



International Journal of Research Publication and Reviews

Journal Homepage: www.ijrpr.com ISSN 2582-7421

Criminal Law and Child Protection Laws in India: A Legal Analysis

Adv. Abhishek S. Dharane

DES's Shri Navalmal Firodia Law College, Pune

1. INTRODUCTION:

Children constitute one of the most vulnerable sections of society and require special protection because of their age, dependency and developmental needs. The protection of children is closely connected with the protection of human dignity, fundamental rights and social justice. In India, concerns relating to child abuse, exploitation, trafficking, child labour, sexual offences and neglect have resulted in the development of a specialised legal framework for the protection of children. The Constitution of India provides the foundation for child protection through various Fundamental Rights and Directive Principles of State Policy. Articles 14, 15, 21 and 24 provide important safeguards relating to equality, special protection, dignity, life and protection from exploitation, while Articles 39(e) and 39(f) direct the State to protect children against abuse and exploitation and provide opportunities for healthy development.¹

The criminal law framework relating to children has developed considerably over time. The Protection of Children from Sexual Offences Act, 2012 (POCSO) created a specialised statutory framework dealing with sexual offences against children. The Juvenile Justice (Care and Protection of Children) Act, 2015 provides mechanisms relating to children in conflict with law and children in need of care and protection. Other legislation relating to child labour, trafficking, education and child marriage also contributes to the broader framework of child protection. The importance of specialised criminal law arises from the vulnerability of children in criminal proceedings. Children who are victims of offences may face fear, stigma, social pressure and difficulties in participating in the justice process. Consequently, child protection requires not merely punishment of offenders but also child-friendly investigation, adjudication, rehabilitation and support.²

Despite the development of an extensive legal framework, significant challenges continue to exist. The research identifies lack of awareness, social stigma, underreporting, institutional inefficiency, socio-economic conditions, delays and inadequate coordination as factors affecting implementation.

The present research therefore examines criminal law and child protection in India from a legal perspective, with particular attention to the statutory framework, constitutional safeguards, judicial approach and practical challenges in enforcement.

2. CONCEPT OF CHILD RIGHTS AND CHILD PROTECTION :

Child rights refer to the fundamental rights and freedoms guaranteed to children for their survival, development, protection and participation in society. Children are not merely recipients of welfare measures but individuals possessing rights and dignity. Child protection, on the other hand, refers to legal, institutional and social measures designed to protect children from abuse, exploitation, violence, neglect and other forms of harm. The concept of child protection has both preventive and protective dimensions. Preventive measures attempt to prevent harm before it occurs, while protective mechanisms respond to situations in which children are already exposed to abuse or exploitation. Rehabilitation and reintegration are also important components of the child protection framework. The research recognises these dimensions and describes child protection as preventive, protective and rehabilitative in nature.³

The international framework relating to child protection has also influenced Indian law. The United Nations Convention on the Rights of the Child, 1989 recognises children as rights-holders and provides an international framework for their protection and development. Indian constitutional and statutory developments have increasingly reflected a rights-based approach to children. In India, child protection is supported by constitutional provisions and specialised legislation. The constitutional framework provides the broad principles of equality, dignity and protection from exploitation, while criminal and welfare legislation creates specific mechanisms for addressing offences and protecting children.

The research also identifies the changing nature of child protection. Modern child protection concerns are not limited to traditional forms of exploitation. Technological developments and changing social conditions have created new challenges, including online exploitation and other emerging forms of abuse.

¹Constitution of India, arts. 14, 15(3), 21 and 24, read with arts. 39(e) and 39(f).

²The Protection of Children from Sexual Offences Act, 2012, ss. 3–12, 19 and 28.

³United Nations Convention on the Rights of the Child, 1989, arts. 3, 6, 19 and 28.

Therefore, the concept of child protection must be understood as a combination of criminal justice, constitutional rights, welfare mechanisms and institutional responsibility.

