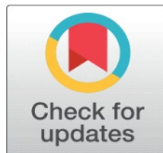
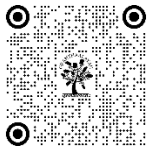


FROM RIGHTS TO REALITIES: THE CONSTITUTIONAL FRAMEWORK FOR CHILD WELFARE IN INDIA

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ABSTRACT

Children, by virtue of their age and dependency, represent one of the most vulnerable and voiceless sections of society. Despite being accorded special recognition under international law and constitutional mandates, their rights are frequently compromised by poverty, social exclusion, exploitation, and systemic indifference. In India, while the legal framework for child protection is extensive, encompassing constitutional guarantees, statutory protections, and international commitments, the gap between law and lived reality remains striking.



1. INTRODUCTION

It is in this context that Public Interest Litigation (PIL) emerges as a transformative judicial tool. By relaxing traditional rules of locus standi, PIL has democratized access to justice, enabling concerned individuals and organizations to approach courts on behalf of marginalized groups, including children. Over the years, the higher judiciary in India has intervened meaningfully through PILs to enforce child rights from banning hazardous child labour and rescuing trafficked minors to securing access to education and protecting children in conflict with the law.

This research paper critically examines the intersection of child rights and public interest litigation in India. It traces the legal and constitutional framework governing child rights, analyzes the evolution and impact of PIL in enforcing those rights, and explores landmark judicial decisions that have shaped child welfare jurisprudence. While PIL has undeniably played a transformative role in foregrounding children's issues in legal and policy discourses, the paper also reflects on its limitations including enforcement deficits, institutional inertia, and the potential for judicial overreach. In doing so, it seeks to evaluate the effectiveness of PIL as a sustained strategy for realizing the rights of children and proposes pathways for strengthening its role in a rights-based governance model.

2. THE ISSUE OF CHILD RIGHTS

The issue of child rights, often erroneously equated narrowly with the problem of child labour, has been a focal point for many child rights activists in India. The persistent denial of basic human rights to millions of children arising from prevailing socio-economic disparities and compounded by the lacklustre approach of successive governments led rights activists to increasingly employ the judicial tool of Public Interest Litigation (PIL). The primary aim of using PIL was to ensure the protection of children from various forms of exploitation such as child labour, prostitution, trafficking, sexual abuse, child pornography, foeticide, child marriage, and related abuses, all of which have systematically denied children their basic rights to education, health, nutrition, and holistic personality development. PILs were strategically utilized to remind and pressure the government to not only enact appropriate child protection laws but also to ensure their effective operationalization. The denial of these rights is inimical not only to the growth and well-being of the individual child but also to the development and progress of society at large. The urgency and importance of protecting child rights were eloquently captured by Justice K. Subba Rao, who remarked:

“Social Justice must begin with child, unless tender plant is properly nourished; it has little chance of growing into strong and useful tree. So, first priority in the scale of social justice should be given to the welfare of children.”

The concern for child rights in India began to attract serious judicial scrutiny, largely due to the innovative and inspiring mechanism of Public Interest Litigation (PIL). Through PILs, the judiciary compelled the State to acknowledge its national and international obligations, and to focus on implementing the statutory and constitutional provisions designed for the welfare of children. Initially, PILs sought relief for children who were wrongfully lodged in various jails across the country, where they often suffered grievous violations of their rights, including sexual exploitation by hardened criminal inmates. In the Kanpur Jail case, the Supreme Court, upon finding substance in the allegations presented through a PIL, directed the competent authorities to shift the affected children to designated children's homes, ensuring their protection and rehabilitation. Similarly, the Supreme Court, through its PIL jurisdiction, addressed the deplorable and inhuman conditions under which children were living in Tihar Jail. The Court's intervention led to significant reforms, emphasizing the need for the separation of juveniles from adult prisoners, the improvement of living conditions, and the safeguarding of children's dignity and fundamental rights within custodial institutions.

In recent times, various Non-Governmental Organizations (NGOs) and child rights activists have increasingly resorted to legal recourse to advocate for the protection of children's rights. This trend is evident in the numerous petitions filed on behalf of children addressing issues such as bonded labour, malnutrition, trafficking, access to education and healthcare, child marriage, juvenile justice, sexual abuse, torture, and other forms of exploitation.

Unlike typical PILs, litigation concerning child rights presents a unique dimension: children, due to their age and vulnerability, are inherently incapable of litigating for themselves. Their socio-economic disabilities further compound this incapacity, making it essential for concerned individuals and organizations to represent their interests before the judiciary. Most of the children on whose behalf these petitions are filed come from economically weaker and socially marginalized sections of society, suffering from severe deprivations and systemic neglect.

