalize one other's interest in youngsters.

## **Sextortion and Live-Streaming of Child Sexual Abuse**

**Evolving Threats:** Sextortion is one of the most recent forms of child sex abuse to appear online.

<sup>4</sup>I Rajagopal and N Bojin, 'View of Globalization of Prurience: The Internet and the Degradation of Women and Children: First Monday' (View of Globalization of prurience: The Internet and the degradation of women and children | First Monday) < <https://firstmonday.org/ojs/index.php/fm/article/view/1114/1034/figure14.htm> > (accessed on 29 April 2023)

**Evolving means of exploitation:** The ability of offenders to abuse children has radically changed because of mobile technology. These gadgets' apps can be used to find, recruit, groom, and pressure kids into having sex.

**Majority of victims, easily targeted:** Children who are online can be tricked and/or forced by offenders, who frequently do so in huge numbers.

**Child Sex Trafficking:** Child Sex work industry survives on child sex trafficking. The children, especially from lower strata of society, are lured in the name of better education, jobs or better living or simply kidnapped, and then they are thrown into the industry of child sex work.

### **Possible Protection and Support**

The industry of child sex work and child trafficking is deep, underground and quite big. It becomes difficult for authorities to not only censure the content that has been promulgated but protect the victims of child sex work too. The possible methods can include:

Increasing and modernizing community-based outreach regarding internet safety:

In light of the evolving risks to children, such as sextortion and new technology tools and applications, awareness-raising, outreach, and educational initiatives are required to prevent child exploitation offences. Messages will also be included to discourage and prevent prospective purchasers of commercial sex.

Creating national public awareness campaigns to stop and discourage abuse of children:

New public service announcements (PSAs) will include messages about responsible technology use and the potential risks to minors who share sensitive information and photos of themselves with others.<sup>5</sup>

### **LEGISLATIVE FRAMEWORK**

A multitude of international agreements and mechanisms have been put into place to address and prevent human trafficking. Among the most important court rulings addressing the problem of child trafficking are the following:

#### **Convention on the Rights of the Child**

The United Nations Convention on the Rights of the Child is a crucial and effective tool for promoting and protecting children's rights<sup>6</sup>. The right of

<sup>5</sup>M Madden, 'Teens, Social Media, and Privacy' (Pew Research Center: Internet, Science & Tech, 21 May 2013) <<https://www.pewresearch.org/internet/2013/05/21/teens-social-media-and-privacy/>> (accessed on 29 April 2023)

<sup>6</sup>Convention on the Rights of the Child 1990

children to life, development, and protection from all forms of maltreatment, exploitation, and neglect is guaranteed by this Convention. States that have signed the Convention are obligated to develop and implement appropriate bilateral, national, and international policies to prevent minors from being sold, traded, or exploited for any reason or in any form. These signatory states also commit to taking all necessary steps to facilitate social reintegration, physical and psychological healing, and self-esteem enhancement for child victims in a dignified environment. The Optional Protocol on the Sale of Children, child prostitution, and child pornography to the Convention on the Rights of the Child was added in 2000.<sup>7</sup> This protocol supplements the Convention by explicitly classifying prostitution and child trafficking as violations of the rights of children.

### **UNICEF and UNODC efforts in India to prevent and combat child trafficking**

India has enacted several laws to stop child prostitution, such as the Immoral Traffic (Prevention) Act of 1956<sup>8</sup>, the Juvenile Justice (Care and Protection of Children) Act of 2015<sup>9</sup>, the Protection of Children from Sexual Offences (POCSO) Act of 2012, and the Indian Penal Code of 1860. UN agencies have done a great job fighting child trafficking on a global scale, most notably the United Nations Office on Drugs and Crime (UNODC) and the United Nations Children’s Fund (UNICEF). The UNICEF strategy is focused on four key areas: increasing public awareness, supporting families financially, improving education access and quality, and fighting for children’s rights.

The Integrated Child Protection Scheme (ICPS)<sup>10</sup>, a recently launched initiative to enhance and expand services for children in need of care and protection and those in conflict with the law in compliance with the provisions of the Juvenile Justice Act and related legislation, is being carried out by UNICEF in partnership with the Government of India.

Special services for child victims of trafficking in India - the National Child Helpline, 1098, is open around the clock to help children in need, but it is unable to adequately support young victims of child trafficking.<sup>11</sup>

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<sup>7</sup>Optional Protocol to the Child’s Rights Convention, concerning the sale of children, child prostitution and child pornography 2000

<sup>8</sup>Immoral Traffic Prevention Act 1956

<sup>9</sup>Juvenile Justice (Care and Protection of Children) Act 2015

<sup>10</sup> Integrated Child Protection Scheme (ICPS) 2009

<sup>11</sup> ‘A 24-Hour Helpline for Children in Need’ (Mint, 17 November 2013) < <https://www.livemint.com/Politics/N3dQ4m4oBmoUAfaO0bPYmL/A-24hour-helpline-for-children-in-need.html> > (accessed on 29 April 2023)

Government Shelters: Although there is always space for improvement, government shelters are actively striving to raise the standards of care in partnership with non- governmental organizations and Child Welfare Committees. Even though they are not recognized or identified as a separate group of vulnerable children, medical services for victims of child trafficking are typically provided to all children in need of extra care and attention, including victims of child trafficking. Despite having limited funding, space, and other resources, a number of non-governmental organizations have distinguished themselves by helping those who are victims of human trafficking and saving their lives. PLAN India is a child-centered initiative that works to improve the lives of vulnerable children and promote child rights.

Shakti Vahini in Delhi makes sure that trafficking cases are thoroughly investigated, addressing exploitation at the source, in transit, and at the destination.<sup>12</sup> In a similar vein, leading pioneering efforts are child rights movements like Bachpan Bachao Andolan and Apne Aap in Delhi.

### **Rehabilitation and Reintegration**

Various teachings emphasize the warning signs that a child may become involved in prostitution. Girls fleeing physically or sexually abusive households are frequently forced into domestic child prostitution. If all children were raised in safe and supportive environments, the prevalence of children becoming prostitutes could be significantly reduced. The current lack of a coherent national plan, on the other hand, poses a challenge. Children must be prioritized by policymakers, who must create a comprehensive national strategy involving multiple agencies and disciplines, as well as a unified vision for children.

Federal, state, and local policies and funding should be directed toward the following goals within the framework of this national strategy:

Educating adults about child sexual abuse: Making it abundantly evident that minors cannot give their consent to sexual activity and that child prostitution is a serious crime that seriously harms children. Ending tolerance for the sexual exploitation of minors: Organizing public awareness campaigns to persuade adults that it is everyone's duty, not just children's, to shield minors from prostitution and other forms of sexual abuse.

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<sup>12</sup>'Human Trafficking India' (Human Trafficking India, 26 March 2023) < <https://traffickingnews.wordpress.com/> > (accessed on 29 April 2023)

Empowering parents and caregivers: Making sure that they are knowledgeable about the precautions that they can take to keep their kids safe.

Taking care of abuse risk factors: To reduce significant abuse risk factors, put in place efficient programs for drug and alcohol abuse, domestic violence prevention, and mental health.

In order to stop abuse and neglect, 2011 saw the provision of evidence-based services like early childhood home visiting and child sexual abuse prevention, as well as access to nutritional programs, financial stability, and respite care. Encouraging children's healthy development is essential to stopping child prostitution. The main priority should be prevention, along with a change in how our system treats children who are forced into prostitution. Arrests and criminal proceedings ought to be reserved for last resort, not the first. The victims of child prostitution that exist today are a reflection of society's inability to uplift and protect them.

## **PART 2 : CHILDREN IN CONFLICT OF LAW**

### **INTRODUCTION**

Children in conflict with the law (CCL) are referred to by a variety of terms, including criminal, thief, killer, and rapist. If anyone looks at them at all, all they see is the furious, cruel, and rough faces of young criminals. When people talk about their voices are frequently filled with disdain, mockery, and even condemnation. Names are given to these kids that solely allude to their transgressions and not to their inherent humanity. Society frequently wants to get rid of such worthless, hopeless beings because they believe that these kids will always lead a life of crime.

Many people are unaware of or careless about the fact that these evil looks are frequently only masks—masks that children have placed on themselves to conceal their suffering, rage, and terror, or masks that we, in our apathy and even disgust, have placed on them. We forget who these kids are because we see their masks instead of their faces. We fail to remember that they are still young people with a lot to learn, do, and dream for. We limit the ability of children to develop and evolve by allowing them to believe the masks are real.

## Access to Legal Representation and Due Process

In addition to being a fundamental right in and of itself, Access to Justice is also a necessary precondition for the protection and advancement of all other human rights. The right of everyone, including members of vulnerable groups, to equal Access to Justice was reaffirmed by member States of the United Nations in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels in September 2012.<sup>13</sup> They stated clearly how important the Rule of Law is to safeguarding children's rights, providing them with legal protection from abuse, exploitation, violence, and discrimination, and preventing these practices from happening to them.<sup>14</sup>

It is important to distinguish between the ideas of juvenile justice and child-sensitive justice, even though they are connected to the notion of children having access to the justice system.<sup>15</sup> The field of juvenile justice focuses on the circumstances surrounding minors who are suspected of breaking the law, have been charged with doing so, or have been proven to have done so. It includes "laws, policies, guidelines, customary norms, systems, professionals, institutions, and treatment specifically applicable to Children in Conflict with the Law."

Conversely, child-sensitive justice is characterized by a method that strikes a balance between the child's right to protection and their unique needs and perspectives.<sup>16</sup> The United Nations Guidelines on Justice in Matters Involving child Victims and Witnesses of Crime state that it entails establishing a legal system that ensures that all children's rights are respected and effectively implemented while taking into account the child's developmental stage and comprehension as well as the specific facts of the case.<sup>17</sup> Accessible, age-appropriate, prompt, comprehensive, and geared

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<sup>13</sup> 'High-Level Meeting on the Rule of Law, 24 September 2012 - United Nations and the Rule of Law' (United Nations) < <https://www.un.org/ruleoflaw/high-level-meeting-on-the-rule-of-law-2012/#:~:text=In%20order%20to%20galvanize%20collective,adopt%20other%20key%20mechanisms%20to> > (accessed on 29 April 2023)

<sup>14</sup> General Assembly Resolution 67/1, paras. 14 and 17

<sup>15</sup> "Child victims and witnesses" denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders; Economic and Social Council resolution 2005/20, Article 9 (a)

<sup>16</sup> UN Common Approach to Justice for Children, p 4

<sup>17</sup> Guidelines of the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, Article II.a; for the purpose of this report, child-friendly and child-sensitive are considered as synonymous.

toward the needs and rights of children, child-friendly justice upholds these rights, which include the rights to due process, the right to privacy and respect for family life, the right to participate in and comprehend the proceedings, and the right to integrity and dignity.

### **Alternatives to Detention**

According to studies, involving children in the process of rehabilitation rather than viewing them as merely “troublemakers” or “problem children” in need of punishment is the most successful strategy to discover positive solutions to children being involved in activities that break the law. An essential first step in this direction is the recognition and protection of their rights as human beings and as children.

Juvenile justice has so departed from the criminal justice model of punishment in recognition of the detrimental effects of affiliation with adult offenders and the greater likelihood of reformation of children due to their developing capacities.

### **Protection from Violence and Exploitation**

Every level of society is impacted by violence against children, which can take place in a variety of contexts such as families, schools, communities, care and justice facilities, businesses, and increasingly online. Numerous studies have been conducted on particular types of violence, such as child labour, FGM/C, sexual assault, and physical assault. There is now a clearer understanding of the negative effects of violence on children’s life as well as the short- and long-term effects that violence has on children’s social, physical, and emotional development.<sup>18</sup> The dynamics of social norms that lead to abuse, exploitation, and violence have been better understood thanks to this enhanced knowledge, as have the steps required to encourage constructive norms intended to put an end to harmful practices. However, obstacles still exist, and it is necessary to make more investments in getting more reliable data and enhancing programmatic responses through tried-and-true methods that place a stronger emphasis on monitoring for results.

Between 133 million and 275 million kids are said to witness incidents of violent behavior between their parents every year.<sup>19</sup> Three out of four kids

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<sup>18</sup>UNICEF < [http://www.unicef.org/protection/files/UNICEF\\_Birth\\_Registration\\_Handbook.pdf](http://www.unicef.org/protection/files/UNICEF_Birth_Registration_Handbook.pdf). > (accessed on 17 March 2023)

<sup>19</sup> UNICEF (2010) Child Disciplinary Practices at Home



between the ages of 2 and 14 experience some form of violent punishment at home on average. Despite the fact that physical punishment is frequently used, statistics reveal that in the majority of countries, carers do not generally support it. Only an average of one in four parents or guardians believe that physical punishment is necessary to properly raise children. According to a worldwide school-based student health survey carried out in several developing countries, between 20% and 65% of school-aged children reported having experienced verbal or physical bullying in the preceding 30 days.<sup>20</sup>

Gender-based violence (GBV) is a pervasive global issue that presents unique challenges when dealing with emergency situations. According to global data, almost one-third of married women have been victims of intimate partner violence.<sup>21</sup> With rates as high as 21% in North America, 33% in Latin America and the Caribbean, and 43% in sub-Saharan Africa, the prevalence varies by region. In Kenya, Swaziland, the United Republic of Tanzania, and Zimbabwe, recent population-based surveys funded by UNICEF and partners, including the US Centers for Disease Control and Prevention (CDC), revealed that 27–38% of females had experienced sexual violence before turning 18.<sup>22</sup> Conflicts and natural disasters worsen the effects of GBV, despite the possibility that comprehensive prevalence data are missing.

The sexual violence against women and girls in the Democratic Republic of the Congo has become so widespread that the conflict is known as “the war against women.” This encompasses both overt strategies employed by armed factions and unscrupulous individuals capitalizing on the atmosphere of impunity.<sup>23</sup>

Although there has been improvement, there is still insufficient response to GBV emergencies worldwide. There is a dearth of protection and support

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<sup>20</sup> WHO, London School of Hygiene and Tropical Medicine, South African Medical Research Council (2013)

Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence.

<sup>21</sup> ‘Violence against Women’ (World Health Organization) <<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>> (accessed on 29 April 2023)

<sup>22</sup> J Ward, *Prevention Programming to Reduce Violence Against Women and Girls in Humanitarian Settings: Towards a Preliminary Framework* (2012)

<sup>23</sup> J Ward and M Marsh, *Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses, and Required Resources. A Briefing Paper Prepared for Symposium on Sexual Violence in Conflict and Beyond*, Brussels (Belgium, 2006)

for survivors, and comprehensive preventative programming is frequently disregarded. Basic risk-reduction practices are often ignored, including GBV prevention tactics in formal and informal learning environments, targeted food distribution programs, and latrine locks. Performers who deal with GBV should make these programs a priority for each new crisis.

The state is ultimately in charge of making sure that children are protected. The strategy has changed to take into account the different ways that communities, families, and formal and informal groups safeguard children. Instead of focusing only on responding to children who are already victims of violence, emphasis has been placed on the setting in which the child protection system operates. It is possible to comprehend the interrelated effects of subsystems, like juvenile justice or dangerous migration, on one another by looking at the larger context of child protection. Child protection systems are dynamic, learning systems, not static pieces of equipment.<sup>24</sup>

### **Access to Education and Vocational Training**

The majority of legislative provisions in India, which has a long history of enacting juvenile legislation, have largely favored the British model. India adopted the English concept of separate treatment for juvenile offenders in the final part of the nineteenth century. According to chronology, the first statute aimed at helping youngsters in need who need to be trained for trade and industry is the Apprentices Act of 1850. It was a national response to the issue of juvenile delinquency. Children between the ages of 10 and 18 were covered under the Apprentices Act, which included provisions for both boys and girls.

## **REHABILITATION**

### **Juvenile Justice and the Police's role in India**

Rehabilitation starts the moment the criminal interacts with the police officer. The young person who gets into difficulty usually wants to escape from it as well. If he had a cordial and considerate first encounter with the police, he will likely be more receptive to the care he will receive. The child's attitude will eventually cool if the officer is truly in control of the circumstance and of himself, making the task at hand simpler. It is frequently stated that police officers should treat juveniles with respect.

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<sup>24</sup>The OPSC, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and the Rio de Janeiro Declaration and Call from Action to Prevent and Stop Sexual Exploitation of Children and Adolescents

## Across the globe

In the Philippines, a large proportion of children do not attend school. This is especially noticeable in General Santos, where data shows that 1,800 children leave school each year before finishing the primary cycle.<sup>25</sup> The main cause of this trend is poverty because, despite the fact that public schools are essentially free, many families find it difficult to pay for necessities, leaving little money for their kids' education. Some low-income families would rather their children, especially the younger ones, enter the workforce when faced with financial difficulties. Unfortunately, the lack of education makes this path challenging, increasing out-of-school children's vulnerability, marginalization, and risk of abuse and exploitation.

A growing number of out-of-school children in General Santos end up living on the streets, begging, or taking part in illegal activities among other risky situations. Many of these kids are drawn to drug abuse, gangs, theft, and robbery. They are frequently the victims of domestic abuse.

The Marcellin Center was founded in 1991 by the Marist Brothers of the Philippines to provide assistance to the most vulnerable children, including those who are in legal trouble.<sup>26</sup> The center was established before the Juvenile Justice and Welfare Act (JJWA) was passed. Before then, young offenders were held in adult prisons and had to wait long periods for their cases to be resolved while also being abused. The JJWA was passed with the intention of protecting, treating, and reintegrating young offenders back into society rather than locking them up.

