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CONSTITUTIONAL PROVISIONS FOR PROTECTING
CHILDREN FROM ABUSE AND NEGLECT:
EVALUATING ROLE OF CHILD WELFARE
COMMITTEE (CWC)

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L.L.M (Constitutional law)

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In Part Fulfilment of Requirement for the Degree of Master of Laws
(LLM)

Under the Guidance and Supervision of
Prof. Arun Upadhyay

DECLARATION

This is to certify that the material submitted in the present research work titled ‘Constitutional Provisions for Protecting Children from Abuse and Neglect; Evaluating Role of Child Welfare Committee (CWC) is my original and genuine research work. This work has not been submitted anywhere, in whole or in part for any other university degree or diploma.

At the appropriate spots, I have properly recognised my indebtedness to the work of others.

Juniper Malsawmkimi Colney

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CERTIFICATE

This is to certify that the Dissertation entitled ‘Constitutional Provisions for Protecting Children from Abuse and Neglect; Evaluating Role of Child Welfare Committee (CWC)’ submitted by Mrs Juniper Malsawmkimi Colney, a student of Amity Institute of Advanced Legal Studies is a bona-fide research work for the award of the Degree of LLM (Constitutional Law). She has been working under my constant supervision and guidance and her dissertation is complete and ready for submission.

I am confident that the current research dissertation is meritorious and satisfies all requirements established by Amity University, Noida, Uttar Pradesh for the awarding of the Master in Laws degree. I highly recommend that it should be considered for the award of the Degree of Master of Laws.

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I would like to take this opportunity to thank our Almighty God for granting me good health and the opportunity to pursue and complete this dissertation. Without his grace, none of this would have been possible.

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A special thanks to my family and cousins for always being supportive throughout this journey, thank you for believing in during the most challenging times. Your supports have been the foundation of this journey.

Finally, I acknowledge the individuals working in child welfare, particularly those involved in Child welfare Committees, their work is both difficult and necessary, and this research is, in part, a reflection of the challenges they navigate every day. I hope this study contributes in some way to the ongoing efforts to protect children and strengthen the systems meant to support them.

Juniper Malsawmkimi Colney

TABLE OF CONTENT

Sl. No.	TITLE	Page no.
1.	Declaration	i
2.	Certificate	ii
3.	Acknowledgement	iii
4.	Table of Contents	iv-vi
5.	List of Abbreviation	vii-viii
6.	List of Cases	ix
7.	Abstract	x
8.	Chapter I: Introduction	1-9
9.	Introduction	1-2
10.	Research Objectives	3
11.	Research Question	3
12.	Literature Review	3-7
13.	Hypothesis	7
14.	Research Methodology	7-8
15.	Student Learning Outcomes	8
16.	Research Design	8-9
17.	Chapter II: Constitutional Provision for Protections of Children (Analysis of Relevant Articles and Case Laws)	10-20
18.	Introduction	10-11

19.	Who is a Child?	11
20.	Constitutional Provisions with case laws: Article 14, 15(3), 21, 21A, 23, 24, 39(e), (f), 45, 47, 51A(k)	11-20
21.	Chapter III: National Legislatives Framework for Child Protection in India (JJ Act, POCSO Act and Others)	21-31
22.	Child Protection	21-22
23.	Child Welfare	22
24.	Child abuse and Neglect	22-23
25.	National Legislations	23-31
26.	Chapter IV: Role of Child Welfare Committee	32-44
27.	What is CWC	32
28.	Child in Need of Care and Protection (CNCP)	32
29.	District Child Protection Unit (DCPU)	32-33
30.	Structure and Composition of CWC, Section 27 of JJ Act	33
31.	Power of CWC- Section 29 of JJ Act	33-34
32.	Functions and Responsibilities of CWC, Section 30 of JJ Act	34-35
33.	Procedure in Relation to Committee	35-36
34.	Role and Effectiveness of CWC in Child Protection	36-44
35.	Chapter V: Challenges Faced by CWCs (Including Cases Highlighting the Gaps)	45-58
36.	Structural and administrative challenges	45-53
37.	Legal procedural challenges	53-55

38.	Infrastructure and Financial Constraints	55-58
39.	Chapter VI: International Commitments, and Best Practices in Child Protection	59-76
	International commitment	60-70
	Best practices	70-75
40.	Chapter VII: Conclusion and Recommendations	76-81
41	Conclusion	76-77
42	Recommendations	78-81
41	Bibliography	82-89
42	NTCC Completion Certificate	90

LIST OF ABBREVIATION

Abbreviation	Full Form
AIR	All India Reporter
Art	Article
CACs	Child Advocacy Centres
CARA	Central Adoption Resource Authority
CCIs	Child Care Institutions
CCL	Child in conflict with law
CEDAW	Convention on Elimination of All forms of Discrimination Against Women, 1978
CNCP	Child in need of Care and Protection
CSAM	Child Sexual Abuse Material
CWC	Child Welfare Committee
CWOs	Child welfare officers
DCPU	District child protection unit
DM	District Magistrate
DPSP	Directive Principles of State Policy
etc	Et cetera
FR	Fundamental Rights
FTSC	Fast Track Special Court
i.e	That is
ICDS	Integrated Child Development Services
ICPS	Integrated Child Protection Scheme
ILO	International Labour Organization
IPC	Indian Penal Code, 1860
IT Act	Information Technology Act, 2000
ITPA	The Immoral Traffic (Prevention) Act

JJBs	Juvenile Justice Boards
NCPCR	National Commission for Protection of Child Rights
NGO	Non-Governmental Organisation
NPC	National Policy For Children
OP	Optional Protocol
PIL	Public Interest Litigation
POCSO	Protection of Children from Sexual Offences
PO	Police Office
RTE	Right to Education
SAARC	South Asian Association for Regional Cooperation
SC	Supreme Court
SCC	Supreme Court Case
SDGs	Sustainable Development Goals
Sec	Section
SIR	Social Investigation Report
SLSA	State Legal Services Authority
SLASA	State Legal Aid Services Authority
SSA	Sarva Shiksha Abhiyan
UNICEF	United Nations International Children's Emergency Fund
UNCRC	United Nations Conventions on the Rights of the Child
VLCP	Village Level Child Protection
WHO	World Health Organization
WLCPC	Ward Level Child Protection

LIST OF CASES

SI. No.	Case Name	Page no.
1	Gaurav Jain v. Union of India (1997) 8 SCC 114	12
2	MC Mehta v. State of Tamil Nadu (1996) 6 SCC 756	12
3	Unni Krishnan, J.P. & Ors v. Sate of Andra Pradesh & Ors (1993) AIR 2178, 1993 SCR (1) 594	14
4	Shiela Barse v. Union of India (1986) 3 SCC 596	16
5	Bachpan Bachao Andolan v Union of India & Ors, Writ Petition (Civil) No. 51 of 2006	27
6	Bachpan Bachao Andolan v Union of India & Ors, 2011, 5 SCC 1	36
7	Laxmikant Pandey v. Union of India (1984) AIR 469, 1984 SCR (2) 795 1984 SCC (2) 244, 1984 SCALE (1)159	52
8	Sampurna Behura v. Union of India (2018) 4 SCC 433	56

ABSTRACT

Protection of the child from neglect and abuse is a serious cause embedded in the constitutional provisions and enforced through statutory regimes in India. The Constitution instills an effective framework for safeguarding the children, their welfare and rights. Provisions like Article 15(3), 21A, and 24 compel the state to enact special provisions for children, provide them with free and compulsory education, and safeguard them from hazardous labor, respectively. Additionally, the Directive Principles of State Policy i.e. Articles 39(e) and 39(f), take care of the responsibility of the state to enact special laws for protecting children from exploitations so that the child can develop appropriately.

The Child Welfare Committees, set up under the Juvenile Justice Act, 2015, is the pivot of child protection in India. The committee has the responsibility of ensuring that care and protection is assured to the child in need. It is a protector to the children not receiving proper care, addressing such issues as exploitations, neglect, and abuse. The CWC also provides social reintegration and rehabilitation through education, counselling, and vocational training. It also monitors the operations of child care institutions for care and safety standards.

By interlinking the constitutional aspects with the functional role of the Child Welfare Committees, India has created an inclusive framework to safeguard the children against abuse and negligence. This protects the rights of the children and ensures them and provides them with an opportunity to develop into society

Key Words: Constitutional Provisions, Child Welfare Committee (CWC), Juvenile Justice Act, Neglect and Abuse, Rehabilitation and Social Reintegrate

CHAPTER I

INTRODUCTION

Children of all countries are the cornerstones of the future of their country, their protection and well-being are a must to establish an advanced and strong society. Children are subjected to exploitation, abuse, and neglect, thereby becoming one among those sections of society that should be protected. Welfare of the children and their protection at the centre of any fair and equal society. In India, the Constitution provides a strong framework for the protection rights of children by articulating these in fundamental rights, directive principles, and other legislation. Emphasizing that the child is one of the most vulnerable sections of society, the State has to provide security, education, and well-being for their safety. This guarantee is seen through the constitutional assurances of Article 21, 21A, 24, and 39(e) and (f). Aside from these legislative shields, there remain numerous children in India who continue to be victimized by abuse, neglect, and exploitation. This calls for efficient institutional procedures dedicated to the protection of the child.

