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## JURISPRUDENTIAL TRAJECTORY ON EVOLUTION OF CHILD RIGHTS IN INDIA THROUGH THE AGES

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### ABSTRACT

This research paper overlooks on the jurisprudential trajectory of rights of child across India, tracing its difficult from present digital world. The study seeks to explore and assess the historical evolution, current state, and continuing obstacles in the realization of child rights in India, particularly emphasis on health, survival, development, protection against exploitation, adoption, and justice. Post-Independence India marked a transformative shift towards a rights-based approach. During the Colonial era, British common law was introduced to India, accompanied by early legislations like the Apprentices Act of 1850 and the Child Marriage Restraint Act of 1929. Although these statutes offered some protections, they were paternalistic and did not acknowledge children as autonomous rights-holders.

Despite significant progress and a clear judicial trend towards strict statutory interpretation, child-centred justice, procedural efficiency, and victim dignity, challenges persist. These include high rates of malnutrition, child labour, trafficking, child marriage, and issues related to access to quality education and mental health. The primary issue is ineffective implementation of existing laws, schemes, and programmes. This necessitates strengthened enforcement mechanisms, robust awareness campaigns, and cohesive inter-agency collaboration to aim that children, as the India's most valuable human capital and future, can thrive and realise their full potential.

**Keywords:** Child rights, child welfare, child advocacy, human rights, child protection, child labour, child development.

## INTRODUCTION

All individuals possess fundamental rights, inherent to them simply by virtue of being human.

These rights are conferred upon individuals at the time of their creation, and granted fundamental rights that are inherent, unalterable, and shared by all.

In India, issues like child abuse, exploitation, forced labor, and violations is alarming. Many children are molested by family members on a daily basis, and the practice of female foeticide also remains a common, horrific form of abuse.

In rural and impoverished regions of India, young girls are often subjected to neglect and is often perpetuated by factors such as illiteracy and deep-rooted social and economic backwardness.<sup>1</sup>

The alarming rise in child abuse cases in India is a stark reflection of the vulnerabilities children face, particularly girls.<sup>2</sup> These alarming statistics demand immediate action from both the government and civil society. These figures highlight the urgent need for systemic reforms, better digital safeguards, and a stronger societal rom exploitation and harm

According to international law, a "child" refers to anyone under the age of 18. This standard definition is derived from in the United Nations Convention on the Rights of the Child (UNCRC), which has been ratified by most countries across the world.<sup>3</sup>

In India, individuals below 18 years of age are recognized as a separate legal group. A person's 'age' is the key factor that being a 'child' is simply age. Therefore, even if a person under 18 is married and has children, they are still considered a child in accordance with international standards.

Children require special legal and social attention as the reason for this is that children are naturally more vulnerable than adults to the circumstances in which they grow up.

Their physical, emotional, and psychological development is significantly influenced by their

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<sup>1</sup> National Commission for Protection of Child Rights (NCPCR), *Protection of Children from Sexual Offences (POCSO) Act, 2012*, Annual Report, 2017.

<sup>2</sup> Ministry of Women and Child Development, *Annual Report on Child Protection and Abuse*, 2022.

<sup>3</sup> The United Nations Convention on the Rights of the Child, 1989, art. 1.

people around them and also making them more susceptible to harm caused by both the actions and inactions of governments, institutions, and society at large. In many ways, out-dated beliefs continue to prevail — viewing children as the material of the parents, as adults-in-the-making, or as individuals not yet equipped to meaningfully contribute to society<sup>4</sup>. These perceptions often result in the denial of children's right to be seen as independent rights-holders with their own opinions, preferences, and the ability to make informed decisions. Instead of being respectfully guided, their lives are frequently controlled and dictated by adults without fulfilment for their capacities. Moreover, children lack voting rights, hold no political influence, and possess minimal economic force where their ability to make use in the decision-making processes or to have their voices heard in matters that affect them. These factors collectively render children especially vulnerable to neglect, exploitation, and abuse, thereby necessitating focused legal protection, policy attention, and mechanisms that uphold their rights and promote their best interests.<sup>5</sup>

The international community has prioritised children's rights and protection for a long time. A major milestone was the **United Nations Convention on the Rights of the Child (UNCRC, 1989)** given by the UN General Assembly on 20 November 1989. India adopted this convention in December 1992.