3. HISTORICAL DEVELOPMENT OF CHILD PROTECTION LAWS IN INDIA:

The development of child protection law in India reflects a gradual movement from a welfare-oriented approach towards a rights-based and child-centric legal framework.

During the pre-independence period, legislative efforts concerning children were limited and fragmented. The Apprentices Act, 1850 sought to provide vocational training to orphaned and poor children. The Reformatory Schools Act, 1876 introduced a different approach towards juvenile offenders by emphasising education and rehabilitation. The Child Marriage Restraint Act, 1929 attempted to address the practice of child marriage by prescribing minimum ages. Following independence, the Constitution provided a stronger foundation for child protection. Fundamental Rights and Directive Principles recognised the need for special protection of children. Articles 14 and 15 provide equality and protection against discrimination, Article 21 protects life and personal liberty, Article 24 protects children from hazardous employment, and Articles 39(e) and 39(f) direct the State to protect children from exploitation and provide opportunities for healthy development.⁴

The statutory framework subsequently expanded. The Children Act, 1960 was followed by the Juvenile Justice Act, 1986, and later the Juvenile Justice (Care and Protection of Children) Act, 2015. The Child Labour legislation developed to address exploitation of children in employment. Most importantly, the Protection of Children from Sexual Offences Act, 2012 introduced a specialised framework dealing with sexual offences against children.

This historical development demonstrates a transition from treating children primarily as objects of welfare towards recognising them as rights-holders requiring specialised legal protection.

4. RESEARCH PROBLEM :

Despite the existence of a comprehensive legal framework for child protection in India, effective implementation remains a significant concern. The central research problem is whether the existing criminal law and child protection mechanisms are sufficient to effectively protect children from abuse, exploitation and other offences, or whether gaps in enforcement, institutional functioning and social awareness continue to undermine their effectiveness.⁵

The problem is not limited to the absence of legislation. The research identifies a gap between legislative provisions and their practical enforcement. Lack of awareness, social stigma, underreporting, inadequate infrastructure, shortage of trained personnel, delays in investigation and trial and lack of coordination between institutions affect the implementation of child protection laws.⁶

The research therefore examines the relationship between the legal framework and its actual implementation, with particular attention to the role of criminal justice institutions.

5. HYPOTHESIS :

The child protection framework in India provides a substantial legal basis for protecting children from abuse, exploitation and neglect; however, its effectiveness is affected by implementation deficiencies, lack of awareness, institutional limitations and socio-economic barriers. Strengthening enforcement, child-friendly procedures, institutional coordination and awareness mechanisms is therefore necessary for the effective realisation of child protection objectives.

6. AIM OF THE STUDY :

The study aims to examine the role of criminal law in protecting children in India and to analyse the legal framework governing child protection. It seeks to examine the major legislation relating to children, constitutional safeguards, judicial decisions and the functioning of institutions responsible for protecting children.

The study further aims to identify the practical and institutional challenges affecting implementation and to suggest measures for strengthening child protection and criminal justice mechanisms.

7. RESEARCH METHODOLOGY :

The study adopts a doctrinal, analytical and explanatory research methodology. It is primarily based on secondary sources.

⁴Apprentices Act, 1850; Reformatory Schools Act, 1876; Child Marriage Restraint Act, 1929.

⁵Constitution of India, arts. 14, 15(3), 21, 21A and 24; Protection of Children from Sexual Offences Act, 2012; Juvenile Justice (Care and Protection of Children) Act, 2015.

⁶National Commission for Protection of Child Rights (NCPCR), Annual Reports; National Crime Records Bureau, Crime in India Reports.

The doctrinal method is used to examine constitutional provisions, statutes and judicial decisions relating to child protection. Particular attention is given to the Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015. The analytical method is used to examine the effectiveness of the existing legal framework and identify gaps between legal provisions and their implementation. The explanatory method is used to examine the reasons behind implementation difficulties, including poverty, lack of awareness, social stigma, institutional limitations and inadequate infrastructure.⁷

The study relies on constitutional provisions, legislation, judicial decisions, government publications, reports of child protection institutions, books, legal journals and other secondary legal materials.