One such system is the Child Welfare Committees, which is a statutorily created institution embedded in the Juvenile Justice Act, 2015. Child Welfare Committees are mandated with the duty to care for such children who require protection, care and rehabilitation. CWCs exercise a quasi-judicial role, and are also authorized to hold inquiries, pass orders related to child care and custody, and provide legal aid and rehabilitation to vulnerable children. In light of all the threats to children whether abandonment, child trafficking, sexual abuse, trafficking or forced marriage, Child Welfare Committees have vital functions to perform towards safeguarding their best interests and protecting their best interests.

Child Welfare Committees function within the general legal framework of a collection of various laws for protection of children. The Juvenile Justice Act, 2015 (JJ Act), their parent legislation specifying their primary role, allows them to conduct case assessments, inquiries, and determination of suitable measures for rehabilitation. The Protection of Children from Sexual Offences Act, 2012 (POCSO) allows their intervention in the case of children rescued from sexual abuse by providing them child-friendly justice and access to psychological and social services. Similarly, according to the Child Labour (Prohibition and Regulation) Act, 1986, the CWCs also need to rescue the exploitative work condition victim and rehabilitate the child. The Right to Education (RTE Act), 2009 provides for reintegration of the children rescued from trafficking, work, or abuse into the schooling process, while the Prohibition of Child Marriage Act, 2006 facilitates the Child Welfare Committees to take action in case of

forced or child marriages, with legal safeguard and alternative care to the victimized children. All these efforts combined are attempting to establish a unified child protection system, within which CWCs act as an important conduit between the judiciary, police structures, and childcare agencies.

Nonetheless, despite having such a robust legal framework, the actual efficiency of Child Welfare Committees is questionable. Grievances and studies have been made which have counted some problems in the functioning of the CWCs like lateness in adjudicating the cases, lack of trained personnel, lack of inter-agency coordination, and lack of infrastructure. For instance, in its report of 2023, National Commission for Protection of Child Right (NCPCR) revealed that the majority of the Child Welfare Committees are afflicted with irregular making of orders, delayed inquiry, and faulty follow-ups. In some others, failure of due or delayed rehabilitation through non-formal process of inquiry renders the children at risk. In addition, operational and financial failures normally undermine the services of CWCs to a great degree, precluding them from offering quality supervision and care to an admitted foster or a child in care. The problem is reinforced by loopholes in legislation to law enforcement authorities, societal ignorance on the one hand and child abuse stigma, which inhibit proper functioning of CWCs and render it challenging for them to carry out their role to full effect and to the maximum utility.

With such challenges, it is critical to analyze and assess how the Child Welfare Committee functioned, particularly in conducting investigations, making findings regarding what is in the best for the child and ensuring that justice is administered in a timely and equitable manner. This dissertation seeks to assess the effectiveness of Child Welfare Committees in enforcing children's protective legislation, analyzing their point of strength and limitation. By the revelation and analysis on such matters, this current study attempts to make input towards child welfare reforms in general and provide beneficial recommendations in order to enhance child welfare systems.

1.2 Research Objectives

1. To explore the provisions of constitution related to the protection of children, the relevant Articles of the Indian Constitution, and their effectiveness in addressing child neglect and abuse.
2. To examine the role of the Child Welfare Committees under the Juvenile Justice Act, 2015,

in guaranteeing the rehabilitation, care and safeguards of children in need, including its functioning, responsibilities, and challenges.

3. To recognize the obstacles encountered by the Child Welfare Committees in enforcing constitutional provision and laws, and to propose ways to enhance their operations.
4. To provide policy recommendations for strengthening child protection mechanisms, ensuring a more integrated and efficient approach to protect right of children in India.

1.3 Research Questions

1. What is the role of the Child Welfare Committee in implementing child protection laws, and how effectively is this role carried out?
2. What challenges does the Child Welfare Committee face in the implementation of child protection laws, and how do these challenges affect the protection and rehabilitation of children?
3. What improvements can be made to the existing legal and institutional frameworks to better protect children from neglect and abuse in India?

1.4 Literature Review

- **Books**

1. Asha Bajpai, (2007). *Child Rights in India: Law, Policy, and Practice* (3rd edition) New Delhi: Oxford University Press. The child protection framework of India is based on constitutional provisions and statutes such as the Juvenile Justice Act and the Protection of Children from Sexual Offences Act of 2012. Asha Bajpai discusses systemic inadequacies in implementation that exist despite compliance with international agreements such as the United Nation Convention of Rights of Children (UNCRC). Child Welfare Committees (CWCs) are vital, yet they confront obstacles such as limited resources, inadequate training, and poor coordination. Bajpai suggests strengthening CWCs, encouraging interagency coordination, and stressing community engagement. Adopting a multidisciplinary, child-centered strategy that is consistent with global standards can considerably improve protection and welfare results for vulnerable children.
2. Desai, M., & Mehta, N. (Eds). (2002). *Child-centered social work in India: Journeys and the way forward*. New Delhi, India: Concept Publishing Company. Desai and Mehta's Child-Centered Social Work in India discusses the utilization of child-centered social work practice, and specially child protection and empowerment. The book

stresses that a response based on rights is necessary, whereby children's voices are listened to in decision-making affecting their lives. The book is centered on the issues of social workers in India, including a lack of resources, sociocultural attitudes, and institutional factors. The authors are calling for an alternative to child-centered solutions that involve families and communities, as well as policy reform to better the quality of child welfare services and children's well-being.

3. Bajpai, G. S. (2009). *Juvenile Justice: Impact and Implementation in India*. New Delhi: Bloomsbury India. G.S. Bajpai's offers critical examination of the Juvenile Justice Act of 2000 and its subsequent amendments. The book explores the legal system that oversees juvenile justice in India, evaluating its contribution to children in conflict with law and those in need of care and protection. Bajpai concentrates on implementation issues such as poor infrastructure, procedural delay, and insufficient proper rehabilitation programs. He suggests improved training of social and judicial personnel, increased coordination between agencies, and increased focus on children's best interests. The book calls for increased child-centeredness and suggests radical reforms to ensure safety and rehabilitation to vulnerable children which are also required to enable efficient functioning of child welfare committees
4. Mishra, A. (2021). *Protection of Children from Neglect and Abuse: Gaps in current Legislation*. New Delhi: Namya Press. A. Mishra examines the Indian protection regime for children. The author identifies all-critical loopholes in law enforcement of child protection, i.e., lack of a co-ordinated structure among agencies, inadequate training of officials, and delayed judicial procedures. Mishra speaks about loopholes in massive pieces of legislation like the Juvenile Justice Act and Protection of Children from Sexual Abuse Act that are not child-friendly or even implemented. The author calls for radical reforms, like improved prevention, intervention, and rehabilitation mechanisms, and heightened public sensitivity and sympathy towards vulnerable children. Mishra favors rights-based practices at the level of international standards in a bid to address child abuse and neglect effectively.
5. Pandey, J.N. (2023). *Constitutional Law of India*. (60th ed.) Allahabad: Central Law agency. The Author gives the detailed analysis of constitutional provisions, the majority of Indian child protection legislation under Articles 15(3), 21, 21A, 23, and 24, these are protection from exploitation, children's right to education, and abolition of child labor. The book discusses Directive Principles (Articles 39(e), (f) and 45) as state duties to take care of children. It critically analyzes significant constitutional provisions, judicial

decisions, and milestone case laws. Judgments of significance elaborated in the book reflect the child protection law evolution in accordance with constitutional standards and offers a solid foundational understanding.

- **Articles**

1. *Legal Mechanism for Protection of Child Rights in India* - by Priyanka. A Available at <https://ijirl.com/wp-content/uploads/2022/01/LEGAL-MECHANISM-FOR-PROTECTION-OF-CHILD-RIGHTS-IN-INDIA.pdf> (last visited on January 18th 2025) Protection of the Child in India has been the emphasis in this article since it concerns provisions under the Constitution and legislating laws. Priyanka discusses applicable legislations such as the Juvenile Justice Act and Protection of Children from Sexual Offences Act, regarding their direction towards protection of the child from sexual abuse and physical neglect. The article also suggests the importance of proper implementation of these mechanisms so that children are protected in reality. Priyanka also introduces the intervention by State institutions and Child Welfare Committees (CWCs) to the children in a state of distress. The study also points towards the importance of sensitization and proper implementation of these legal provisions.
2. *A critical study on Children Protection in India -by Suresh Kumar and CP Sheoran* Available at <https://www.lawjournal.info/article/48/2-2-11-720.pdf> (last visited on January 19th 2025). Kumar and Sheoran critically examine the effectiveness of India's child protection system, condemning the implementation process. The article highlights the impact of international conventions like the United Nation Convention on Rights of Children (UNCRC) on Indian laws like the Juvenile Justice Act (JJ Act) and Protection of Children from Sexual Offences (POCSO) Act. It talks about systemic failures like lack of proper infrastructure, absence of trained staff, and absence of coordination between the agencies that is causing hindrance in the smooth functioning of child protection mechanisms. The authors also demand more accountability and transparency in the functioning of agencies like Child Welfare Committees (CWCs). The article ends by suggesting reforms to enhance the existing set-up and deliver better results
3. *Legal Research on Child Abuse – by Neha Singh*, Available at https://theadvocatesleague.in/assets/pdf/papers/legal_research_on_child_abuse.pdf (last visited January 17th 2025). Neha Singh's piece covers the magnitude and nature of child abuse in India, ranging from physical to emotional and sexual abuse. The article analyzes the legal framework dealing with such issues, and more particularly the Protection of

Children from Sexual Offences Act (POCSO Act) and Juvenile Justice Act (JJ Act). Singh identifies the reporting of abuse as an issue due to social stigma and lack of support systems. The article criticizes the loopholes in enforcement and absence of child-friendly mechanisms in the judicial system. Singh highlights the importance of Child Welfare Committees (CWCs) in giving rehabilitative care and justice to abused children. The article prefers greater awareness and systemic changes.