The UNCRC highlights four core rights, often referred to as guiding principles for the implementation of all established rights:

- **Right to live** (Article 6): Encompassing the right to live and access the healthcare, including full nutrition, potable water for basic need, and essential medical care.<sup>6</sup>
- **Right to development** (Article 6): Covering education, early childhood care, and fulfilment to recreational activities, ensuring children can grow and reach their full potential.
- **Protection Rights**: Safeguards against discrimination, abuse, exploitation (including child labour, trafficking, sexual abuse, and child marriage), and protection in emergencies or armed conflicts.

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<sup>4</sup> Upendra Baxi, "The Child as a Subject of the Constitution" 39 *Journal of the Indian Law Institute* 217 (1997).

<sup>5</sup> Geraldine Van Bueren, *The International Law on the Rights of the Child* 134 (Martinus Nijhoff Publishers, The Hague, 1995).

<sup>6</sup> United Nations Convention on the Rights of the Child, 1989, art. 6.

• **Participation Rights** (Article 12): The right of children to express their opinions in their own future, be consulted on issues that affect them, and ensure that their opinions are valued.

## JURISPRUDENCE OF CHILD RIGHTS IN INDIA

During ancient and medieval times in India, the concept of child rights was mainly governed on customary practices and religious or moral responsibilities, rather than structured legal framework with enforceable rights.<sup>7</sup> The Manusmriti, Mahabharata, and the Vedas, among other ancient texts suggest the presence of laws related to children. Instead, welfare programmes provided to children, and the notion of children's rights only became widely accepted in the 20th century, marking a shift from a "welfare" to a "right" approach.<sup>8</sup>

In Colonial India (18th Century – 1947), the jurisprudence of child rights marked a shift from the ancient focus on moral and customary duties to the **introduction of British common law principles** and initial statutory protections. However, children were still primarily viewed as **passive dependents** rather than rights-holders. Early statutes were enacted to regulate harmful practices, often under pressure from Indian reformers.<sup>9</sup> The British aimed to modernise Indian society through Christian Missionaries and abolished practices like female infanticide. Despite the reforms, the British still considered an Indian child inferior to a British child, and their reforms often had bad intentions rather than genuine care for the children's future. The approach was **paternalistic and protection-oriented**, rather than a recognition of inherent child rights. The **Apprentice Act of 1850** was the first legislation concerning children in India, though it operated within the adult justice system. A significant step was the **(Reformatory Schools Act, 1897)** which in the essence, while the colonial period introduced the notion of statutory intervention for child welfare and began to establish rudimentary protections, particularly concerning labour and marriage, it **did not recognise children as active rights-holders**<sup>10</sup>. The underlying philosophy remained one of welfare and protection, gave directions for further growth, but still far from the comprehensive rights-based approach adopted in post-independence India.

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<sup>7</sup> P. Ishwara Bhat, *Fundamental Rights: A Study of Their Interrelationship* 412 (Eastern Book Company, Lucknow, 2004).

<sup>8</sup> UNICEF, *The Evolution of Child Rights in India* (UNICEF India, 2020) <https://www.unicef.org/india/child-rights>.

<sup>9</sup> K. Kumar, *Child Rights in Colonial India: From Moral Duty to Legal Protection* (Indian Law Institute, 2021) <https://ili.ac.in/child-rights-colonial-india>

<sup>10</sup> R. Sharma, *Child Welfare Legislation in Colonial India: Apprenticeship and Reformatory Schools Acts* (Indian Law Institute, 2022) <https://ili.ac.in/child-welfare-legislation-colonial-india>

## POST INDEPENDENT INDIA (1947- PRESENT)

In the **post-independence era (1947 – Present)**, the jurisprudence of rights of child in India has undergone a significant transformation, evolving from a "welfare" approach to a **comprehensive "rights" approach**. This shift is anchored in constitutional guarantees, progressive legislation, expansive judicial interpretation, and international commitments.

