

BRIDGING GAPS IN CHILD PROTECTION: NATIONAL AND INTERNATIONAL LEGAL STANDARDS AND JUDICIAL TRENDS IN INDIA

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ABSTRACT

This paper critically examines the legal framework governing the rights and welfare of children, particularly orphaned children, in India through the lens of national and international laws and judicial decisions. The analysis begins by exploring India's legal obligations under the Constitution, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences (POCSO) Act, 2012, alongside other child welfare laws. It further assesses India's commitment to international conventions, such as the United Nations Convention on the Rights of the Child (UNCRC), focusing on how these standards are reflected in national legislation. A review of landmark judicial decisions in India highlights the judiciary's proactive role in safeguarding children's rights, particularly orphaned and vulnerable children, through constitutional remedies like Public Interest Litigation (PIL) and directives on child welfare policies. Cases related to child labor, adoption, education, and protection from exploitation are critically analyzed to understand the evolving judicial interpretation of child rights. The paper also identifies gaps between legislative intent and on-ground implementation, especially concerning orphaned children's access to education, healthcare, and protection from trafficking and abuse. Furthermore, it examines India's adherence to international standards, pointing out areas where national policies fall short of global benchmarks. In conclusion, the analysis underscores the need for stronger enforcement mechanisms, improved rehabilitation programs, and increased collaboration between national and international bodies to better protect children, particularly orphans, in India. The paper calls for reforms in the existing legal structures and more robust judicial interventions to ensure that the rights of children, especially the most vulnerable, are fully realized in line with both national aspirations and international commitments.

KEYWORDS: Orphan Children, Child Rights, Juvenile Justice Act 2015, POCSO Act 2012, UNCRC, Public Interest Litigation, Child Welfare, Adoption, Child Labour, Trafficking, Judicial Intervention.

INTRODUCTION

Children are among the most vulnerable members of society, and safeguarding their rights and welfare is a key concern for any legal system. In India, the framework governing the rights and welfare of children, particularly orphaned children, is shaped by a combination of national legislation and international commitments. This paper critically examines this legal framework, emphasizing the alignment between India's laws and its international obligations.

At the national level, the Indian Constitution provides fundamental rights

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and directives for the protection and welfare of children. This is complemented by various child-specific statutes such as the Juvenile Justice (Care and Protection of Children) Act, 2015, which focuses on the rehabilitation and reintegration of children in need of care and protection. The Protection of Children from Sexual Offences (POCSO) Act, 2012, addresses sexual abuse and exploitation, setting stringent provisions for the safety and well-being of children. Additionally, other statutes such as the Prohibition of Child Marriage Act, 2006, and the Right of Children to Free and Compulsory Education Act, 2009, contribute to creating a comprehensive legal structure for child welfare.

Internationally, India is a signatory to the United Nations Convention on the Rights of the Child (UNCRC), which sets global standards for the protection, development, and participation of children. The principles enshrined in the UNCRC, including the right to survival, protection, and education, are reflected in various national policies and programs. However, despite these commitments, gaps exist between legislative intent and actual implementation. Challenges such as inadequate access to education, healthcare, and protection from exploitation persist, particularly for orphaned and vulnerable children.

The judiciary in India has played a proactive role in bridging these gaps through progressive judicial interpretations and interventions. Landmark cases involving child labor, adoption, and protection from abuse demonstrate the courts' dedication to advancing the welfare of children. Public Interest Litigations (PILs) and judicial directives have been instrumental in shaping child welfare policies and ensuring accountability for children's rights violations.

This paper aims to provide a comprehensive analysis of the existing legal framework and its effectiveness in protecting orphaned children. By critically reviewing national legislation, international conventions, and judicial decisions, it highlights the need for stronger enforcement mechanisms, improved rehabilitation programs, and enhanced collaboration between national and international bodies. The study concludes by suggesting legal and policy reforms to better safeguard the rights and welfare of orphaned and vulnerable children in India.

OBJECTIVE OF THE STUDY

- (1) The primary objective of this study is to critically evaluate the legal framework concerning the protection of children, especially orphaned and vulnerable children in India. The study aims to:
- (2) Analyze national legislation, including the Constitution, Juvenile Justice (Care and Protection of Children) Act 2015, and the Protection of

Children from Sexual Offences (POCSO) Act 2012, to understand their role in child welfare.

- (3) Examine India's commitments to international conventions, especially the United Nations Convention on the Rights of the Child (UNCRC), and how these standards are implemented in national policies.
- (4) Identify gaps in legislative and judicial responses regarding the enforcement of child protection laws, focusing on the rights of orphaned children.
- (5) Provide recommendations for improving legal enforcement, rehabilitation programs, and collaboration between national and international bodies to ensure better protection for children in India.

RESEARCH METHODOLOGY

This study employs a doctrinal research approach, utilizing both primary and secondary sources. The primary sources include constitutional provisions, national statutes such as the Juvenile Justice (Care and Protection of Children) Act 2015, POCSO Act 2012, and international legal instruments like the UNCRC. Secondary sources such as scholarly articles, judicial decisions, and government reports are also analyzed to provide context and depth to the legal analysis. A comparative approach is adopted to assess India's adherence to international child protection standards, with a focus on judicial interpretations that have shaped the legal discourse on children's rights. Case law is reviewed to highlight judicial trends, particularly through Public Interest Litigations (PILs), in ensuring child welfare and addressing gaps in legislative intent versus implementation.

NATIONAL LEGAL FRAMEWORK

A. 1 Constitution of India¹

The Constitution of India has stated many rights for children. Some of the rights are explicitly for children, and some of the rights are for every citizen, person, and woman in the country. The framers of the Constitution made the Indian Constitution a very flexible and right giving statute. Constitution is itself a grundnorm for every statute. The Constitution of India came into force on November 26 1949, and it is a combination of various international conventions and other countries constitutions. M.N Roy gives the idea to have a constitution in India. A committee of 7 members drafted the Constitution of India, and the chairmen of that committee were Dr BR Ambedkar. Constitution provides every citizen with a person basic human rights, which is essential for the survival of humans.

¹ <https://legislative.gov.in/sites/default/files/COI-updated.pdf>

The Indian Constitution gives children the Right to be citizens of the country and keep in view their special status, and they have been given special privileges.

The Fundamental Rights which are related with the Children's are:

- Article 21A²: Provides that the government shall provide free and compulsory elementary Education to all the children under the age group 6-14 years. This Right is famously known as the Right to Education. Article 21A has been added by the 86th Amendment act 2002.
- Article 24: Provides that no children below the age of fourteen years shall be employed in any hazardous employment.
- Article 23: Right of protection from being trafficked and forced into child labour.
- Article 21: Right to Personal life and personal liberty of a person.
- Article 14: Equality before the law and equal protection of laws.
- Article 15: Right against any form of discrimination.
- Article 19: Right to freedom of speech and expression
- Article 29(2): Right of a citizen to admission to Educational institute.

The Directive Principle of State Policy is related to the Rights of Children's are:

- Article 45: This article puts an obligation on the State shall provide early age childhood care and Education for all children until they have completed six years.
- Article 39(e): Right to be protected from being abused and the children's tender should be protected.
- Article 39(f)³: Children should be given opportunities and facilities to develop in a healthy environment, and freedom and dignity should be protected.
- Article 46: State shall promote Education and economic Interest of the S.C.'s and S.T.'s and other weaker sections.
- Article 47: State shall raise the level of nutrition and the standard of living to improve public Health.