4. *Crime against Children and Role of Child welfare Committee in India: A Legal Study* by V.Rama Narsaiah, Available at

<https://www.lawjournals.org/assets/archives/2023/vol9issue5/9174-1697094964660.pdf>

(Last visited on January 18th 2025). This article establishes the mandate role of CWCs in addressing crimes against children according to the Juvenile Justice Act (JJ Act). Narsaiah assesses the effectiveness of Child Welfare Committees in dealing with care, rehabilitation, and justice to children in need of protection. Drawbacks to CWCs like inadequate infrastructure, insufficient training, and procedural delays are noted by the article. It also implies the coordination deficits between CWCs and other child protection institutions. Narsaiah underscores increased training programs, improved resource allocation, and increased oversight to enhance the performance of CWCs in the protection of laws and rights of the children and reduction of their vulnerabilities.

5. *Significance of child welfare committee in india* by Huma Faheem Ansari. Available at <https://jlrjs.com/wp-content/uploads/2023/02/19.-Huma-Faheem-Ansari.pdf> . The writer discusses the crucial role played by CWCs in protecting vulnerable children. According to Section 27(1) of the Juvenile Justice Act (JJ Act), 2015, Child Welfare Committees are under a mandate to care for and protect children in need. Ansari points out that majority of the children in India are under the poverty line and this forces them to use the services provided by CWCs. The committees are tasked with providing advice to the government on matters of child welfare, guaranteeing their well being, and protecting children from being victims of crime. Ansari points out that CWCs are the first line of defense for care and protection-seeking children because they are the sole agencies in most cases that can provide necessary assistance and support.

1.5 Hypothesis

1. Child Welfare committees and the Juvenile Justice Act, 2015, as well as constitutional provisions pertaining to child protection including Article 15(3), 21A, 24 and 39(e), (f) greatly aid in protecting India children from abuse and neglect.

2. The Child Welfare Committees make a significant impact in enforcing laws of protection of a child but faces challenges such as resource limitations, procedural inefficiencies, and societal barriers.
3. Effectiveness of the Child Welfare Committee in addressing cases of abuse and neglect is hampered by these challenges, leading to gaps in the implementation of child welfare provisions.
4. There is a significant gap between the constitutional mandates for protection and their practical enforcement by Child Welfare Committees.

1.6 Research Methodology

Doctrinal research methodology will be employed.

The *doctrinal method* involves an in-depth analysis of primary legal sources and secondary sources to understand the theoretical foundation and practical implementation of child protection mechanisms. Focusing on the analysis of existing legal texts, statutes, case law, and legal principles to assess the effectiveness of Child Welfare Committees in enforcing child protection laws in India. The study examines key statutory provisions, through a comprehensive review of constitutional provisions, judicial interpretations, and case law, the research seeks to find out the challenges in the functioning of Child Welfare Committees (CWCs). Additionally, secondary sources will be utilized to gather insights on the effectiveness and limitations of the current legal framework. By critically analyzing these materials, the dissertation aims give a clear picture of the legal gaps and challenges faced by CWCs and propose recommendations for improving their functioning in providing a strong safeguard for the well-being of a child.

1.7 Student Learning Outcomes

Upon successful completion of this dissertation, the student will be able to:

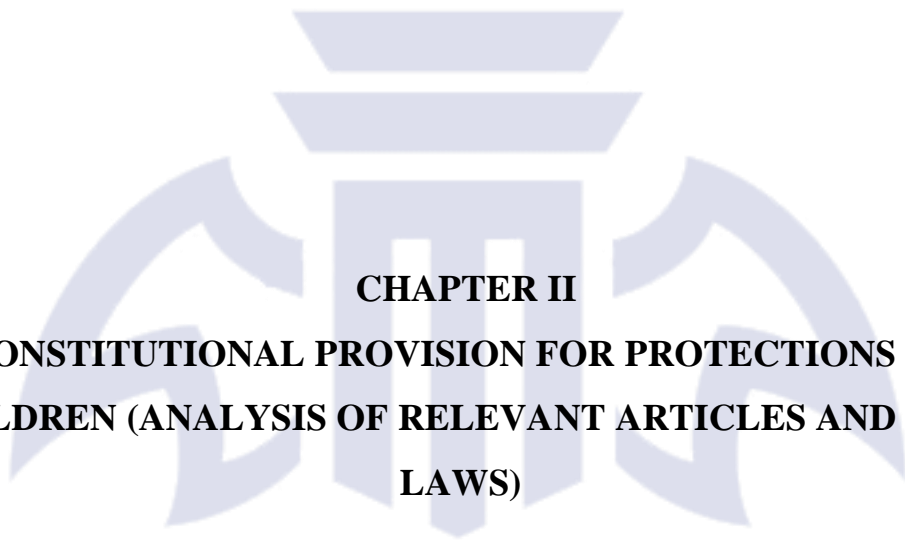
1. Build a deep and critical understanding of the constitutional safeguards and legal provisions that protects children from abuse and neglect in India.
2. Critically evaluate the role and effectiveness of Child Welfare Committees in implementing child protection laws and ensuring the welfare of children in practice.
3. Identify and analyse the gaps and challenges in the current legal and institutional mechanisms for child protection, particularly within the functioning of Child Welfare Committees.
4. Formulate actionable recommendations to enhance the capacity and efficiency of Child

Welfare Committees, aiming at improving the implementation of constitutional child protection laws and ensuring better outcomes for children in need.

1.8 Research Design

The framework (Chaptalization) of this dissertation will be as follows:

Chapter I	Introduction (including Statement of problems, Research Questions, Research hypothesis, Research objectives, Literature Review, Student learning outcome)
Chapter II	Constitutional provision for protections of children (analysis of relevant Articles, case laws and judicial interpretations)
Chapter III	National Legislative Framework for Child Protection in India (Juvenile Justice Act, POCSO Act and others)
Chapter IV	Role of Child Welfare Committees (Including its establishments, Functions, powers, effectiveness in child protection)
Chapter V	Challenges faced by CWCs in the implementation (Including cases highlighting the gaps)
Chapter VI	International Commitments, and Best Practices in Child Protection
Chapter VII	Recommendations and Conclusion

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CHAPTER II

CONSTITUTIONAL PROVISION FOR PROTECTIONS OF CHILDREN (ANALYSIS OF RELEVANT ARTICLES AND CASE LAWS)

2.1 Introduction

One of the utmost urgent responsibilities of any society is to keep the children safe from neglect, exploitations and abuse. A child requires special safeguards and care for their well-being and development as they are vulnerable and delicate at heart. India has been progressing in providing laws to safeguard and protect the vulnerable and marginalized children, nevertheless, the real challenge is making these policies and laws into reality, especially at the grassroots level, where they are needed the most.

But despite all the progress given by the government, challenges arise in the implementation of protection of laws of children, especially at the level of local governance and execution.

This dissertation seeks to explore the constitutional provisions for the child protection in India, specifically focusing on the role of CWC in ensuring the enforcement of laws for children. The

key objective of this research is to analyze the effectiveness of these committees in the field and problems they face in executing their mandate. Additionally, it tries to analyze the existing legal and institutional setups and propose areas that need reform for the protection mechanism to be enhanced.

This research is guided by three core questions: What is the role of CWCs in implementing laws for children protection and how effectively is this role carried out?; What challenges do CWCs face in the enforcement and execution of laws for the children protection, and how do these challenges affect the protection and rehabilitation of children? and What improvements can be made to the existing laws and institutional frameworks to better protect children from neglect and abuse in India?.

Based on these questions, this study attempts to illuminate us about the current situation of child welfare in India, imparting information and knowledge about legal and institutional problems involving child protection and where change can be most significant. It also examines the constitutional provisions, including key articles like Article 15(3), Article 21, and Article 39, which lay the groundwork for the protection of children, and explores how effectively these laws have been integrated into practice.

In doing so, this dissertation will offer aid to the ongoing discussion in the country's child welfare, advocating for efficient, organised and child friendly method to the secure the well-being and safety of a child across the nation. Ultimately, the goal is to present knowledge and understanding of the complexities of the country's child protection, taking into account the role of government institutions, legal frameworks, and the challenges faced by CWCs in fulfilling their essential mandate.

The constitution has a number of important clauses which provides for the well being and protection of the children of the country. A child requires special attention and safeguards as they belong to such age category which is a development stage. They are given particular rights that are acknowledged on a national and worldwide level. The constitution goes into great details about the rights of children, including free and compulsory education, safeguarding their freedom and growth, making sure they are not subjected to discrimination in the classroom, and prohibiting their employment in hazardous jobs like mines and factories. These clauses are meant to protect the children and their general growth and safety.