8. CONSTITUTIONAL AND LEGAL FRAMEWORK FOR CHILD PROTECTION :

The Constitution of India provides the foundation for child protection. Article 14 guarantees equality before law and equal protection of laws. Article 15 prohibits discrimination and Article 15(3) permits the State to make special provisions for children. Article 21 protects life and personal liberty and has been interpreted to include dignity and other aspects of a meaningful life. Article 21A provides for free and compulsory education for children between six and fourteen years. Article 24 prohibits employment of children below fourteen years in factories, mines or other hazardous employment.⁸

The Directive Principles further strengthen the constitutional framework. Article 39(e) directs the State to ensure that children are not abused and that citizens are not forced by economic necessity to enter occupations unsuitable to their age or strength. Article 39(f) requires opportunities for children to develop in a healthy manner and with freedom and dignity. Article 45 concerns early childhood care and education, while Article 47 relates to nutrition and public health.⁹

The constitutional framework therefore combines enforceable rights with State obligations concerning child welfare.

9. MAJOR CRIMINAL LAWS RELATING TO CHILD PROTECTION :

The Protection of Children from Sexual Offences Act, 2012 is one of the principal criminal laws specifically dealing with offences against children. It creates a specialised legal framework for sexual offences and recognises the need for child-sensitive procedures.¹⁰

The significance of POCSO lies in its specialised treatment of offences against children. The legislation seeks to protect children from sexual assault, sexual harassment and related forms of exploitation while establishing procedures intended to reduce the trauma associated with criminal proceedings. The Juvenile Justice (Care and Protection of Children) Act, 2015 is another central component of the child protection framework. It deals with children in conflict with law as well as children in need of care and protection. Its approach includes care, protection, rehabilitation and social reintegration. The research identifies the legislation as an important development in India's movement towards a comprehensive child-centric framework.¹¹

Child labour legislation also forms part of the protection framework. The prohibition and regulation of child labour seeks to prevent children from being exposed to exploitative and hazardous employment. Similarly, laws and mechanisms concerning trafficking, child marriage and education contribute to the broader protection of children.¹²

The criminal law framework therefore operates alongside constitutional and welfare legislation. Criminalisation alone cannot address every form of vulnerability, but it provides an important mechanism for deterrence, accountability and access to justice.

10. ROLE OF JUDICIARY AND LANDMARK JUDGMENTS :

The Indian judiciary has played an important role in developing child protection jurisprudence. Courts have interpreted constitutional provisions and legislation in cases involving child labour, trafficking, sexual exploitation, custody, institutional care and education.

In *Sheela Barse v. Union of India*, the Supreme Court addressed the treatment and protection of children in custody and emphasised humane treatment and legal assistance. The case illustrates the importance of protecting children who come into contact with the justice system.¹³

In *M.C. Mehta v. State of Tamil Nadu*, the Supreme Court dealt with child labour in hazardous industries and issued directions relating to rehabilitation. The decision demonstrates the judicial role in addressing exploitation and requiring State action.¹⁴

⁷Protection of Children from Sexual Offences Act, 2012; Juvenile Justice (Care and Protection of Children) Act, 2015.

⁸Constitution of India, arts. 14, 15(3), 21, 21A and 24.

⁹Constitution of India, arts. 39(e), 39(f) and 45.

¹⁰Protection of Children from Sexual Offences Act, 2012, ss. 3–12, 19, 28 and 33.

¹¹Protection of Children from Sexual Offences Act, 2012, ss. 24, 33 and 35.

¹²Child Labour (Prohibition and Regulation) Amendment Act, 2016.

¹³*Sheela Barse v. Union of India*, (1986) 3 SCC 596.

¹⁴*M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.