'Hospitality at the centre's family homes and reintegration into school' is how the Marcellin Center starts off its projects. Part of the rehabilitation process involves reintroducing minors to the community or enrolling them in city schools with the goal of promoting inclusivity to lessen stigma. In order to guarantee academic progress, the Marcellin Center offers accredited courses to certain students who are unable to leave due to a variety of circumstances. The ultimate objective is for every child to finish the school year, encouraging learning and inclusivity throughout the recuperation process.

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<sup>25</sup> "Giving a New Life to Kids in Conflict with the Law" (Fondazione Marista per la Solidarietà Internazionale ONLUS, September 16, 2019) <<https://fmsi.ngo/en/giving-a-new-life-to-kids-in-conflict-with-the-law>> (accessed on 22 April 2023)

<sup>26</sup> Marcellin Foundation Center: A Shelter for Children in Conflict with the Law' (Champagnat, 7 October 2020) <<https://champagnat.org/en/marcellin-foundation-center-a-shelter-for-children-in-conflict-with-the-law/>> (accessed on 29 April 2023)

## CONCLUSION

The exploitation and dehumanization of children through sexual abuse results in serious emotional and physical harm, as well as an increased risk of long-term health problems and shortened lifespans. Under the pretense of employment, victims from other nations are frequently enticed to the US, where they are later forced into prostitution. Similarly, Children in conflict of law are a product of society's failure to provide a better system and learning environment to grow and prosper. They are not the criminals rather victims of their condition. They have the capacity to be better individuals, to learn, grow and move on in life, provided the fact that they are given a conducive environment. It is pertinent to understand that the only method which has eliminated or reduced crime in a society is attacking the root cause of the problem in the case of juveniles. States which have invested in training, education of the juveniles involved in crime have produced results rather than states which treat their children in conflict of law on par with other criminals.

As a society, we have an obligation to make sure that no child is placed in a situation this dangerous. We need to lobby our federal, state, and local lawmakers to put a comprehensive and well-coordinated child strategy at the top of their list of priorities.

# ABANDONMENT AND SEXUAL ASSAULT: RECONCILING VULNERABLE CHILDREN

Anuj Kulhar\*

## Five random pictures of children from the web



Figure 1 <https://www.google.com/imgres?imgurl=https%3A%2F%2Fflawtrend.in>

**Feeling :** Concern

**Thought :** What could have led to these children being abandoned? How long have they been on the road? What will happen to them now? Where are their parents? They will probably lead a difficult childhood. They are too young to survive on their own. Will anyone help them?

**Feeling :** Shock

**Thought :** The thought that arises when looking at the picture is one of concern for the well-being of the children. It is alarming to think about the potential physical, emotional, and psychological harm that may result from children being forced into a marriage.



Figure 2 <https://www.google.com/imgres?imgurl=https%3A%2F%2Fwww.jyotijudiciary.com>



Figure 3 <https://www.google.com/imgres?imgurl=https%3A%2F%2Fflawtrend.in>

**Feeling:** Hope

**Thought:** Looking at the picture, I think about the importance of education in a child's life and how it can help them in achieving their dreams and aspirations. The picture may also remind me of the barriers to education that many children face.

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**Feeling :** Empathy

**Thought :** Who is responsible for the child’s abuse? How can we ensure that the child receives justice and support?



Figure 4 <https://www.google.com/imgres?imgurl=https%3A%2F%2Fonline-learning-college.com>



Figure 5 <https://www.google.com/imgres?imgurl=https%3A%2F%2Fstatic01.nyt.com>

**Feeling :** Fear

**Thought :** The picture raises questions about the context and circumstances in which the children were photographed, as well as the social and cultural factors that may contribute to the normalization of violence among young children.

I have chosen to focus on the sexual abuse of children and their abandonment by family.

## INTRODUCTION

All the children in the picture appear to be in a vulnerable condition. The older girl is holding a baby in her lap, which indicates that she may be responsible for the child's care. The fact that they are on the street suggests that they do not have a safe or stable home environment.

The girl child and her brothers may require immediate assistance in the form of food, shelter, and medical attention. The children may also need help in accessing education and opportunities to develop life skills. The Indian government has various programs and initiatives in place to support vulnerable children, which could be utilized to assist this girl child and her brothers.

## LEGISLATIONS AND SCHEMES THAT CAN HELP

What are the different laws and legislations which will apply to this child? The Indian Constitution includes provisions for the protection of children's rights, such as the right to education, health, and protection from abuse and exploitation. Additionally, India has specific laws and policies aimed at the protection and welfare of children, such as the Juvenile Justice Act and the Integrated Child Protection Scheme (ICPS). These laws and policies could be applied to support these children.

What schemes and policies will help these children? Such children may benefit from programs like the ICPS, which provide financial and institutional support to children in need. The Indian government has also launched various initiatives, such as the Mid-Day Meal Scheme, to provide children with nutritious meals at school. These programs could be leveraged to support the child in the picture and her brother.

- Juvenile Justice (Care and Protection of Children) Act, 2015: This Act provides for the care and protection of children who need special protection, including abandoned or orphaned children like the children in Picture 1. The Juvenile Justice (Care and Protection of Children) Act, 2015, in section 2 (14), defines "Child in need of care and protection" (CNCP)<sup>1</sup>.
- Integrated Child Protection Scheme (ICPS): This scheme provides for the protection of children from violence, exploitation, abuse, and neglect,

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<sup>1</sup>Juvenile Justice (Care and Protection of Children) Act, 2015, s 2(14)

and also supports the rehabilitation and reintegration of children in need of care and protection.<sup>2</sup>

- Child Welfare Committees (CWCs): CWCs are statutory bodies established under the Juvenile Justice Act that are responsible for the care and protection of children in need of care and protection. They can make decisions regarding the care, protection, and rehabilitation of children, including abandoned children like the children in Picture 1.<sup>3</sup>
- Child Adoption Resource Information and Guidance System (CARINGS): This is an online platform that facilitates the adoption of children by prospective adoptive parents, including children who have been abandoned or orphaned<sup>4</sup>.
- Right to Education (RTE) Act, 2009: This act provides for free and compulsory education to all children between the ages of 6 and 14 years, including children like the ones in Picture 1 who may not have access to education<sup>5</sup>.
- National Policy for Children, 2013: This policy provides for the protection, development, and welfare of children in India, and outlines strategies for achieving their well-being, including the protection of children who are vulnerable or in difficult circumstances<sup>6</sup>.
- Childline Services: Childline is a national 24x7 toll-free helpline (1098) that provides emergency assistance and support to children in need of care and protection, including those who are abandoned, lost, abused, or exploited<sup>7</sup>.

What future course of action should be adopted for such children? These children may require long-term support to ensure their safety, development, and overall well-being. The government may need to take measures to identify and address the root cause of the child's vulnerability, which may involve working with the child's family or community to provide support and resources. Additionally, the government may need to monitor and evaluate the child's progress over time to ensure that she is receiving adequate support.

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<sup>2</sup>Juvenile Justice (Care and Protection of Children) Act, 2015, s 65

<sup>3</sup>Juvenile Justice (Care and Protection of Children) Act, 2015, s 27

<sup>4</sup>Juvenile Justice (Care and Protection of Children) Act, 2015, s 65

<sup>5</sup>The Right to Education Act 2009, s 3

<sup>6</sup>National Policy for Children, 2013

<sup>7</sup>Juvenile Justice (Care and Protection of Children) Act, 2015, s 2(25)



## SEXUAL ABUSE OF CHILDREN

Feelings that arise when we look at the picture are anger, sadness, empathy, and concern. Many questions arise in my mind. Who is responsible for the child's abuse? How can we ensure that the child receives justice and support?

The child in the picture is likely to be in a state of shock and trauma due to the sexual harassment she has experienced. She may also feel a sense of shame or guilt, even though she is not responsible for the abuse. Such children may require immediate medical and psychological attention to address the trauma and prevent any long-term negative effects.

What help can be provided to such children? They may require immediate medical attention to address any physical injuries and prevent any long-term damage. Additionally, these children may require counselling and other psychological support to address the trauma and help them cope with the experience. The Indian government has various programs and initiatives in place to support victims of sexual abuse, which could be utilized to assist the children.

## RELEVANT LEGISLATIONS

In India, the Protection of Children from Sexual Offences (POCSO) Act, 2012 provides legal protection to children till the age of 18 years<sup>8</sup> from sexual abuse<sup>9</sup> and harassment<sup>10</sup>. The POCSO Act defines a range of sexual offences against children including sexual harassment prescribes deterrent punishment for the perpetrators, and outlines procedures for investigation and trial. The Act also mandates the establishment of Special Courts<sup>11</sup> for the speedy trial of offences against children.

The Indian government has launched several schemes and programmes, adopted policies and created institutions to protect children from sexual abuse and exploitation. Some of the important schemes may be found below:

- ICPS provides for the establishment of child protection units, counselling services, and other support systems for children who have experienced abuse.

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<sup>8</sup>Protection of Children from Sexual Offences (POCSO) Act 2012, s 2(1)(d)

<sup>9</sup>Protection of Children from Sexual Offences (POCSO) Act 2012, s 2(1)(b)

<sup>10</sup>Protection of Children from Sexual Offences (POCSO) Act 2012, s 11

<sup>11</sup>Protection of Children from Sexual Offences (POCSO) Act 2012, s 28

- One Stop Centre (OSC) Scheme: This scheme provides support services to women and children who are victims of violence, including sexual abuse, and includes counselling, medical assistance, legal aid, and shelter facilities<sup>12</sup>.
- Sakhi Centers: Sakhi Centers are Women Welfare Centers (WCC) that provide support and assistance to women and children who are victims of violence, including sexual abuse<sup>13</sup>.
- Mahila Police Volunteers (MPVs): MPVs are trained volunteers who act as a link between the police and the community, and can assist in the prevention and reporting of crimes against women and children, including sexual abuse.
- Childline Services: Childline is a national 24x7 toll-free helpline (1098) that provides emergency assistance and support to children in need of care and protection, including those who have been victims of sexual abuse<sup>14</sup>.

India adopted its first National Policy for Children in 1976 focused on the creation of robust citizens of India. A new National Policy for Children was adopted in 2013, It identifies survival, health, nutrition, education, development, protection and participation as the undeniable rights of every child. This Policy is to guide and inform all laws, policies, plans and programmes affecting children. National Policy for the Empowerment of Women, 2001: This policy outlines the government’s commitment to promoting gender equality and the empowerment of women and includes measures to prevent and address violence against women and children.

The Commission for Protection of Children at the Centre and State levels have also been established under the Commission for Protection of Child Rights Act, 2005. These commissions are responsible for protecting and promoting the rights of children in India. The NCPCR and CSPCR can take action to ensure that each abused child receives the necessary care, protection, and support.<sup>15</sup>

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<sup>12</sup>Ministry of Women and Child Development, “One Stop Centre Scheme Implementation Manual,” (New Delhi: Government of India, 2015)

<sup>13</sup>The Protection of Women From Domestic Violence Act 2005, s 10

<sup>14</sup>Juvenile Justice (Care and Protection of Children) Act, 2015, s 2(25)

<sup>15</sup>The Commissions for Protection of Child Rights Act 2005, s 13

What future course of action should be adopted for these children? These children may need ongoing medical and psychological support to address the trauma and long-term impact of the harassment. It is important to ensure access to education and vocational training to help them become self-sufficient and independent in the future. These children may also benefit from legal support and advocacy to ensure that the perpetrator is held accountable for their actions.

How do we bring them back to society? Rehabilitating a sexually abused child back into society requires a comprehensive approach that addresses the physical, psychological, and emotional harm caused by the abuse. A crucial step in the rehabilitation process is providing the child with access to specialized medical care and mental health services to address any physical injuries, illnesses, or mental health issues resulting from the abuse. Additionally, providing the child with a safe and supportive environment, such as a shelter or a foster home, is important for their recovery. Access to education, vocational training, and life skills programs will help them build a foundation for a better future. These programs can help the child develop the necessary skills and knowledge to reintegrate into society and become independent. Another key aspect of rehabilitation is providing the child with legal support to seek justice and hold their abuser accountable. This can involve providing legal representation or advocacy services to help the child navigate the legal system and access justice.

## **CONNECTION BETWEEN THE TWO PICTURES**

The pictures of the abandoned children and the sexually abused children are both examples of the vulnerability that children face when they lack parental protection and support. Abandoned children are at a higher risk of being sexually exploited due to lack of supervision, economic vulnerability, and limited access to resources. This vulnerability can make them targets for predators who seek to exploit their vulnerability and manipulate them into sexual activities. The sexually abused child in Picture 4 has experienced the trauma and harm caused by sexual exploitation, while the abandoned children in Picture 1 are at risk of similar exploitation without the protection of a caregiver. The connection between the two pictures highlights the

urgent need for policies and programs to protect vulnerable children from sexual exploitation and abuse.

There are several reasons why a child who has been abandoned may be at a higher risk of being sexually exploited:

- **Lack of parental protection:** Children who are abandoned lack the protection and guidance of a parent or caregiver, making them more vulnerable to exploitation and abuse.
- **Economic vulnerability:** Abandoned children may lack necessities such as food, shelter, and clothing, which can make them vulnerable to exploitation by individuals who offer these basic needs in exchange for sexual favours.
- **Lack of supervision:** Without parental supervision, abandoned children may be more likely to engage in risky behaviour, such as running away from home or hanging out with peers who may encourage or engage in sexual activity.
- **Mental and emotional health:** Abandoned children may experience feelings of isolation, loneliness, and low self-esteem, which can make them more susceptible to being groomed and manipulated by predators.
- **Limited access to education and resources:** Without the support of parents or caregivers, abandoned children may not have access to education, healthcare, or other resources that could help protect them from sexual exploitation.

## **HOW CAN WE HELP?**

As a student of law, there are several ways in which one can help children who are in difficult situations, such as those depicted in Picture 1 and Picture 4. Firstly, one can spread awareness about the issue of child sexual abuse and child abandonment by utilizing social media platforms. One can share information about the laws and policies that exist to protect children and advocate for their rights. Educating others on the importance of reporting child abuse and providing support to children in need is also vital.

Another way to help is by volunteering with organizations that provide support to children in need, such as NGOs and child helplines. One can offer their time and skills to assist these organizations with their programs and initiatives aimed at protecting children's rights.

Organizing fundraising events to raise money for organizations that provide support to children in need is another way to contribute. The funds raised can be used to support programs and initiatives aimed at protecting children's rights, and providing medical care, and counselling to children who have been sexually abused or abandoned.

As a law student, one can provide legal aid to children who have been sexually abused or abandoned by working with legal aid clinics or NGOs to provide legal support and help them seek justice. Advocacy is another way to help, by writing to policymakers and lawmakers to urge them to pass laws and policies that protect children's rights and provide support to children in need. Participating in rallies and protests to raise awareness about child abuse and advocate for change is also a powerful tool.

# THE IMPACT OF FAMILY SOCIOECONOMIC STATUS ON CHILD LABOUR AND FINANCIAL INSTABILITY

Shoubhik Bose\*

## Five random pictures of children from the web



Figure 1 <https://www.humanium.org/en/child-labour/>

**Feeling :** Empathy

**Thought :** Children's fundamental rights are violated when they are used as labourers and this can have a negative impact on their physical and emotional health. Youngsters who are compelled to work frequently forfeit their education, which may restrict their options in the future and prolong the poverty cycle.

**Feeling :** Helplessness

**Thought :** Financial instability profoundly impacts children, hindering access to basic needs, education, and healthcare, thereby impeding physical, emotional, and social development. The resulting stress and uncertainty may contribute to long-term mental health consequences.



Figure 2 <https://borgenproject.org/how-access-to-financial-services-fights-poverty/>



Figure 3 <https://www.thestatesman.com/world/pandemic-can-push-86-million-children-into-household-poverty-by-the-end-of-2020-unicef-1502893530.html>

**Feeling:** Sad

**Thought:** Lack of education has far-reaching consequences for society, impeding economic growth by limiting skilled workforce availability and hindering social and political participation. Overcoming barriers like poverty and discrimination is essential for ensuring universal access to quality education.

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**Feeling : Depressed**

**Thought :** Food insecurity can have severe physical and mental health consequences, especially for children. Malnutrition, stunted growth, and increased susceptibility to diseases are few examples of the health impacts of food insecurity. It can also affect cognitive development, leading to poor academic performance and limited opportunities for the future.



Figure 4 <https://www.unicef-irc.org/article/1626-first-global-estimates-of-food-insecurity-among-households-with-children.html>



Figure 5 <https://images.app.goo.gl/9dcbWzhnzYZzoSP7A>

**Feeling : Bittersweet**

**Thought :** Access to healthcare is a human right, yet millions, especially the underprivileged lack adequate healthcare leading to poor health outcomes.

I have chosen to focus on the relationship between child labour and financial instability.

## **PART 1: CHILD LABOUR**

### **INTRODUCTION**

Child labour is a widespread problem, affecting millions of children around the world. One of the main drivers of this issue is poverty and financial instability. Families below the poverty line frequently struggle to make ends meet in many low-income nations, and children are frequently forced to work in order to support their families. These kids are denied their rights to healthcare, education, and an upbringing free from abuse. Moreover, child labour often perpetuates a cycle of poverty, as children who work instead of attending school are less likely to secure better-paying jobs as adults. This can lead to lower incomes and a lack of social mobility for affected families, perpetuating the cycle of poverty across generations. While the issue of child labour is complex, addressing the financial conditions that drive families to rely on child labour is a crucial step towards ending this practice. This can involve implementing policies to alleviate poverty, providing access to education and training opportunities, and raising awareness of the harm that child labour does to children's health, happiness, and prospects for the future. It is possible to guarantee that every child has the chance to develop, learn, and flourish in a secure and nurturing atmosphere by tackling the underlying causes of child labour.