2.2 Child

“A child is every person who has not completed 18 years of age”¹

2.3 Constitutional provisions with case laws

Indian Constitution gives specific rights to the children of India, which are mentioned in its Part III (Fundamental Rights), Part IV (Directive Principles of State Policy) and Part IV A (Fundamental Duties) They are elaborated below:

2.3.1 Article 14 - 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.”²

The state must ensure that everyone (Citizen) have equal legal standing and equal legal protection. All Indian people, including children, are entitled to non-discrimination, and equality equally. Children are small and delicate, and they are often overlooked and are neglected and abused. According to this article, as any other citizens, children are treated equally and with positive discriminations is necessary and have the same level of legal protection. This article mandates that children, especially those vulnerable to abuse and neglect, must receive equal legal safeguards and state protection.

Article 14 ensures that children irrespective of their backgrounds receive protection from abuse and neglect. Courts have consistently upheld the need for state intervention, rehabilitation, and execution of the rights of the children, reinforcing these constitutional dedications to equality and justice for every child.

*Gaurav Jain v. Union of India (1997)*³

The petitioner filed PIL and highlight the challenges of sex workers children, emphasizing their entitlement to be treated equally with respect and equal protection under the law. The case exposed the children’s discrimination and barrier to access to their fundamental services which

¹ Definition of a child , The Convention on the Rights of the Child: The children’s version
<https://www.unicef.org/child-rights-convention/convention-text-childrens-version> last visited 1st April, 2025

² Art 14

³ (1997) 8 SCC 114.

includes school, rehabilitation and healthcare. The court held that these young children should have easy access to their fundamental rights under Article 14. The court directed the government to build rehabilitation facilities, give education, and assist with social integration. It emphasized the tasks to the state in safeguarding these youngsters' well-being and protect them from neglect, societal discrimination and abuse.

This decision upheld the concept that all children, regardless of background, have the right to equal legal treatment. The court's decisions sought to interrupt the cycle of exploitation and provide a more positive, stigma-free future for children born to women in underprivileged groups.

M.C. Mehta v. State of Tamil Nadu (1996)⁴

An environmental lawyer and activist, launched a public interest litigation on child labour in hazardous fireworks factory. The petition stated that children were being forced to labour in hazardous situations, which violated their rights to equality, education and protection from exploitation. The Supreme court determined that child labour in hazardous industries violated Art. 14 and art. 24

Directing the Government to:

- Find out those children engaged in such labour and rescue them.
- Gives compensation to affected children.
- Ensure compulsory education and create rehabilitation programs.

This judgement explained that the breach or violation of the fundamental rights of the children cannot be justified by the economic constraints. The state was held accountable for ensuring equal opportunities for every child, reinforcing their educational rights and protection from abuse.

2.3.2 Article 15(3) - Special protection for Children

Article 15(3) is one of the most significant provisions when it comes to child protection in India. It allows the State to make "special provisions for children, even though Article 15

⁴ (1996) 6 SCC 756.

prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.”⁵ This provision has been instrumental in ensuring that laws can be framed specifically to address the unique needs of children, allowing for special protection from exploitation and harm. This article allows the State to make special laws and policies for the benefit of Children, since children are vulnerable and need additional support, affirmative action can be taken for their protection. Laws such as the Juvenile Justice Act and Right to Education Act are based on this provision.

Legislative framework based on Article 15(3)

- a. Right of Children to Free and Compulsory Education Act, 2009 (RTE Act).
- b. Juvenile Justice (Care and Protection of Children) Act, 2015.
- c. The Protection of Children from Sexual Offences (POCSO) Act, 2012.
- d. National Policy for Children, 2013.

2.3.3 Article 21 – Right to Life and Personal Liberty

“No person shall be deprived of his life or personal liberty except according to procedure established by law”⁶ Art. 21 guarantee and provides the right to life with dignity, including protection from trafficking, neglect and abuse. The court has broadened its interpretation to incorporate easy entry to safe environments, educations and healthcare. In the *Bachpan Bachao* case, the Court emphasized the requirements to rehabilitate a rescued children from child labour. This ensures that children are not just physically protected but also given opportunities for development and holistic growth. Any action that endangers a child’s well-being is considered a violation of this rights.

In the case of *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. (1993)*⁷, the court held that Right to Educations is included under Article 21 as a Fundamental Rights. This judgment paved way for the inclusion of Article 21A, making education a fundamental right for children aged 6 to 14.

This is a very important judgment in shaping the efforts of the child protections in related to exploitations, sexual abuse and trafficking, as the right to personal liberty ensures that no child

⁵ Art 15 (3)

⁶ Art 21

⁷ (1993) AIR 2178, 1993 SCR (1) 594

should live in environment that threatens their safety or dignity. It is an essential legal foundation in eliminating various kinds of abuse to children.

2.3.4 Article 21A – Right to Education⁸

This article was introduced through the 86th Constitutional Amendment and provides Free and compulsory education for every child who is of the age between 6 to 14. This provision plays a vital role in keeping the child in safe place by sending them to schools and educational institutions and keeping them from working in those hazardous works.

The Right to Education Act, passed in 2009, was a crucial step in providing quality education to every child, regardless of their background. The court has consistently highlighted that denying a child the opportunity to learn is a direct violation of their fundamental rights. Education is important material in the life of a child to drive them out of poverty, exploitations, and neglect, offering them the chance to build a better future. This provision supports children's development and also strengthens the children ability to contribute meaningfully to society.

2.3.5 Article 23 – Prohibition of Trafficking and Forced Labor

Human trafficking, forced labour, and exploitation of a child is prohibited by this article as these practices is prevalent in India and I being one of the main issues faced in the welfare of children. This article is very important in safeguarding those children from being trafficked for sexual exploitations and from forced labour in factories that could be harmful to their health, safety and well-being. ⁹

It also amounts to the violation to the fundamental rights of children, held by the apex court. Laws like the Bonded Labour System (Abolition) Act, 1976, that seeks to eliminate the practice of bonded labour and children are often that are compelled to work, and Immoral Traffic (Prevention) Act, 1956, which was enacted to prevent the use of children in hazardous labor, derive strength from this provision. It ensures strict legal action against those exploiting children for labor or commercial gain.

Together with Article 23, the Child Labour Act (1986) and Juvenile Justice Act protect minors against forced labour and guarantee their rehabilitation in the event that they are discovered to be engaged in exploitative work. Even with these legislative protections, enforcement remains

⁸ Art 21A

⁹ Art 23

difficult, specifically in those remote areas of the country minors are at high risk of exploitations and human trafficking. The government encourages education and offer aid and assistance to the impacted child by introducing National child labour project and tries to end the prevalent child labour. However, there are various hindrances such as inadequate fundings failure in execution of these laws in grassroot levels affects the effectiveness of these projects. However, art. 23 is a very essential provisions for constitutional protection, which can be achieved through institutional and community awareness at the lower level of the country.

2.3.6 Article 24 – Prohibition of Child Labor ¹⁰

This article specifically prohibits the employment of children below 14 years in hazardous industries. It recognizes that forcing children into labour deprives them of education, health, and a dignified life. Millions of children continue to work in hazardous conditions often in industries such as agriculture, domestic work, manufacturing.

In response to this, there various laws that have been formulated to curb child labour, including the Child Labour (Prohibition and Regulation) Act 1986, which bans employing of a child below 14 years of age in hazardous occupations and to prevent child labour through a comprehensive strategy of rehabilitation, education and socio-economic support for families.

M.C. Mehta v. State of Tamil Nadu, the court ruled that child labor violates fundamental rights and ordered rehabilitation measures. The Child Labour (Prohibition and Regulation) Act, 1986, was strengthened under this constitutional mandate. This provision ensures that economic hardship does not justify child exploitation.

2.3.7 Article 39(e) & (f) – Protection from Exploitation and Neglect¹¹

These Directive Principles of state Policy directs the state to guarantee that children are not abused or forced into work unsuitable for their age and strength. Article 39(f) mandates that children should be given equal opportunities for healthy development. The court has interpreted these provisions to support laws that bans child labour, trafficking, and sexual abuse. Governments are required to create policies that prioritize child welfare and safety. These principles serve as guiding factors for legislative and judicial decisions on child rights.

¹⁰ Art. 24

¹¹ Art 39(e), (f)

*Shiela Barse v. Union of India (1986)*¹² is an important case where the Court addressed the issue of abuse and exploitation of children in state-run observation homes. The petition, filed by social activist Shiela Barse, sought the Court's intervention in ensuring that children in these homes were not subjected to inhumane treatment or neglect. The Court ruled that children in state care, including those in juvenile homes, should be provided with humane treatment and adequate facilities for their rehabilitation and education. It highlights the requirement for special protection in these institutions and ordered the government to ensure regular inspections of observation homes to guarantee the children's welfare. This case highlighted the State's responsibility to safeguard the children's rights in state custody and reinforced the principle that children, especially those in care institutions, should be protected from abuse, neglect, or exploitation.

2.3.8 Article 45 – Early Childhood Care and Education¹³

Article 45 directs the State to provide free and compulsory early childhood education. It recognizes that education in the early years is critical for cognitive and social development. The Mid-Day Meal Scheme and Integrated Child Development Services (ICDS) stem from this directive. Courts have ruled that denying early childhood education goes against constitutional values. This provision strengthens India's commitment to universal education and child welfare.