Other Provisions in Constitution related with the rights of Children

- Article 51A(k): It imposes a fundamental duty on a parent/guardian who takes care to provide various opportunities for Education to his child between the age of six and fourteen years.

The Provision mentioned above deals exclusively with child rights. Apart from the above-given provisions, all other fundamental rights and other rights

² Added by 86th Amendment act 2002

³ Subs. by 42nd Amendment act 1977

are given in the Constitution are also provided to the children. The fundamental rights are enforceable in nature. If there is an infringement on anyone fundamental right. In that case, they can directly approach the supreme court or the high court to enforce their fundamental Right under article 32 to the supreme court and article 226 to the high court. While the directive principle of the Constitution is not enforceable in nature, they are just a Provision for the country's welfare. While making any law, every country should look into these Provisions for the country's Interest and welfare of the country's citizens. The judiciary, in various cases, comes into the front for the enforcement of these fundamental rights. Without proper enforcement of fundamental rights, no one enjoys their lives.

A.2 Provisions of Code of Criminal Procedure, 1973⁴

The code of Criminal Procedure establishes various procedures for administering substantive criminal law. The code provides the various procedures for the smooth working of the criminal justice system. The procedure outlined by the code of criminal procedure is for the welfare of the children, and they should be protected from any arbitrary action of the State. The code of criminal procedure laid down various protective provisions for the protection of the child, which is as follow

- Section 125: This Section deals with the order of maintenance of wives, children and parents.
- Section 27: This Section deals with jurisdiction in the cases of juveniles.
- Section 265A: Plea Bargaining does not apply if an offence has been committed against a child below the age of fourteen years.
- Section 416: Postponement of the death sentence on pregnant woman for the life of an unborn child.
- Section 98: Power to compel an immediate restoration of a woman or female under eighteen years of age.
- Section 167: The magistrate can grant custody only in remand home if the accused is a woman under eighteen years.
- Section 173(1A): Police investigation in case of rape of a child may be completed within the first three months from the date on which the information was recorded by the officer in charge of the police station.

The Provisions of Code of Criminal procedure are to be followed if any case comes up in front of the judicial system that deals with the children. If any matter related to a child comes, that matter should be given priority as mentioned in the CrPc; that case should be completed within a given time. CrPc laid down the Provision mentioned above specifically for children and other provisions also related to the person and applicable to the children's.

⁴ <https://legislative.gov.in/sites/default/files/A1974-02.pdf>

A.3 Provisions of Indian Penal Code, 1860⁵

The Indian penal code is the code that defines what crime is and what is not. The First draft of IPC was drafted by Thomas Babington Macaulay. The draft was majorly based on the codification of the criminal law in England. The Indian penal code defines all the offences, punishments for the offences, general exceptions, and explanations. Indian penal code is the major Act that plays an essential role in the criminal justice system. Every Provision for the Act defines the crime and lays down the punishment for such a specific crime. These all crimes are ranging from heinous to petty offences.

The significant sections of the Indian Penal Code related to Children are as follow

- Section 82: nothing is an offence if a child does any act under seven years.
- Section 83: Nothing is an offence if any act done by a child above seven years of age and less than twelve who has not attained sufficient maturity to know about the nature of his conduct.
- Section 89: Nothing is an offence if any act is done in good faith for the benefit of the child.
- Section 228A⁶: This Section deals with the non-disclosure of the identity of the victim of certain offences.
- Section 293: Sale, etc., of obscene objects to any young person.
- Section 299(Explanation 3): The Crime of culpable homicide is made out when the death of a living child is caused, and any part of that child has been brought forth, even though the child may not have been unborn or been completely born
- Section 305: Any abetment of suicide of child or insane person shall be punished.
- Section 312: Any person causing Miscarriage to women with children shall be punished.
- Section 315: Any Act done with intent to prevent a child from being born alive or causes it to die after birth is an offence under the Indian Penal Code.
- Section 317: Any exposure and abandonment of a child less than twelve years of age either by parents or guardian having care of it shall be punished.
- Section 318: Any person concealing the birth of child by secret disposal of a dead body shall be punished.

⁵ https://www.iitk.ac.in/wc/data/IPC_186045.pdf

⁶ Inserted by act 43 of 1983

- Section 361: Anyone Who takes or entices minors less than sixteen years of age for males and eighteen years of age for females shall be considered kidnapping.
- Section 363A⁷: Any kidnapping of a minor for the purpose of begging is punishable.
- Section 366A: Whoever procures a minor girl under the age of eighteen years shall be punished.
- Section 369: kidnapping or abduction of any child under ten years shall be punished.
- Section 370(4, 5, 6): Trafficking any minor.
- Section 372: Whoever sells minors for the Purpose of Prostitution.
- Section 373: Whoever buys a minor for the Purpose of Prostitution.
- Section 376(3)⁸: Whoever Commits rape on a woman under sixteen years of age.
- Section 376(A.B.)⁹: Punishment for rape on women under twelve years of age.
- Section 376(DA)¹⁰: Punishment for gang rape on women under sixteen years of age.
- Section 376(D.B.)¹¹: Punishment for gang rape of women under twelve years of age.

This all provisions above mentioned are made for the welfare of the children as they are the ones who need special attention, protection and care from the State. Any offence related to children is cognizable in nature and punished with the minimum one-year punishment and maximum capital or life imprisonment.

A.4 Provisions of The Juvenile Justice (Care and Protection of Children) Act 2015¹²

The juvenile justice act 2015 is the amendment of the original Act of 2000. Its main aim is to protect the children in conflict with the law and those who need care and protection by fulfilling their basic necessities through proper maintenance, nourishment, and proper development. The Act provides a special approach toward children and provides a framework for their protection, treatment, and rehabilitation in view of the criminal justice system. The significant sections of the J.J. act follow as follows:

⁷ Ins. By act 52 of 1959

⁸ Ins. By act 22 of 2018

⁹ Ins. By act 22 of 2018

¹⁰ Ins. By act 22 of 2018

¹¹ Ins. By act 22 of 2018

¹² https://legislative.gov.in/sites/default/files/A2016-2_0.pdf

- Section 2(1): Abandoned child means any child deserted by biological or adoptive parents or guardians and declared abandoned by the committee after inquiry.
- Section 2(2): Adoption is when a child is legally separated from the biological parents and given to adoptive parents.
- Section 2(12): Child Defined as a person who has not completed the age of eighteen years.
- Section 2(14): Children those who need of care and protection
- Section 2(21): Child care institutions.
- Section 2(29): Foster care means the placement of a child by the committee in a family environment.
- Section 2(42): Orphan means a child without biological or adoptive or legal guardian or whose legal guardian is not willing to take or capable of taking care of the child.
- Section 27: Child welfare committee
- Section 35: Surrender of children.
- Section 37: Orders passed regarding a child who needs care and protection.
- Section 44: Need of Foster care.
- Section 59: Procedure for inter-country adoption of a child who has been orphaned, abandoned, or surrendered.
- Section 68: Central adoption resource authority.
- Section 74: Prohibition on disclosure of the identity of children.
- Section 106: Constitution of State child protection society and District Child protection units.
- Section 107: State government shall make Provision for special juvenile police unit.
- Section 108: Public awareness on the Provision of the Act.

This whole Act is made to give a smooth criminal justice system for children with the conflict of law and those who need care, protection, and rehabilitation. Many times Supreme Court, in his judgments, states that there is a need to be effective implementation of the Provision of Juvenile justice act¹³.