### **ISSUES**

1. **Poverty and Lack of Access to Education:** One of the primary cause of child labour is poverty. In order to supplement their income, families in poverty frequently send their kids to work, which robs them of their childhood and limits their options in the future. This poverty cycle is sustained by lack of educational opportunities, which has long-term detrimental effects on both child and society at large. The International Labour Organization (ILO) estimates that 72 million of the 152 million children work in dangerous jobs. Governments and organizations need to make reducing poverty a top priority and make educational investments to give kids the skills and chances they need to escape the cycle of poverty.
2. **Exploitation and Insufficient Social Protection:** Children from financially unstable households are vulnerable to exploitation by employers who



offer them low wages and dangerous working conditions. These children often work long hours in hazardous conditions, which can lead to physical and mental health problems. Moreover, they often lack access to social protection measures such as healthcare, education, and income support, which can exacerbate the problem of child labour.<sup>1</sup> To address this problem, governments and organizations must work to ensure that children have access to basic services and social protection measures to protect them from exploitation and ensure their well-being.

3. **Lack of Enforcement of Laws:** Despite the existence of laws prohibiting child labour, they are often not enforced effectively, particularly in the informal sector. Many employers flout the law and employ children in hazardous and non-hazardous industries. Moreover, the enforcement agencies often lack the resources, capacity, and political will to effectively combat child labour.<sup>2</sup> To address this problem, governments and organizations must work to strengthen enforcement mechanisms and ensure that employers who violate child labour laws are held accountable.
4. **Discrimination:** Children from marginalized communities are more likely to be engaged in child labour due to discrimination and social exclusion. Girls, children with disabilities, and children from ethnic and religious minorities are particularly vulnerable to exploitation.<sup>3</sup> To address this problem, governments and organizations must work to promote inclusivity and address discrimination in all its forms to ensure that every child has equal opportunities to grow, learn, and thrive.
5. **Inadequate Rehabilitation:** Children who are rescued from child labour often do not receive adequate rehabilitation and support to help them reintegrate into society and access education and other opportunities. Many of these children suffer from physical and mental health problems, and their education is often disrupted, making it difficult for them to catch up.<sup>4</sup> To address this problem, governments and organizations must provide comprehensive rehabilitation and support services to ensure that rescued children can access education and other opportunities and rebuild their lives.

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<sup>1</sup>United Nations Children's Fund (UNICEF), (2017), Child poverty and disparities in India: An analysis of trends and progress. New Delhi: UNICEF India.

<sup>2</sup>Human Rights Watch, (2016), Small change: Bonded child labour in India's silk industry. New York: Human Rights Watch

<sup>3</sup>Human Rights Watch, (2016). 'Off the backs of the children': Forced and child labour in India's brick kilns. New York: Human Rights Watch

<sup>4</sup>United Nations Children's Fund (UNICEF). (2015). Children in hazardous work: What we know, what we need to do. New York: UNICEF

## LEGAL PROVISIONS

There are several legal provisions and case laws that establishes a link between child labour and poverty. One such provision is the Convention on the Worst Forms of Child Labour of the International Labour Organization, which forbids hiring children for jobs that could endanger their morals, health, or safety<sup>5</sup>. The Convention calls for actions to address the underlying causes of this issue, such as poverty reduction and social protection measures, acknowledging that poverty is one of the primary causes of child labour.

In addition, there are several case laws that highlight the link between child labour and financial conditions. For example, The Indian Supreme Court acknowledged in the *Bachpan Bachao Andolan v Union of India*<sup>6</sup> case that child labour is a result of poverty and lack of access to education, and ordered the government to implement measures to combat child labour and provide educational and social support for affected children.

These legal provisions and case laws emphasize the importance of addressing the financial conditions that lead to child labour. By providing support and resources to families living in poverty, governments can reduce the prevalence of child labour and ensure that every kid has a chance to grow, learn and prosper.

## LEGAL ISSUES

Child labour is a serious problem in India, and there are several legal issues associated with it. The Indian Constitution<sup>7</sup> forbids employing children below the age of 14 in dangerous jobs industries, and the Child Labour (Prohibition and Regulation) Act, 1986<sup>8</sup>, prohibits the employment of minors in non-hazardous industries who are younger than fourteen. Child labour is still common in India despite these legal protections, especially in the unorganized sector.

One of the legal issues with child labour in India is the lack of effective implementation and enforcement of the laws. Many employers, particularly those in the informal sector, flout the law and employ children in hazardous and non-hazardous industries. Moreover, the enforcement agencies often lack the resources, capacity, and political will to effectively combat child labour.

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<sup>5</sup>Worst Forms of Child Labour Convention, 1999

<sup>6</sup>(2011) 5 SCC 1

<sup>7</sup>Constitution of India 1950, Art. 24

<sup>8</sup>Child Labour (Prohibition and Regulation) Act, 1986

Another legal issue is the lack of adequate social protection measures for vulnerable families. Poverty and lack of access to education are the primary drivers of child labour, and unless these issues are addressed, the practice of child labour is likely to persist. There is a need for more comprehensive social protection measures, including access to education, healthcare, and income support, to prevent children from being forced to work.

Finally, more education and awareness are required regarding the detrimental effects of child labour. The long-term effects of child labour on children's health, wellbeing, and prospects for the future are not widely known to families. Raising awareness about the issue can help to change attitudes towards child labour and encourage families to seek alternative means of income generation.

### **CURRENT LEGAL SYSTEM IN INDIA**

India has statutory laws aimed at addressing child labour and promoting education, such as the Child Labour (Prohibition and Regulation) Act, 1986<sup>9</sup> and the Right to Free and Compulsory Education for Children Act, 2009. These statutes forbid the employment of children below the age of 14 years in both hazardous and non-hazardous fields, and they impose fines on employers who break the law. Furthermore, children must have access to free and compulsory education up until the age of 14 according to legal provisions.

There have been several notable case laws in India that have dealt with child labour, including:

1. *M.C. Mehta v State of Tamil Nadu*<sup>10</sup>: The Supreme Court ruled that it was against the Indian Constitution's guarantees of personal liberty and the right to life to employ children in dangerous industries. The Court mandated the removal of all minors employed in dangerous industries and their provision of education and rehabilitation. *Bachpan Bachao Andolan v Union of India*<sup>11</sup>: The Supreme Court ruled that children rescued from child labour have a right to social support, healthcare and education from the government. The government was mandated by the court to set up a fund for the rescue and education of rescued children.

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<sup>9</sup>Ibid

<sup>10</sup>(1996) 6 SCC 756

<sup>11</sup>(2011) 5 SCC 1

2. *People's Union for Democratic Rights v Union of India*<sup>12</sup>: According to Indian labour laws, the Supreme Court of India ruled that minors employed in the carpet industry were eligible for minimum wages and social security benefits.
3. *Mukti Datta v Union of India*<sup>13</sup>: The Delhi High Court held that children working in domestic households were entitled to the same legal protections as other child workers under Indian labour laws.

These legislative measures and case laws demonstrate the Indian government's dedication to preventing child labour and defending children's rights. But in spite of these initiatives, child labour is still widely prevalent in India, particularly in the informal sector. There is a need for greater enforcement of the law, improved social protection measures, and awareness-raising efforts to effectively address the issue of child labour in India.

## **PART 2: FINANCIAL INSTABILITY**

### **LEGAL ISSUES**

Financial instability can create legal issues for children, particularly in cases where their basic needs and rights are not being met. Here are some examples of legal issues that can arise due to financial instability:

1. Child neglect<sup>14</sup>: Uncertainty in finances can result in neglect, where parents or guardians are unable to meet their children's basic needs, like clothing, food, and shelter. In such cases, child welfare authorities may step in to protect the child's rights and well-being.
2. Child labour<sup>15</sup>: Children who are forced to work to support their families due to financial instability may suffer long-term effects on their education, health, and prospects for the future. Child labour is illegal in many countries, and children who are forced to work may be entitled to legal protections and support.<sup>16</sup>

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<sup>12</sup>(1982) 3 SCC 235

<sup>13</sup> (1989) 2 SCC 226

<sup>14</sup>Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services, (2008)

<sup>15</sup>Child Labour (Prohibition and Regulation) Act, 1986, No. 61 of 1986

<sup>16</sup> Ibid (n. 5)

3. Child support: In cases of divorce or separation, parents may be required by law to provide financial support for their children. If a parent is unable to provide support due to financial instability, legal action may be taken to ensure that the child's needs are met.
4. Education: Education is a fundamental right of children, and financial instability should not be a barrier to access.<sup>17</sup> Up to a certain age, governments are required by law to offer free and compulsory education, and children from financially unstable households may be entitled to additional support, such as scholarships or fee waivers.
5. Child welfare<sup>18</sup>: Financial instability can have a significant impact on a child's well-being, and child welfare authorities may need to intervene to ensure that the child's rights and best interests are protected.

## LEGAL PROVISIONS

There are several legal provisions in India that aim to guarantee financial stability of children. Some of these provisions, along with relevant case laws, are as follows:

6. The Juvenile Justice (Care and Protection of Children) Act, 2015<sup>19</sup>: The care, protection, and rehabilitation of children in need of care and protection are covered by this act. The act provides financial aid for the education, training, or any other purpose of children in need of care and protection. In order to oversee the application of these provisions, the act also calls for the appointment of child welfare committees.
7. The National Policy for Children, 2013<sup>20</sup>: This policy recognizes the importance of ensuring the financial stability of children, especially those from disadvantaged backgrounds. In order to support children's development and well-being, the policy places a strong emphasis on the necessity of having access to healthcare, education, and other necessities. The Supreme Court ordered the government to give financial support to children rescued from bonded labour in the case of *Bandhua Mukti Morcha v Union of India*<sup>21</sup> in order to ensure their rehabilitation and education

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<sup>17</sup>Constitution of India 1950, Art. 21A

<sup>18</sup>Child Welfare Information Gateway, Child Welfare Information Gateway Podcast Series: Financial Stability and Child Welfare (2019)

<sup>19</sup>Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>20</sup>National Policy for Children, Ministry of Women and Child Development, Government of India (2013)

<sup>21</sup>(1984) 3 SCC 161

8. The Right to Education Act, 2009<sup>22</sup>: Children between the ages of six and fourteen are required to receive free and compulsory education under this act. Additionally, the act allows for the reimbursement of costs for books, uniforms, and tuition for kids from lower socio-economic groups. The Right to Education Act mandates that private schools reserve 25% of their seats for students from economically disadvantaged sections. The Supreme Court upheld this requirement in the case of *Society for Unaided Private Schools of Rajasthan v Union of India*<sup>23</sup>

## SUGGESTIONS

Child labour and financial stability are two interconnected issues that require urgent attention. Child labour refers to the exploitation of children for economic or other purposes, while financial stability refers to the ability of individuals or households to meet their basic needs and achieve their goals without facing undue financial hardship. Unfortunately, child labour and financial instability often go hand in hand, as families those who are impoverished might have to send their kids to work in order to make ends meet.

One of the main challenges in addressing child labour and financial instability is the lack of access to education. Youngsters compelled to engage in labour frequently forfeit their education, which may restrict their prospects in the future and prolong the poverty cycle. On the other hand, financial instability can also prevent children from attending school, as families may be unable to afford the cost of tuition, uniforms and other expenses. This highlights the need for a comprehensive approach that addresses both the issues.

There are several ways in which child labour and financial stability can be addressed. First and foremost, laws and policies that shield kids from the worst kinds of child labour and advance their rights to a good education and a job are in need of reinforcement. Improving access to education is something that governments and other stakeholders should endeavor to achieve, especially for kids from underprivileged families. This involves giving low-income families financial support to help them cover the cost of uniforms, books, and school fees.

Additionally, encouraging financial stability and addressing child labour are two important goals of ethical business practices. Companies should adopt ethical supply chain practices and conduct regular audits to ensure

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<sup>22</sup>Right to Education Act, 2009

<sup>23</sup>(2012) 6 SCC 1

that their products are not produced using child labour. This can help to create a fair and just economy that benefits everyone, including children.

Finally, social protection programs can provide vital assistance to vulnerable families and children by providing financial assistance, healthcare, and other basic services. Governments should develop and implement effective social protection policies that target the most vulnerable children and families.

## **CONCLUSION**

Photographs can be a powerful tool for interlinking different themes and ideas, including child labour and financial stability. Photography has the ability to convey emotions, tell stories, and raise awareness about important issues that affect our society. When used in the context of child labour and financial stability, photography can be particularly impactful, as it can provide a visual representation of the challenges faced by children and families living in poverty.

Through the lens of photography, we can see the reality of child labour and financial instability and understand the struggles that families and children face on a daily basis. Photographs can capture the faces, emotions, and stories of those affected by these issues, making them more relatable and humanizing the problem.

The interlinking of child labour and financial stability is a complex issue that requires urgent attention. Children who are forced to work are often from families living in poverty, and the lack of financial stability can prevent children from attending school and limit their future opportunities. This perpetuates a cycle of poverty that is difficult to break.

It is essential to address both child labour and financial stability simultaneously to create a comprehensive solution. Strengthening legal frameworks is vital to defend children from the most severe forms of child labour and to advance their rights to decent employment and education. Improving access to education, particularly for children from disadvantaged backgrounds, is also critical to ending the cycle of poverty.

Responsible business practices can also play an essential role in addressing child labour and promoting financial stability. Companies should adopt ethical supply chain practices, conduct regular audits, and ensure that workers are paid a living wage. This will create a fair and just economy that benefits everyone, including children.

Providing social protection programs can also help vulnerable families and children by providing financial assistance, healthcare, and other basic services. Effective social protection policies that target the most vulnerable children and families should be developed and implemented to break the cycle of poverty.

Raising public awareness is also vital to generate support for action. Public campaigns, advocacy, and media engagement can help increase understanding of the detrimental effects of child labour and the significance of financial stability.

In conclusion, the interlinking of child labour and financial stability is a significant challenge that requires a multi-faceted approach. By strengthening legal frameworks, improving access to education, encouraging responsible business practices, providing social protection, and raising public awareness, we can work towards ending child labour and promoting financial stability for all children. Addressing this issue is crucial for creating a just and equitable society for future generations.



# ENSURING ACCESS TO EDUCATION TO ALL CHILDREN AND PREVENTION OF CHILD LABOUR

Ishaan Aryan\*

## Five random pictures of children from the web



Figure 1: <https://images.app.goo.gl/gRRVuYJcuSzu5ctd7>

**Feeling :** Bittersweet

**Thought :** The picture depicts a very grievous issue. Although the children have food on their plates, the larger question is whether food is a luxury for them. Maybe they are lucky to have it today but that may change in the future.

**Feeling :** Depressing

**Thought :** This picture depicts that these children who should ideally be in school receiving education, are made to work just to earn bread for their family.



Figure 2: <https://images.app.goo.gl/mmljjv2tNDNwdMhQ6>



Figure 3: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fi.pinimg.com>

**Feeling:** Sad

**Thought:** This picture depicts how these poor children have no shed over their heads. Streets have become their permanent residence. It is very saddening to see how the poor little boy is giving support to the younger child as he is sleeping on his lap.

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**Feeling :** Hopeful

**Thought :** The picture depicts that kids, despite their daily struggles in life, are still trying to learn and get educated.



Figure 4: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fc8.alamy.com%2Fcomp>



Figure 5: <https://www.google.com/imgres?imgurl=https%3A%2F%2Fwww.financialexpress.com>

**Feeling :** Scared

**Thought :** This picture shows how these poor children have been used as commodities. These children are trafficked and then used to beg and prostitution. In some cases, their body parts even get mutilated for selling.

I have chosen to focus on child education and child labour.

## INTRODUCTION

In India, there is a significant connection between education and child labour. As education gives kids the knowledge, abilities, and chances to pursue respectable employment in the future, it is vital in avoiding and eradicating child labour. On the other hand, child labour frequently denies children their right to an education and feeds the cycle of social injustice and poverty.

Poverty is one of the main causes of youngsters being compelled to labour. Families in poverty frequently have restricted access to essentials including healthcare, education, and food. As children contribute to the family income, child labour becomes a need for many families. However, this leads to a vicious cycle of poverty, as children who work are often unable to attend school, which limits their future opportunities for employment and economic mobility. As children who labour frequently cannot attend school, this reduces their future employment and economic mobility chances, which creates a vicious cycle of poverty.

The key to ending this cycle is education. Giving kids access to high-quality education, not only equips them with information and skills but also creates possibilities for future work that will pay more. Parents and communities are better informed about the value of children's rights and the harmful effects of child labour, thanks to education.

However, child labour significantly harms kids' educational opportunities. Children who work are frequently unable to attend school regularly or may completely stop going. Children's physical and emotional health is also impacted by child labour, and this can hurt their schooling. Long-hour workers are frequently worn out and unable to focus in class, and those who participate in dangerous employment may sustain illnesses or injuries that prevent them from going to school.

Additionally, child labour keeps social inequality alive by denying children from low-income families the chance to go to school and advance their economic status. This exacerbates social gaps already present and helps pass on poverty from one generation to the next.