Art 45 formerly provided for free and obligatory education for children under the age of fourteen. However, the 86th Constitutional Amendment Act established article 21A, establishing the right to education a basic right for children aged 6 to 14. This has substantially contributed to India's child protection framework, as education is viewed as a critical component in preventing child exploitation and giving children with opportunities for upward social mobility.

2.3.9 Article 47 – Nutrition and Standard of Living¹⁴

¹² (1986) 3SCC 596

¹³ Art 45

¹⁴ Art 47

This provision mandates the State to improve nutrition levels and living standards, particularly for children. Malnutrition and poor living conditions lead to child mortality, stunted growth, and reduced learning capacity. Schemes like the National Nutrition Mission and Public Distribution System are formulated under this directive. The Court, in the Right to Food Case, emphasized the State's duty to prevent child malnutrition. This provision aligns with global commitments like the United Nation Commission on Right of Children.

Article 47 of the Constitution of India is a Directive Principle of States Policies that promotes public health and prohibits intoxicating substances that can harm persons and society. It urges the state to enhance nutrition and living standards, as well as public health, by tackling issues such as malnutrition, diseases, and the detrimental impacts of substances like alcohol and narcotics. Although this item is not legally enforceable, it gives crucial recommendations for child protection, particularly in ensuring that children grow up in a safe environment free of hazardous drugs. This directive's preservation of children's health is consistent with numerous child welfare policies and programs, such as Integrated Child Development Services, which give nutritional support and healthcare to children, particularly those in vulnerable communities.

2.3.10 Article 51A(k) – Fundamental Duty of Parents¹⁵

It places a fundamental duty on parents and guardians to ensure that their children receive an education. This provision reflects the shared responsibility between the State and families to secure the future of children through education, thus contributing to their overall development and protection. It goes beyond mere encouragement and underlines that education is a right, with parents being directly accountable for enabling their children to access it.

The introduction of the Right to Education Act, 2009 brought this constitutional principle into sharper focus by making education a fundamental right for children between the age of 6 to 14. The Act not only mandates that children must be sent to school, but it also holds parents accountable for their children's school attendance. This legal framework is vital in eliminating child labor and preventing abuse, as it provides children with the opportunity to learn and grow in a safe environment. In broader sense, Article 51A(k) reinforces the notion that child protection is a shared responsibility. It is not simply the state's job to guarantee that children

¹⁵ Art 51(k)

have access to education, but parents also play an important part in achieving this obligation. This shared obligation transforms child safety into a communal endeavour and supports the idea that children's well-being entails more than just physical security, it also includes providing chances for learning, growth, and personal development.

The Constitution of India provides a robust legal framework for the protection and welfare of children, ensuring that their rights are safeguarded at the highest level. The provisions within the Constitution lay the foundation for child protection laws and policies, making it clear that the well-being of children is a moral obligation. These provisions empower the state to take action to ensure that every child, regardless of their background, has access to a life free from neglect, abuse, and exploitation.

One of the most significant provisions is Article 15(3), which allows the state to make special provisions for children, thereby ensuring that laws can be specifically crafted to protect children's rights. This article provides the legal grounds for laws like Juvenile Justice Act, which provides the protection, rehabilitation to children.

In addition, Article 21, has been a powerful tool in the protection of children's rights. Judicial interpretation has broadened the articles by including right to educations, health and protection, the state is responsible for protecting children from physical harm and also to ensure that they have the opportunity to live a fulfilling life, free from abuse and neglect.

Another vital provision is Article 23, which prohibits human trafficking and forced labor. This is especially crucial in protecting children from child labor and exploitation. With its focus on banning trafficking and forced labor, It ensures that children cannot be used for exploitation in any form, whether for work in dangerous environments or for illegal purposes.¹⁶

Article 39(e) and 39(f) further solidify the constitutional commitment to child welfare. These articles call for the protection of children from exploitation and guarantee that they have the necessary opportunities to grow up in a healthy and supportive environment. Article 39(e) ensures that children are protected from harmful labour, while Article 39(f) emphasizes the

¹⁶ Art 23

need for policies that support their growth, development, and well-being. These provisions underscore the obligation of the state to create a society where children's basic needs, including safety and access to education, are not just met, but are prioritized in all development processes.¹⁷

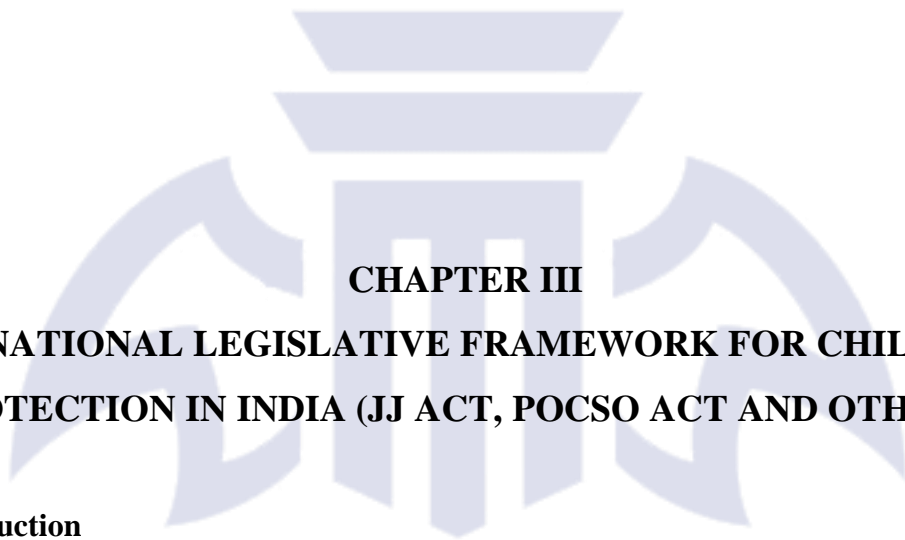
Furthermore, Article 45 and the 86th Constitutional Amendment of 2002, which introduced Article 21A, reaffirm the state's commitment to providing free and compulsory education for children up to the age of 14. This provision is a vital step in ensuring that every child has access to education, which is essential not only for personal growth but also for the broader goal of child protection as education is a key factor in empowering children, allowing them to overcome the barriers created by poverty, neglect, and abuse.

Finally, Article 51A(k), part of the Fundamental Duties, places a responsibility and duties to the child's guardians and parents. Reminding them that protection and well-being of children is not solely the responsibility of the state but is a shared duty of society. The inclusion of this responsibility in the Fundamental Duties section highlights that child protection is a collective responsibility, one that requires the engagement of families, and communities, alongside government institutions.¹⁸

Together, these constitutional provisions create a broad framework for children's protection. They protect the children, their rights and opportunities for growth and development. By establishing these provisions, the Constitution pointed out that children are the responsibility of the society at large. However, the success of these constitutional guarantees depends on their effective implementation. The Child Welfare Committees mechanisms must be supported and strengthened in order to fulfil these constitutional promises, while these constitutional provisions provide a solid foundation for the protection of children, it is the implementation of these laws and the effectiveness of child protection agencies like the CWCs that will ultimately determine the well-being of children across India.

¹⁷ Art 39(e),(f)

¹⁸ Art 51A(k)

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CHAPTER III

NATIONAL LEGISLATIVE FRAMEWORK FOR CHILD PROTECTION IN INDIA (JJ ACT, POCSO ACT AND OTHERS)

3.1 Introduction

In addition to the constitutional provision, in India, various laws have been passed to protect, enhance, and promote children's rights. Child protection in India is governed by a broad legislative framework that safeguards every child from exploitation, neglect, and abuse. Article 15(3), 21, and 24, provided the obligation of the state to safeguard the rights and welfare of children. Key national laws, such as the Juvenile Justice (JJ Act) Act, 2015, the Protection of Children from Sexual Offences Act, (POCSO) 2012, and the Child Labour (Prohibition and Regulation) Act, 1986, are all important laws that work together to prevent abuse, provide rehabilitation, and ensure entry to safe environment as well as education. The legal framework is also complemented by India's adherence to international conventions like the United Nation Commission on Rights of Children (UNCRC) that reflects the nation's shift towards safeguarding its most vulnerable citizens. The strong legal framework penetrates deep into problems like child labour and trafficking and sexual abuse, and grants full protection and assistance to the children in distress.

3.2 Child Protection

According to UNCRC Article 19, “Child Protection refers to protection from violations, exploitations, abuse and neglect by their parents or any other who looks after them”¹⁹

The UNICEF's 2021–2030 Child Protection Strategy defines “Child protection as the prevention of, and response to, harmful practices towards children”²⁰ “Child protection is a term used to describe philosophies, policies, standards, guidelines, and procedures to protect children both from intentional and unintentional harm. The definition reflects the duty of organizations and the people in them toward children in their care”²¹

Child Protection is about ensuring every child grows up safe from harm, whether from abuse, neglect, or exploitation. It's shared responsibility, families, communities, and organisations, all are significant in creating a secure environment where a child can thrive.

3.3 Child Welfare

Child welfare is all about making sure children grow up safe, healthy, and supported. It's a system that helps protect kids from harm, offers care when families are struggling, and provides support to create loving and stable homes. Whether through social services, foster care or community or programs, the goal is simple, every child deserves a chance to thrive.