Despite the existence of a comprehensive national and international framework aimed at eliminating child exploitation and promoting child rights, the overall condition of children, particularly those from disadvantaged backgrounds, remains grim. Lack of social security measures, pervasive poverty, and systemic inequalities continue to coerce children into enduring various forms of suffering and exploitation, highlighting the urgent need for more effective implementation of existing legal protections and the strengthening of child welfare mechanisms.

However, before delving into the judicial interventions and the remedial measures undertaken to address violations of child rights, it is essential to first examine the various rights guaranteed to children under the constitutional framework. A discussion of the debates within the Constituent Assembly is also necessary, as it offers valuable insight into the intentions of the framers and provides objective clarity regarding the inclusion and exclusion of certain rights. Despite the recognition of several rights as fundamental to the holistic development of the child, many of them failed to attract sufficient attention from the founding fathers and consequently did not find a place within the enforceable framework of Fundamental Rights. Understanding this historical context is crucial for appreciating the evolution of child rights jurisprudence in India and the role of the judiciary in bridging these constitutional gaps through proactive interpretation and intervention.

3. CONSTITUTIONAL COMMITMENT TO CHILDREN

Aiming at the all-round development of children, who were envisioned as the future facilitators of nation-building across socio-cultural, economic, and political spheres, the architects of Indian constitutionalism embedded their vision within the chapters on Fundamental Rights and the Directive Principles of State Policy. Recognizing that children represent both the most vulnerable and the most vital segment of society, the framers sought to ensure their protection, welfare, and development through a blend of enforceable rights and aspirational directives. While certain rights were made justiciable to provide immediate protection, others were incorporated as guiding principles to direct the State's long-term efforts towards creating an environment conducive to the holistic growth of every child. India's Constitution enshrines a robust framework for the protection and promotion of the rights of women and children. These provisions collectively underscore the State's commitment to social justice, equality, and human dignity. Article 14 guarantees Equality Before Law, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This foundational right ensures that all individuals, regardless of gender or age, are treated equally before the law. It forms the bedrock for anti-discriminatory policies and judicial interventions promoting gender and child justice. Article 15(3) has Special Provisions for Women and Children "Nothing in this article shall prevent the State from making any special provision for women and children." A significant exception to the general non-discrimination clause, this provision empowers the State to enact affirmative actions—such as reservations, welfare schemes, and legal protections—tailored to uplift women and children. Article 21 guarantees Right to Life and Personal Liberty "No person shall be deprived of his life or personal liberty except according to procedure established by law". Through judicial interpretation, Article 21 has evolved to include the right to live with dignity, access healthcare, shelter, and education—essentials particularly relevant to vulnerable women and children. Article 21A provides Right to Education "The State shall provide free and compulsory education to all children of the age of six to fourteen years." Inserted by the 86th Amendment, this right emphasizes the critical role of education in empowering children, especially girls, and eliminating intergenerational cycles of poverty and marginalization. Article 23(1) – Prohibition of Trafficking and Forced Labour "Traffic in human beings and begar and other similar forms of forced labour are prohibited". This article addresses exploitative practices such as child trafficking and bonded labour, which disproportionately affect women and children in vulnerable communities. Article 24 – Prohibits Child Labour in Hazardous Work "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment." It provides a crucial safeguard against exploitation of children in dangerous industries and aligns with the broader objectives of child welfare and education. Article 29(2) provides Equal Access to Educational Institutions "No citizen shall be denied admission into any educational institution maintained by the State... on grounds only of religion, race, caste, language or any of them." This provision ensures that marginalized children, including those from disadvantaged social backgrounds, have equitable access to State-supported education. Article 39(e) – Protects from Economic Exploitation "The State shall direct its policy towards securing... that children are not forced by economic necessity to enter vocations unsuited to their age or strength." This Directive Principle mandates the State to prevent economic exploitation and prioritize the well-being of children and women in its policy frameworks. Article 39(f) – Development in Freedom and Dignity "Children shall be given opportunities to develop in a healthy manner and in conditions of freedom and dignity..." It emphasizes holistic child development and protection from neglect, reinforcing the State's duty to provide a nurturing environment for childhood. Article 45 speaks of Early Childhood Care and Education "The State shall endeavor to provide early childhood care and education for all children until they complete the age of fourteen years" Though a Directive Principle, it underscores the importance of early interventions in health, nutrition, and pre-primary education for long-term development. Article 47 – Duty to Raise Nutrition and Public Health "The State shall regard the raising of the level of nutrition and the standard of living... as among its primary duties" This provision connects health and nutrition to human dignity, directly impacting the survival and well-being of women and children, particularly in marginalized communities. Article 51A(k) – Fundamental Duty of Parents "It shall be the duty of every citizen who is a parent or guardian to provide opportunities for education to his child". It places the onus on parents and guardians, complementing the State's role in ensuring that every child receives basic education.