A.5 Provisions of Right to Education Act 2009¹⁴

The Right to education act is the outcome of the 86th constitutional amendment act 2002. 86th amendment act clears the way to the government for the Right to education act. This Act came into power on April 1 2010. The main intention of the Act is to provide universal elementary Education to all the children under

¹³ <http://cara.nic.in/PDF/JJ%20act%202015.pdf>

¹⁴ https://www.education.gov.in/sites/uploadfiles/mhrd/files/upload_document/rte.pdf

the age of six to fourteen years by ensuring maximum attendance in schools and for an increase in literacy among the nation. Significant Provision related to the Education of the child follows as:

- Section 2(c): Define child as a male or female of the age of six to fourteen years.
- Section 2(f): Elementary Education, which means Education from first class to eight classes.
- Section 3: Right of the child to free and compulsory Education without paying any fee.
- Section 13: There is no capitation fee or screening procedure while admitting a child into school.
- Section 17: Prohibition of any kind of physical and mental punishment to any child.
- Section 31: Provide that the National Child commission and the state commission has to Monitor and examine of child's Right to Education.

Right to Education Act clearly states the government's agenda to ensure every child shall get an education at their elementary level. The Act has said the countries seriousness about Education. This Act created a legally protected environment for the child for their promising future. The acts main aim is to improve the literacy rate in the country. The Right to education act will also help uplift the children who have been orphaned due to covid 19 by providing them with the necessary Education to excel in their future.

A.6 Provision of the Protection of Children from Sexual Offences Act,2012¹⁵

POCSO is an act which is made with an intention to protect children from any sexual assault, sexual harassment and child pornography. This Act came into force on June 19 2012. This Act defines the various forms of child abuse. The POCSO Act is a gender-neutral act; it includes both boy and girl children. It defines sexual offences in a broad sense, not in a limited sense. The Act is designed to give adequate access to justice as it has made various provisions related to special procedures and special courts. The different significant provisions of the Act are as follow:

- Section 2(d): Defines child as a person who has not completed the age of eighteen years.
- Section 3: Define the Penetrative sexual assault.
- Section 5: Define the aggravated Penetrative Sexual Assault.
- Section 7: Sexual Assault

¹⁵ <https://legislative.gov.in/actsofparliamentfromtheyear/protection-children-sexual-offences-act-2012>

- Section 13: Use of child for a pornographic purpose.
- Section 24: Recording of a statement of a child at his residence.
- Section 27: Medical Examination of a child in accordance with the Provision of Section 164A of CrPc.
- Section 28: Constitution of Special Courts.
- Section 40: Right of the child to take the assistance of legal practitioner with the Provision of Section 301 of CrPC.
- Section 43: The central government or state government shall spread awareness about the Act.
- Section 44: The monitoring powers are with the National Commission for the protection of child rights.

Pocso act's main objective is to create an atmosphere in the special courts where children can speak without any fear to make accurate decisions regarding the case. POCSO act plays an essential role in the rights of the children who have been orphaned due to covid 19 in India as it provides the Provision for the protection of child sexual abuse. The Provision mentioned above specifically deals with significant provisions of the Act.

A.7 Provision of The Orphanages and other Charitable homes (supervision and control) Act, 1960¹⁶

This Act came into force on April 9 1960. This is the Act that provides supervision and control of orphanages, homes for neglected women or children, and other institutions connected with such matters.

- Section 2(c): this Act defines a child as a boy or girl who has not completed the age of eighteen years.
- Section 2(d): This Section defines the meaning of home, which means an institution called an orphanage or other home known to be for care.
- Section 5: Under this Section, the government may establish a board of control and supervision and control of homes under the State.
- Section 9: Power of inspection to the children homes.
- Section 17: Under this Section, the government has the power to revoke the certificate of orphanage homes if they do not comply with the directions of the government.

It is India's only important legislation that governs and supervises orphanage homes and charitable homes. It empowers the government to monitor and supervise the institutions to protect and care for the children. Through this Act, the government is empowered to take care of the children who have lost their homes for various reasons or have been become orphaned.

¹⁶ <https://legislative.gov.in/sites/default/files/A1960-10.pdf>

A.8 Provisions of The Child Labour (Prohibition and Regulation) Act, 1986¹⁷

This Act Prohibit the employment of children under the age of fourteen years into hazardous work. It regulates the working condition of child labour in India. There are many Provisions made in this Act regarding the employment of children above the age of fourteen years. This Act decides the nature of the occupation or process of the employment of the child. This Act wholly bans the employment of children below the age of fourteen years. This Act came into force on December 23 1986. The relevant provisions of the Act are as follow:

- Section 2(ii): Define the meaning of a child as a person who has not completed the age of fourteen.
- Section 3: It prohibits the employment of children in certain occupations.
- Section 7: It regulates the working conditions and working of children in various occupations.
- Section 11: maintenance of register is compulsory.
- Section 13: This Section deals with the Health and safety of the children engaged in employment.

This Act is made to reduce child labour in India and improve work conditions for those who are above fourteen years of age to get the adequate salaries according to their work. When we talk about orphaned children, they will also get help from this Act because it prohibits the employment of children below the age of eighteen years.

A.9 Provisions of The Immoral Traffic (Prevention) Act, 1956¹⁸

This Act is made with the pursuance of the International Convention on the prevention of immoral traffic 1950. This Act criminalizes Prostitution and trafficking, particularly in places that are used as brothels and earned income on the basis of Prostitution and selling of minor boys or girl for monetary benefit. This Act only criminalizes the involuntary form of Prostitution, not voluntary Prostitution. This Act helps and protects orphaned children from being trafficked into illegal Prostitution. The following sections related to the child as follows:

- Section 2(a): Defines the term brothel, which includes any house, room, or any place which is used for sexual violence.
- Section 2(aa): Define the term child as a person who has not completed the age of sixteen years.

¹⁷ https://labour.gov.in/sites/default/files/act_2.pdf

¹⁸ <https://legislative.gov.in/sites/default/files/A1956-104.pdf>

- Section 2(f): Define the term Prostitution. It means sexual exploitation of a person for commercial purposes.
- Section 4: Punishment for living on the earning of Prostitution is punishable, and if it engaged earning through child prostitution, it is punishable with stringent punishment.
- Section 5(Proviso(i)): Procuring, inducing or taking the child for the sake of Prostitution.
- Section 6(2,2A): Detaining any child in premises where Prostitution is carried on.
- Section 7(1A): Prostitution in public places.
- Section 13: Provision for a special police officer and advisory body.
- Section 22(A): Constitution of Special Courts.

This Act is made with the vision to protect the person from being illegal trafficking into Prostitution. This Act helps the children who have been taken to Prostitution at a young age. It provides various necessary Provisions for the protection and care of the children. This Act has some of the provisions for the protection of orphaned children.

A.10 Provisions of The Hindu Adoptions and Maintenance Act, 1956¹⁹

This Act deals with the legal procedure of adoption maintenance of a child by a Hindu. This Act applies to the Hindu as defined by The Hindu Marriage Act. This Act defines who can adopt, what is valid adoption, and the obligations related to the adoption of a child. This Act also defines adoption and also the definition of a child. This Act came into force on December 21 1956. Also, this Act laid the primary conditions to adopt any child. Some of the important Provision related to child adoption are as follow:

- Section 2(a): Defines the term Hindu, which also includes Hindus, Jains, Buddhists, Sikhs, Virashaiva, Lingayat, or members of Arya samaj.
- Section 2(b): defines maintenance which includes food, shelter, clothing, Education and medical expenses.
- Section 2(c): This defines a child as a person who has not completed the age of eighteen years.
- Section 6: Requisites of valid adoption.
- Section 7 & 8: These sections define the capacity of a Hindu male and female.
- Section 9: This Section describes a person capable of giving in adoption.
- Section 10: Persons who may be adopted.
- Section 15: valid adoption should not be cancelled.
- Section 20: Maintenance of children.