“Child welfare is a continuum of services designed to ensure that children are safe and that families have the necessary support to care for their children successfully. ACF provides funding and technical assistance to state/tribal child welfare programs and grantees to promote positive outcomes for children and families.”²²

3.4 Child abuse and Neglect

According to “The Federal Child Abuse Prevention and Treatment Act, Child abuse and neglect is defined as at minimum any recent act or failure to act on the part of a parent or

¹⁹ Gaps and challenges in implementing juvenile justice (Care and Protection of children) Act 2015-a critical analysis P.17

²⁰ Child Protection Strategy 2021-2030 UNICEF <https://www.unicef.org/documents/child-protection-strategy> (last visited 22nd January, 2025)

²¹ E.Khoo, Early childhood risk, protection and abuse prevention, 2010, international Encyclopedia of Education (Third Edition) <https://www.sciencedirect.com/topics/psychology/child-protection> (last visited 25th February 2025)

²² https://acf.gov/acf_issues/child_welfare (last visited 25th February 2025)

caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation, or any act or failure to act which presents an imminent risk of serious harm”²³

Child abuse happens when a child is hurt physically, emotionally, or sexually or exploited in any way. It's not just about physical harm, constant criticism, threats, or exposing a child to violence can also be deeply damaging.

Child Neglect is when a child's basic requirements, like food, shelter, healthcare, education, or emotional support, are not met. Sometimes, this happens because caregivers lack the resources or knowledge, but it can also be due to negligence.

Both abuse and neglect can have a lasting effect on a child, making it harder for them to grow up healthy, happy and confident. Every child deserves to be cared for protected, and given a chance to thrive.

3.5 National Legislations

3.5.1 *The Juvenile Justice (Care and Protection of Children) Act, 2015*

This regulates the provision for the children the rehabilitation, protection and care requiring such support. The formation of CWCs and Juvenile Justice Boards (JJBs) is mandated to address cases of exploitation, neglect and abuse. It provides for rehabilitation, restitution, and restorative justice for children who are victims of abuse or neglect. This act stipulates that an individual who has not reached the age of 18 as a child; given that age is a critical determinant, it is essential to ensure accuracy in determining a child's age. Individuals over 18 years should not be regarded as a child, while those under 18 must receive the protections afforded by this legislation.

The two categories of children under this act is Children in conflict with the law (CCL)²⁴ and Children in need of care and protection (CNCP)²⁵. Juvenile Justice Boards address problems concerning children who conflict with the law, while CWC handle case which involves CNCP.

²³ <https://www.hhs.gov/answers/programs-for-families-and-children/what-is-child-abuse/index.html> (last visited 25th January, 2025)

²⁴ <https://lawbhoomi.com/children-in-conflict-with-law-a-comprehensive-analysis/> last visited 2nd march 2025

²⁵ <https://kashmirreader.com/2023/09/19/who-are-the-children-in-need-of-care-and-protection/> last visited 1st April, 2025

Child Protection and the Law: Navigating Juvenile Justice Boards (JJBs):

A child who commits will be tried by Juvenile Justice Board or a court for children. It is preferable for a young individual facing legal issues to be brought before a board without delay. Nonetheless, it is possible for an individual confronting criminal allegation to be brought before a court of law instead of a tribunal. Such an event could occur due to lack of awareness regarding this legal provision or uncertainty concerning the age of the accused. Consequently, every child who is eligible can claim their rights to be tried under Juvenile Justice Act, irrespective of the grounds for their appearance before a court instead of a board. Such courts has to carry out an investigations on the accused's age and document its findings based on that. Subsequent to the inquiry, it is imperative for the court to document its determination regarding the age of the accused. At the time of the offence, if the accused was an age below 18, the child shall be tried as per the JJ Act, irrespective of the accused's present age. Significantly, there exists no temporal restriction on asserting of this claim of juvenility.²⁶

Dealing with Children in need of protection under CWCs

Each district has a minimum of one Child Welfare Committees to deal with the cases of Child in need of protection (CNCP). All the children who are in need of protection, the orphaned, abandoned, surrendered, abused, exploited, or at risk due to extreme poverty, disability, or trafficking are being taken care of by CWC. The Act ensures child care institutions, foster care, sponsorship schemes, and adoption arrangements for protection to them and their well-being, it also guarantees child-friendly treatment whereby children are given psychological counselling, and education training to rehabilitate them back to society.

In addition to the foregoing, the Act also prohibits children's neglect, abuse, and exploitation and makes individuals accountable on default. It establishes engagement of NGOs as well as government departments to run schemes under child welfare and monitor the childcare homes. The Juvenile Justice Act is child-centered along with rights-of-children and integrated development in creating an atmosphere of protection for ensuring dignity along with best interest for each child in need.

3.5.2. The Protection of Children from Sexual Offences (POCSO) Act, 2012

It represents a significant legislative measure in India, designed to protect children from sexual abuse and exploitation. It provides a comprehensive legal framework to address sexual offences

²⁶ Juvenile Justice (Care and Protection of Children) Act, 2021 NHRC, p. 17

committed against minors, ensuring child-friendly procedures for reporting, investigation, and trial.

- **The Necessity of the POCSO Act**

India has one of the Largest child populations globally, with approximately 472 million children under the age of 18, according to the 2011 census. The protection of children is a fundamental responsibility of the state as enshrined in Article 21 of the Indian Constitution. Furthermore, India is committed to upholding children's rights as a signatory to the United Nations Convention on the Rights of The Child. Before the POCSO Act came into effect, the Goa Children's Act of 2003 was the only explicitly focused on addressing child abuse in the country.²⁷

Under section 375, 354, 377 of Indian Penal Code, 1860, the abuser of children in various forms was prosecuted. Due to various drawbacks and loopholes of different legal provision in protecting children, the POCSO Act, 2013 was enacted.

- **Punishments under POCSO Act**

All forms of sexual abuse, that is, penetrative assault and non-penetrative assault, sexual harassment, and engaging in pornography are prohibited under the Act. All these are heavily penalized by the Act in the interest of protecting children and punishing the offenders with a punishment which can extend up to life imprisonment and fines.²⁸ And for the crime where the child is below 12 years a death penalty was added under Section 6A through Amendment in the year 2019.

Further, the law also ensures reporting of the same offence and punishment in case of non-reporting. In view of the well-being of the child, POCSO make sure the protection, rehabilitation, and counselling to the victims at the judicial stage. Apart from this, the Act protects the child victim by protecting their dignity and privacy by way of confidentiality.

- **General Principles**

Twelve General principles provided under POCSO Act are to be followed by anyone including State, CWC, and Special Courts, they are "Right to life and survival, Best interests of the child,

²⁷ Protection Of Children from Sexual Offences Act (POCSO Act) <https://byjus.com/free-ias-prep/pocso-act/> (last visited on 22nd February 2025)

²⁸ IPC Section 354A

Right to be treated with dignity and compassion, Right to be protected from discrimination, Right to special preventive measures, Right to be informed, Right to effective assistance, Right to privacy, Right to be heard and to express views and concerns, Right to be protected from hardship during the justice process, Right to compensation, Right to safety”²⁹

To avoid re- traumatization in the courts, the Act allows the employment of special public prosecutors, child-friendly interrogation, and trials in camera. In addition, it mandates the carrying out of awareness programs and sensitization training among parents, teachers, and police officers so that abuse is avoided.

- **Challenges in implementing POCSO Act**

As of March 2023, pending POCSO cases numbered over 130,000, an increase of 7.4% since the previous year. Even with the implementations of 758 Fast Track Special Courts, of which 412 are POCSO Courts, pending cases continue to be quite high.³⁰

Although POCSO has secured the child protection mechanisms in India, problems related to delayed justice, procedures, absence of publicity among the masses, police, and even judiciary, and underreporting on perhaps cultural and social reasons are still big concerns. Continuous endeavor in enforcing the law, people's awareness campaigns, and administrative reforms are critical to further strengthen the efficacy of the law toward safeguarding children from abuse and neglect.³¹

3.5.3. The Child Labour (Prohibition and Regulation) Act, 1986 (Amended in 2016)

In hazardous occupations, children who is under 14 years of age is prohibited from working under this act “The 2016 amendment extends the prohibition to all forms of child labor in non-hazardous occupations as well, except for work in family enterprises or entertainment, under strict conditions. It aligns with India’s obligations under international convention such as the

²⁹ The POCSO Act, 2012

³⁰ Backlog Of Pocso Cases Aros To 1.3 Lakh In 2023, Government Tells Lok Sabha <https://timesofindia.indiatimes.com/India/Backlog-Of-Pocso-Cases-Rose-To-1-3-Lakh-In-2023-Government-Tells-Lok-Sabha/ArticleShow/106001848.Cms>? Last visited 24 march, 2025

³¹ NCPCR Reports on POCSO Implementation.