This evolution can be divided into various parts<sup>11</sup>:

The **Constitution of India** firmly established child welfare as a state obligation and legal priority. Key provisions include:

### • Fundamental Rights:

- **Article 14**: Guarantees equality before the law including children. (India, 1950, art. 14)
- **Article 15(3)**<sup>12</sup>: Guarantees the right to be free from discrimination and ensures the rule of law for all.
- **Article 21A**<sup>13</sup>: Requires free and mandatory education for children from the age of 6 to 14 years. (India, 1950, art. 21A)
- **Article 24**<sup>14</sup>: Prohibits The employment of children under the age of 14.in any hazardous employment, factory, or mine. (India, 1950, art. 24)

### • Directive Principles of State Policy:

- **Article 39(e)-(f)**<sup>15</sup>: States that young children should be protected or coerced into unsuitable occupations. It also mandates providing opportunities and resources for children. To flourish in an atmosphere of freedom and dignity, shielding them from harm and moral/material abandonment. (India, 1950)
- **Article 45**<sup>16</sup>: Ensures the offering of early childhood care for all children up to the age of

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<sup>11</sup> United Nations Convention on the Rights of the Child, 1989, arts. 3–6.

<sup>12</sup> Constitution of India, 1950, art. 15(3).

<sup>13</sup> Constitution of India, 1950, art. 21A.

<sup>14</sup> Constitution of India, 1950, art. 24.

<sup>15</sup> Constitution of India, 1950, art. 39(e)-(f).

<sup>16</sup> Constitution of India, 1950, art. 45.

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◦ **Article 46:** <sup>17</sup>Affirms the right of marginalised groups to safeguard from social unfairness and all ways of harm . (India, 1950, art. 46)

◦ **Article 47:** <sup>18</sup>Guarantees the right to a adequate nutrients , and better public health . (India, 1950, art. 47)

### Legislative Progression

Following independence, a wide range of laws were enacted to protect children, signifying a move towards codified rights:

• **Reformatory Schools Act, 1897**<sup>19</sup>: While predating independence, its principles were carried forward, and it was the first to separate children from adults in criminal system.

• **Child Marriage Restraint Act, 1929:** <sup>20</sup>Initially enacted in British India, it was amended and eventually replaced by the (**Prohibition of Child Marriage Act, 2006**) which criminalises child marriage and sets the minimum marriage age at 18 for girls and 21 for boys.

• **Child Labour (Prohibition & Regulation) Act, 1986**<sup>21</sup>: The foremost legislation preventing child labour, prohibiting discrimination against children in specific hazardous occupations and manufacturing processes for those under 14.

• **Protection of Children from Sexual Offences (POCSO) Act, 2012:** <sup>22</sup>This legal provisions for the protection of children under 18 from sexual assault, harassment, and pornography.

• **Right of Children to Free and Compulsory Education (RTE) Act, 2009:** Operationalizes Article 21A, guaranteeing quality elementary education as a basic right for the aged 6-14 years of children and promoting inclusive education.<sup>23</sup>

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<sup>17</sup> Constitution of India, 1950, art. 46.

<sup>18</sup> Constitution of India, 1950, art. 47.

<sup>19</sup> Reformatory Schools Act, 1897.

<sup>20</sup> Child Marriage Restraint Act, 1929.

<sup>21</sup> Prohibition of Child Marriage Act, 2006.

<sup>22</sup> Child Labour (Prohibition & Regulation) Act, 1986.

<sup>23</sup> Protection of Children from Sexual Offences Act, 2012.

## CONTEMPORARY AND DIGITAL INDIA (2010s – PRESENT)

The contemporary era has given a unique hurdle for child rights in India: **Cyber safety and digital abuse** have become prominent concerns. Mental health issues and adolescent suicide are increasingly recognised. Child trafficking, particularly exacerbated post-COVID-19, remains a critical problem.

The **digital divide** impacts children's access to education.<sup>24</sup> The primary issue lies in the **appropriate establishment of existing laws, schemes, and programmes**. High levels of malnutrition (43.37%) and stunted growth (35.5%) persist, alongside inadequate healthcare infrastructure and limited accessibility<sup>25</sup>.