4. STATUTORY SAFEGUARDS

India has enacted several child-specific laws to operationalize these constitutional principles: The Juvenile Justice (Care and Protection of Children) Act, 2015: A comprehensive statute dealing with children in conflict with the law and

children in need of care and protection. It incorporates principles of child-friendly justice and restorative rehabilitation. The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act): Mandates free and compulsory education to all children aged 6 to 14 and lays down norms and standards for schools. The Protection of Children from Sexual Offences Act, 2012 (POCSO): Provides a gender-neutral, child-centric legal framework to address sexual abuse and exploitation of children. The Child Labour (Prohibition and Regulation) Amendment Act, 2016: Prohibits employment of children below 14 in all occupations and processes, while regulating the employment of adolescents (14–18 years) in non-hazardous occupations. These laws are reinforced by general statutes such as the Indian Penal Code, 1860, the Commissions for Protection of Child Rights Act, 2005, and various welfare and social security laws aimed at protecting the rights and interests of children.

International Commitments India is a signatory to several international instruments affirming its commitment to child rights, the most prominent being: The United Nations Convention on the Rights of the Child (UNCRC), 1989: Ratified by India in 1992, the UNCRC lays down a comprehensive framework of child rights under four broad categories: survival, development, protection, and participation.

5. CONSTITUENT ASSEMBLY DEBATE ON RIGHTS OF CHILD

The above-mentioned constitutional provisions are the outcome of serious debates and discussions within the Constituent Assembly, and a close examination of these debates is essential to understand the inclusion and exclusion of certain rights — whether as justiciable Fundamental Rights or as non-justiciable provisions under the Directive Principles of State Policy (DPSP).

Article 45, which mandates free and compulsory education for children, was deliberately placed under the DPSP. The framers of the Constitution were concerned that if the right to education were made a part of the Fundamental Rights, it would open the floodgates to numerous claims against the State, potentially overwhelming its limited administrative and financial capacity in the immediate post-independence period. Similarly, Article 41 deals with the right to education, but clearly subordinates it to the “economic capacity” of the State, suggesting a cautious, resource-dependent approach rather than a firm legal guarantee.

This cautious placement reflects a significant limitation: despite acknowledging the intrinsic value of education for the overall development of a newly independent democratic state, the framers hesitated to impose enforceable obligations on the State in this regard. Interestingly, the Sub-Committee on Fundamental Rights of the Constituent Assembly had initially decided to include the right to primary education as an enforceable right. However, this progressive proposal faced vociferous opposition from several members...Unfortunately, the vociferous opposition by prominent members such as Sir Alladi Krishnaswami Aiyar and Sardar K. M. Panikkar forced Govind Ballabh Pant to suggest to the Advisory Committee that the right to education be included within the group of non-enforceable rights under the Directive Principles of State Policy. Their primary concern was the potential administrative and financial burden that an enforceable right to education would impose on the fledgling State, which was already grappling with scarce resources and the challenges of nation-building.

Among the other important issues related to education raised during the Constituent Assembly debates was the concern articulated by Shri B. Das. He emphasized the need to ensure that education be imparted in the mother tongue, especially for minorities within particular states. According to Shri B. Das, providing education in one's own language was essential not only for preserving cultural identity but also for preventing the “denationalization” of the masses, who would otherwise be compelled to receive education in an alien language despite having their own rich linguistic traditions.

Mr. Das's intervention highlighted the deep connection between education, language, and cultural preservation — a recognition that remains relevant in contemporary debates on linguistic diversity and education policy in India. Mr. Naziruddin Ahmad, another member of the Constituent Assembly raised the issue of substituting the phrase “free and compulsory education with “free and compulsory primary education”. Further, if the state strives to provide secondary education along with primary education, it will simply enlarge the scope of governmental obligations and make it more innocuous. However, Ambedkar tactfully dismissed it with his argument that merely primary education would not suffice considering the age limit of the people to be benefitted by this provision is set at fourteen who under Article 18 of the Draft Constitution are to be protected from employment as well. The word ‘Primary’, therefore, was not added to the

constitution. However, despite acrimonious debate for including education in state list it was included in concurrent list due to fierce opposition by Maulana Abul Kalam Azad who was supported by Pandit Nehru. They argued that it was necessary to do so for maintaining uniform standard of education throughout the country.