¹⁹ https://legislative.gov.in/sites/default/files/A1956-78_0.pdf

- Section 21: Dependents has been defined under this Section.
- Section 22: Maintenance of dependent.

The adoption in India is done through the Hindu Adoption and Maintenance Act provisions. The Act provides for the adoption and maintenance of the child. This Act is one of the most important acts that protect the rights of children during the course of adoption. It protects the children by ensuring the Right to maintenance.

A.11 Provisions of The Commission for Protection of Child Rights Act, 2005²⁰

The National Commission for Protection of Child Rights (NCPCR) is based on the principle of universality of child rights. The aim of the Commission is to protect the child from the age of 0-18 years in the country. It is a monitoring body that monitor, supervise, inspect and make various Provision for the protection and welfare of the children throughout the country. The NCPCR has played a significant role during the Covid-19 to protect children. The NCPCR act came under the Provision of the Commission for the protection of child rights. This Act came into force on January 20 2006. The main aim of the Act is to create a national and various state commission for the protection of child rights. The various important Provision is following as:

- Section 2(b): Child Rights includes the children rights as adopted in U.N. Conventions.
- Section 2(c): There shall be National Child Protection Commission.
- Section 3: Defines the Constitution of the National Commission for Protection of Child Rights.
- Section 13: This Section defines the Commission's functions, which are mainly to examine, review, and inquire into the violations of child rights.
- Section 17: Define the Constitution of State Commission for Protection of Child Rights.
- Section 25: There shall be Children's Courts.
- Section 26: Special Public Prosecutor for children.
- Section 31: There is the protection of action taken in good faith by the National or State Commission.

The key purpose of this Act is to look into children rights. The National Commission and State Commission in the times of the Covid 19 pandemic has played an essential role in the protection of child rights. National Commission has made a portal, namely "Bal Swaraj", for all the state government to provide the details of all children who have been orphaned due to covid 19. National

²⁰ <https://legislative.gov.in/sites/default/files/A2006-4.pdf>

Commission being a central commission, gives many directions to the State Commission to look into the cases of orphaned children and give them necessary help and make Provision for their welfare whenever there is a violation of the rights of children every time the national Commission has to take suo moto regarding the same. The Commission's duty is to look into the children's educational, Health, and overall development rights.

A.12 Contemporary Bill/Legislative Initiatives

Provision Of The Orphan Child (Provision of Social Security) Bill, 2016²¹

Shri Vinod Kumar Boianapalli, Member of Parliament(M.P.), introduced this Bill as a Private member bill²² on March 10 2017, in Lok sabha. This Bill aimed to provide social security and welfare measures to orphan children and other matters related to them, but this Bill lapsed in Lok sabha due to parliamentary functioning. This Bill contains many provisions for the welfare of orphaned children in the country. This Bill provides various Provisions for the educational, Health, financial rights and other rights to the children who have lost their parents and became orphaned. This Bill was the one and only Provision that deals solely with orphaned children. The essential provisions of this Bill as follows:

- Section 2(b): Define a child as a person who has not completed the age of eighteen years.
- Section 2(c): Define foster care homes.
- Section 2(d): Define an Orphan child as a child who has been abandoned or has lost both parents or whose parents identity is not known and includes a child who is not part of a family, either natural or foster.
- Section 3: The Central Govt. along with State Govt. conduct survey on orphaned children in every ten years along with census.
- Section 4: Central Govt. shall formulate a national policy for the welfare of orphaned children in one year of publication of report under section 3.
- Section 6: The Central Govt. Shall constitute a fund wholly for the orphaned children.
- Section 7: There shall be three per cent reservation to the orphaned children in educational institutes and Govt. Services.
- Section 8: Establishment of Foster care homes.
- Section 10: Central govt should pay funds to the state governments.

²¹ <http://164.100.47.4/billtexts/lbills/asintroduced/2385.pdf>

²² Bill No-319 of 2016

This Bill is progressive in nature, but it does not cover single parents orphaned children. Currently, there is no legislation specifically dealing with the problems of orphaned children. India today needs to pass such bills on a priority basis as the Bill is for the children who are the future of this country. The Bill also suggests about the foster care institutes, which means the children should be provided with a family environment where they can be raised, and their basic needs should be fulfilled. As currently, children who have been orphaned due to covid 19 pandemic or before this pandemic are in dire need of such legislation.

A.13 Child Protection Services Scheme²³

The Integrated Child Protection Scheme (ICPS) was renamed as Child Protection Services Scheme in 2017 and it is a scheme that is centrally sponsored is an umbrella scheme which is implemented by the union ministry of women and child development in the year 2009-10 and also revised in 2014. This scheme is intended as a vehicle to support the effective implementation of the juvenile justice care, and protection of children act 2015. Its main aim is to build a caring atmosphere for children who are in harsh conditions and other exposed children through Government-Civil Society partnership. ICPS is based on the principle of child interest and protection of their rights. This scheme is basically focused on the total development of a child. The basic moto of the scheme is to provide a promising future for the children to complete their studies and start working and earning. ICPS also enable an understanding of the need for the State to prevent children from getting into situations of risk and to support innovative need-based programmes that meet the children's needs. This scheme consists of four chapters which are as follows;

- Introduction and concept
- Service Delivery Structures which includes SCPU's and DCPU's, CARA and SARA
- Implementation Plan Funding pattern outcomes and output indicators this chapter includes the implementation part and also the pattern of funding and their flows.
- Services and other activities include the care and rehabilitation services with the help of the establishment of Mother NGO and emergency outreach helpline numbers. Sponsorship and foster care services are also provided, including giving children rupees 2000 monthly for their development. To avail of this Sponsorship, the children parents income must be below 36000 per annum in metro cities and 24000 per annum in rural areas.

²³ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1776865>

The modules mentioned above provide a very brief overview of the scheme and provide a basic understanding of the objects. The union ministry for women and child development is implementing the scheme at its child welfare bureau, and various central project support units have been made. The ICPS not only prevents a child from getting into situations of risk but also how it is a vehicle for the effective implementation of the J.J. act 2015 and thereby strengthens the child protection system in India.

A.14 PM CARES For Children²⁴

The National scheme launched by the Hon'ble Prime Minister of India on 29th May 2020, namely "PM CARES for Children" regarding compensatory amount to be provided in lieu of ensuring comprehensive care and protection to the children orphaned. These three kinds mentioned under the scheme are-

- (i) Children who have lost both parents in the pandemic;
- (ii) Children who have lost the Surviving parent; or
- (iii) Children who have lost Legal Guardian/ Adoptive parents/ Single Adoptive Parent

Under this Scheme following Benefits has been laid down in scheme.

- Rupees 10,00,000 Fixed Deposit will be done in in the account of children and children can redeem after attaining the age of 23.
- Monthly stipend will be given until they attain the age of 18.
- For children below the age of 6 years will receive support and assistance from the Anganbadi services for health and nutritional care.
- For children under 10 years of age shall be given admission into nearest kendriya Vidyalaya or private school and for children in government school free uniform and books shall be provided under Samagra Shiksha Abhiyan
- School education to children under 11-18 years of age shall be provided in central government schools such as sainik school, Navodaya Vidyalaya, eklavya model schools etc.
- Support for higher education will be given.
- Children should be covered under PM-JAY health insurance of rupees 5,00,000

This Scheme is came after the issue of orphaned children is heard by Supreme Court. The main purpose of the Scheme is to Rehabilitate the children who have lost their parents and has become the orphans. The scheme will provide many kind of benefits to the children for there overall development.