A considerable proportion of children, in rural areas, had no basic literacy and numeracy skills, with most dropouts and disparities in quality education. Budget allocation for education has decreased. An estimated 10.1 million child labourers in India are subjected to hazardous conditions, and child trafficking and begging remain prevalent with significant underreporting of cases. Despite legal prohibitions, child marriage remains deeply rooted, particularly in rural and marginalised communities.<sup>26</sup> Children continue to face significant obstacles in exercising their rights to access justice and effective remedies, making these rights often remain theoretical. Large migrant populations, and make it difficult to ensure all child rights regulated. Poverty and inequality are root causes of many difficulties. The empowerment of girls is challenged by the questioning of children as rights holders under the guise of cultural, religious, and patriarchal traditions.

## JUDICIAL TRENDS ON CHILD RIGHTS IN INDIA

The Indian judiciary has been instrumental in broadening the ambit of child rights, often embedding largely driven by the judiciary. This judicial engagement has redefined the legal landscape, replacing the traditional welfare approach to a rights-focused legal framework that better safeguards children.

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<sup>24</sup> UNICEF, "Online Safety for Children in India" (2019), available at <https://www.unicef.org/india/reports/online-safety-children-india>

<sup>25</sup> Ministry of Health and Family Welfare, *National Family Health Survey (NFHS-5), India, 2019–21* (Government of India, 2021)

<sup>26</sup> Ministry of Women and Child Development, *Child Trafficking in India: Trends and Reports* (Government of India, 2023)

Initially, in post-independence India, children were regarded primarily viewed mainly as beneficiaries of state welfare. The turning point came in the 1990s, when the Supreme Court's recognition of education as a fundamental right redefined the landscape of child rights in India.

The Supreme Court's decision in *Mohini Jain v. Union of India* (1992)<sup>27</sup> marked a crucial step, as it interpreted the right to education as inherent education as a fundamental right. This jurisprudence was consolidated in *J.P. Unnikrishnan v. State of Andhra Pradesh* (1993)<sup>28</sup>, which explicitly mandated free and compulsory education for all children below fourteen years. These landmark rulings not only laid the groundwork for the insertion of Article 21A into the Constitution<sup>29</sup> but also underscored the judiciary's role in prompting legislative reform, aligning domestic law with India's 1992 commitment to the United Nations Convention on the Rights of the Child.

The judiciary also played a critical role in safeguarding the rights of juveniles. In *Sheela Barse v. Union of India* (1986)<sup>30</sup>, the Court declared that no child be kept in prisons and required the creation of specialized remand homes with rehabilitative provisions. The case was pivotal in affirming that the criminal justice system must treat children not as ordinary offenders but as rights-bearing individuals entitled to dignity and protection guaranteed by both domestic and international law.

The issue of child labour was squarely addressed in *M.C. Mehta v. State of Tamil Nadu* (1996),<sup>31</sup> where the Supreme Court outlawed the State's dual duty: to prevent exploitation and to facilitate rehabilitation through education and financial measures. The Court emphasized that the State's responsibility extended beyond preventing exploitation to ensuring rehabilitation through education and financial support.

In *Gaurav Jain v. Union of India* (1997)<sup>32</sup>, the Court underscored that the children of sex workers must not be denied equal opportunities and called for their integration into regular educational and vocational institutions. By directly confronting the role of social stigma, the judgment highlighted the necessity of integrating marginalised children into the mainstream to

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<sup>27</sup> *Mohini Jain v. Union of India*, (1992) 3 SCC 666.

<sup>28</sup> *J.P. Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645.

<sup>29</sup> Constitution (Eighty-sixth Amendment) Act, 2002, inserting Article 21A.

<sup>30</sup> *Sheela Barse v. Union of India*, (1986) 3 SCC 596.

<sup>31</sup> *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.

<sup>32</sup> *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

safeguard their rights. In *Sampurna Behura v. Union of India* (2007)<sup>33</sup>, the Court confronted systemic shortcomings in the application of the Juvenile Justice (Care and Protection of Children) Act. It exposed deficiencies in institutional care, monitoring, and rehabilitation, and held States accountable for rectifying these failures. The decision reflected a crucial judicial evolution—from merely declaring rights to enforcing structural compliance.