Another important debate concerning child rights dealt with child labour. Unfortunately, due to lack of consensus and predominance of issue of forced labour substantial debate could not take place involving child labour. The only significant intervention was made by Shibani Lal Saxena who wanted children below sixteen not to be employed in hazardous work instead of fourteen. But, it was neither passed nor debated. This is how Article 24 was born which seems to have been influenced by the Yugoslavian Constitution and the Indian National Congress declaration of 1933. However, it is puzzling that on the one hand provisions related to Untouchability and Forced Labour have penal provisions but violation of this provision was not made a criminal offence. It is puzzling that the child labour provision does not have such a penal provision despite fulfilling three basic criterion which seems to have been adopted by the assembly in according status of fundamental rights in similar issues (forced labour and untouchability): it must be a horizontal right (a right that ensures protection from other individuals rather than the state); textually specific and deal with a social practice that needed to be eradicated. We do not have enough evidence to understand the exact reasons for child labour not being criminalized even though it seemed to be a perfect candidate for such a measure. It might be assumed, though with due caution, that the normative framework that existed during the late 1940s did not view child labour as a pressing social malaise. The seemingly compelling economic circumstances of the majority in India, during the constitution-making period, may have led to child labour being viewed as an economic necessity that one had to live with, at least for a while.

6. ISSUES LEADING TO PIL

Adoption which is a system or an arrangement in which a child is given to a childless family or person has been misused as a mechanism of child trafficking not only within the country but beyond its sovereign territory. Such blatant violations of rights of adopted child by the adoptive parents have been brought before the judiciary courtesy PIL and the court has come out against such practices. In *Lakshmi Kant Pandey vs. UOI*, Justice Bhagwati keeping in mind various types of abuses which questioned the very adequacy of law and issue of social justice elaborated on the norms and principles to be followed in inter-country adoptions. In *Shabnam Hashmi vs. Union Of India* it was declared that the religious background of the prospective parents will not be taken into consideration and they are free to adopt provided they follow the prescribed procedure which is enumerated in the Juvenile Justice Act which prevails upon the personal laws and religious code of the country until such time that the vision of a uniform civil code is achieved. *Roxan Sharma vs. Arun Sharma* was another significant case related to adoption in which Supreme Court clearly said that the “the children being supremely important national asset” should not be treated as “chattel”.

To fulfill the norms laid down by the United Nations Conventions on Rights of the Child on one hand and the Constitutional provisions under Article 15, 39, 45 and 47 The Juvenile Justice (Care And Protection Of Children) Act, 2000 was enacted on one hand and to fulfill the Constitutional obligations as provided under Article 15 (clause 3), Article 39 (clause e and f) and Article 45 and 47 on the other. Identifying two areas of concern it intends to resolve the issue of “Juvenile in conflict with law” and “Child in need of Care and Protection” in such a manner that the child gets an opportunity of reformation and social rehabilitation. Post enactment several PIL were filed in the apex court and the judicial pronouncements have far reaching implications. In *Subramanian Swamy and Ors. Vs. Raju Thakur*while dismissing the PIL the court observed that “If the provisions of the Act clearly indicate legislative intent of the country’s international commitments and the same is in conformity with the constitutional requirements, it is not necessary for the Court to understand the legislation in any other manner. In fact, if the Act is plainly read and understood, which we must do, the resultant effect thereof is wholly consistent with the Act. Therefore, it need not be read down, as suggested, to save it from the vice of unconstitutionality of article 14 as such unconstitutionality does not exist”. Despite an absolute prohibition on incarcerating children into jails, the national practice runs contrary and the Police routinely presents children as adults in Courts and cause them to be incarcerated into jails. Recently Hon’ble Delhi High Court was presented evidence that even the reputed Tihar Jail of the capital City of India had at least 114 children incarcerated during 2010-11. Such evidence was procured by “HAQ: Centre for Child Rights” through right to information application and was presented to Chief Justice A. K. Sikri of Delhi High Court by way of a letter petition. In *Munnava. State of U.P.*, whereby writ petitioners were seeking relief in respect of certain juvenile prisoners who instead of being lodged in children home were lodged in Kanpur Central Jail with hardened criminals who on off sexually exploited them. The Court observed:

"Juvenile delinquency is, by and large, a product of social and economic maladjustment. Even if it is found that these juveniles have committed any offences, they cannot be allowed to be maltreated. They do not shed their fundamental rights when they enter the jail". The National Legal Services Authority issued guidelines for Legal Aid in Juvenile Justice Boards and for Training of Police Juvenile Justice in order to comply with the orders of Supreme Court in *Sampurna Behrua Versus Union of India*. The court gave the ruling that the children in jail should be nurtured with special care and should be given special treatment they are national asset in *Sheela Barse v. Union of India*. It also directed the government to setup of remand and juvenile homes for children. Moving a step forward the Supreme Court in *Sheela Barse v Secretary Children Aid Society* directed that the rights of the children in the observation homes should be protected.