²⁴ <https://pmcaresforchildren.in/>

A.15 Landmark Judgements and Daily Orders

The following sub-chapter provides the significant Judgements and Daily orders regarding Orphaned Children. The Supreme court has specified through several orders that these children must be taken care of, and they need to grab society's attention at the earliest. The children who get orphaned at a very tender age need to be provided with proper affection to grow up as independent individuals in society. The Supreme Court has specified several times that the government must come up with efficient schemes and programmes so that the Education, Health, Growth of these children is not hampered.

To specify about all the above-mentioned ideas of the supreme court presented in several daily orders and directions, the significant and important orders mentioned are as specified under.

1. IN RE CHILDREN IN NEED OF CARE AND PROTECTION DUE TO LOSS OF PARENTS DURING COVID 19²⁵

Supreme Court takes Suo Moto in the wake of the Covid 19 pandemic. Initially, this Suo moto petition is named Re Contagion of Covid 19 Virus in Children Protection Homes and direct the states and U.T.'s to ensure protection to the children in the child protection homes and institutes. In this petition, S.C. appoints Mr Gaurav Agrawal as Amicus Curiae. On 28/05/2021, amicus curiae filed an interlocutory application²⁶ in the supreme court seeking direction for the Health and Education of the children who have been orphaned due to Covid 19. Till date, 23 daily orders have been passed by the Supreme court, which consists of the direction to NCPCR and all states and U.T.'s and ensure the basic fundamental rights to these children.

- i. **Order No²⁷-14th** Gaurav Agarwal, learned Amicus Curiae in this case, has filed an interlocutory application seeking directions regarding children who have been orphaned due to the Covid 19 pandemic. NCPCR informed to the Supreme Court that a portal "Bal Swaraj" is operational. All the states have been given access to this portal to identify the orphaned children from march 2020 to till date and put their details on this portal. The Supreme Court Directed the district authorities to upload the children's information on the "Bal Swaraj" portal as earlier.

²⁵ SMW (C) NO.4 OF 2020

²⁶ No. 64373/2021

²⁷ https://main.sci.gov.in/supremecourt/2020/10820/10820_2020_37_37_28035_Order_28-May-2021.pdf

- ii. **Order No²⁸-15th** NCPCR filed an affidavit on 29/05/2021 after the Supreme Court 14th order, and in his affidavit, NCPCR states that 9346 children were orphaned, abandoned or lost one parent. Also, NCPCR state that we need more time to collect the data. Amicus Curiae, in this case, also contended that PM cares For Children has been announced by Prime Minister for these orphaned children.
- iii. **Order No²⁹-16th** Child Welfare Committees are directed to conduct inquiries and pass suitable directions without any delay, and such directions should be implemented expeditiously. The Monitoring of orphaned children should be done by the DPCU's and CWC, also S.C. state that these affected children should benefit from the schemes announced by the Central Government and State governments. 30071 (05/06/2021) children have been orphaned by both parents or single parents and abandoned. The further it divides, 3621 orphaned, 26176 have lost a single parent and 274 abandoned. Also, the Supreme Court directed that state govts, U.T.'s should make Provision for the Education of the children orphaned in govt and private schools, directed to take action against illegal adoptions.
- iv. **Order No³⁰-17th** on 26/07/2021 affidavit filled by NCPCR stated that 75320 children have been orphaned, lost either parent or abandoned. Amicus Curiae have again highlighted the issue of identification of children and their rehabilitation. Total 34 Schemes has been started by the state govt. And UT's. The Supreme court directed the states to issue orders for the continuation of the children's Education in govt and private schools at least for one year. If there is any difficulty for Education, that will be dealt with under the RTE act.
- v. **Order No³¹- 22nd** Supreme Court Directed the Registry to change the name of a case from IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES to "In re: Children in Need of Care and Protection due to Loss of Parents during Covid-19".

²⁸ https://main.sci.gov.in/supremecourt/2020/10820/10820_2020_37_30_28036_Order_01-Jun-2021.pdf

²⁹ https://main.sci.gov.in/supremecourt/2020/10820/10820_2020_37_1_28059_Order_07-Jun-2021.pdf

³⁰ https://main.sci.gov.in/supremecourt/2020/10820/10820_2020_36_5_28864_Order_27-Jul-2021.pdf

³¹ https://main.sci.gov.in/supremecourt/2020/10820/10820_2020_35_28_31283_Order_15-Nov-2021.pdf

- vi. **Order No³²- 23rd S.C.** directed the D.M.'s and D.C.'s to ascertain the educational status of the children orphaned for the smooth implementation of PM cares for Children and also directed to meet the child personally.

Supreme Court takes the Suo-Moto for the welfare of the children. These children are the country's future if we can't ensure these children's future. There is no use of the provisions in the Constitution, and there will be no use of all special acts made for the welfare of the children. This matter is still going in Supreme Court, and the Supreme Court will pass many more orders for the welfare of these children.

2. GAURAV KUMAR BANSAL VERSUS UNION OF INDIA³³

- i. **Order No³⁴- 9th** Supreme Court directed the concerned states to reach out to the children who have been orphaned due to covid 19 and pay them the ex-gratia amount of 50000 to these children whose information is available on the “Bal Swaraj” portal. SC also directed the states to furnish the full information regarding the numbers of the children who have orphaned in the state and also give these information to the state legal services authority.
- ii. **Order No³⁵- 10th** Supreme Court in this order said that as per their last order in the present case the state governments had to provide with all the data of people orphaned due to covid 19 and also about the list of people who have been compensated with the ex-gratia payment. But Despite the orders of the court, the state governments only gave away the general statistics about the same. The basis object behind the last order was to find out about the people who have not yet been compensated and so that all those families could be reached at earliest by the state legal services authorities. The supreme court further stringently gave the government a period of one week more to either come up with the data or else the matter would be taken up very seriously. Also, it was ordered that the application which have been already rejected regarding the claims of compensation must be viewed again and it must be ensured that no eligible person is deprived of the said compensation.

³² https://main.sci.gov.in/supremecourt/2020/10820/10820_2020_35_35_31623_Order_29-Nov-2021.pdf

³³ Miscellaneous Application No. 1805/2021

³⁴ https://main.sci.gov.in/supremecourt/2021/27610/27610_2021_42_7_32666_Order_19-Jan-2022.pdf

³⁵ https://main.sci.gov.in/supremecourt/2021/27610/27610_2021_42_1_33144_Order_04-Feb-2022.pdf

3. IN RE CHILDREN IN STREET SITUATIONS ³⁶

Initially this case named as IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES. Supreme court in his 21st order take up the issue of children in street situations (“CiSS”) and directed the states and NCPCR to identify the children who are living on the street and upload the information regarding the same on the portal of “Bal Swaraj”. The NCPCR has filed an affidavit on 13/10/2021 and prepared an SOP 2.0 which consists the following stages, (i) identification of children (ii) Social background of the child (iii) identification of benefits under individual care plan (iv) CWC should take part and upload orders regarding the same (v) Schemes and benefits which can be linked to the children (vi) checklist of follow up given to the child. The NCPCR circulate this SOP 2.0 to all states and UT’s and ask them to fill the details of children according to the SOP 2.0. in order no 22nd SC directed the registry to register a fresh SMW(C) in the name of IN RE CHILDREN IN STREET SITUATIONS.