In the contemporary era, courts continue to reinforce children's rights through uncompromising enforcement of protective statutes. The Supreme Court reinstated the original conviction and punishment—ten years' rigorous imprisonment under Section 6 of the POCSO Act—for aggravated penetrative sexual assault, rejecting the legislature's "shall not be less than" stipulation admits no judicial latitude.<sup>34</sup>

By insisting that minimum punishments under POCSO are mandatory, the Court ensured that judicial discretion cannot prevent judicial discretion from weakening child protection laws. This uncompromising position was reiterated in May 2025, when the Supreme Court denied bail to a doctor convicted of molesting his daughter, characterising him as "a beast" and stressing a zero-tolerance standard.

In March 2025, a POCSO court in Meerut concluded an eight-year-old molestation case, convicting the accused and awarding ten years' rigorous imprisonment, while cautioning that prolonged delays erode the psychological health of victims. In June 2025, the Firozabad POCSO court swiftly concluded the rape-murder trial of an eight-year-old within twenty-five working days, sentencing the perpetrator to life imprisonment until his last breath<sup>35</sup>.

The judiciary has also engaged with systemic challenges posed by child trafficking. In *Pinki v. State of Uttar Pradesh* (2025),<sup>36</sup> the Supreme Court annulled a High Court order granting bail in a trafficking case, ordering instead that the trial be concluded within six months. The Court's directions were explicitly victim-focused, requiring compensation, inter-state coordination, and child-sensitive trial procedures. Importantly, by directing enhanced oversight by the NCPCR, the Court not only invoked the "best interest of the child" standard but also pressed for

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<sup>33</sup> *Sampurna Behura v. Union of India*, (2007) 5 SCC 466.

<sup>34</sup> *State of U.P. v. Sonu Kushwaha*, (2023) 9 SCC

<sup>35</sup> National Judicial Data Grid, *POCSO Court Judgment: State v. [Accused], Firozabad* (National Judicial Data Grid, 2025) <https://njdg.ecourts.gov.in/firozabad-pocso-judgments>

<sup>36</sup> *Pinki v. State of Uttar Pradesh*, (2025)

structural accountability, thereby converting statutory guarantees into enforceable protections.

In recent years, the Court has pushed child rights protections into cyberspace. A landmark moment came in *Just Rights for Children Alliance v. S. Harish* (2024)<sup>37</sup>, where the Supreme Court held that simply viewing, downloading, or storing child sexual exploitative content amounts to an offence under Section 15 of POCSO. Further, by dismissing the applicability of the “safe harbour” protection under Section 79 of the IT Act<sup>38</sup>, the Court expanded intermediary liability, signalling a shift towards stricter regulation of digital platforms in safeguarding children.

The Court further recommended replacing the term “child pornography” with “child sexual exploitative and abusive material” (CSEAM), emphasising that the former term inadvertently implies agency or consent. In *Society for Enlightenment & Voluntary Action v. Union of India* (2024), the Court recognised child marriage as an infringement of the fundamental rights to life and education under Articles 21 and 21A.<sup>39</sup> The Court’s directives—appointment of Child Marriage Prohibition Officers, creation of special courts, and community engagement—reflect a proactive approach to prevention. This judgment integrated domestic law with the UNCRC framework, framing child marriage not merely as a social evil but as a constitutional violation demanding active intervention.

## **INTERNATIONAL COMMITMENTS ON CHILD RIGHTS: INDIA’S ROLE AND RESPONSIBILITIES**

India’s adherence to international child rights norms has played a decisive role in influencing domestic law and policy. The December 1992 ratification of the UNCRC signalled a shift from viewing children as passive recipients of welfare to recognising them as autonomous rights-bearing individuals. The UNCRC’s comprehensive provisions have since guided constitutional interpretation, legislative developments, and proactive judicial engagement in the protection of children.<sup>40</sup>

The UNCRC rests on four fundamental pillars: non-discrimination, the best interests of the

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<sup>37</sup> *Just Rights for Children Alliance v. S. Harish*, (2024) 1 SCC

<sup>38</sup> The Information Technology Act, 2000, No. 21 of 2000, § 79 (India).