International Labour Organization (ILO) Convention no. 138 on the minimum age for employment, and Convention no. 182 on the worst forms of child labour.”³²

The Child Labour (Prohibition and Regulation) Act of 1986

The act seeks to create regulation concerning the working hours and condition child labours, as well as to forbid the working of children in industries deemed hazardous conditions. The Act strictly forbids around 13 occupations and 51 specific processes from employing children. Art, 24 of the Constitution disallowed children to work in factories. Furthermore, the Act delineates explicit protocols for employers regarding employment of a person who is under 14 years of age. It is the duty of the employer to make sure that the health and safety of child workers are maintained. Furthermore, essential infrastructure such as toilets, proper ventilation and drinking water must be provided. Employers are required to notify the Factory Inspector in the employing a child and must ensure adherence to all applicable legal standards. Additionally, it is necessary to enable them to acquire and confirm an age certificate for the child employee.

Child Labour (Prohibition and Regulations) Amendment act, 2016

As per the amendment in 2016, employers who contravene the act and its guidelines will face more severe penalties. The amendment addressed 18 occupations along with 65 processes of the 1986 Act. It strictly forbids the child who is under the age of 14 to be employed, with the sole exception being their participation in family businesses, only if it does not interfere with the well-being and education of the child. Additionally, the Act establishes a distinct classification for a new category for adolescents aged 14 to 18 years, prohibiting their involvement in hazardous employments and activities to safeguard their health and development.

Bachpan Bachao Andolan v. Union of India (2010)³³

The court discussed the duty of different commissions formed to the rights of a child. The court instructed these commissions to examine cases of children exposed to inhumane working conditions, especially physical and mental health among adolescents aged 14 to 18 years. The

³² Lt Dr. R. Sivakumar, Tamil Nadu, India, Child rights and Child Protection p.23

https://msuniv.ac.in/images/distance%20education/learning%20materials/ug%20pg%202023/pg%202021/MAC_riminology/SCPE22_II_Sem_Child_Rights_and_Child_Protection.pdf

³³ Writ Petition (Civil) No. 51 of 2006.

commissions were also instructed to examine denial of minimum medical attention and food for such children. The court directed the commissions to give a clear expression of their mission and a thorough work plan in 30 days from the day of the verdict to facilitate effective protection of children.

3.5.4. *The Right to (Free and Compulsory) Education (RTE) Act, 2009* ³⁴

The Act was enacted on 4th August, 2009, guarantees that all children who is of the age between 6 to 14 years gets free and compulsory education. The act enacted under Article 21A of the Indian Constitution guarantees that all children have the right to education. The Act constitutes education as a fundamental right for all children between the ages of 6 and 14 years and further outlines minimum standards for elementary schools.

Education acts as a protection against abuse and neglect since it offers children the chance to grow and protects them from the risks of trafficking and abuse. Being one of the most important significant law in protecting children in providing their well-being and development by way of education, its impact can be seen in various forms. The main objective is to protect children from neglect and harmful practices, thereby ensuring their safety and well-being. By making education a fundamental right, the RTE Act intends to deter child labor and child marriage, which are largely the effects of illiteracy and economic exposures. Education is a protective shield, offering children a chance at a good life free from exploitation and a platform for holistic development in a healthy, disciplined atmosphere.

It mandates that every private school reserved 25% of the seats reserved for economically weaker section children, upholding the ethos of inclusiveness and not taking away the right of vulnerable children to schooling. Besides that, the Act prohibits the practice of detention, expulsion, and corporal punishment in schools as a means of discouraging children from physical and emotional abuse.

The Act further direct schools to implement infrastructure and student-teacher ratio conditions to make learning facilities comfortable and focused on the welfare of the children as a whole. By providing these arrangements, the RTE Act not only provides access to education but also

³⁴ <https://righttoeducation.in/know-your-rte/about> last visited 25 march, 2025

attempts to protect children from the ill effects of neglect, abuse, and exploitation in the educational system.

3.5.5 The National Policy for Children, 2013

This policy lay down a general framework to protect children, aiming to eliminate abuse, neglect, and exploitation. It also aims at institution building for child's protection. This policy also reminded the government of India to implement its promise to protect child environment so that they can be protected from all forms of violence, ranging from physical to sexual and emotional violence, both institutionally such as in schools and in wider society. In general, the aim is in an attempt to protect children from neglect and ill treatment and thus their protection and well-being.

The children's well-being is one of the policy guidelines, which requires that the protection of children's rights, and needs is to be the paramount consideration in all government activity and programs and policies. The policy is consistent with international norms, such as the UNCRC, and advocates a systematic and coordinated approach for safeguarding children. It centers around their development, well-being, and safety. It also expresses concern regarding addressing the special risks to disadvantaged and marginalized children, including the economically underprivileged background children, disabled children, and socially marginalized children.

3.5.6. The National Commission for Protection of Child Rights (NCPCR) Act, 2005:

NCPCR was established in March 2007, the commission is assigned to make sure that every policy, laws and programs is coordinated with the provision of UNCRC.³⁵ It investigates cases of neglect and abuse cases, and makes sure the rights of every child is being upheld and suggest necessary changes.

One of NCPCR's responsibilities under the JJ Act is to create training modules for stakeholders. Additionally, in accordance with Rule 89(5), State Governments must consult the NIPCCD or other institutions with the necessary expertise when developing training manuals and modules for the State Child Protection Society when planning training programs for stakeholders at the domestic levels. This will help to make sure that the training process is consistent across the

³⁵ <https://ncpcr.gov.in/about-ncpcr>

nation. As a result, the module was created for CWCs with the more general goal of providing in-depth information about the systems in juvenile system and the laws that are associated with it.³⁶

Objectives of NCPCR

- It handles the monitoring of implementation of the rights of children, policies, and programs at the domestic level. It works to make sure that the children's rights are effectively translated into action.
- The NCPCR receives and addresses complaints regarding child rights violations and takes appropriate action to provide redressal.
- The commission engages in advocacy initiatives to raise awareness about child rights, sensitizes stakeholders, and promotes the capacity building of various duty-bearers. This includes government officials, civil society organizations, and communities.
- NCPCR provides recommendations to the government on child protection policies, including strengthening child-friendly judicial processes for dealing with POCSO cases, it also regularly publishes reports on the status of child abuse cases, including the hurdles faced by the kids themselves as well as their guardians in navigating the judicial system.
- It monitors the facilitation of child protection laws.

National Commission for Protection of Child Rights (NCPCR) and its role in supporting CWCs

- NCPCR provides guidelines, monitoring and facilities so that CWCs perform its role efficiently and as per child protection act, some of the key activities are:
- Monitoring and evaluation: NCPCR monitors the functioning of CWCs nationwide, making sure that they function to their maximum capacity and as per the law. It ensures if the CWCs are actually doing their work, i.e., inquiring into the abuse of a child and offering rehabilitation schemes.
- Capacity building and training: NCPCR enables capacity building of CWCs through committee members' training on handling sensitive cases of child abuse, i.e., sexual offenses. It is to ensure that CWCs have better training and resources in handling the child victim.

³⁶ Training Module for Chairperson and Members of Child Welfare Committee , National Commission for Protection of Child Right https://ncpcr.gov.in/uploads/1668950434637a29a2d3cd9_cwc-module-updated.pdf

- Issuance of guidelines: It prepares for working of CWCs so that it will have a better platform to handle cases of child abuse.
- Monitoring and advocacy: NCPCR monitor the child care institutions, foster homes and monitor and advise the committee, it also raise awareness about children's rights.
- Reporting and data collection: NCPCR collect data on the number of Child protection cases disposed off by CWCs, specifically POCSO cases and publish reports giving insights into matters concerning child abuse to inform policy reform.

According to the Baalswaraj statistics of report on POCSO, there are 8255 registered cases and all 8255 are produced before CWCs ³⁷

3.5.7. The Immoral Traffic (Prevention) Act, 1956:

This Act aims to prevent child trafficking for prostitution and child labor exploitation. The Act requires preventive measure, punishment of the traffickers, and rehabilitation of the victims. The act further provides for protection of children especially where the abuse, neglect, or exploitation involves trafficking and forced prostitution.

It penalizes the sexual exploitation of children (below 18 years) with heavy punishment, including imprisonment up to 10 years and fine. It penalizes also those who make money from the sexual exploitation of children, keep brothels that involve children, or have sex with trafficked children. The government authorizes authorities to rescue victims and bring them into protection homes for rehabilitation.

However, the Act has been criticized for loopholes in enforcement and lack of good service to rescued children. The majority of victims are subjected to stigma, poor shelter home conditions, and inadequate reintegration opportunities. Weak implementation also allows traffickers to go unpunished, leaving children vulnerable to further exploitation. A strong child protection system, improved rehabilitation services, and stricter law enforcement are required to focused child abuse and neglect well under the ITPA.

³⁷ Baalswaraj portal <https://ncpcr.gov.in/baalswaraj/main>

CHAPTER IV

ROLE OF CHILD WELFARE COMMITTEE

4.1 What is Child Welfare Committees (CWCs)?

The CWC is a legal body formed under Section 27 of the JJ Act, 2015, with the key responsibility of protecting, safeguarding, and Child in need of care and protection (CNCP). It is a significant body in making sure their well-being, rehabilitation, and overall development. As mandated by the Act, state governments are directed to established in every district one or two CWCs, to provide necessary intervention for vulnerable children. The committee holds the authority to make final decisions regarding their care, protection, treatment, safeguards, rehabilitation while also ensuring their rights.