- i. **Order No³⁷- 1** In this Order NCPCR has filled an affidavit regarding the implementation of SOP 2.0. SC directed the states to immediately identify the children in street situation and take necessary steps for their rehabilitation also directed the states to upload information on “Bal Swaraj” portal without any delay and can not wait for the next order. SC also directed the states to file an status report.
- ii. **Order No³⁸-02** NCPCR has submitted the data on 11/01/2022 which states that only 9455 CiSS has been identified till date and an rough estimate through NCPCR is approx. 15lakh. SC also directed to the states to form Special Juvenile Police units under section 107 of the JJ act. SC directed the DM’s and DC’s to take the help from the district legal services authority or any other organization for the identification of these children. NCPCR in his next meeting should discuss the issue of rehabilitation of the children, and directed to all the official to take the necessary steps for the identification of these children.

³⁶ SMW (C) NO.6 OF 2021

³⁷ https://main.sci.gov.in/supremecourt/2021/28793/28793_2021_35_14_32084_Order_13-Dec-2021.pdf

³⁸ https://main.sci.gov.in/supremecourt/2021/28793/28793_2021_35_6_32541_Order_17-Jan-2022.pdf

B Legal Challenges

B.1 Moving From General Acts to Specific Acts.

The Constitution of every country is the grundnorm for it. The Constitution bestows the rights, duties and privileges of an individual. Part III of the Constitution provides each individual fundamental Right that can only be suspended under reasonable circumstances. Article 21, Article 14 and Article 20 of India's Constitution use the term person, not male, female. The rights mentioned under these Articles provide rights and privileges to every individual regardless of caste, class, race, religion, sex and even place of origin.

India is the second most populated country in the world. India is home to a large number of orphans. According to a UNICEF³⁹ report in 2018, India has approx. Thirty million orphaned children, and it is visible in the study that these numbers have been increased due to Covid 19 pandemic. To know about the current legislation related to orphaned is significantly less, which is not explicitly dealing with orphaned children. At present, there are Approx. Twenty acts of the government of India dealing with the children. These acts range from the rights, protection, rehabilitation, adoption, to the need and care of the children. There are many specific acts which are dealing with children. But at present, no act deals explicitly with the orphaned children as the orphaned children's are more vulnerable than any other children.

It is crucial to ensure that orphaned children receive institutional and kinship care as they are highly vulnerable to exploitation and abuse during the Covid 19 Pandemic. In most cases, extended relatives of the orphan belong to low-income groups, making them unqualified to care for the child unless they are provided with monetary assistance. It is necessary that children orphaned due to the pandemic receive specialized help to help them manage with parental loss. These orphaned children have been kept in child care institutions, and they are always looking for foster care. The child care institutions are the institutions that are maintained by the district child protection units, and they have no family care like environment. There should be a Special act for orphaned children because they are more vulnerable than any other child. When the parents of a child die, he has nothing to live his life. They only live with the memories of their parents, and such children should be taken care of by the government as the government have to play the role of the parents of these orphaned children. So govt should pass a legislature for the protection, welfare, and provide social security to these orphaned children.

³⁹ <https://www.sos-usa.org/our-impact/focus-areas/advocacy-movement-building/childrens-statistics>

B.2 Right of Orphaned Children.

India has many programmes and legislation related to children. Still, this legislation often failed to provide protection to these children, but why? Because it has been seen many times that the government is not paying heed to the issue of children knowing that they are the country's future. The Constitution and other legislation provide many rights, but the implementation of this legislation is not exemplary as per the idea of the Constitution. Orphaned children have the same Right as provided to any nation person. When we talk about the rights of orphaned children, which means a right for the survival of these children. Children's of any country is the future of that country. If we can't give them fundamental human rights, then the country's future is itself in danger. They not only need the Right to shelter and Health but they are also entitled to be loved by the country's citizens. There are various rights of the orphaned children as follow

- Article 21 of the Constitution which guarantees the Right to life and personal liberty to everyone. It also ensured the Right to life and liberty to children.
- Right to Health also falls under the purview of Article 21 of the Constitution.
- Right of Citizenship in part II, our Constitution provides that any person born in this country is a citizen by birth of this country. It puts an obligation on the government to take care of its own citizen.
- Protection from exploitation is given under articles 23 and 24 of the Constitution. These articles protect orphaned children from being trafficked into sexual abuse or forced labour and employment of children in hazardous factories.
- For Education, we have the Right to Education under Article 21A of the Constitution, which puts a responsibility on the government to provide Education to orphaned children.

These rights, as mentioned above, are only a few rights that are given to orphaned children. But the legal challenge under this chapter is that these all provisions are not followed by the government. The government has not taken any strict steps for the implementation of these rights to the children as India is currently suffering from many lacunas in enforcing these rights. India's overall rank is 113 out of 182⁴⁰ countries regarding child labour which is prohibited under Articles 23&24 of the Constitution. A report by the UN, India ranks 131 out of 180⁴¹ countries in the child flourishing index. In Education, India ranks

⁴⁰ <https://theprint.in/india/on-world-day-against-child-labour-a-look-at-the-hard-hitting-statistics-of-india/248817/>

⁴¹ https://cdn.who.int/media/docs/default-source/a-future-for-children/policy-brief-3---commercial-marketing.pdf?sfvrsn=98d4a30b_2&download=true

32 out of 78⁴² countries. Also, India ranks 113 out of 176⁴³ countries when it comes to the Wellbeing of Children.

B.3 Lacuna In Current Legislation

The first void in the present laws is that in order to claim any sort of Sponsorship under the ICPS Scheme run by the Central Government, the criteria present in the legislation is such that the selection procedure of selecting a child under this programme is a complicated and a problematic one. The selection procedure mentions that only those children will be eligible for the Sponsorship whose family income is Rs. 36,000 per annum or less than Rs. 36,000 in case of the metro cities, while it is Rs. 30,000 or less for the urban areas. The range for the families of rural areas is a little less, it mentions about including those families under the scheme who has family income of Rs. 24000 or less per annum. The said scheme seems to be very much in the need of review as the aforementioned income of families is very meagre and it should be revised and made such that the amount is reasonable one and in order to provide the scheme to more and more people who are in the dire need of it.

Talking about the amount to be provided under the scheme, as per the present criteria, a child is provided with a very minor amount of Rs.2000 per month. There is an urgent need to change this limit to atleast Rs.4000 per month because in this very fast pacing world of costliness, survival with facilities like health and educational services with meagre amount of 2000 does not seems to be a possibility. If we talk even about the times of Covid-19, the entire education system went online and even if we assume that all these kids or their parents possess atleast a single smartphone in their family, then also the amount of internet data packs for a month is a minimum of 200. This is in cases where there exists a smartphone, but in reality, there is not even mobile phones at the homes of poor families. If the families spend so much on data connection, then how will the health and basic necessities of survival be managed, keeping aside the expenses of books and other study materials. So, keeping in light all these situations, it is necessary that the Centre look upto these troubles and change the limit of the amount offered under the scheme as earlieast as possible.

If we look upto another national scheme launched by the Hon'ble Prime Minister of India on 29th May 2020, namely "PM CARES for Children" regarding compensatory amount to be provided in lieu of ensuring comprehensive care and protection to the children orphaned. This scheme seems to be a very forward step towards empowering the children affected due

⁴² <https://worldpopulationreview.com/country-rankings/education-rankings-by-country>

⁴³ <https://www.downtoearth.org.in/video/health/india-ranks-113-of-176-countries-on-children-s-wellbeing-64916>

to the Covid-19 Pandemic but this very scheme has a major loophole in it as the scheme mentions about covering only three kinds of children under it. These three kinds mentioned under the scheme are-

- (iv) Children who have lost both parents in the pandemic;
- (v) Children who have lost the Surviving parent; or
- (vi) Children who have lost Legal Guardian/ Adoptive parents/ Single Adoptive Parent.