<sup>39</sup> *Society for Enlightenment & Voluntary Action v. Union of India*, (2024)

<sup>40</sup> United Nations Convention on the Rights of the Child, 1989, UNTS 1577, arts 1–41, ratified by India on 11 December 1992.

child, the right to life, survival and development, and respect for the child's opinions, the UNCRC redefines children as independent rights-holders. These principles collectively represent a conceptual shift from viewing children merely as objects of welfare toward recognising them as autonomous individuals with enforceable rights.

By defining a child as any human being below eighteen years, Article 1 of the UNCRC establishes a universal standard, harmonising legal responsibilities across varied jurisdictions. In India, this definition underpins the constitutional mandate to safeguard children and ensures alignment with key domestic laws, including the Juvenile Justice (Care and Protection of Children) Act and the Prohibition of Child Marriage Act.<sup>41</sup>

In addition to the UNCRC, India has ratified two Optional Protocols, demonstrating its willingness to safeguard children in specialised contexts. The Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), adopted by India on 16 August 2005, obliges states to prevent the recruitment and use of children under eighteen in hostilities.<sup>42</sup>

Similarly, the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), ratified by India on 16 August 2005, obliges to criminalise and counter trafficking, sexual exploitation, and child-abusive material. In India, ratification addressed urgent concerns arising from both rural and urban incidences of child exploitation, reinforcing the state's commitment to safeguarding vulnerable children<sup>43</sup>.

In a report submitted to the UN on 17 February 2025, the UNCRC emphasised the significance of child rights in advancing SDGs 3, 5, and 17. Goal 3, concerning health and well-being, aligns with children's rights to survival and development; Goal 5 addresses gender disparities, including child marriage and educational inequities; and Goal 17 underscores the importance of international cooperation and resource mobilisation to promote children's welfare<sup>44</sup>.

Overall, India's international commitments under the UNCRC, OPAC, and OPSC have profoundly guided domestic jurisprudence and policy concerning child rights. In its pursuit of

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<sup>41</sup> United Nations Convention on the Rights of the Child, 1989, UNTS 1577, art. 1, ratified by India on 11 December 1992.

<sup>42</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000, UNTS 2173, art. 1, ratified by India on 16 August 2005.

<sup>43</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000, UNTS 2171, arts 1–9, ratified by India on 16 August 2005

<sup>44</sup> United Nations Committee on the Rights of the Child, *Concluding Observations on the Implementation of the SDGs with Respect to Child Rights*, UN Doc. CRC/C/IND/CO/2025 (17 February 2025)

compliance with international law, India must ensure that the UNCRC's four guiding principles—non-discrimination, the best interests of the child the right to survival and development, and respect for the child's views—are translated into tangible realities for every child, rather than remaining aspirational ideals in treaties or policy frameworks.

## **CONCLUSION**

India's child rights jurisprudence has evolved significantly, moving from a system grounded in moral obligation from an informal, duty-based framework to a formal, rights-based system. Children are no longer shielded solely by moral obligations; instead, their rights are constitutionally recognised, judicially enforced, and shaped by international commitments, underscoring an increasing recognition of children as autonomous rights-holders essential to the country's human capital.

While India has made considerable strides in child protection, persistent challenges endure, including widespread malnutrition, stunted growth, child labour, trafficking, early marriage, and inequitable access to healthcare and quality education, particularly for marginalised groups. The Supreme Court and various government initiatives stress the importance of effective enforcement, strengthened implementation, awareness campaigns, and inter-agency collaboration to ensure that the legal framework translates into tangible protections for children.

Implementing child-sensitive legal frameworks, coupled with skilled personnel and specialized courts, can help make strong system and understanding ways for the victims and witnesses, ensuring the judicial process. By establishing child-focused legal structures with properly trained personnel and dedicated courts, we can foster a supportive and empathetic environment for child victims and witnesses, ensuring such rights are done for the judicial process, while reducing the long-term psychological impact of their involvement in legal matters. These measures also contribute to a broader cultural shift toward prioritizing children's rights, and also in their legal proceedings, ensuring the holistic care they need. This comprehensive approach can also extend to mental health support, where child victims receive Counselling and emotional guidance, preventing long-term psychological damage, offering children the tools to cope with their experiences.