Child Labour in India had been prohibited since 1938 when the Employment of Children Act was passed. In 1986 this Act was substituted by Child Labour Prohibition and Regulation Act 1986 in which it occupations were specified in which children were employment of children was prohibited. Despite this child labour is an important area of concern and has led to several PIL prompting the judiciary to intervene which has wider ramifications. The Child Labour Prohibition and Regulation Act in *M.C Mehta vs State of Tamil Nadu and Others* which had culminated in a national debate on the children being employed in hazardous firecracker industries the court delivered a historic judgment whereby it not only elaborated in detail the issue of child labour in India but it also outlined the vision of constitution with respect to children. Highlighting the relation between poverty and child labour they not only deplored the failure of the state machinery but also deliberated about the possible solutions to eradicate the child labour. Forced child labour in Mirzapur Carpet Industry following the abduction and sale of children from Palamu District of Bihar to the carpet weavers prompted the Bandhua Mukti Morcha to file a petition. But the state denied the very existence of child labour where it is commonly found The Supreme Court in *People's Union for Democratic Rights v. UOI*, child labour has been prohibited under Article 24 of the Constitution and to this effect many enactments have been brought about but still employment of children continues as the state has not been able to eradicate poverty. In such a case the poor parents have no alternative but to. Similar verdict was delivered in *Salal Hydro Projects v. State of J.K.* The Supreme Court in *Sheela Barsev. UOI*, has declared that a child is national asset. They cannot be treated like a property or as an inanimate object. The Supreme Court took serious note of the children employed in circus. In a petition filed in *Bachpan Bachao Andolan vs. Union of India* the Court gave the ruling that suitable notifications for prohibition of child labour in circus must be issued by the Central Government in order to implement Article 21A under the Indian Constitution. The Supreme Court gave the ruling that suitable notifications for prohibition of child labour in circus must be issued by the Central Government in order to implement Article 21A under the Indian Constitution. Children from circus should be rescued and should be kept in protective home till they attain the age of 18. Efforts must be taken to rehabilitate these children in a proper way or to send them to their respective homes.

7. RIGHT TO EDUCATION AMENDMENT AC

By the 86th Amendment Act 2002 of Indian Constitution Right to Education was made an integral part of the Fundamental Right. Article 21A was inserted which provides free and compulsory education to all the children till the age of 14 years. The legislation to this effect was passed in 2009 as Right of Children to free and compulsory education (RTE) Act 2009 Since then on the basis of the provisions in the RTE it has become the legal obligation of the Central and the State Government to execute this and to provide the necessary infrastructure for the same. However, failure of the state to implement law in true spirit has led to many PIL and pro-active judicial interventions. The National Coalition for Education versus Union of India & Ors is considered as an important PIL which sought remedial action against shortage of around one lakh professionally trained teachers which has negatively impacted the performance of students. It further sought for the disclosure by the states and UT as to how many students were admitted under Economically Weaker Section quota according to the provisions of the Act. Acting proactively in *Rajan Kumar Singh versus Union of India and ors.*, writ of mandamus was issued to the Jharkhand Government to provide admission to the underprivileged children in the school within the state of Jharkhand with a reservation of 25% of seats as per Section 12(1) (c) of the Rights of Children to Free Compulsory Education Act, 2009. It directed that criteria for giving the admission should be scrupulously followed and a nodal officer should be appointed reiterating the fundamental right of children to education and observing that it is not at all a healthy and congenial atmosphere for the children to attend school where a Police Camp has been set up, the Calcutta High Court directed for removal of the Police Camp from the Makhra Primary School in Birbhum, West Bengal, to a place where no such inconvenience would be caused to the children or other sections of the society.

In another Public Interest Litigation concerning Mid-Day Meal Scheme known as Harit Recycler association v/s union of India it was brought before Hon'ble Delhi High Court that there was an incident where poisonous food was given to 126 children in a school under Mid-Day Meal Scheme in Delhi, which had resulted in serious health hazard for children. Delhi High Court ordered Government to pay compensation to children for being served contaminated food under Mid-Day Meal Scheme.