So, if we summarise the scheme in short, we can see that only a few kind of orphaned children have been covered for compensation under the scheme. The children who have lost even a single parent in the Covid-19 Pandemic also needs to be guarded under the scheme as in such cases, as the data suggests, most of the children who have been deprived of a single parent, in roughly 80% of such cases, the parent lost is mostly the father and as we are well aware of our society, the earning hand and the bread-winner of the families is mostly a male member or we can say the father. So, the children losing their fathers are also deprived of even essential needs in the pandemic as the mother is unable to earn and provide with basic amenities to the children and thus, the children are forced to work as labourers for their survival. The scheme must have taken into consideration all the kids who are not economically well off from their families and have lost even a single parent in the wave of Covid-19 Pandemic.

If we think of the possibility of these orphaned kids getting adopted then, we must take into consideration the very basic facts of the laws of our country that the laws for Adoption are very stringent one's. The whole procedure of the Adoption is a very lengthy and a complicated process. The adoptive parents needs to take into several processes and verifications before getting the custody of any child. It is an obvious fact that there must be proper checks and balances in the adoption process so that the child is provided with a safe and a healthy environment with efficient parents for further life, but in the light of the Covid-19 Pandemic, these adoptive measures must be relaxed a little bit as the children are already suffering a lot and there is no one with them to ensure them with the primary basic take care. If the measures gets a little bit smooth and easy, then the whole process of adoption can be carried out swiftly and in that way, the children at the earliest will be provided with a home and caretakers and their future would not be compromised.

Furthermore, there exists no child friendly provisions in our laws which talks about the take-care of children while the whole legal process of the Courts. Whenever there is a child witness in any trials conducted in the court, there is no proper sitting arrangements and separate waiting rooms for the children where the children can be asked to wait before and after the hearing. A child is full of emotions and a soft hearted being who is not used to the normal court proceedings or the court scenarios and him watching the criminals

walking can impact him a lot. Even the child victims or be it the children who are accused in any case must be provided with atleast a psychologist with them to accompany them in the court rooms so that they feel comfortable while the proceedings. A child must not suffer alone in the way of seeking justice through courts or legal process. Now, if we take into light the court proceedings during the time of Covid-19, the courts were shut in the pandemic and the whole judicial proceedings were carried out through virtual mode. In those scenarios, whenever there was the need of video-conferencing with the child victims, due to our poor infrastructure of courts, not all the courts had the facility of conducting virtual methods of hearing. Due to this lack on the part of infrastructure, the children in several cases had to report to the designated court rooms from their homes, and for that had to travel even 4-5 hours which was a major difficulty when the entire country was in a state of hustle bustle due to the Pandemic and the lockdown conditions.

One of the major lacuna is that, we do make laws but in real world of practice, there exists no law. If we take into view the provisions of the “Child Labour (Prohibition and Regulation) Act, 1986, the law mostly focuses upon the prohibition and regulatory measures for the child labour but instead the idea should be of rehabilitation of the children. The aim of any law is not only to stop a menace but also to create a world of happiness and environment which is friendly for a child. There must be certain rehabilitative measures issued towards the children.

Another major lacuna exists in the Indian Penal Code, where in the basic Criminal Law Act of the Country, there is no definition of child abuse provided. Moreover, there is no mention of child abuse as a specific offence under the law. Under Section 377 of the Code, unnatural sex and sodomy is an offence but there is no mention of this offence against children and it is only left to the imagination of the Courts to interpret the law in the light of the children affected by it. The law must be amended in such a manner that there is a specific, suitable and stringent punishment provided to all those accused who makes the children victims and there must be higher conviction in such cases.

Furthermore, there exists gap in the Juvenile Justice Act as it also doesnot specifically deals with the issue of child abuse. It is a common observation that several times, the defence lawyers takes the benefit of these loopholes of the legislations and covers their clients under its umbrella and gets them acquitted of even serious crimes and the Prosecution seems to be helpless and speechless and is thus unable to seek justice for the victim.

Also, there exists no proper allocation of the funds for the development of the Children. Year by year, there is seen a constant dip in the percentage of the budget amount allocated to the children welfare. The government needs to

allocate and award more and more amount for the potential future of the country while the opposite is happening. Only due to the fact that the children are not the vote-banks of the political parties, they seem to have no proper representation provided by the government in the Budget. Now, in this remark only, if we make out a comparison of the budget allocated for the child welfare schemes for the year 2012-13, it was around 4.76% of the total budget. While in the present year 2022-23, the current budget allocates only 2.35% for the child welfare out of the total budget. The figures clearly remark that over a decade almost, the budget for the children has been cut out to be half which is a shameful scenario for the country as the children are the future of the nation and the hope lies in them for the country to move ahead but they are even deprived of the basic equal amounts in the budget allocation.

C- International Conventions on Children Rights.

C.1 Convention on the Rights of the Child, 1989 (UNCRC)⁴⁴, (ratified by India on December 11, 1992)

Declaration on the rights of the child, 1959⁴⁵ is an early initiative and it reads the child because of his physical and mental naivety needs special safeguards and care including appropriate legal measures before as well as after birth. The child cannot express as an adult of its pain and hardship. The World Health Organisation defines "Health as a state of complete physical, social and mental well-being and not merely an absence of disease or infirmity"⁴⁶. UNCRC 1989, is the result of many yearly concerns of child and many international initiatives. Such as The child labour convention adopted in 1919, Geneva Declaration of human Rights 1948, Declaration of the rights of the child adopted by the general assembly on November 20 1959, minimum age convention 1973 are some major initiatives in this regard.

The Convention on the Rights of Child was declared to protect the child and provide the State with guidelines to protect the interest of the child. The preamble of the Convention states that a child should be brought up in a family environment that provides them happiness, love and understanding. The family environment should promote the spirit of peace, tolerance, equality, dignity in the child. The child should be provided with special safeguards, including legal protection, before and after birth. UNCRC is divided into Three parts. Part I deals with the nature of rights described in 41 articles, Part II deals with progress of the child by parties to the convention described in Article 42-45,

⁴⁴ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁴⁵ [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/1DeclarationoftheRightsoftheChild\(1959\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/1DeclarationoftheRightsoftheChild(1959).aspx)

⁴⁶ https://www.euro.who.int/__data/assets/pdf_file/0003/152184/RD_Dastein_speech_wellbeing_07Oct.pdf

Part III of the convention deals with articles 46-54 and also amendements,

Article 1 defines the term child as whoever is below the age of eighteen years unless the age is prescribed earlier by the law of the State.

Article 2 states that the child should be protected from all type of discrimination or punishment, which are based on parents, legal guardian or family member's beliefs.

Article 3 enforces a responsibility on the State to take any action, be it legislative, judicial or executive, in the best Interest of the child.

Article 8 state that Right to preserve identity, family relations, name and nationality.

Article 11 Provides for measures to combat the illicit transfer and non return of children abroad and for bilateral or multilateral agreements.

Article 12 states that the child should be provided with the rights to express his own views that are in a matter affecting him

Article 13 states that the child should have the Right to expression, which shall include the freedom to seek, impart and receive knowledge and information. The Right may be subjected to restriction, but it should be provided by the law.

Article 18 This article insists state parties to ender appropriate assistance to parents and legal guardians in performance of their child-rearing responsibilities and to ensure the development of institutions and facilites and services for the children.