It is obvious how education and child labour are related in India. While child labour impairs children's education, maintains poverty, and creates social injustice, education is crucial in avoiding and eliminating it. It is therefore

crucial to prioritize education and address the root causes of child labour to create a better future for the children of India. Therefore, to improve the future of India's children, it is essential to place a high priority on education and deal with the underlying issues that lead to child labour.

## **EXISTING PROBLEMS**

With an estimated 10.1 million child labourers aged 5 to 14 years old, India has one of the biggest numbers of child labourers worldwide. Child labour is a complicated problem that is directly linked to social injustice, poverty, and limited access to education. The following are some of the key issues with child labour and education in India:

Inability to access education - Many children in India lack access to high-quality education, despite constitutional and legal requirements for free and mandatory schooling. In rural areas, where schools are frequently underfunded and understaffed, the lack of access to education is particularly acute.

In rural regions, just 16.5% of students aged 6 to 14 could read books intended for class 2 in their language, and only 41.6% of them could recognise numerals up to 99, according to the Annual Status of Education Report (ASER) 2020. Children who lack access to education are frequently forced into the labour market.<sup>1</sup>

Poverty and socioeconomic inequality are two major factors that contribute to child labour in India. Many low-income households rely on the income of their kids to make ends meet. Children from socially excluded groups, such as Dalits and Adivasis, are especially susceptible to exploitation and abuse in the workplace.

The National Statistical Office (NSO) estimates that about 30% of Indians live in poverty in rural areas. Due to the high cost of schools, including uniforms, books, and transportation, poverty is a significant obstacle to attending education.<sup>2</sup>

While India has a strong legislative structure in place to protect children from being used for labour exploitation, implementation of these rules is frequently lax. The International Labour Organization (ILO) reported that

<sup>1</sup>Annual Status of Education Report 2020, Pratham

<sup>2</sup>National Statistical Office, Ministry of Statistics and Programme Implementation, Government of India, Key Indicators of Household Social Consumption on Education in India

only a small percentage of child labourers in India are rescued and given new opportunities.<sup>3</sup>

There were 10.1 million child labourers in India in 2011, who were aged 5 to 14. As a result of the fact that many kids work in the unofficial sector and are not counted in official statistics, it is believed that many more youngsters work as labourers than this.<sup>4</sup>

Discrimination based on gender: In India's setting of child labour and education, gender discrimination is a major problem. Girls are more likely to leave school early and start working. The ASER 2020 research states that there is a growing gender disparity in reading competency, with just 14.9% of girls in rural regions between the ages of 6 and 14 being able to read books intended for class 2 in their native language, as opposed to 18.2% of males.<sup>5</sup>

India's issues with child labour and education are complicated and call for a multifaceted strategy to solve them. To end child labour and guarantee that all children have access to high-quality education, it is essential to strengthen the legal system, make investments in education, and deal with the underlying causes of poverty and social injustice.

## **LEGAL FRAMEWORK IN INDIA**

India has a major problem with child labour, thus there are laws and other protections in place to prevent child exploitation. No child under the age of 14 must be employed to work in a factory, mine, or do any hazardous activity, according to Article 24 of the Indian Constitution. Additionally, Article 21A requires the State to give all children between the ages of 6 and 14 free and compulsory education.<sup>6</sup>

The Child Labour (Prohibition and Regulation) Act, of 1986,<sup>7</sup> is another important statute that forbids the employment of kids younger than 14 in risky jobs and occupations. Additionally, it governs the working environment for kids in non-hazardous jobs. Juvenile Justice (Care and Protection of Children) Act 2015<sup>8</sup> safeguards the treatment, defence, and recovery of

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<sup>3</sup>International Labour Organization, Global Estimates of Child Labour: Results and Trends, 2012-2016

<sup>4</sup>Census of India, Office of the Registrar General & Census Commissioner, India, Census of India 2011: Child Population: 2011

<sup>5</sup>Annual Status of Education Report 2020

<sup>6</sup>Indian Constitution, Art. 21A

<sup>7</sup>Child Labour (Protection and Regulation) Act, s 3

<sup>8</sup> Juvenile Justice (Care and Protection of Children) Act, s 3

children in need. It forbids the use of kids for prostitution, begging, or any other type of activity that could endanger their safety, morals, or health.

The Indian Supreme Court has heard several cases that uphold these statutes and defend children's rights. In *MC Mehta v State of Tamil Nadu*,<sup>9</sup> all hazardous companies in Tamil Nadu that employed children under the age of 14 had to be shut down. The State Government was also ordered by the Court to offer alternate means of subsistence to the households impacted by the closure of these industries.

Similarly, in *People's Union for Democratic Rights v Union of India*,<sup>10</sup> the Supreme Court determined that the right to education is a fundamental right. The government was ordered by the Court to make sure that no child is made to engage in labour because of a lack of resources or access to education.

In *Bachpan Bachao Andolan v Union of India*<sup>11</sup>, the government was ordered by the Supreme Court to make concrete efforts to stop child labour in the nation. The government was required by the Court to ensure the rehabilitation of children who were freed from bonded labour and to compensate them.

In *People's Union for Civil Liberties v Union of India*,<sup>12</sup> the government was required by the Supreme Court to make sure that all kids are enrolled in school and get a free, mandatory education. The government was directed by the Court to take legal action against employers who used youngsters under the age of 14 in dangerous jobs.

The Right of Children to Free and Compulsory Education Act, 2009,<sup>13</sup> is a fundamental statute that guarantees all children between the ages of 6 and 14 years free and compulsory schooling. It forbids the use of kids in any process or job that interferes with their right to an education.

The National Policy on Education, 1986,<sup>14</sup> is yet another crucial legal clause about the right to education in India. The goal of the policy is to ensure that everyone in society has access to education and to encourage the growth of an equitable society. It advocates for universal access to education and

<sup>9</sup>(1996) 6 SCC 756

<sup>10</sup>(1982) 3 SCC 235

<sup>11</sup>(2011) (5) SCC 1

<sup>12</sup>(1998) 8 SCC 485

<sup>13</sup>Right of Children to Free and Compulsory Education Act, 2009

<sup>14</sup> National Policy on Education, 1986

acknowledges the value of education in fostering social and economic growth.

The Indian government has introduced several programmes and projects to guarantee that the legal requirements relating to the right to education are adequately implemented. The Sarva Shiksha Abhiyan (SSA), which was introduced in 2001 to encourage universal access to basic education, is one such initiative. The programme seeks to offer all kids between the ages of 6 and 14 with free education.<sup>15</sup>

Another significant programme aiming at advancing the right to education in India is the Midday Meal Scheme. Children in basic and upper primary schools around the nation receive free lunches during the school day thanks to this programme. The program's objectives are to raise children's nutritional status and increase their school attendance.<sup>16</sup>

The legal basis for the right to education in India has been strengthened as a result of several significant Court decisions. In *Mohini Jain v State of Karnataka*,<sup>17</sup> the Supreme Court said that the Indian Constitution recognises the right to an education as a basic right. No matter their socioeconomic status, the Court ordered the government to make sure that all children had access to school.

In *Unni Krishnan v State of Andhra Pradesh*,<sup>18</sup> the Supreme Court said that everyone has the right to access higher education. The government has been ordered by the Court to make sure that all eligible students can enter higher education.

In *Society for Unaided Private Schools of Rajasthan v Union of India*,<sup>19</sup> the constitutionality of the Right to Education Act 2009 was upheld by the Supreme Court. The regulation, according to the Court, is a reasonable constraint on unassisted private schools' rights and is required to advance every child's right to an education.

In *Pramati Educational and Cultural Trust v Union of India*,<sup>20</sup> according to the Supreme Court, all private schools, including those operated by minorities, are subject to the Right to Education Act of 2009. The Court

<sup>15</sup>Sarva Shiksha Abhiyan (Ministry of Education, Government of India, 2021)

<sup>16</sup>Mid-day Meal Scheme (Ministry of Education, Government of India, 2021)

<sup>17</sup>(1992) 3 SCC 666

<sup>18</sup>(1993) 1 SCC 645

<sup>19</sup>(2012) 6 SCC 1

<sup>20</sup> (2014) 8 SCC 1



determined that the Act is necessary to ensure that all children, particularly those from minority populations, have access to school.

Overall, India's legislative guidelines and case laws concerning the right to education have played a significant role in advancing equal access to education and guaranteeing that every kid has the chance to acquire a high-quality education. To ensure that all children may benefit from education and to improve its quality, there is still more work to be done.

## **SUGGESTIVE MEASURES AND REFORMS**

1. Increase government spending on education: The Indian government needs to spend more money on education, especially where there is a lack of access. This can involve expanding the number of schools, offering student transportation, and boosting the budget allocated to grants and other educational initiatives.
2. Focus on improving the quality of education: Increasing access to school alone won't be enough, the quality of education is also crucial. To make sure that pupils are receiving a high-quality education, the government should endeavour to improve teacher training, curriculum creation, and evaluation techniques.
3. Address cultural and social barriers: Cultural and societal conventions in some areas of India may prevent girls or kids from underprivileged communities from going to school. Through awareness-raising campaigns and community engagement initiatives, the government and NGOs should seek to remove these obstacles.
4. Implement social welfare programs: The Indian government should adopt social welfare initiatives that give low-income families financial support. This can include healthcare initiatives, food aid programmes, and cash transfer programmes that can lessen some of the financial strains that cause child labour.
5. Address the root causes of poverty: Because poverty is such a complicated problem, merely giving people money may not be sufficient to address its root causes, especially for marginalised areas, the government should endeavour to enact policies that support economic growth, job creation, and social mobility.
6. Strengthen labour laws: India has several regulations in place to guard against child exploitation, but they are not always adequately enforced.



The government should seek to make these laws stronger and allocate sufficient funding for their enforcement.

7. Increase penalties for violations: Increased penalties for breaking labour rules are necessary to deter businesses from using minors as slaves.
8. Improve monitoring and reporting mechanisms: To more effectively identify and address infractions of child labour laws, the government should work to enhance monitoring and reporting methods.
9. Address cultural and social barriers: Awareness-raising efforts and community outreach initiatives should be used to combat cultural and societal conventions that stigmatise girls and women.
10. Provide opportunities for girls: More educational and career options for girls should be made available by the government, especially in professions that have historically been dominated by men.

## **CONCLUSION**

Child labour and education are two interrelated problems that India has serious difficulties in resolving. Even though there are laws and government programmes targeted at solving these issues, they continue because of a variety of socio-economic issues including poverty, social and cultural hurdles, insufficient labour law enforcement, and gender-based discrimination.

A multifaceted strategy is required to solve these issues. This entails raising government spending on education and enhancing its quality, putting social welfare programmes in place to combat social injustice and poverty, enforcing stricter labour laws with harsher penalties, enhancing monitoring and reporting systems, removing social and cultural barriers, presenting opportunities for girls and women, and promoting female leadership.

It is crucial for all parties involved, including the government, civil society, and communities, to collaborate to guarantee that every kid in India has access to quality education and the chance to realise their full potential without being forced into child labour. Then and only then can we have any hope of giving India's children a better future.

# PERILS OF CHILD LABOUR AND IMPACT OF MALNUTRITION ON CHILDREN

Sushree Grisma Pradhan\*

## Five random pictures of children chosen from the web



Figure 1: <https://www.ck12.org/book/ck-12-biology-advanced-concepts/section/17.85/>

**Feeling :** Anxious

**Thought :** The inception of a new life inside someone's body makes me feel anxious as to how the baby is doing. Nothing should happen to him/her and he/she should be born healthy. The mother should also take care of herself and have proper nutrients.

**Feeling :** Sad

**Thought :** It's hard not to notice how frail and distressed they appear. They look malnourished, desperate, and struggling in an unhealthy condition.



Figure 2: <https://indianexpress.com/article/india/mid-day-meal-scheme-is-now-pm-poshan-pre-primary-children-will-be-covered-7542748/>



Figure 3: <https://www.ck12.org/book/ck-12-biology-advanced-concepts/section/17.85/>

**Feeling:** Terrible

**Thought:** It's disheartening to see children working instead of receiving an education and enjoying their childhood.

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**Feeling :** Nostalgic

**Thought :** When I look at this young girl going to school, it reminds me of my school days. School is where we create some of the most unforgettable memories and gain knowledge that stays with us throughout our lives.



Figure 4:<https://www.istockphoto.com/photo/school-going-baby-girl-gm969723088-264281717>



Figure 5: <https://www.forbesindia.com/blog/health/mid-day-meal-scheme-a-nutritious-promise-to-boost-learning-outcomes/>

**Feeling :** Happy

**Thought :** The children look healthy and are comfortably eating food. It is appreciated when children attend school as parents do not prefer to send their children to school in rural areas.

I have chosen to focus on Perils of Child Labour and Impact of Malnutrition on Children.

## PART 1: CHILD LABOUR

Child labour, described as work that deprives children of their childhood, potential and dignity, has severe and long-lasting implications for society. This encompasses labour deemed intellectually, physically, socially, or ethically detrimental to children, adversely affecting their education by either hindering school attendance, precipitating premature dropout, or necessitating a challenging balance between education and excessively demanding employment. The parameters defining “Child Labour” vary, considering factors such as the child’s age, the nature and duration of the work, the working conditions, and the specific goals outlined by individual countries or industries.<sup>1</sup>

“Within India, data from the 2011 Census underscores the prevalence of Child Labour, with 10.1 million Child Labourers identified, comprising 5.6 million boys and 4.5 million girls. Globally, an estimated 152 million children are engaged in labour, with 64 million being girls and 88 million boys, constituting nearly one-tenth of the global child population.”<sup>2</sup> Despite recent reductions in Child Labour rates, severe forms persist, including bonded labour, child soldiers, and trafficking. Children participate in various occupations, exposing them to vulnerabilities such as sexual exploitation and online child pornography.

The roots of Child Labour are multifaceted, driven by factors like poverty, societal norms, limited employment opportunities, migration, and emergencies for both adults and adolescents. These factors both emanate from and perpetuate socioeconomic inequalities, compromising the fundamental right to education and reinforcing entrenched cycles of poverty. Child labour presents a substantial obstacle to education, negatively impacting attendance and academic performance.

Child trafficking, often interlinked with Child Labour, results in widespread abuse, including physical, psychological, sexual, and emotional harm. Comprehensive prevention strategies involve fortifying child protection institutions, addressing the root causes of poverty and inequality, enhancing access to and the quality of education, and mobilizing public support for the fundamental rights of children. In this concerted effort, teachers and other

<sup>1</sup> “What is Child Labour” (IPEC) <<https://www.ilo.org/ipecc/facts/lang--en/index.htm>> (accessed on 20 April 2023)

<sup>2</sup> “Child Labour and Exploitation” (UNICEF India) <<https://www.unicef.org/india/what-we-do/child-labour-exploitation>> (accessed on 20 April 2023)

educational professionals play a pivotal role, serving as frontline allies in identifying signs of child distress or excessive work hours. Legislative changes that empower families to prioritize education over exploitative labour are also indispensable in redirecting children from work to school, ensuring a brighter and more secure future for the youngest members of our global community.

## **LEGAL PROVISIONS**

The commitment of the Indian government to eradicate Child Labour is unwavering, and this dedication is enshrined in the Constitutional provisions found in Fundamental Rights and the Directive Principles of State Policy. These constitutional pillars explicitly articulate the imperative of shielding children from engaging in economic pursuits that are not commensurate with their age. In conjunction with these foundational principles, additional legislative measures have been enacted to fortify the campaign against Child Labour and exploitation.

### **Constitutional Provisions**

**ARTICLE 21 A - RIGHT TO EDUCATION:** This constitutional provision underscores the fundamental right to education, mandating that the State provides free and compulsory education for children aged 6 to 14. It encapsulates the government's commitment to ensuring that every child has access to education, irrespective of socioeconomic factors.<sup>3</sup>

**ARTICLE 24 - PROHIBITION OF CHILD EMPLOYMENT:** Article 24 stands as a staunch prohibition against the employment of children below 14 years in hazardous occupations. This provision, encapsulated in the Constitution, serves as a shield guarding children against potential harm in dangerous work environments.<sup>4</sup>

**ARTICLE 39 - POLICY FOR PROTECTION:** This constitutional provision directs the State's policy towards safeguarding the health and strength of workers, both men and women, including the tender age of children. It acts as a directive principle, aiming to prevent economic circumstances from compelling citizens to partake in occupations unsuitable for their age or strength.<sup>5</sup>

The government's comprehensive strategy for eradicating Child Labour is characterized by a gradual approach. It commences with a focus on

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<sup>3</sup>Constitution of India, Art 21 A

<sup>4</sup>Constitution of India, Art 24

<sup>5</sup>Constitution of India, Art 29

children engaged in hazardous professions, subsequently expanding its efforts to encompass those involved in various other professions. This dual-pronged strategy involves legal actions geared towards implementation while concurrently concentrating on general development programs. These programs aim to financially empower families with children, particularly in regions witnessing a high concentration of Child Labour.

### **Child Labour (Prohibition and Regulation) Act, 1986**

The landmark Child Labour (Prohibition and Regulation) Act of 1986 serves as a pivotal legal instrument in the fight against Child Labour. It not only prohibits the employment of children under 14 in specified industries and operations but also establishes a dynamic mechanism for modifying the Schedule of restricted occupations and processes.

The Act, in its comprehensive approach, goes beyond prohibition, aiming to regulate the working conditions of children in occupations where they are not restricted from earning a living. Moreover, it institutes heightened penalties for any infringement, reinforcing adherence to the stipulated rules and regulations.