Though the above mentioned cases are important from the point of view of operational deficiencies, the following cases deserve special mention as these exerted tremendous pressure on the state which in due course of time led to inclusion of right to education as the fundamental right. Justice Mohan gave his observation in Unni Krishnan J.P. v State of Andhra Pradesh and portrayed educational institutions as the seed bed of culture observed and children as destinies of future, patriots and whose hands of quiver but they have the capability to grow up as statesmen, soldiers, patriots and philosophers who later on will decide the future of the country Mohini Jain vs. State of Karnataka was a PIL in which the court emphasizing the importance of Directive Principles of the State Policy dealt with the right to education under Article 41 and while holding that the right to education is concomitant to the Fundamental Rights gave the following observation:

The directive principles which are fundamental in the governance of the country cannot be isolated from the Fundamental Rights guaranteed under Part III. These principles have to be sent into the Fundamental Rights. Both are complementary to each other. The State is under a constitutional mandate to create conditions in which the Fundamental Rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "Right to education" under Article 41 of the Constitution a reality, the Fundamental Rights under Chapter III shall remain beyond the reach of large majority which is illiterate. The Fundamental Rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity"

Goodricke Group Ltd. v. State of West Bengal, the Court emphasized that it is the joint responsibility of the Centre, the States, and the Union Territories to mobilize and allocate the necessary resources to achieve the constitutional goal of providing free and compulsory education to children. The Court recognized that while financial constraints may exist, they cannot be used as an excuse to delay the realization of this fundamental obligation, particularly in light of India's constitutional commitments under Articles 21A, 41, and 45, and its obligations under international instruments like the United Nations Convention on the Rights of the Child (UNCRC)

8. TRAFFICKING

The persistent social evils of child labour and child trafficking, though prohibited by the Constitution of India, could not be effectively tackled for a long time. In an attempt to address these concerns and in keeping with the directives of the International Convention signed in New York in 1950, the Immoral Traffic (Prevention) Act, 1956 was enacted. However, this legislative effort largely proved futile, as it failed to eradicate the deeply entrenched exploitation of children.

Children who grow up in a constant environment of exploitation frequently exhibit a range of severe psychological and behavioral issues, including anti-social behavior, over-sexualized behavior, self-harm, aggression, distrust of adults, dissociative disorders, substance abuse, complex trauma, and attention deficit disorders. Recognizing the urgent need for more robust measures, the Government of India adopted the National Charter for Children in 2003 and subsequently enacted the Commissions for Protection of Child Rights Act, 2005. Nevertheless, trafficking and related forms of exploitation persisted as grave socio-legal issues and increasingly attracted judicial attention through Public Interest Litigations (PILs).

In a landmark judgment dated 5 January 2011 concerning the trafficking of adults and minors from various parts of India to Delhi through placement agencies, the Delhi High Court directed the Labour Department of the Government of NCT of Delhi to register and regulate all placement agencies within a definite time frame. In Kishen Pattnayak v. State of Orissa, a PIL brought to light the sale of children in the Kalahandi district of Orissa due to extreme poverty. The Supreme Court intervened and undertook measures both to improve the socio-economic conditions and to prevent the trafficking of children.

Similarly, the sexual exploitation of a blind girl student at a school in Berhampur, Orissa, was brought to the notice of the Supreme Court through a PIL. Taking immediate cognizance, the Court ordered appropriate remedial measures.

In *Gaurav Jain v. Union of India*, the Supreme Court addressed the problems faced by children born to prostitutes. The Court constituted a committee comprising lawyers and social activists to examine legal and practical measures necessary for the protection and rehabilitation of such children. The Court issued directions to establish separate classes for children of prostitutes and emphasized that juvenile homes should only serve as temporary shelters. It mandated that adequate safety, protection, and rehabilitation facilities be provided, managed by qualified and trained social workers or NGOs, with financial assistance from the Government of India or the concerned State Government. Furthermore, it recommended the formation of a nodal committee comprising public-spirited NGOs, particularly women's organizations, to oversee the management of these initiatives.

In *Bharatlal Kumar v. State of Orissa*, an advocate from West Bengal brought to the Court's notice—through a letter referencing a news item published in *Amrit Bazaar Patrika*—the sexual exploitation of a girl student. In response, the Court directed the concerned Chief Judicial Magistrate to conduct an inquiry and submit a report for taking appropriate action. This case exemplified how justice could be delivered to vulnerable children, who due to their disadvantaged socio-economic position, were otherwise unable to approach the courts directly, thereby reaffirming the critical role of PILs in safeguarding child rights.