Article 19 states that the State should make laws to protect the child from any physical or mental violence, negligent treatment, male treatment in the care of the parent or the legal guardian.

Article 21 Recognition for the system of adoption, inter-country adoption and necessary safeguards and standards equivalent to those of national adoption.

Article 24 states that each child should be given the Right to the highest attainable standard of Health and for treatment. This Right to standard Health also provides for the full implementation of this Right in Article 24(2) which has a vast scope that it takes care of many steps like diminish infant mortality rate, primary heath care etc.

Article 26 State that Right to Social Security makes state parties to recognize for every child's Right to profit from social security, including social insurance in accordance with their national law.

Article 27 it is comprehensive article for physical and mental Health and it insists state parties to recognize the Right to every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28 obligates on state parties to make the primary Education compulsory and it encourages the development of secondary Education and

also makes higher Education accessible to all.

Article 34 states that the State should ensure that the child is protected from all forms of sexual exploitation and sexual abuse.

Article 36 State the obligation on the state parties to protect the child from other forms of exploitation.

Article 37 states that the State should ensure that the child is not subjected to any inhuman or degrading treatment or punishment.

Article 39 states that the State should take all measures to promote the psychological and physical recovery of a child who underwent any torture, cruel, inhuman or degrading treatments.

The Convention on Rights of Child is based on the concept that each child should be protected from any type of abuse and given an environment in which he/she can grow in a loving and caring environment. The Convention states that a child should not undergo any treatment that is only based on parents' belief. It is an obligation on the State to protect the Interest of the child by enacting laws that would keep the best Interest of the child in focus. The Indian government, considering the Convention enacted Protection of Children against Sexual Offences, 2012, which only covers sexual abuse and use of children for pornography. There is still an absence of legislation that would protect the Interest of orphaned children.

C.2 International Bill of Human Rights

The International Bill of Human Rights consists of the main three conventions that went on the form the major declaration that provide the most basic human rights relating to civil, political, cultural, economic and social rights. These three are the first of its kind declaration that the first (UDHR) providing general principles of human rights and then other (ICCPR, ICESCR) would provide particular rights along with certain limitations. Together the three declarations cover all the fundamental rights that are required by an individual to lead a dignified life

1. Universal Declaration of Human Rights, 1948 (UDHR)⁴⁷, (ratified by India on January 1, 1942)

The UDHR was formed due to the Second World War, which brought about each individual's Human Rights. The UDHR is not legally binding on any country, but they act as the guidelines each country should follow for peace and protection of their citizens' rights. The document consists of 30 rights and freedoms that should be provided to each individual regardless of colour, race, religion or creed.

⁴⁷ https://nhrc.nic.in/sites/default/files/UDHR_Eng_0.pdf

The preamble of the Declaration states that recognition of inherent human dignity, equal and inalienable rights of all human is the foundation of freedom, justice and peace of the world.

Article 1 of the Declaration states that each and every human is born free and equal, equal in dignity and rights.

Article 2 states that every person is entitled to all freedoms and rights, which are mentioned within the Declaration regardless of race, sex, colour, language, birth, political or other opinions... another status.

Article 4 states that every person shall have the Right to life, personal liberty and the Right to security.

Article 5 states that no person shall be subjected to torture, inhuman or degrading treatment or punishment.

Article 7 states that all are equal before the law, and all are entitled to equal protection against any discrimination in violation of the Declaration.

Article 9 states that no person shall be subjected to arbitrary arrest or detention

Article 13 states that every person has the freedom to move and reside with the border of each State, and everyone has the Right to leave any country that may also include his own country.

Article 16 states that any man or women who are of the age with free and full consent should have the Right to marry and found a family. Every person is entitled to equal marriage rights and its dissolution.

Article 25 it state that the Childhood and the motherhood are entitled to special care and assistance. All the children who born with the marriage or without any marriage is also treated the same social protection

2. International Covenant on Civil and Political Rights, 1966⁴⁸ (ratified by India on April 10, 1979)

The series of International Documents pertaining to human rights started with the adoption of United Nations Charter in 1945. Owing to its generality, the need for specific instruments was soon realized, which resulted in framing the UDHR in 1948, followed by International Covenant on Economic, Social, and Cultural Rights (ICESCR) and International Civil and Political Rights (ICCPR). These three instruments are collectively referred to as International Bill of Human Rights as drafted by the U.N. It is divided in six parts and has two optional protocols to it. 168 states are party to this covenant.

The ICCPR respects each person's inherent integrity and commits to strengthening conditions within states such that civil and political rights can be practised. Countries that have ratified the Covenant are expected to take

⁴⁸ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

administrative, legal, and legislative steps to uphold the privileges enshrined in the treaty.

Article 6 states that every human has the Right to life and the protection of the law. No person shall be destitute of his life arbitrarily.

Article 7 states that no person shall be subjected to any inhuman or degrading treatment.

Article 9 states that every person has a right to liberty and security.

Article 10 All the accused juvenile persons shall be separated from the adults accused and their adjudication should be done in speedily. They shall be treated different from the adults.

Article 13 states that everyone within a territory of a State shall have the Right to move and the freedom to choose his residence. The Right shall only be restricted on reasonable restriction established by the law.

Article 14 Everyone should be treated equally in eyes of the law but the procedure of the courts and tribunals should be designed according to the needs of the childrens so they can get different treatment as per their age.

Article 23 states, the family is a natural and fundamental unit of society and should be provided protection by the State and society. The Article also states that every man and woman of marriageable age with free and full consent should have the Right to marry, and family shall be recognized.

Article 24 states that every child should be provided protection required by minor regardless of race, colour, religion, language, sex etc.

Article 26 states that all person is equal before the law and without any discrimination on the ground of race, colour Or another status should be provided with equal protection of the law.

The ICCPR is a legally binding treaty which means that states who have ratified this treaty are legally bound to implement it. The ICCPR is made to promote conditions within State to allow the enjoyment of Civil and Political Rights and to provide an effective remedy. The ICCPR in India is formulated under article 19 of the Constitution of India. It has all the provisions which have been given under 19 of the Constitution of India.

3. International Covenant on Economic, Social and Cultural Rights, 1966⁴⁹ (ratified by India on April 10, 1979)

The ICESCR is one of the principal international human rights treaties. It is the primary international instrument that defines and seeks to enforce economic, social and cultural rights. These are the rights aimed at fulfilling certain material needs such as food, water and shelter, providing access to the cultural life of the community also right to Education, Health and just condition and favourable condition work.

⁴⁹ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

The Covenant ensures the Right to the enjoyment of most essential economic, social and cultural rights. The Covenant was adopted and opened to signature, ratification and accession on December 16, 1966, but came into force on January 3, 1976.

Article 1 gives all people the Right to self-determination, and by virtue of the Right, the person is free to determine their cultural development

Article 3 states that equal Right should be given to men and women to enjoy all the cultural rights

Article 10 states that each and every individual should be granted the Right to marriage which is entered with free consent. Family is stated as a fundamental group of units of society

Article 12 states that each person should enjoy the highest attainable standard of mental and physical Health by making sure that attention is provided to conditions while one avails any medical service or attention.

Article 13 it puts an obligation on the state parties to give Right to Education everyone. State parties also have to respect the liberty of the parents and guardian for choosing school for their child.

The International conventions are based on human rights, thus provides some basic fundamental rights to each and every human regardless of their race, religion, creed, class etc. When the terms human, person, women, child are used, it can be assumed that everyone is included in it. Freedom from any manner of cruel treatment can also include medical treatment, which goes against human rights of the Right to Health, be it Physical or Mental.