In response to the evolving landscape, the government implemented the Child Labour (Prohibition & Regulation) Amendment Act, 2016, which came into effect on September 1, 2016. Renamed the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986, this amendment introduces a robust framework, incorporating a complete ban on the labour or employment of children under 14 in any industry or operation.

In concert with these legislative modifications, the government formulated the Child Labour (Prohibition & Regulation) Amendment Rules, 2017. These rules not only encompass provisions for elimination, rescue, rehabilitation, and integration but also meticulously define “help” in businesses owned by the child’s family. Additionally, they introduce measures to regulate child performers, ensuring their safety and security within the framework of the law.<sup>6</sup> The establishment of a District Nodal Officer (DNO) and a Task Force, chaired by the District Magistrate, underscores the commitment to effective implementation.

The Act designates authority to both the Central and State Governments. The Central Government holds the title of the “appropriate Government” for

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<sup>6</sup>Child Labour (Prohibition and Regulation) Amendment Rules 2017, sec 2 C

institutions under its jurisdiction, such as railway management, significant ports, mines, or oilfields. Conversely, the State Government assumes this designation in all other instances. The Ministry's State Action Plan serves as a comprehensive document detailing the activities undertaken by State Governments/Union Territories following the passage of the Amendment Act.

Post-amendment, the government undertook a meticulous review of the List of Hazardous Work and Operations, enhancing its comprehensiveness based on recommendations from the Technical Advisory Committee (TAC). The Act's Part of Hazardous Occupations and Processes now stands categorized into "Part A" and "Part B." These delineate a list of hazardous occupations and processes where adolescents are forbidden from working and children are restricted from assisting in family-owned businesses.

In conclusion, this legislative framework, and the comprehensive strategy underscore India's steadfast commitment to eradicating Child Labour. The multifaceted approach, blending legal measures, developmental initiatives, and an exhaustive regulatory framework, reflects the nation's resolve to ensure the well-being and education of its youngest citizens.

## **CASE LAWS**

### ***Bandhua Mukti Morcha v Union of India & Ors. (1984) AIR 802***

A Public Interest Litigation (PIL) was filed directly with the Supreme Court of India under Article 32 of the Indian Constitution, urging the Court to instruct the State of Uttar Pradesh (UP) to take decisive actions against Child Labour. A Court-appointed panel revealed extensive child exploitation in UP's rug industries, noting the abduction of children from Bihar, predominant engagement of minors under 14, and instances of physical assault.

The Supreme Court, recognizing the importance of preserving children's rights to education, health, and development for India's democratic progress, acknowledged the economic challenges of an immediate prohibition of Child Labour. Instead, it emphasized the need for practical efforts to safeguard the rights of children in economically disadvantaged segments of Indian society. The Court referred to various constitutional provisions, including Article 21, Article 24, Article 39(e), Article 39(f), and Article 45, highlighting the right to life, prohibition of Child Labour, protection from

unsuitable vocations, the State's duty to protect children, and the mandate for free compulsory education.

In alignment with India's obligations under the Universal Declaration of Human Rights (UDHR) and the Convention on the Rights of the Child, the Court directed the states of Uttar Pradesh and Bihar to take actions to gradually eliminate Child Labour, provide mandatory schooling, ensure proper nutrition, and conduct regular health checks.

This case, among other public interest litigation and anti-Child Labour initiatives, successfully raised awareness about Child Labour's prevalence, bringing it to the government's attention. Legal and political measures have been initiated to officially eliminate Child Labour, particularly in the education sector. While there has been a reduction in Child Labour in the textile industry, challenges persist, emphasizing the need for more robust safeguards for children's rights.

### ***M.C. Mehta v State of Tamil Nadu & Ors. AIR (1996) 6 SCC 756***

In the case of *M.C. Mehta v. State of Tamil Nadu*<sup>7</sup>, the town of Sivakasi in Tamil Nadu was recognized as severely affected by Child Labour. Concerned about the unacceptable conditions, M.C. Mehta filed a petition under Article 32<sup>8</sup>, arguing that employing children in hazardous matchstick manufacturing was morally repugnant and unconstitutional. The government, acknowledging the gravity of the situation, proposed solutions. Subsequently, the Supreme Court issued specific orders to enhance the lives of affected children. However, a disaster happened at one of Sivakasi's fireworks companies shortly after this directive.<sup>9</sup> In the accident, the match industry took away the lives of 39 which prompted the court to expand its focus on Sivakasi and the other areas. It ruled that Child Labour was not limited to Sivakasi but should be addressed as a national issue. Articles 24, 39(e) 9(f), 41, and 47 of the Indian Constitution were cited to emphasize children's rights, including the prohibition of Child Labour, compulsory, and free schooling, ensuring a decent quality of life, and more. Domestic legislation such as the Apprentices Act of 1961, the

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<sup>7</sup> AIR (1996) 6 SCC 756

<sup>8</sup> The Constitution of India 1950, Art 32

<sup>9</sup> "M.C. Mehta v State of Tamil Nadu and Others" (Indian Law Portal August 2020)

<[299](https://indianlawportal.co.in/m-c-mehta-v-state-of-tamil-nadu-and-others/#:~:text=A%20solicitous%20lawyer%2C%20M.C.,morally%20preposterous%20and%20constitutionally%20invalid.></a> (accessed on April 20 2023)</p></div><div data-bbox=)



Beedi and Cigar Workers Conditions of Employment Act, of 1966 and the Child Labour (Prohibition and Regulation) Act, of 1986 further protected similar rights. India's commitment to the Convention on the Rights of the Child was highlighted, safeguarding children's economic, social, cultural, and humanitarian privileges.

The court explored various reasons for the prevalence of Child Labour in India, referencing studies by experts such as Nazir Ahmad Shah in his book 'Child Labour in India; Dr Amar Singh & Raghuveer Singh in a Journal Article named 'Causes of the Exploitation of Child Labour in India and Dr J.C. Kulshreshtha in 'Indian Child Labour'<sup>10</sup>. Contributing factors included poverty, inadequate adult wages, unemployment, lack of family housing schemes, urban displacement, larger families, easy availability of Child Labour, lack of regulations for mandatory education, parental ignorance, and typical attitudes. The court concluded that the primary reason was the worsening financial situation of families, compelling children to work and earn. To address this, the court-mandated the establishment of a Child Labor Rehabilitation and Welfare Fund. Violators engaging children in hazardous labour would face a fine of Rs. 20,000, contributing to the Fund for the child's growth and development. Employers were directed to ensure full-time schooling for the child. If an adult family member could not find alternative employment, the government was required to contribute Rs. 5000 to the Fund for each child employed in hazardous occupations.

To ensure effective implementation, the court-mandated a Child Labour survey, criteria for analysing hazardous workplaces, employment opportunities for parents or family adults, financial support in specific circumstances, and guaranteed quality education as per Article 45 of the Indian Constitution. This case marked a significant step toward addressing Child Labour nationally, underlining the need for comprehensive measures to eradicate this pervasive issue.

## **CONCLUSION**

Expanding the scope of the discussion to a global level provides a comprehensive understanding of the multifaceted issue of Child Labour. International efforts and conventions aimed at combating Child Labour

should be highlighted, emphasizing the importance of a collective global approach. Furthermore, delving into the historical context of Child Labour

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<sup>10</sup> MC Mehta v State of Tamil Nadu & Ors AIR (1996) 6 SCC 756 [27]

provides insights into its evolution over the years, considering changes in laws, policies, and societal attitudes. This historical perspective adds depth to the analysis, showcasing the trajectory of efforts to address Child Labour.

Examining the impact of Child Labour on society beyond immediate consequences for the children involved is crucial. Discussing how Child Labour perpetuates poverty, hinders education, and contributes to a cycle of exploitation paints a more comprehensive picture of the issue's implications.

Collaborations between governmental agencies and non-governmental organizations (NGOs) play a pivotal role in tackling Child Labour. Examining successful models and potential areas for improvement in such collaborations provides insights into the complexities of implementing effective strategies. Beyond legal provisions, a deeper exploration of long-term solutions, including education, skill development, and poverty alleviation programs, is essential for sustainable reduction in Child Labour.

Public awareness campaigns emerge as influential tools in bringing attention to the issue and fostering societal change. Evaluating their impact on altering attitudes and instigating collective responsibility to eradicate Child Labour is critical. A discussion on the future outlook for addressing Child Labour, considering emerging challenges and potential areas for improvement, provides a forward-looking perspective.

Lastly, incorporating insights into the psycho-social impact of Child Labour on the mental and emotional well-being of affected children, drawing from psychology and child development perspectives, adds a human dimension to the analysis. Balancing these aspects in a comprehensive narrative ensures a thorough exploration of the complex and pressing issue of Child Labour.

## **PART 2: MALNUTRITION IN CHILDREN**

### **LEGAL ISSUES**

#### **Discrimination Based on Caste (during service)**

Around 260 million individuals face prejudice based on caste globally, where various rights spanning civic, political, economic, social, and cultural

domains are violated.<sup>11</sup> Caste systems lead to the unjust stratification of people into social groups, with those at the bottom considered “lesser human beings,” “impure,” and “polluting” by other caste groups. Referred to as “untouchables” or Dalits in South Asia, they often find themselves compelled to engage in the dirtiest, most perilous, and undesirable occupations, including involuntary and bonded labour. Exclusionary practices employed by both state and non-state entities restrict their access to resources, services, and overall development, resulting in the majority of Dalits living in dire poverty. This discrimination is rooted in the belief that different caste categories possess varying levels of holiness and pollution, designating Dalits and other socially affected groups as particularly impure and capable of polluting higher caste groups.

### **Corruption**

Corruption is an undeniable and widespread issue in India. In addition to major corruption scandals that occasionally come to light, petty corruption prevails, impacting the basic rights and services of the average person. Authorities have faced numerous complaints of misappropriating funds allocated for the midday meal program.<sup>12</sup>

### **Poor Quality of Food Grains**

Instances of children contracting food-borne illnesses and, tragically, even dying after consuming lunch at school underscore the poor quality of food grains in some cases. This stems from the lack of oversight and control by school administrations regarding the method and quality of food preparation. For instance, a rural school in Bihar utilized the government-sponsored Mid-Day Meal Scheme, leading to 23 students losing their lives due to poisoning in July 2013.<sup>13</sup> The incident revealed a lack of inspections or supervision by local authorities to ensure the proper preparation and preservation of food. Audit files and research papers indicated that officials had long ignored warnings about the absence of monitoring and transparency in the system. This tragic event occurred within a scheme that feeds over 120 million children daily across India, with some children succumbing

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<sup>11</sup>‘Caste Discrimination’ (International Dalit Solidarity Network) < [<sup>12</sup>Sumi Sukanya Dutta, ‘Centre carrying out a detailed audit of Mid-day meal programme in wake of episodes of corruption’ Indian Express \(January 05, 2020\)](https://idsn.org/caste-discrimination/#:~:text=Caste%20discrimination%20affects%20an%20estimated%20260%20million%20people%20worldwide%2C%20the,unequal%20and%20hierarchical%20social%20groups.> (accessed on 27 January 2024</p></div><div data-bbox=)

<sup>13</sup>Banerji A and Kotoky A, “Poor Quality and Bad Management: India Ignored Warnings in Free Meal Programme” (Reuters July 21, 2013) <<https://www.reuters.com/article/bihar-mid-day-meal-warnings-idINDEE96K04D20130721>> (accessed on 20 April 2023)

so rapidly to poisoning, believed to be caused by cooking oil stored in a pesticide container, that they passed away while being transported to the hospital in their parents' arms.

## **LEGAL PROVISIONS**

### **Constitutional Provisions**

**Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**Article 15 (1):** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

**Article 16 (1):** Equality of opportunity in matters of public employment, without being discriminated.

**Article 17:** This article forbids untouchability and its practice in any form and treats it as a punishable offence.

### **Corruption**

There are many legal provisions for eradicating corruption from society but there is no particular act or provision for eliminating corruption involved in mid-day meal service. So, the two most important pieces of legislation are focused on here:

**PREVENTION OF CORRUPTION ACT, 1988:** The Act's primary goal was to codify all of the nation's rules against corruption by civil workers, which penalizes the offences of accepting bribes and obtaining unlawful assets. The 2013 Amendment has been improved and proposed with some new modifications to help the agencies rein in the nation's corrupt civil servants. For example, private enterprises and commercial enterprises are now covered by the act, and ensuring or giving bribes is now a punishable offence. Bribe-taking has also been made illegal.

**PREVENTION OF MONEY LAUNDERING ACT, 2002:** It is recognized as India's most potent and efficient anti-corruption statute. The Enforcement Directorate of India typically initiates investigations under the PMLA. Following the most recent judgment of the Hon. Supreme Court of India, the estimation of unaltered belongings is not a requirement for establishing the accused under PMLA. The Act establishes money laundering as trying to, aiding, or knowing assisting or joining the crime that is associated with the proceeds of crime, or the money obtained by the criminal act that is projected as untainted property. Only the identification and demonstration of the accused's connection to the property will be enough to warrant

prosecution under the act. The Act's most endearing aspect is that it gives the ED the power to seize and include the assets of the accused and those who assisted them at the outset of the inquiry, even before they are proven guilty. If the Special Court rules that this action was justified and legal, it will then be returned.

The PMLA imposes strict rules and responsibilities on the financial institutions and banks of the nation, requiring them to keep client information and books, adhere to the KYC (Know Your Customer) instructions, and report any suspicious transactions surpassing a specified value to the proper regulatory body.

Through these two pieces of legislation, a tab should be kept on the funding towards the Mid-day meal scheme. There are ample newspaper articles where corruption is found in handling the funds for mid-day meals. Similarly, there was a case where a headmaster of a government school in Jagatsinghpur<sup>14</sup> was suspended on suspicion of embezzling money intended for the provision of school uniforms and the midday food program.<sup>15</sup>

According to sources, the headmaster was accused of providing low-quality food resources under the MDM plan, and older pupils along with members of the School Management Committee (SMC) reported to the administration, higher authorities of the school, and the mass education department. They claimed that as a result, the number of cases of malnutrition is rising daily. The district education officer looked into the complaint in question. He stated that the headmaster had been suspended after being discovered to have illegally increased student enrolment to steal money from MDM and pilfer money from various government programs. These are some instances which are prevalent in our society and need to be eliminated.

## **FOR POOR-QUALITY OF FOOD GRAINS**

One of the most important Centrally Sponsored Schemes under the National Food Security Act of 2013 (NFSA) is **Pradhan Mantri Poshan Shakti Nirman (PM POSHAN)**, formerly known as the National Programme of Mid-Day Meal in Schools. The scheme's main goal is to enhance the nutritional status of students in classes I to VIII in accredited schools. The program's dietary guidelines are as follows:

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<sup>14</sup>A District in the State of Odisha

<sup>15</sup>"Odisha Headmaster Suspended for MDM Fund Corruption" The New Indian Express (January 26, 2023) <<https://www.newindianexpress.com/states/odisha/2023/jan/26/odisha-headmaster-suspended-for-mdm-fund-corruption-2541521.html>> (accessed on 20 April 2023)

Nutrition norm per child per day		
Level	Calorie	Portion
Primary	450	20gms
Upper Primary	700	40gms

Food norms per child per day					
Level	Food Grains	Pulses	Vegetables	Oil & Fats	Salts & Con- diments
Primary	100gms	20gms	50gms	5gms	As per need
Upper Primary	150gms	30gms	75gms	7.5gms	As per need

\*The source for the above-mentioned tables are Department of School Education and Literacy.<sup>16</sup>

The Scheme's goals are to solve two of the most important issues facing the majority of Indian children, namely hunger and education, by:

1. Improving the nutritional status of eligible students attending state-run and state-aided schools.
2. Encouraging underprivileged kids to go to school more frequently and aiding their concentration when they are in class.

### RELEVANT CASE LAW

In the case of *Radha M & Ors. v State of Karnataka & Ors.*<sup>17</sup>, the Karnataka High Court voiced scepticism regarding the state government's plan to revitalize schools while suspending midday meals in schools situated in areas where COVID-19 cases had increased. Judges B.V. Nagarathna and N.S. Sanjay Gowda, who sits on a divisional bench, dismissed the Karnataka government's argument that the mid-day food program was discontinued in some schools near the Kerala-Karnataka border due to an increase in coronavirus cases. The case was being heard in court to respond to a petition filed by Radha M asking the state government to provide children in classes 6 to 8 with midday meals once regular schools had resumed in the State. *"People have known the outcome for a year. As of yet, no plan has been*

<sup>16</sup> "PM Poshan Shakti Nirman (PM-Poshan)" PM Poshan Shakti Nirman (PM-POSHAN) January 2023 <<https://dsel.education.gov.in/index.php/scheme/pm-poshan-scheme>> (accessed on 20 April 2023)

<sup>17</sup>W.P. No. 2366/2021

*created. If approval is granted for the opening of schools, then assembling is also permitted. Why cannot you start mid-day meals if you are willing to permit it at this stage” Justice Nagarathna asked.*

The division bench noted that considering students may not be able to focus on their studies with their hungry stomachs it further observed that the availability of mid-day meals is a crucial aspect of the fundamental right to education as outlined in Article 21A.

Since it is impossible to expect students to concentrate while hungry, the supply of a midday meal will ultimately have to be made a fundamental right. The bench commented, “Though it is in the form of a scheme, someday we will have to recognize it as a Fundamental Right. No hungry person can learn.”<sup>18</sup>The Karnataka administration informed the court that children will receive dry servings up till April 10 as the State awaited instructions from the Centre for the resumption of the mid-day meal program for the benefit of the kids.