In *Bandhua Mukti Morcha v. Union of India*, the Court addressed bonded labour and highlighted the need for identification, protection and rehabilitation of affected persons, including children. The decision reflects the relationship between fundamental rights and protection from exploitative labour.¹⁵

In *Vishal Jeet v. Union of India*, the Supreme Court dealt with child prostitution and trafficking and directed governmental action to address exploitation and rehabilitation. The case demonstrates judicial attention to trafficking and sexual exploitation of children.¹⁶

In *Gaurav Jain v. Union of India*, the Court considered the rights and welfare of children of sex workers and emphasised dignity, education and rehabilitation.¹⁷

In *Sampurna Behrui v. Union of India*, the Supreme Court examined implementation of the Juvenile Justice framework and addressed the functioning of child-care institutions and monitoring mechanisms.¹⁸

In *Unni Krishnan v. State of Andhra Pradesh*, the Supreme Court recognised the right to education as part of Article 21, contributing to the subsequent constitutional recognition of Article 21A.

These decisions demonstrate that judicial intervention has contributed to the development of child protection jurisprudence by interpreting constitutional rights, directing institutional action and emphasising rehabilitation and dignity.

11. CRIMINAL JUSTICE APPROACH TO CHILD PROTECTION :

The protection of children within the criminal justice system requires attention to the entire process, beginning with reporting and investigation and continuing through trial and rehabilitation. A child victim may experience fear, social stigma and difficulty in communicating with authorities. Consequently, criminal justice institutions must function in a manner that recognises the vulnerability of children. Police authorities constitute an important point of contact because investigation begins with the reporting of an offence. Proper handling of complaints, sensitive interaction with children and effective coordination with child protection institutions are essential. The judiciary also has an important role in ensuring that proceedings remain child-sensitive and that the rights and dignity of child victims are protected. Delays in investigation and trial can adversely affect the interests of children and may discourage participation in the justice process. Child protection therefore requires more than the existence of penal provisions. The entire criminal justice process must function effectively and sensitively.¹⁹

12. IMPLEMENTATION AND ENFORCEMENT CHALLENGES :

A significant challenge identified by the study is the gap between law and implementation. India has developed an extensive legal framework, but the practical effectiveness of that framework depends upon the functioning of enforcement institutions.

Lack of awareness is one important problem. Children, parents and members of society may not be sufficiently aware of available legal protections and reporting mechanisms. The research also identifies social stigma as a factor that can discourage reporting, particularly in cases involving sexual abuse. Institutional deficiencies constitute another challenge. Police authorities, courts, Child Welfare Committees and Juvenile Justice Boards require adequate infrastructure and trained personnel. Delays in investigation and trial may weaken the effectiveness of protection mechanisms.²⁰

Coordination is equally important. Child protection cases may involve police authorities, courts, welfare institutions, educational institutions, medical personnel, government departments and NGOs. Fragmented functioning can affect the continuity of protection and rehabilitation. Socio-economic conditions also influence child vulnerability. Poverty, illiteracy, unemployment and lack of access to basic services can increase the risk of child labour, trafficking and exploitation. The research observes that legal prohibitions alone cannot completely address problems rooted in socio-economic conditions.

Legal and procedural complexity can also affect implementation. Delays, inadequate training and inconsistent application of child-friendly procedures can create additional difficulties for children participating in criminal proceedings.

13. ROLE OF CRIMINAL JUSTICE AND CHILD PROTECTION INSTITUTIONS :

Child protection requires coordinated institutional action. The police, judiciary, Child Welfare Committees, Juvenile Justice Boards and other government authorities form important components of the protection system.²¹

Child Welfare Committees have an important role in matters concerning children in need of care and protection, while Juvenile Justice Boards deal with children in conflict with law. These institutions are intended to ensure that children's needs are addressed through specialised mechanisms. The judiciary

¹⁵*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

¹⁶*Vishal Jeet v. Union of India*, (1990) 3 SCC 318.

¹⁷*Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

¹⁸*Sampurna Behrui v. Union of India*, (2018) 4 SCC 433.