The judiciary in India has consistently played a pivotal role in addressing child trafficking and exploitation, particularly through the use of Public Interest Litigations (PILs). The Supreme Court and High Courts have demonstrated a proactive stance, interpreting the constitutional mandate to protect child rights expansively. PILs have served as an important tool in bringing systemic issues to light, compelling the state to act where legislative measures have been inadequate. In cases of child trafficking and exploitation, courts have not only directed immediate relief for victims but have also issued landmark judgments that influence policy changes, legislative actions, and institutional reforms. The judiciary has particularly focused on ensuring the rehabilitation of children, directing the creation of separate educational provisions for affected children, and mandating improved conditions in juvenile homes. Through PILs, the courts have reinforced the principle that the state has a constitutional duty to protect its most vulnerable citizens, while also holding it accountable for lapses in its child protection responsibilities.

9. CHILD ABUSE

Child abuse, in its various forms, is generally categorized as physical, psychological, economic (such as child labour or forced begging), and sexual abuse. Among these, the girl child is often the most vulnerable and has historically been the worst sufferer. The torture and abuse of the girl child represent a gross violation of human dignity and strike at the very foundation of a culture based on human rights. The forms of abuse faced by girl children are manifold, including torture inflicted by the state during armed conflict, abuse within the family, and violence within the community.

In the context of armed conflict, children, especially girls, are particularly defenseless and vulnerable to acts of sexual violence in exchange for basic necessities such as food, shelter, passage, rations, and papers. Within the family, the girl child may face incest and sexual abuse, which are criminalized under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Additionally, honour killings and female genital mutilation (FGM), which are carried out within certain communities, serve as further instances of dehumanizing practices inflicted upon the girl child. These acts are not only physically torturous but also psychologically traumatic. The rising incidence of child abuse, particularly sexual violence, prompted the Supreme Court of India to take action in *Sakshi v. Union of India*, where it requested the Law Commission to propose measures for addressing issues related to the sexual abuse of children. Despite the existence of laws aimed at preventing such abuse, children continue to suffer from sexual assault, pornography, and other forms of sexual exploitation. Furthermore, incestuous behavior with children remains a significant problem, further necessitating legal reforms. In response, the Supreme Court also called on the Law Commission to explore amendments to sections 375 and 376 of the Indian Penal Code (IPC) concerning sexual offences.

10. MISSING CHILDREN

Each year, thousands of children go missing in India, with Delhi reporting an extraordinarily high number of such cases. The majority of these children come from economically disadvantaged backgrounds, and many run away due to extreme poverty or violence at home, unaware that they may be trafficked for prostitution, slavery, or forced begging. A disturbing nexus has been observed between missing children and organ trade.

The Nithari murder case, one of the most gruesome and heinous crimes in recent memory, highlighted the tragic fate of children, largely from migrant worker families, who were victims of trafficking and exploitation. In response to the issue of missing children, the Supreme Court took cognizance of a petition filed by Bachpan Bachao Andolan (BBA), a leading child rights organization, and issued several directives. These directives included the establishment of police responsibilities, the role of the National Legal Services Authority (NLSA), and the development of an effective Standard Operating Procedure (SOP) to deal with missing children cases in collaboration with BBA.

Kailash Satyarthi, the founder of BBA, called this a “watershed moment” in the fight to restore childhood to millions of children in India. He emphasized that the high incidence of missing children is not coincidental but the result of an organized network of traffickers and mafias. The Supreme Court’s ruling, therefore, provided a fresh lease of hope for countless children and their families, whose cries had often gone unheard due to systemic apathy and a lack of legal protection. As R.S. Chaurasia, Chairperson of BBA, noted, the organization would continue to rigorously follow up on the enforcement of the landmark judgment and offer its full support to the government in ensuring its effective implementation.

11. SEXUAL EXPLOITATION OF CHILDREN

Human rights are fundamental freedoms inherent to every human being. These rights are universally recognized as inalienable, integral, and indivisible, as articulated in the Universal Declaration of Human Rights. As such, any violation of these fundamental rights, particularly those concerning children, is a matter of grave concern. Several Public Interest Litigations (PILs) related to the sexual exploitation of children have been filed on the grounds that such exploitation infringes upon the most basic human rights of children.

One such significant case was *Bachpan Bachao Andolan v. Union of India*, a PIL filed in the Supreme Court to address the abuse and exploitation of children in the circus industry. The Court’s intervention led to important reforms in the child protection framework, including the issuance of a notification by the Central Government prohibiting the employment of children in circuses. The Court also directed the formulation of a comprehensive scheme for the restoration and rehabilitation of these children.

Vishal Jeet v. Union of India, the Court recognized the close link between sexual exploitation and poverty, acknowledging that children from impoverished backgrounds are often vulnerable to being trafficked into flesh trade, which is not only degrading but also a grave violation of their human dignity. This case highlighted the intersection of poverty and child exploitation, prompting the Court to call for systemic reforms aimed at eradicating these exploitative practices.