One of the main factors in the government of Karnataka’s success in achieving the program’s goals was its innovative decision to establish an NGO as its executive branch. The Central Government has been impacted by these private-public institutions’ successes. The government efficiently uses the skills and resources of the private sector for the greater good by establishing and empowering private-public associations. The Midday Meal Scheme in India, which benefits 9.78 billion children in 11.40 lakh schools, is one of the largest school meal initiatives in the world.

The mid-day meal’s key advantages are:

- preventing classroom hunger,
- increasing enrolment and attendance,
- enhancing caste socialization,
- addressing malnutrition,
- empowering women through work are all goals.

## **CONCLUSION**

To end Child Labour, educating society to understand the nuances of a child well well-being is a crucial factor. Children’s education should be a top priority for governments, non-governmental organizations, and other groups, especially those at risk of Child Labour. Many children are forced into labour due to their family’s financial needs. Providing financial

<sup>18</sup>Radha M & Ors v State of Karnataka & Ors W.P. No. 2366/2021

assistance to low-income families can help put an end to Child Labour.

Programs like cash transfers, subsidies, or microloans, for instance, the Direct Benefit Transfer Scheme 2013, and Micro Finance Programme in 2003-04, etc may fall under this category. Governments should uphold legislation that forbids Child Labour and make sure that those responsible for child exploitation are held accountable. Additionally, governments ought to set and enforce employment-related minimum ages. Raising awareness about the harmful consequences of Child Labour through public education campaigns, social media, and neighbourhood outreach initiatives can contribute to ending Child Labour.

For midday meal services, routine program evaluation should be done to make sure that the food is of a high enough standard and that the meals are made and provided on time. To guarantee that the program is open and free of corruption, the government should increase accountability procedures. Regular audits, investigations, and harsh penalties for individuals found guilty of corruption can all be part of this. Technology can be utilized to increase the program's accountability and openness, for example, digital tools can be used to track the delivery of food supplies and monitor the attendance of students.



# PROTECTING INNOCENCE: COMBATING CHILD LABOUR AND CHILD MARRIAGE IN INDIA

Mehera Pulavarty\*

## Five random pictures of children chosen from the web



Figure 1: <https://ahvalnews.com/childrens-rights/624-young-children-behind-bars-turkey>

**Feeling :** Disheartening, helplessness

**Thought :** Imprisonment at a very young age affects the physical and social well-being as children get a proper opportunity to grow further and imprisonment would also profoundly affect their mental well-being which in the long run, may lead to trauma.

**Feeling :** Concern

**Thought :** The child in this picture looks very malnourished and weak. The things that come to my mind when I see this picture are in the arena of illness, lack of resources, poverty, lack of nutrients and so on



Figure 2: <https://www.savethechildren.org/us/charity-stories/biggest-challenges-children-will-face-2022>



Figure 3: <https://satyarathi.org.in/child-labourers-return-home/>

**Feeling:** Dejected

**Thought:** It is saddening to see the practice of child labour affecting children to the extent that they are being stripped of their fundamental right to education.

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**Feeling :** Worry

**Thought :** She is only a child being married off at a very tender age, while children of that age are supposed to develop their social skills and enhance the same.



Figure 4: <https://www.unfpa.org/child-marriage>



Figure 5: <https://www.theguardian.com/education/2013/mar/11/indian-children-education-opportunities>

**Feeling :** Melancholy

**Thought :** Education is a very important virtue that every individual needs to possess. However, the children in this picture do not look happy and they look like they have been placed in a very dejected or disheartening atmosphere.

I have chosen to focus on “Poverty or Purgatory? A child’s Perspective”.

## **PART 1: CHILD LABOUR**

### **INTRODUCTION**

According to the International Labour Organization (ILO), child labour is the work which deprives children of their childhood, the period that is necessary for their growing up and the work which affects their dignity and potential and in its inherent sense, harmful to their health, physical and mental development. Essentially, work of this nature deprives the children of the variety of opportunities and activities that are necessary for their mental, physical and emotional growth, such as schooling, going to the playground and playing with their friends, learning new things and so on. Their involvement in work that necessitates them to go to various hazardous factories deprives them of an important part of their childhood i.e., the formative years.

The formative years of children (0-8 years of age) are the years during which the children experience the development of their brains. Experience and exposure to situations that hamper their childhood results in creating negative impacts on the children's brains and their overall development in their lives as well. They become scarred by such experiences due to which they are at the risk of being deprived of positive interactions and an overall positive environment.

In India, where the issue of poverty is still prevalent, it has been identified that the majority of the cases of child labour can be seen in the primary or agricultural sector where technological development has still failed to reach. The country has been witnessing a decline in the cases of child labour being identified over the years, due to an increased recognition of the importance of Education and children being exposed to positive experiences and a positive environment during their formative years during which the children are most receptive to the environment and social connections and bonds that they form.

Over the years, there have also been rapid developments in the judicial view on the issue of child labour and the importance of eradicating the issue once and for all from the country. We see several cases throughout the years, in phases, where the view towards both, child labour and the importance

of Education has developed positively. Since independence, the country has attempted to spread awareness of Education throughout the country and has attempted to bring down the rate of poverty and the acceptance of the importance of Education, especially by the individuals involved in the primary and agricultural sectors.

## **LEGAL PROVISIONS**

Since its Independence, India has been trying to come up with provisions and policies to curb the practice and the rising cases of child labour in India. India has been inspired by many other countries such as the USA, Yugoslavia and so on which caused it to introduce provisions regarding child labour in the Constitution of India. Article 24 of the Constitution of India prohibits employment of children below the age of 14 in any factory, mine or other hazardous occupation. Two other provisions in the Constitution address the issue of child labour, namely, Articles 21A, and 39. Article 21A provides for the Right to Education as a fundamental right of children who are under the age of fourteen and that the States are responsible for ensuring that free and compulsory education is provided to all children falling under the age group of six to fourteen years. Article 39 imposes the responsibility on the State to make policies so that the health of the workers is not compromised and that no child is forced to get involved in the practice of child labour due to economic necessities and issues.

Under the Constitutional mandate, the child labour (Prohibition and Regulation) Act, of 1986 was passed. It applied to children below fourteen years of age. The primary aim of this Act was to ensure that the children are employed in places which are involved in the manufacturing of hazardous substances and also with a focus on regulating the working hours of the children to ensure the safety of the children.

The child labour (Prohibition and Regulation) Amendment Act, 2016 expanded the scope of the CLPR Act to cover adolescents between the age of 14-18 years of age and renamed the earlier Act as the child and Adolescent Labour (Prohibition and Regulation) Act 1986. This Act now prohibits the employment of children below the age of 14 years in any place except in non-hazardous work carried out by their own family. It further prohibits the employment of adolescents in hazardous work and regulates the working conditions for adolescents.

Child labour (Prohibition and Regulation) Amendment Rules, 2017 provide detailed rules for “prevention, prohibition, rescue and rehabilitation” of the child and adolescent workers who may have been rescued along with providing clarity on several issues involving safeguards to the workers, regulation in the working hours and conditions and other issues involving family matters.

## JUDICIAL DECISIONS AND VIEWS

The judicial view on the issue of child labour is rather interesting. It can be classified into different phases which have been elaborated as follows -

The First Phase (1982 – 1992): During this phase, there have been several deliberations, discussions and discoveries regarding the issue of child labour that is faced by the whole country while also recognizing the importance of childhood for children. For instance, in the case of *Francis Coralie Mullin v. Union Territory of Delhi*,<sup>1</sup> the importance of Article 21 was discussed and it laid down the importance and the need to protect the health and strength of its workers, including men, women and children against cases of abuse. Another instance is the case of *Peoples Union for Democratic Rights v. Union of India*,<sup>2</sup> in which it was held that children below the age of fourteen are not supposed to be employed, more so in activities like construction and mining and so on (inclusive of the activities which pose a risk to the health of the children) and any employer who is seen to have involved in such cases would face consequences. This opinion was also upheld in the case of *Laborers Working on Salal v. The State of Jammu and Kashmir*.<sup>3</sup>

The Second Phase (1992 – 2002): During this phase, the country started considering the importance of education in a child’s life whilst also upholding the opinion of the courts in the sense that, child labour should be strictly prohibited and regulated and that children below the age of fourteen years should not be involved in any sort of activity or employment which includes any sort of relation to hazardous activities and so on. This has been evident in the cases *TMA Pai Foundation v. Union of India*<sup>4</sup> and *M. C. Mehta v. State of Tamil Nadu and Others*,<sup>5</sup> in which the court opined that children in the age group of six to fourteen years should be provided with

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<sup>1</sup>(1981) AIR 746

<sup>2</sup>(1982) AIR 1473

<sup>3</sup>(1984) 3 SCC 538

<sup>4</sup>(2003) AIR 355

<sup>5</sup>(1996) AIR 417

free and compulsory education and that children who are less than fourteen years of age should not be involved in any hazardous employment activities.

The Third Phase (2003–2012): This phase covered a variety of developments regarding the previous claims, in the sense that there was more focus on penalisation of the people involved in child labour along with duties being defined and assigned to commissions and committees. This has been made evident in the cases of *Ganesh Ram v. State of Jharkhand & Ors.*<sup>6</sup> and *Bachpan Bachao Andolan v Union of India & Ors.*<sup>7</sup> where it has been held that a penal order can only be passed against an employer if he is found to have engaged a fourteen-year-old child but no penal order would be passed against the employee. It was also pointed out that the working hours of child employees should be regulated and that it was important to make provision for various services to them including medical services and access to food.

The Final Phase (2011 – present): This phase involved the addressing of issues such as the rehabilitation and rescuing of the children and adolescents who were prey to the act of child labour while highlighting the importance of the same. This opinion has also been highlighted in the case of *Jayakumar Nat & Anr v State of NCT Delhi & Anr.*<sup>8</sup>

Over the years, India has moved towards complete prohibition of child labour and free and compulsory primary education and schooling for children.

## CONCLUSION

Though the country has not entirely eradicated the practice of child labour throughout the country, it is evident that if seen on a comparative basis since the time of independence, there has been a drastic reduction in the cases reported under child labour. The credit for this can be given to the awareness of the reasons why child labour has to be criminalized.

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<sup>6</sup>(2006) 2 JCR 489 Jhr

<sup>7</sup>(2011) 5 SCC 1

<sup>8</sup>(2015) SCC OnLine Del 11811

## PART 2: CHILD MARRIAGE

### INTRODUCTION

Marriage of a girl below the age of 18 years and a boy below the age of 21 years is called a child marriage as per the child marriage Prohibition Act 2006. It is valid but punishable and the under-age child also has the option of repudiation on or before attaining the age as specified above.

Child marriage affects children in a manner that risks their developmental process. children who are below the specified age are still developing and getting accustomed to finding their social environment. child marriage leads to negative consequences for the child as it may lead to emotional scarring, physical injuries, early pregnancy in teenage girls, and an increased risk of situations involving domestic abuse or sexual violence as well. Additionally, they also lose out on their right to education.

child marriage has been identified as a global issue and it has been the subject matter of numerous international agreements provisions have also been given under Article 19 of the Convention of the Rights of child,<sup>9</sup> which provides for the protection of children against violence and maltreatment of the child and so on; provisions have also been given under Article 16 of the Universal Declaration of Human Rights<sup>10</sup> which throws light on the importance of age and consent during any marriage and so on.

The practice of child marriage mainly affects the children belonging to the female gender. Historically, it was a social or religious belief that by marrying the girls early, they protected the girl child or they were just married off to overcome their economic difficulties such as poverty, no fixed source of financial dependence and so on. Over the years, due to judicial decisions and several legislations being put into place to prohibit the same, the practice of the same has been reduced.

However, the practice of child marriage has not been eradicated even after the advent of legislation and prohibitions made to prevent the same. Although many child marriages have been prevented during the pandemic, the statistics of the same have also increased.

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<sup>9</sup>Convention of the Right of child, 1989, Art 19

<sup>10</sup>Universal Declaration of Human Rights, 1948, Art 16

## LEGAL PROVISIONS

Several legislations have been passed in India to curb the practice of child marriage in the country since 1929. A few of them have been mentioned below:

**The child marriage Restraint Act, 1929:** This Act is also known as the Sarda Act and it provided restrictions on the area of the age of marriage of the children. When the Act was passed in 1929, the minimum age for marriage for girls and boys was fixed at 14 and 18 years of age, respectively. After India attained independence in 1949, the minimum age was amended to 15 and 18 years of age for girls and boys respectively. And finally, in 1978, the minimum age was extended to 18 years for girls and 21 for boys. The main aim of this Act was to lessen the stress and pressure on the girl children who get married off early and also to avoid early deaths due to complications in pregnancy and so on.

**The Prohibition of child marriage Act, 2006:** This Act also deals with the minimum age of the children to get married. It provides that the minimum age for the same should be 18 years for girls and 21 years for boys. Additionally, Section 7<sup>11</sup> also provides that if any male adult was found to be indulging in the same, he shall be punishable with rigorous imprisonment which may extend to two years or with a fine which may extend to an amount of one lakh rupees or with both. The main aim of this Act is to prohibit child marriage.

**The Hindu Marriage Act, 1955:** There haven't been any provisions about punishment for indulging in child marriage under this Act. However, under this Act, a girl can only choose to annul her marriage if she has gotten married before the age of 15 years and she challenges the same before she turns 18.

**Muslim Personal Laws:** There are no bars prescribed under Muslim Personal Laws about child marriage. However, there exists the "option of puberty" under the same which means that the girl can repudiate the marriage after attaining the age of puberty if the marriage has not been consummated till then. Under Muslim laws, the age of puberty is 15 years.

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<sup>11</sup>Prohibition of child marriage Act 2006, s 7



The Protection of children from Sexual Offences Act, 2012 (POCSO): The main aim of this Act is to prevent violation of the rights of the children and also to protect the children against any violation. It defines a child as any person who is below the age of 18 years and it also provides provisions about punishing any person who indulges in the practice of child marriage.

The Juvenile Justice Act, 2015: The primary goal of this Act is to provide care and protection for children. The ambit of the children included in this Act also extends to children who are victims of child marriage. A child under this Act is also defined as a child who is under 18 years of age and it also includes provisions about the protection and rehabilitation of children who conflict with law, and also children who need care and protection.

There have been several discussions about increasing the age limit for women i.e., increasing the minimum age for marriage in the case of women, to 21 years. The pros and cons of the same are still being weighed and the Union Cabinet has cleared the same. However, it has not come into force yet.

## **JUDICIAL DECISIONS AND VIEWS**

Over the years, the view of the judiciary has also improved significantly in the manner that they have laid importance towards child protection and prohibition of child marriage. Earlier, the courts did not or more likely could not take a stance or action towards it because there was the belief that child marriage was to be considered a custom. In India, customs would generally overrule the law of the land, be it the Hindu Marriage Act or anything else. In any case, if the parties can prove that an action was to be considered an essential religious practice (ERP) or a custom, it would not be possible for the courts to take action against the same.

Subsequently, the courts started taking a stance towards the same, realizing that it would be a strict violation of the children's rights and human rights and it would also be considered an obstacle to social development. It is said that children are the future of the economy, but when their rights and social development are being obstructed in such a manner, it is important to put a stop to the practice of child marriage in the country.

There have been several cases which have led India to where it is today and it also throws light on the steps taken by the country and the judiciary and

legislature to put a stop to the act of child marriage. A few of the cases about the same are as follows –

*Vishaka v State of Rajasthan*<sup>12</sup>: The facts of the case involved a social activist/ worker, Bhanwari Devi who had tried to stop a child marriage from happening and she was vengefully gang raped by the accused and his friends as a result of the same. This judgment whilst also laying down guidelines to prevent sexual harassment at the workplace, also threw light upon the fact there is a need for rehabilitation and support for victims who have been sexually harassed or much less, proved to be victims of child marriage i.e., child brides.

*Independent Thought v Union of India*<sup>13</sup>: One of the major issues in this landmark case was whether or not the sexual activity between a man and his wife who is between the ages of 15 to 18 would amount to rape. The court also examined exception 2 to Section 375<sup>14</sup> of the Indian Penal Code. The child rights organization, Independent Thought filed a writ petition before the Supreme Court which challenged the constitutionality of Exception 2 to Section 375 which decriminalised the sexual intercourse between a husband and his wife who may be between the ages of 15 to 18. In conclusion, the Supreme Court upheld the right of every girl to bodily dignity and criminalised any sexual intercourse between husband and wife.

## CONCLUSION

Thus, it can be seen that India has come a long way in putting an end to child marriage by passing legislation to prohibit the same and also providing safeguards to victims and penal provisions for people who indulge in such an act. The judicial decisions have also come a long way in recognizing the importance of children's rights and how such an act puts their entire lives in jeopardy.

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<sup>12</sup>(1997) 6 SCC 241

<sup>13</sup> (2017) 10 SCC 800

<sup>14</sup> Indian Penal Code 1860, s 375

# BREAKING CHAINS: ADDRESSING CHILD LABOUR AND CHILD ABUSE FOR A SAFER FUTURE

Gargi Gouri\*

## Five random pictures of children chosen from the web



Figure 1: <https://www.brecorder.com/news/40285670/kse-100-down-081-as-profit-taking-rumours-dominate-session>

**Feeling :** Concern

**Thought :** These children do not have enough food available to them at home. The school provides them mid-day meals with purpose to fulfil their daily minimum nutritional intake. However, it worries me if the food quality is consumable and how frequently quality check of the food is done. It is concerning that this might be the only

proper meal these children have in their entire day.