¹⁹Protection of Children from Sexual Offences Act, 2012, ss. 19, 24, 33 and 35.

²⁰National Commission for Protection of Child Rights (NCPCR), Annual Reports; National Crime Records Bureau, Crime in India Reports.

²¹Juvenile Justice (Care and Protection of Children) Act, 2015, ss. 4 and 27.

provides legal oversight and interprets constitutional and statutory provisions. Law enforcement agencies investigate offences and assist in bringing offenders before courts.

The research emphasises that institutional effectiveness depends upon adequate resources, trained personnel, monitoring and coordination. Non-governmental organisations also contribute to child protection through rescue, rehabilitation, legal assistance, awareness campaigns and advocacy. Organisations such as Bachpan Bachao Andolan have been involved in addressing child labour and trafficking and in advocating stronger protection mechanisms.²²

14. ROLE OF FAMILY, COMMUNITY AND EDUCATIONAL INSTITUTIONS:

Child protection cannot be achieved exclusively through criminal law. The family is generally the primary environment in which children grow and develop. A supportive family can protect children from harm, but abuse and neglect may also occur within family environments. Consequently, awareness and accountability remain important.

Communities can assist by identifying and reporting abuse, neglect and exploitation. Community-based awareness programmes can help children and adults understand child rights and available legal mechanisms. Educational institutions also have an important role. Schools can provide a safe environment in which children can seek assistance. Teachers and school authorities may identify indications of abuse or neglect and can contribute to prevention and early intervention.

The research identifies bullying, corporal punishment and inadequate awareness among educators as issues affecting child protection within educational institutions. Training and appropriate reporting mechanisms are therefore important. Government institutions and NGOs further supplement these efforts. Effective child protection therefore requires cooperation between legal institutions and society.

15. EMERGING CHALLENGES IN CHILD PROTECTION :

Child protection law must respond to changing social and technological conditions. Traditional concerns such as child labour, trafficking, abuse and neglect continue to exist, while technological developments have created additional forms of vulnerability.

The research specifically recognises online exploitation as an emerging challenge requiring updated legal responses. The growth of digital communication can create new avenues through which children may be exposed to exploitation and abuse. This requires legal institutions to continuously develop investigative capacity and child protection mechanisms. The changing nature of child exploitation also demonstrates the importance of coordination between criminal law, technology, educational institutions, families and enforcement authorities.²³

A modern child protection framework must therefore remain capable of responding to both traditional and emerging forms of harm.

16. FINDINGS :

The study finds that India has developed a substantial legal framework for child protection through constitutional provisions, specialised legislation and judicial decisions. The Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015 represent important components of this framework. The study further finds that the judiciary has played an important role in interpreting child protection laws and constitutional provisions. Judicial decisions have addressed child labour, trafficking, exploitation, institutional care and education and have contributed to the development of child protection jurisprudence.

However, a significant gap remains between the existence of legal provisions and their effective implementation. The major challenges identified include lack of awareness, social stigma, institutional inefficiency, inadequate infrastructure, shortage of trained personnel, delays in investigation and trial, inadequate coordination and socio-economic inequalities. The study also finds that criminal law, while essential for accountability and deterrence, cannot by itself address all causes of child vulnerability. Effective child protection requires coordination between criminal justice institutions, welfare institutions, families, educational institutions, government agencies and civil society.²⁴

17. SUGGESTIONS AND RECOMMENDATIONS :

The implementation of child protection laws should be strengthened through better coordination between police authorities, courts, Child Welfare Committees, Juvenile Justice Boards and other relevant institutions.

Law enforcement and judicial personnel dealing with children should receive appropriate training concerning child-friendly procedures and the specific vulnerabilities of child victims. Awareness programmes should be strengthened so that children, parents, teachers and communities understand child

²²Juvenile Justice (Care and Protection of Children) Act, 2015; see also NCPCR, Annual Reports.

²³Protection of Children from Sexual Offences Act, 2012; United Nations Convention on the Rights of the Child, 1989, art. 34.