In *Gaurav Jain v. Union of India*, the Supreme Court addressed the plight of children born to prostitutes. The Court ruled that these children have an inherent right to equality, dignity, care, and protection, ensuring their rightful inclusion in mainstream society without the stigma of their parents’ profession. In this case, the Court directed the formation of a committee to create and implement a rehabilitation scheme for these children and child prostitutes, with periodic reports to be submitted to the Court’s Registry.

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Another landmark PIL, *Sakshi v. Union of India*, focused on the sexual abuse of children, particularly in the context of prostitution. The Supreme Court, in this case, emphasized that prostitution could only be eradicated if effective measures were implemented. The Court also urged the Law Commission to consider proposed amendments to sections 375 and 376 of the Indian Penal Code (IPC) to strengthen the legal framework against child sexual exploitation.

12. IMPACT FACTOR

Indeed, it is challenging to fully quantify the success of Public Interest Litigations (PILs) in addressing the complex and multi-dimensional issues of child abuse and the denial of child rights. However, it can be unequivocally stated that PILs have played a crucial role in bringing these issues to the forefront of public discourse and judicial attention. Through PILs, concerned NGOs and activists have been able to highlight critical issues, leading to tangible actions and outcomes, including the formulation of laws and the execution of policies that aim to protect and promote child rights. The Indian Constitution offers a comprehensive legal and ethical framework to uphold the rights of women and children. While several provisions are enforceable rights, others serve as guiding principles for policy and governance. Together, they reflect the vision of a welfare State committed to equity, inclusion, and justice. However, constitutional promises must be translated into ground realities. Persistent challenges such as gender-based violence, child labour, trafficking, malnutrition, and school dropouts demand continued legislative action, judicial vigilance, and civic responsibility. The judiciary has played a proactive role in expanding the scope of these rights, yet effective implementation by the executive remains critical. Empowering women and protecting children is not just a constitutional mandate but a moral imperative for building an inclusive and humane society.

The PIL mechanism has effectively spurred action on multiple fronts, enabling civil society to advocate for children's rights in a legal framework. This has also encouraged the government to enact and implement several significant laws aimed at tackling child exploitation, trafficking, sexual abuse, and other forms of child rights violations. For instance, the enactment of the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Commissions for Protection of Child Rights Act, 2005, are direct outcomes of both judicial intervention and sustained advocacy by NGOs and activists.

While PILs alone cannot fully address the deep-rooted socio-economic issues leading to the exploitation of children, they have been an essential tool in catalyzing legal reforms and fostering greater awareness and action from the government, civil society, and the judiciary. The Indian Constitution, combined with judicial activism through PILs, provides a comprehensive framework that strives to protect and promote child rights. With continued vigilance and advocacy, the hope is that these provisions and the legal infrastructure they support will lead to a more equitable society for children in India, ensuring that their basic human rights are not just protected but actively realized.

The ongoing challenge remains in the effective enforcement of these legal protections and ensuring that the most vulnerable children receive the protection, care, and opportunities they deserve.

CONFLICT OF INTERESTS

None.

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None.

REFERENCES

- The Constitution of India, 1950 – Articles 14, 15(3), 21, 21A, 23(1), 24, 29(2), 39(e), 39(f), 45, 47, 51
 Right of Children to Free and Compulsory Education Act, 2009.
 The Immoral Traffic (Prevention) Act, 1956.
 Child Labour (Prohibition and Regulation) Act, 1986 (amended as the Child and Adolescent Labour (Prohibition and Regulation) Act, 2016).
 Juvenile Justice (Care and Protection of Children) Act, 2015.
 The Prohibition of Child Marriage Act, 2006.
 Protection of Children from Sexual Offences (POCSO) Act, 2012.
 Dattatraya Motiram More v. State of Bombay, AIR 1953 Bom 311 – Validated affirmative action for women under Article 15(3).
 Gaurav Jain v. Union of India, (1997) 8 SCC 114 – On rehabilitation and education of children of sex workers, connected to Articles 21 and 39(f).
 Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645 – Recognized right to education as part of Article 21 before Article 21A was enacted.

M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756 – Landmark case on child labour under Articles 24 and 39(e).
People's Union for Civil Liberties v. Union of India, (2013) 2 SCC 688 – Linked right to food with Articles 21 and 47, emphasizing nutritional rights for children.
Basu, D.D., Introduction to the Constitution of India, LexisNexis, 24th Edition.
Pandey, J.N., Constitutional Law of India, Central Law Agency, 2022.
Baxi, Upendra, "The Supreme Court and the Rights of Children," India International Centre Quarterly, Vol. 22, No. 3/4, 1995.