**Feeling :** Frustration

**Thought :** The primary cause behind children engaging in labor is often the economic hardship experienced by their families, leaving them with little choice. The child should not be carrying such heavy things on her head but she has no choice as she needs to do this for her survival.



Figure 2: <https://www.voicesofyouth.org/blog/lost-childhood-child-labor>



Figure 3: <https://www.asianage.com/india/all-india/250919/malnutrition-free-india-by-2022-is-it-a-realisable-goal.html>

**Feeling:** Sad

**Thought:** The child is malnourished. He either has no parents who could provide for him or his parents are in helpless conditions. The region where this child hails from likely faces challenges in accessing an adequate food supply.

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**Feeling :** Worry

**Thought :** It depicts child abuse. It looks like the parent is screaming at the child for something she might or might not have done. The child is sitting in a stressful and protective pose. Every child should have a nurturing and stress-free household for proper growth of child physically and mentally.



Figure 4: <https://www.indiatoday.in/education-today/news/story/mms-scandal-sex-sexual-molestation-harassment-child-abuse-116628-2012-09-20>



Figure 5: <https://www.unicef.org/press-releases/staggering-scale-grave-violations-against-children-conflict-revealed-new-unicef>

**Feeling :** Helpless

**Thought :** It looks like the children are in a war zone area. They look very used to bombing instances which is not normal for children to experience. Since wars involve political agendas, I feel helpless for such children because it is difficult to provide them help due to border issues and violent politics.

I have chosen to focus on addressing child labour and child abuse for a safer future.

## **PART 1: CHILD ABUSE**

### **INTRODUCTION**

In India, there is a widespread and distressing issue of child abuse, with millions of kids experiencing physical, emotional, and sexual abuse each year. To safeguard children from abuse, the government has implemented various legal measures designed to discourage, apprehend, and penalize perpetrators. In several countries, child abuse is a widespread problem that frequently goes undetected or unacknowledged because of societal taboos and stigmas. However, by proper awareness, people will be able to recognize the warning signs of abuse and then they will be able to report them. As a consequence, there will be an increase in the recording and handling of cases.

Child abuse can have serious, protracted repercussions on a child's physical and emotional well-being, resulting in trauma, anxiety, sadness, and other long-term ramifications. By raising awareness, parents and other carers can discover ways to stop abuse from happening and make their children's environments safer.

In the long run, education and awareness can aid in lowering the prevalence of child abuse. The protection of vulnerable children, maintaining their safety and wellbeing, and creating a society that places a priority on the protection of its youngest members all depend on increasing public knowledge of child abuse.

Why this Picture?

I chose this image because, despite several policies and their execution, child abuse persists in a highly pervasive manner and, even more dishearteningly, even in sophisticated, modern homes and establishments. Schools, being common venues for such incidents, raise concerns about the deep-seated belief that physical punishment is in the child's best interest. However, the more immediate concern is the multifaceted nature of child abuse, encompassing physical, mental, and notably, sexual abuse.

## LEGAL PROVISIONS

It depicts child abuse which can be in form of physical, mental and sexual abuse. Legal issues related to child abuse can be sexual offences against children, child trafficking, Child labour and child neglect.

### **The Indian Penal Code 1860 (IPC):**

A number of laws concerning child abuse are included in the Indian Penal Code (IPC), which addresses a variety of offences against children, including physical, sexual, and emotional abuse and neglect. Section 317 of the Indian Penal Code<sup>1</sup> deals with intentional abandonment of a child below the age of twelve years. The punishment for this is imprisonment for up to 7 years or fine or both. Currently, this provision<sup>2</sup> is mentioned under Section 91 of the BNS Act 2023. Children facing physical abuse in homes and schools is another pertinent issue. It can happen in a person's home, a child's school setting, or in the society of the child. Parental or guardian misconduct includes both actions and inactions that directly or indirectly affect a child. Growing up requires discipline, but the methods many parents use to instill it are debatable. In schools, corporal punishment illegal. When we were kids, spanking, raising hands, and other physical abuse towards children were commonplace; tragically, this is still the case in India. There is Section 352 of IPC where the perpetrator will be punished with imprisonment up to 3 months or fine or both for minor physical abuse such as slapping or hitting.<sup>3</sup> The new BNS bill mentions this provision under Section 129.<sup>4</sup> A charge of "hurt" under Section 323 of the (now repealed) IPC<sup>5</sup> and sec 113 of the BNS<sup>6</sup> may be brought against the culprit if the physical abuse results in more severe wounds like fractures or bruising. This offence has a maximum one-year sentence in jail, a fine, or both. In India, there is a high prevalence of child sexual abuse. These incidents are challenging to report since, as young children, the victims are frequently their own families or friends, and they lack the maturity to distinguish between right and evil. Additionally, they are too afraid or ashamed to disclose such incidents, which makes this a delicate problem that has to be brought to light. The

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<sup>1</sup>The Indian Penal Code 1860, s 317

<sup>2</sup>The Bharatiya Nyaya Sanhita 2023, s 91

<sup>3</sup>The Indian Penal Code, 1860, s 352

<sup>4</sup>The Bharatiya Nyaya Sanhita 2023, s 129

<sup>5</sup>The Indian Penal Code, 1860, s 323

<sup>6</sup>The Bharatiya Nyaya Sanhita 2023, s 113

IPC's Section 366A addresses coercing any minor girl into having sex with another individual. This offence carries a fine and a sentence of up to ten years in jail.<sup>7</sup> The BNS bill has improved the provision to gender neutral.<sup>8</sup> Child trafficking is another dark reality that our country faces. Sections 372 and 373 of the Indian Penal Code punish anybody who is charged with selling or purchasing young girls for the purpose of prostitution or engaging in illegal sexual behavior. The accused faces a fine and a maximum ten-year prison sentence.<sup>9</sup> Both of these provisions have been made gender neutral under BNS 2023.<sup>10</sup>

### **Protection of Children from Sexual Offences Act 2012 (POCSO):**

Sexual offences against children are defined and sanctioned under this extensive statute. It includes measures for the protection of young victims and witnesses as well as specific courts and processes for the expedited trial of cases. Sections 24, 26 and 33 of the POCSO Act lay down the procedure of investigation and trial which has been formulated keeping in mind the needs of a child. The statement of the child is to be collected at their residence by a police officer not in uniform. It should be ensured that the child does not come in contact with the accused during exam and the identity of the child is protected. The Magistrate can take the help of interpreter to record statement of the child.

### **Juvenile Justice (Child Care and Protection) Act 2015 (JJ Act):**

This statute is for the children who face neglect and abandonment. It regulates the care, protection, and rehabilitation of minors in need of care and protection, including those who have been abused or exploited. It establishes child welfare committees, juvenile justice commissions, and rehabilitation homes. According to Section 75 of the JJ Act, a person who, while actually in charge or control of a child, assaults, abandons, abuses, exposes, or willfully neglects the child, or causes or arranges for the child to be subjected to any of these actions in a way that is likely to cause the child unnecessary suffering, either physically or mentally, faces up to three years in prison, a fine of one lakh rupees, or both.<sup>11</sup> Under the act, any child

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<sup>7</sup>The Indian Penal Code, 1860, s 366A

<sup>8</sup>The Bharatiya Nyaya Sanhita 2023, s 94

<sup>9</sup>The Indian Penal Code 1860, s 372 and 373

<sup>10</sup>The Bharatiya Nyaya Sanhita 2023, s 96 and s 97

<sup>11</sup>The Juvenile Justice Act 2015, s 75

who is in need of care and protection may be produced before the Child Welfare Committee (CWC).<sup>12</sup> Any abuse of a kid must be reported to this committee by the police officer within twenty-four hours. Subsequently, CWC will choose a person who will provide the kid with assistance and bear responsibility for the child's psychological health. The family of the kid will get case updates from the CWC representative.

## JUDICIAL PRECEDENTS

Child sexual abuse is a crime that is mostly unreported in India and has pandemic proportions. The Protection of Children from Sexual Offences (POCSO) Act saw the registration of over 47,000 cases in 2020; at the end of the year, 1,70,271 of those cases were for trial, according to the Women and Child Development Ministry.<sup>13</sup>

36% of men and 35% of women in 2015 research on the prevalence of sexual abuse among teenagers in Kerala reported having been sexually abused at some time in their lives. Similar research on 17,220 children and adolescents conducted by the Government of India to quantify the burden of sexual abuse found that every second kid in the country is sexually assaulted.<sup>14</sup>

In the famous case of *Tuka Ram and Anr v State of Maharashtra*,<sup>15</sup> 1979, popularly known as Mathura case, radical reforms in India's rape laws were made as a result of the case's vehemence and unrestrained confrontations. In this instance, two police officers who were detained sexually assaulted Mathura, a young tribal girl.

The Supreme Court sided with the Sessions Judge in ruling that there was voluntary sexual activity. The Supreme Court elaborated on this by saying that Mathura "consented to sex" because there were "no marks of injury" seen on her body and she did not "raise an alarm for help." The supreme court's implication was that, no evidence of resistance means that she consented to the act. He called the incident as a "peaceful affair".

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<sup>12</sup>The Juvenile Justice Act 2015, s 32

<sup>13</sup>Ministry of Women and Child Development, 'Lok Sabha Unstarred Question No. 1835: Cases Under PocsO Act' (December 2022) < <https://sansad.in/getFile/loksabhaquestions/annex/1710/AU1835.pdf?source=pqals> >

<sup>14</sup>Over 47,000 Child Abuse Cases Filed in 2020: Government" (NDTV.com, July 29, 2022) < <https://www.ndtv.com/india-news/over-47-000-child-abuse-cases-filed-in-2020-government-3206642> > (accessed on 16 March 2023)

<sup>15</sup>(1979) 2 SCC 143



The ruling sparked widespread outrage and was a landmark case as it led to many amendments in the legislation. The 1983 Criminal Law Amendment Act followed. This statute altered Section 114(A) of the Indian Evidence statute, which presumed that the victim did not agree to sexual intercourse if she says so.<sup>16</sup> Once sexual intercourse is proved, the perpetrator bears the burden of proof.<sup>17</sup>

In the famous case of *Nipun Saxena v Union of India*<sup>18</sup>, A query concerning the rape victim's identification was posed. The Supreme Court ruled that the owner or publisher of the media, studio, or photography facility in this instance is liable jointly and severally for an employee's breach of Section 23 of the POCSO Act.

In the case of *Jarnail Singh v State of Haryana*<sup>19</sup> the appellant abducted and raped a sleeping girl child. The Indian Supreme Court decided in this judgement that in situations when the POCSO Act, 2012 cannot be implemented, the Juvenile Justice (Care and Protection of Children) Rules, 2007 may be used to determine the age of a child. By this ruling, Jarnail Singh was found guilty.

## CONCLUSION

Children may not understand sexual abuse or be embarrassed to report it. Child sexual abuse may be devastating. Abused children feel powerless, embarrassed, and suspicious. A parent should immediately seek professional help if their child is acting unusually or showing signs of maltreatment.

In India, where there are millions of children, child sexual abuse is an extremely delicate subject. The fact that so few parents, teachers, and members of the general public are aware of the POCSO Act is also concerning. It's nevertheless a sad reality that it's challenging to give every youngster greater independence, access to education, and improved health.

Fast-track courts are available for minors who are in legal trouble or who have been sexually abused. Still, it is imperative that they are operating

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<sup>16</sup>The Indian Evidence Act 1872, s 114(A)

<sup>17</sup>The Indian Evidence Act 1872, s 101

<sup>18</sup>(2019) 2 SCC 703, 13

<sup>19</sup>(2013) 7 SCC 263

efficiently. The police inquiry's slow pace and the delay in getting sample deposits to forensic science labs are the main causes of the delayed investigation that resulted in a rise in POCSO Act cases.

It may be legally necessary for professionals who work with children, such as physicians, teachers, and other staff members, to notify the authorities of any suspected child abuse. Not reporting such instances might have legal ramifications.

Campaigns to educate the public on the subject of child abuse can serve to increase awareness of the problem and motivate individuals to report any suspected occurrences. The law might take into account making it a requirement that curriculum in schools and universities cover topics like child abuse and how to prevent it. This can help reduce the notion of embarrassment for family members when reporting cases of child abuse and can also aware them about the necessary services the law provides to such victims under the JJ Act and POCSO Act such as support persons who know about the law, no release of identity of child etc.

## **PART 2: CHILD LABOUR**

### **INTRODUCTION**

An article from The Print tells a story about 19 children who sit in a tiny room with no fan and walls covered in paan stains as they sit hunched over making 400-500 bangles a day with no masks amid the covid-19 pandemic making a mere Rs 50 a day in the state of Rajasthan.<sup>20</sup> This is just one from the many odd and life-threatening jobs that children are forced to do because of their economic conditions. Numerous legislations and amendments and policies have been made to prevent child labor but the contrasting reality is in every locality it is very easy to find children working in factories, Dhabas, repair shop, garbage dumps etc. to earn the meagre support they need to survive.

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<sup>20</sup>Pandey T, "Covid Made India's Child Labour Problem Bigger. in Rajasthan, They Slog 18 HRS/Day for Rs 50" (Covid made India's child labour problem bigger. In Rajasthan, they slog 18 hrs/day for Rs 50, September 14, 2021) < <https://theprint.in/india/covid-made-indias-child-labour-problem-bigger-in-rajasthan-they-slog-18-hrs-day-for-rs-50/732625/> > (accessed 20 April 2023)

The International Labour Organization states that employment that harms a child’s physical and mental development and robs them of their youth, potential, and dignity is commonly referred to as “child labour.” It also includes work that “*interferes with a child’s ability to attend and participate in school fully by requiring them to leave early or attempt to combine school attendance with excessively long and heavy work,*” as well as work that “*is mentally, physically, socially or morally dangerous and harmful to children.*”<sup>21</sup>

Data from the 2011 Census<sup>22</sup> show that 10.1 million Indian children between the ages of 5 and 14 are employed (3.9% of the nation’s total child population), with 4.5 million being girls and 5.6 million being boys<sup>23</sup> According to UNICEF, girls are twice as likely as boys to drop out of school and take care of household chores including cooking, cleaning, and watching after other kids.<sup>24</sup>

### Why this Picture?

The reason why I chose this picture is because this is an issue which has been going on in India since long and even after proper implementation of laws and schemes the problem has been difficult to eradicate as poverty of the country is one of the biggest root problems of this concern.

## LEGAL PROVISIONS

### 1. Child Labour (Prohibition and Regulation) Amendment Rules, 2016

*“An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.”*

Under this act, a child is a person under 14 years of age. The Child Labour (Prohibition & Regulation) Amendment Act, which was amended in 2016, puts strict regulations in place, prohibits the employment of minors (under the age of 14) in any occupation or process, links that age to the requirement of free and compulsory education and forbids the employment

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<sup>21</sup>International Labour Organisation, ‘What is Child Labour’(ILO.Org) < <https://www.ilo.org/ipec/programme/lang--en/index.htm> > (accessed 26 June 2023)

<sup>22</sup>International Labour Organisation, ‘Fact Sheet: Child Labour in India’ (June 2017) < [https://www.ilo.org/newdelhi/whatwedo/publications/WCMS\\_557089/lang--en/index.htm](https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_557089/lang--en/index.htm) > (accessed 26 June 2023)

<sup>23</sup>5 Facts about Child Labour in India” (End Child Labour February 7, 2022) < <https://endchildlabour2021.org/5-facts-about-child-labour-in-india/> > (accessed April 20, 2023)

<sup>24</sup>ibid

of adolescents (between the ages of 14 and 18) in hazardous occupations or processes. Exceptions apply to such works if done after school hours or during vacations as a way of providing for the family as assistance and when the working conditions are not hazardous according to Section 5 of the act.<sup>25</sup> Adolescents are minors between the ages of 14 and 18, and they are not allowed to work in any dangerous jobs.<sup>26</sup> This act has five goals. It includes prohibition of hiring of minors for specific jobs, determination of a process to modify the banned occupations schedule, regulating the working condition of children where they are allowed to work, enhancing penalties for employment of children in violation of law and to seek uniformity in the definition of “child” in related laws. Under Section 18 of the act, if any person is found employing a child under 14 years for such occupations, he will be penalized with imprisonment up to 2 years or a fine which can go up to 50,000 rupees or both.<sup>27</sup>

## **2. The Right of Children to Free and Compulsory Education Act, 2009:**

The free and compulsory education of children between the ages of 6 and 14 is required by this act. Additionally, under this law, private schools had to reserve at least 25% of their seats for students who are physically handicapped or belong to vulnerable groups. Moreover, Article 21A<sup>28</sup> ensures the same as mentioned above as a fundamental right. Additionally, Article 24<sup>29</sup> prohibits employment of children under 14 years of age in factories or any hazardous occupation. Also, the Factories Act, 1948: prohibits employment of children in factories who are below 14 years of age and also regulates who, when and for how long should children work in factories who are aged 15-18 years that is adolescents.<sup>30</sup>

## **JUDICIAL PRECEDENTS**

*M. C. Mehata v State of Tamil Nadu Supreme Court*<sup>31</sup> : An activist lawyer petitioned the court alleging severe violations of children’s fundamental rights in violation of Article 24 of the Indian Constitution in a firework factory. The supreme court gave recognition to the poverty in country as a

<sup>25</sup>The Child Labour (Prohibition & Regulation) Amendment Act 2016, s 5

<sup>26</sup>The Child Labour (Prohibition & Regulation) Amendment Act 2016, s 4

<sup>27</sup>The Child Labour (Prohibition & Regulation) Amendment Act 2016, s 18

<sup>28</sup>The Constitution of India, Art 21 A

<sup>29</sup>The Constitution of India, Art 24

<sup>30</sup> The Factories Act 1948, s 71

<sup>31</sup>(1996) 6 SCC 756

reason for child labour. It issued certain directions to resolve the matter. It asked the state to conduct surveys to find data on Child labour and in what kind of occupation they are involved in and the employer in contravention of article 24 to pay 20,000 Rs for every child employed. The state to ensure that that the adult member of the child's family gets a job etc.