²⁴National Commission for Protection of Child Rights (NCPCR), Annual Reports; National Crime Records Bureau, Crime in India Reports.

rights, available legal remedies and mechanisms for reporting abuse. Institutional infrastructure should be improved, particularly in relation to child welfare and justice mechanisms. Monitoring and accountability mechanisms should also be strengthened.

The investigation and trial of offences against children should be conducted efficiently while maintaining child-sensitive procedures. Delays can negatively affect the interests of child victims and therefore require institutional attention. Rehabilitation and support mechanisms should form an integral part of the criminal justice response. Protection should not end with the identification or prosecution of an offender; affected children may also require continuing care, support and rehabilitation. Socio-economic factors such as poverty, illiteracy and lack of access to basic services should also be addressed because they can increase children's vulnerability to exploitation. The research specifically recommends greater attention to rehabilitation, support services, community participation and NGO involvement.²⁵

Finally, the legal framework should continue adapting to emerging forms of child exploitation, including those associated with technological and social changes.

18. CONCLUSION :

Child protection in India has developed from a relatively fragmented welfare-oriented framework into a broader rights-based and child-centric legal system. Constitutional provisions, specialised legislation and judicial decisions collectively provide an important foundation for protecting children from abuse, exploitation, trafficking, child labour and other forms of harm. The Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015 represent significant components of the contemporary legal framework. Judicial decisions have further contributed to the development of child protection jurisprudence by addressing exploitation, trafficking, child labour, institutional care and education.

However, the existence of legislation does not automatically guarantee effective protection. The principal challenge lies in implementation. Lack of awareness, social stigma, underreporting, institutional deficiencies, shortage of trained personnel, procedural delays and socio-economic conditions can limit the effectiveness of legal mechanisms. Criminal law therefore needs to operate together with effective investigation, child-friendly procedures, judicial protection, rehabilitation, institutional accountability and social awareness. The family, educational institutions, government agencies, judiciary, police, welfare bodies and civil society all have important roles in translating legal protection into practical protection.

The central concern is consequently not merely whether India has laws protecting children, but whether those laws are effectively implemented in a manner that protects the safety, dignity and rights of every child. Strengthening the connection between legislation, criminal justice institutions and social participation is essential for ensuring meaningful child protection in India.

19. REFERENCES / BIBLIOGRAPHY :

Books

1. M.P. Jain, *Indian Constitutional Law*, 8th ed., 2018.
2. V.N. Shukla, *Constitution of India*, 13th ed., 2017.
3. Paras Diwan, *Law Relating to Children in India*, 2019.

Statutes and Constitutional Materials

1. Constitution of India.
2. Protection of Children from Sexual Offences Act, 2012.
3. Juvenile Justice (Care and Protection of Children) Act, 2015.
4. Child Labour (Prohibition and Regulation) Amendment Act, 2016.
5. Child Marriage Restraint Act, 1929.
6. Reformatory Schools Act, 1876.

International Materials

1. United Nations Convention on the Rights of the Child, 1989.
2. UNICEF, *Child Protection Strategy*, 2008.
3. UNICEF, *State of the World's Children Report*.

Case Laws

1. *Sheela Barse v. Union of India*, (1986) 3 SCC 596.

²⁵Protection of Children from Sexual Offences Act, 2012, s. 35; Juvenile Justice (Care and Protection of Children) Act, 2015.

2. *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.
3. *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.
4. *Vishal Jeet v. Union of India*, (1990) 3 SCC 318.
5. *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.
6. *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.
7. *Sampurna Behrua v. Union of India*, (2018) 4 SCC 433.
8. *Unni Krishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645.

Reports and Other Sources

1. National Commission for Protection of Child Rights (NCPCR), Annual Reports.
2. National Crime Records Bureau, *Crime in India* Reports.
3. Integrated Child Protection Scheme (ICPS), Ministry of Women and Child Development.
4. Relevant legal journals, research articles and legal databases including SCC Online and Manupatra.