*P. U. D. R. v Union of India*<sup>32</sup>: In order to gather information about the living conditions and labour abuses of workers hired by the Union of India, Delhi Development Authority, New Delhi Municipal Committee, and Delhi Administration to construct stadiums, swimming pools, highways, and other facilities for the Asian Games, the People's Union for Democratic Rights, an organization dedicated to defending citizens' democratic rights, hired three social scientists. Children under the age of 14 were employed for building projects. The respondent argued that Construction work is not listed as a hazardous workplace in the Employment of Children Act, 1938, hence Sec 3(3) and Art 24 of the Indian Constitution are not violated. The court held that Article 24 of the Constitution prohibits employing under-14s, the court ruled. The Union of India, Delhi Administration, or Delhi Development Authority must enforce the law and prevent constitutional rights violations. They can be petitioned. The Court dismissed the respondents' claim that there is no Fundamental Right breach and that this writ case is valid owing to Fundamental Right violation. The Karnataka High Court urged strict Child labour prevention measures in *A. Srirama Babu v The Chief Secretary to the Government of Karnataka*<sup>33</sup>. It issued directions to the State to take every step possible to educate people for prevention of child abuse and child labour. A child protection department must be established as well as a facility for runaway children. The state should build as many aftercare homes as possible to care for and train street children to be productive citizens. The government should encourage legitimate, secular non-governmental organizations to engage with the Department of Children Welfare to end child homelessness.

## CONCLUSION

Child labour is a complicated issue in India, and eliminating it would require a strategy that incorporates a number of different approaches. The use of children as labour in India can be reduced by the implementation of the following reforms:

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<sup>32</sup>AIR (1982) SC 1473

<sup>33</sup> (1997) Kar 2269

Child labour is illegal in India, but the country's existing laws need to be more strictly enforced in order to be effective. India also needs to strengthen its legal framework. In addition, the government should think about amending and modernizing the regulations and legislation that are already in place in order to offer a higher level of protection for children.

Education is one of the most important factors in reducing child labour, and it is also one of the most effective techniques. The government has the ability to expand access to education for children living in vulnerable communities and ensuring that all children have access to education of sufficient caliber.

**Awareness campaigns:** Bringing the negative effects of Child labour to the attention of parents, employers, and the general public through the use of awareness campaigns can help avoid it. People can be educated about the perils of Child labour and the significance of education through public awareness initiatives that the government can organize.

Programmes that assist children's wellbeing can help limit the number of instances in which children are forced to work. These programmes are called "child welfare programmes." The government may assist children and their families by offering assistance in the fields of healthcare, nutrition, and other areas in order to address the root causes of child labour.

Companies that engage in the use of Child labour should be held accountable and urged to adopt responsible labour practices as part of their corporate social responsibility. Together with private companies, the government can make certain that companies do not use Child labour and that they offer their workers a secure and risk-free environment to do their jobs in.

**Reduction of Poverty:** Poverty is one of the primary reasons that contributes to child labour. The alleviation of poverty through the creation of jobs, the expansion of social assistance programmes, and economic growth can contribute to a reduction in the prevalence of child labour.

**Child protection:** The government can provide a higher level of protection for children who are at danger of being exploited and abused, such as orphans, children living on the street, and children living in areas where there is active conflict.

By putting these changes into effect, India will be able to make a big advance towards its goal of eliminating Child labour and providing its young people with a more promising future.

Sometimes children are too young to comprehend sexual assault or feel too ashamed to inform anybody. However, the effects of child sexual abuse could be quite negative. Many psychological symptoms, such as feelings of helplessness, humiliation, and suspicion of others, are present in children who endure abuse. The moment a parent becomes aware that their child is behaving strangely or displaying signs of abuse, they should seek expert help. Child abuse comes in many forms. It is important to make both children and parents aware regarding such instances which depict abuse towards child. It is crucial that people around the child are aware of rights of the child and the legislations specific to punish such abusers and seek remedy. The government here has the responsibility to create policies and check the implementation of the same to prevent child abuse.

Child Labor is nothing less of a serious issue in the country. In India, with such a big economic gap, children are bound to take up minimum wage jobs to assist their families when they should be having education and leading a carefree life. The government has made many policies and legislation to prevent the same and make access to education for such children easier, however, as long as poverty persists it will be difficult to eradicate the same. On top of that the proper implementation of such policies is again an issue. Timely and regular inspections and surveys should be conducted to check if the policies are being effectively implemented. Awareness is just as important. India still has a long way to go before eradicating the issue of child labour.

## BIBLIOGRAPHY

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### Books

- Alison Bisset, *Blackstone's International Human Rights Documents* (Oxford University Press 2014)
- Ansari MR, *Protecting Human Rights* (Max Ford Books 2006)
- Bernd Rechel et al, *Migration and Health in the European Union* (McGraw-Hill Education 2011)
- Bhatnagar J and Sen G, *Child Labour in India* (Oxford University Press 2017)
- Boorman-nagy I and Spark GM, *Invisible Loyalties: Reciprocity in Intergenerational Family Therapy* (Harper and Row 1973)
- Goodley D, Hughes B and Davis L, *Disability and Social Theory: New Developments and Directions* (Palgrave Macmillan 2012)
- Gurchathen SS, *Child Labour in India* (1st edn, Oxford University Press 2016)
- Hetherington EM, *Coping with Divorce, Single Parenting, and Remarriage: A Risk and Resiliency Perspective* (1st edn, Lawrence Erlbaum Associates 1999)
- Priestley M, *Disability: A Life Course Approach* (John Wiley & Sons 2003)
- Sen G, 'Child Labour and the Law' in De Tocqueville A and Guha R (eds), *Children and the Law in India* (Oxford University Press 2020)
- Shakespeare T, *Disability Rights and Wrongs Revisited* (Routledge 2013)
- Singh A, 'Childhood Malnutrition in India' in Bhattacharya S (ed) *Perspective of Recent Advances in Acute Diarrhea* (IntechOpen 2020)

### Journals

- Barbara JS, 'Impact of War on Children and an Imperative to End War' (2006) 47(6) *Croat Med Journal* 891
- Bhadury S, 'Child Pornography in India: Issues and Challenges' (2022) 6(6) *Journal of Positive School Psychology* 6524



- Bhattacharyya H et al, 'Impact of COVID-19 on Child Health and Healthcare Services' (2022) 78 *Medical Journal Armed Forces India* 3
- Bhatta K, 'Child Labour and Education in India: An Overview' (2017) 58 (3) *Economic and Political Weekly* 38
- Bowlby J, 'The Nature of the Child's Ties to his Mother' (1958) 39 *International Journal of Psychoanalysis* 350
- Dozier M et al, 'Institutional Care for Young Children: Review of Literature and Policy Implications' (2012) 6 *Social Issues and Policy Review* 1
- Earley L and Cushway D, 'The Parentified Child' (2002) 7 *Clinical Child Psychology and Psychiatry* 163
- Egbert SC and Lamont EC, 'Factors Contributing to Parents? Preparation for Special-Needs Adoption' (2004) 21 *Child and Adolescent Social Work Journal* 593
- Fry PS and Trifiletti RJ, 'An Exploration of the Adolescent's Perspective: Perceptions of Major Stress Dimensions in the Single-parent Family' (1983) 5 *Journal of Psychiatric Treatment and Evaluation* 101
- Galambos NL and Tilton-weaver LC, 'Adolescents' Psychosocial Maturity, Problem Behaviour, and Subjective Age: In Search of the Adultoid' (2000) 4 *Applied Developmental Science* 178
- Godsell RE et al, 'Why some Kids do Well in Bad Situations: Relation of Parental Alcohol Misuse and Parentification to Children's Self-concept' (2004) 39 *Substance Use and Misuse* 789
- Gould LM, 'The Politics of Portrayal in Violent Conflict: The Case of the Koni 2012 Campaign' (2014) 39(4) *Alternatives: Global, Local, Political* 207
- Graeff-Martins AS et al, 'Diffusion of Efficacious Interventions for Children and Adolescents with Mental Health Problems' (2008) 49 *Journal of Child Psychology and Psychiatry* 335
- Hooper LM, 'Expanding the Discussion Regarding Parentification and its Varied Outcomes: Implications for Mental Health Research and Practice' (2007) 19 *Journal of Mental Health Counseling* 373

- Jurkovic GJ et al, 'Role of Filial Responsibility in the Post-war Adjustment of Bosnian Young Adolescents' (2005) 5 *Journal of Emotional Abuse* 219
- Moirangthem S, Kumar NC and Math SB, 'Child Sexual Abuse: Issues & Concerns' (2015) 142 *Indian Journal of Medical Research* 1
- Paul P, 'Child Marriage Among Girls in India: Prevalence, Trends and Socio-Economic Correlates' (2020) 14(2) *Sage Journal* 304
- Radfar A et al, 'Challenges and Perspectives of Child Labor' (2018) 27(1) *Industrial Psychiatry Journal* 17
- Rao GP, Ramya VS and Bada MS, 'The Rights of Persons with Disability Bill, 2014: How 'Enabling' Is It for Persons with Mental Illness?' (2016) 58 *Indian Journal of Psychiatry* 121
- Sachdev Y and Dasgupta J, 'Integrated Child Development Services (ICDS) scheme' (2001) 57(2) *Medical Journal Armed Forces India* 139
- Singh K, 'Right to Education' (2015) 42 *India International Centre Quarterly* 119
- Wagner KH and Brath H, 'A Global View on the Development of Non Communicable Diseases' (2012) 54S *PrevMed* 38
- Walsh S et al, 'The role of Parentification and Family Climate in Adaptation among Immigrants in Israel' (2006) 16(10) *Journal of Research on Adolescence* 321
- Weiss RS et al, 'Growing up a little faster: The experience of growing up in a single parent household' (1979) 35 *Journal of Social Issues* 97

### **International Instruments**

- The Convention on the Rights of the Child 1989
- The Geneva Convention relative to the Protection of Civilian Persons in time of War 1950
- The International Covenant on Civil and Political Rights 1966
- The International Covenant on Economic, Social and Cultural Rights 1966
- The United Nations Convention on the Rights of Persons with Disabilities 1989

- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990
- The Worst Forms of Child Labour Convention 1999

### **Indian Statutes**

- The Bharatiya Nyaya Sanhita 2023
- The Bombay Prevention of Begging Act 1959
- The Bonded Labour System (Abolition) Act 1976
- The Child Labour (Prohibition and Regulation) Act 1986
- The Child Labour (Prohibition and Regulation) Amendment Act 2016
- The Children Act 1960
- The Code of Criminal Procedure 1973
- The Commissions for Protection of Child Rights Act 2005
- The Constitution of India 1950
- The Factories Act 1948
- The Immoral Traffic (Prevention) Act 1956
- The Indian Armed Forces Tribunal Act 2007
- The Indian Evidence Act 1872
- The Indian Penal Code 1860
- The Juvenile Justice (Care and Protection of Children) Act 2015
- The Juvenile Justice (Care and Protection of Children) Rules 2007
- The Mental Healthcare Act 2017
- The Mines Act 1952
- The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999
- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995
- The Prohibition of Child Marriage Act 2006

- The Protection of Children from Sexual Offences Act 2012
- The Protection of Women from Domestic Violence Act 2005
- The Railways Act 1989
- The Rehabilitation Council of India Act 1992
- The Right of Children to Free and Compulsory Education Act 2009
- The Rights of Persons with Disabilities Act 2016

### **Foreign Statutes**

- The Mental Health Parity and Addiction Equity Act 2008 (USA)
- The Modern Slavery Act 2015 (UK)
- The Tariff Act 1930 (USA)

### **Websites**

- Banerji A and Kotoky A, ‘Poor Quality and Bad Management: India Ignored Warnings in Free Meal Programme’ (Reuters, 21 July 2013) <<https://www.reuters.com/article/idUSDEE96K04E/>>
- Bhat MA, ‘Teacher Shortages: A Problem of Distribution or Scarcity?’ (Times of India, 23 October 2021) <<https://timesofindia.indiatimes.com/blogs/developing-contemporary-india/teacher-shortages-a-problem-of-distribution-or-scarcity/>>
- Bloxham L, ‘The vicious cycle of poverty explained’ (Concern Worldwide, 19 June 2023) <<https://www.concern.org.uk/news/vicious-cycle-poverty-explained>>
- ChildrenCJetal, ‘MothersandChildreninPrison:NGOSHelp,butBetter Implementation of Policies Needed’ (The Leaflet, 14 December 2023) <<https://theleaflet.in/mothers-and-children-in-prison-ngos-help-but-better-implementation-of-policies-needed/>>
- Datta S, ‘Child Beggars: India’s Invisible Citizens of Tomorrow’ (Delhi Post, 24 February 2020) <<https://delhipostnews.com/child-beggars-indias-invisible-citizens-of-tomorrow/>>

- Kulkarni T, 'Age limit in RTE denies dropouts a chance to get back to school' (The Hindu, 14 November 2012) <<https://www.thehindu.com/news/cities/bangalore/age-limit-in-rte-denies-dropouts-a-chance-to-get-back-to-school/article4094532.ece>>
- Lee BR, 'Child Labour: What are the Health and Social Implications' (Baylor College of Medicine, 19 October 2021) <<https://blogs.bcm.edu/2021/10/19/child-labor-what-are-the-health-and-social-implications/>>
- Madden M et al, 'Teens, Social Media, and Privacy' (Pew Research Centre, 21 May 2013) <<https://www.pewresearch.org/internet/2013/05/21/teens-social-media-and-privacy/>>
- Manfred N, 'United Nations Global Study on Children Deprived of Liberty' (OHCHR, 11 July 2019) <<https://www.ohchr.org/en/treaty-bodies/crc/united-nations-global-study-children-deprived-liberty>>
- Mitra D, 'Free Legal Aid Eludes Trafficking Survivors' (Telegraph India, 5 November 2022) <<https://www.telegraphindia.com/my-kolkata/news/free-legal-aid-eludes-trafficking-survivors/cid/1896290>>
- Navya PK, 'Ineffective implementation of child labour laws' (India Together, 5 January 2017) <<https://indiatogether.org/ineffective-implementation-of-child-labour-laws-children>>
- Paliath S, 'Living With Imprisoned Mothers, Children Struggle for Normal Childhood' (Indiaspend, 7 October 2020) <<https://www.indiaspend.com/8-women-prisoners-children-live-with-them-heres-how-the-system-fails-them/>>
- Pandey T and Mondal M, 'Covid Made India's Child Labour Problem Bigger. in Rajasthan, They Slog 18 HRS/Day for Rs 50' (The Print, 13 September 2021) <<https://theprint.in/india/covid-made-indias-child-labour-problem-bigger-in-rajasthan-they-slog-18-hrs-day-for-rs-50/732625/>>

- Saleem MA, ‘Fighting Child Beggary and Trafficking’ (Deccan Herald, 27 June 2019) <<https://www.deccanherald.com/opinion/fighting-child-beggary-and-trafficking-743060.html>>
- Shashidhar J, ‘An analysis of begging as an offence in India’ (Prime Legal, 3 September 2023) <<https://primelegal.in/2023/09/03/an-analysis-of-begging-as-an-offence-in-india/>>
- Vajawat B and Chandra PS, ‘Becoming a Mother behind Bars’ (The Citizen, 24 December 2021) <<https://www.thecitizen.in/index.php/en/NewsDetail/index/15/21252/Becoming-a-Mother-Behind-Bars?infinitescroll=1>>
- \_\_\_, ‘How Children are forced into Begging by Cartels’ (Bal Raksha Bharat, 2 November 2016) <<https://balrakshabharat.org/blog/child-protection/how-children-are-forced-into-begging-by-cartels/>>
- \_\_\_, ‘Spotlight on Street Children Provided by Bal Raksha Bharat’s Study across 10 Cities’ (Bal Raksha Bharat, 27 November 2019) <<https://balrakshabharat.org/blog/news/spotlight-on-street-children-provided-by-save-the-children-study-across-10-cities/>>
- \_\_\_, ‘Supreme Court uphold constitutional validity of RTE Act’ (The Economic Times, 12 April 2012) <<https://m.economictimes.com/news/politics-and-nation/supreme-court-uphold-constitutional-validity-of-rte-act/articleshow/12634042.cms>>





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This project is a profound exploration of visibility and a catalyst for empathy, solidarity, and fraternity. The methodology is elegantly simple: don the 'human hat,' articulating raw emotions and reactions onto paper. Then, as legal practitioners, assume the role of lawyers, scrutinizing violations deeply and strategizing to reinstate rights.

Bridging the chasm between theory (lexis) and action (praxis), our students translate classroom knowledge into real-world impact, actively challenging infringements and working towards the restoration of rights.

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**ISBN : 978-81-982431-3-3**