4.2. Child in Need of Care and Protection (CNCP)

CNCP under sec. 2(14) of Juvenile Justice Act means a “Child who is found without any home or settled place or abode and without any ostensible means of subsistence; who is found working in contravention of labor laws for the time being in force or is found begging, or living on the street; or Child who resides with a person, whether a guardian of the child or not, and such person - has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child or has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out or

has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person or who is mentally or physically challenged or suffering from any terminal or incurable disease, having no one to support or look after or having parents unfit to take care or who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated by the Juvenile Justice Board or child welfare committee”.³⁸

4.3 District Child Protection Unit (DCPU)

DCPU performs a very critical roles in protecting and the well-being of the children in India at the grassroot level, that are meant to facilitate the welfare and rights of children within a district. It is under the Integrated Child Protection Scheme, a government program for tackling protection of children's concerns such as child abuse, neglect, and CNCP.

The Juvenile Justice Act is implemented by this unit at the districts. 'DCPU' under Sec. 2 (26) JJ Act, 2015 is a “Child Protection Unit for a District, established by the State Government under Section 106, which shall function under supervision of District Magistrate (DM) to ensure the implementation of this Act and other child protection measures in the district”³⁹. It is tasked with executing the rights and protection activities and other services includes Adoption, and Foster Care in districts. The DCPU is functioning under the control of DM, who is also the chairperson of DCPC. The District Child Protection Officer (DCPO) is the nodal person in the DCPU. Under the DCPU are Child Protection Committees at the local levels: Block Level Child Protection Committee (BLCPC) and Village Level Child Protection Committee (VLCPC), Ward Level Child Protection Committee (WLCPC).

The DCPU is responding to child welfare emergencies, ensuring child rights, and coordinating across various levels of governments to create a children-friendly environment.

4.4 Structure and Composition of CWC, Section 27 of JJ Act.

³⁸ <https://kashmirreader.com/2023/09/19/who-are-the-children-in-need-of-care-and-protection/> last visited 27th feb, 2025

³⁹ Government of Assam, Chirang District, District Child Protection Unit (DCPU) <https://chirang.assam.gov.in/departments/district-child-protection-unit-dcpu> 24th february, 2025

1. Every CWC consists of one chairperson and additional four person. The Chairperson must have expertise in child welfare issues and at least one member of the board should be a woman
2. Members serve for maximum if three years, but they can be removed even before that.
3. The District Magistrate (DM) reviews the functioning of the CWC every three months.

4.5 Power of CWC - Section 29 of JJ Act

“The committee functions as a bench and have the power conferred by Criminal Procedural Code, 1973, on a metropolitan magistrate or as the case may be, a judicial magistrate of first class”.⁴⁰

The Child Welfare Committee (CWC) is responsible for making decisions regarding the care, protection, treatment, development, and rehabilitation of children in need of support. It also ensures that their basic needs and rights are met. When a CWC is set up for a particular area, it has the authority to oversee and manage all matters related to children who require care and protection under the provisions of the law.

4.6 Functions and Responsibilities of CWC, Section 30 of JJ act

- **Functions**

1. The committee can take Cognizance of children that are produced before it, Children who are neglected can be produced before this committee.
2. Conducting inquiries on child safety and well-being under this legislation.
3. Direct child welfare officers (CWOs), district child protection units (DCPU), and non governmental organizations (NGO) to conduct social investigations and submit reports to the committee.
4. Conducting an inquiry to determine who is qualified to care for and safeguard vulnerable Children In Need Of Care And Protection (CNCP).
5. To Direct placement of children in foster care facilities.
6. To guarantee the restoration, care, protection, and suitable rehabilitation of children who require such care and protection. This is determined by the specific care plan for that child. It also entails giving parents, guardians, and other suitable individuals, as well as children's homes or facilities, the essential instructions.

⁴⁰ JJ Act, 2015 <https://www.indiacode.nic.in/bitstream/123456789/2148/1/a2016-2.pdf> last visited 27th feb, 2025

7. To select a registered institution for the placement of every child that requires support which is based on that child's gender, age, disability and needs. This should be done by keeping in mind the available capacity of the institution.
8. Recommend actions to improve service quality for the District Child Protection Unit and State Government.
9. To certify the performance of the surrender deed by parents and provide them time to think or reconsider about their decision to keep the family together.
10. Ensure that lost or abandoned children are returned to their family in accordance with the Act's due process.
11. To Declare orphaned, abandoned, and relinquished children legally free for adoption after appropriate inquiry.
12. Take suo moto cognizance of cases and assist children in need of care and protection.
13. To Prohibit rehabilitating sexually abused children who have been reported as needing protection and care by the Committee, Special Juvenile Police Unit, or local police, as applicable.
14. Coordinate with other departments involved in child care and protection to address situations referred by the Board under sub-section (2) of Section 17 of this Act. These departments include the police, the labor department, and other organizations.
15. To Inquire and direct police or the District Child Protection Unit in cases of child abuse complaint.
16. Ensure children have access to proper legal services and perform additional duties as assigned.

• **Responsibilities:**

1. Hearing Cases of Neglected or Abused Children- CWCs provide a legally valid forum for children who have been abused, exploited, or neglected.
2. Recommending Rehabilitation Steps- They recommend education, occupation, and psychological counseling to facilitate a child's rehabilitation.
3. Coordination with Other Officials- CWCs coordinate with police, NGOs, and government departments to provide protection to children.
4. Ensuring Legal Rights- They ensure children's rights under the JJ Act and other child care legislation.
5. Awarding Interim Relief- CWCs can provide interim shelter, medical aid, or guidance to wayward children.

4.7 Procedure in respect of committee

1. The procedure is specified by section 28 of the act, and it provides that the committee shall meet at least twenty days in a month for observing regulations and procedures related to the transaction at its business sessions.
2. When the committee visits to an established child care institution, a sitting meeting is held. When the committee is not in session, a child in need of care and protection must be placed in a children's home or with a suitable adult.
3. If there is a disagreement among the committee members, the majority opinion will prevail.
4. If there is not a majority of this kind, the chairperson's opinion shall be considered, subject to the provision of a minimum number of committee members. The committee shall make no order declaring it invalid simply because a member is absent during any stage of the proceedings that are held.
5. This is relevant if there are at least three members who must be present to finally resolve the matter.

4.8 Role and effectiveness of Child Welfare Committee in Child Protection.

Child Welfare Committees plays a significant part in implementing the laws for protection of children, such as Juvenile Justice Act 2015, POCSO Act, Child Labour Act etc, their laws also provide a strong platform for CWCs to work effectively. The committee determines the Child in need of care and protection and inquire into such cases and give necessary help and protection to them by keeping them at Child Care Institutions (CCIs), foster care or for adoption. CWCs are not working single-handed, they work in association with police, NGOs and government agencies.

*Bachpan Bachao Andolan v. Union of India & Ors. 2011*⁴¹

In this landmark case concerning the child protection, child labour and trafficking, the Supreme Court of India highlighted the critical aspects of Child Welfare Committees (CWCs) and their effectiveness in protecting children from exploitation, child labor, and trafficking, the court reaffirmed that CWCs play vital part in rehabilitating children rescued from hazardous labour, trafficking and abuse, and directed the strict implementation of the JJ Act 2000 (later amended

⁴¹ 2011, 5 SCC 1.

in 2015) to ensure that rescued children are properly rehabilitated by placing them in child care institutions, foster care or send them back to their family, the court further direct the committee to collaborate with police, NGOs, and government agencies, labor departments to ensure effective child protection and rehabilitations.

The court also placed the loopholes and deficits in the efficiency of the the committee, procedural delay, unavailability of skilled persons and poor follow up mechanisms and demanded reforms for enhancing their efficiency and directing every one of the state governments to make every district have an efficient CWC to deal with children in need of care and protection (CNCP), it placed emphasis on the necessity of highly skilled CWC members who will be qualified enough to effectively deal with child welfare cases.

Role of CWCs

4.8.1 Inquiring and providing care to CNCP

CWC identifies a child who are abandoned, abused, orphaned, or in conflict with the law and provides them with immediate support, they also ensure temporary shelter, medical care, psychological counselling, legal aid to these children. The Juvenile Justice Act empowered CWC to take up such cases and also prescribed process for CWC to follow.

Inquiry by the committee

i. Identifying and Production before the committee of CNCP

Individuals and organizations in charge of child welfare may bring a CNCP before the CWC. This includes police officers, governmental employees, and Child Welfare Police Officers. Officials from the District Child Protection Unit (DCPU) and labour inspectors are also authorized to do so. Furthermore, Childline Services, NGOs, social professionals, or any concerned citizen with a feeling of civic responsibility may intervene. Healthcare personnel such as nurses, doctors, and hospital managers from maternity or nursing homes can also offer a child to the CWC. In some situations, a kid may contact the committee independently to request assistance. Such children in distress or who is neglect, abandoned, abused physically, sexually and mentally must be brought before the committee within 24hours of being found.

- ii. **CWC after identifying such CNCP, shall gather basic information such as**
 - a. Name, age, gender.
 - b. Circumstances in which the child was found
 - c. If there is any signs of abuse, distress or neglect.
 - d. And if the child is able to give statement and is old enough, he or she may give statements which shall be recorded.
 - e.
- iii. **Social Investigation Inquiry** shall be prepared by Probation Officers, Child Welfare Officer (CWO), District Care and Protection Unit (DCPU), NGOs etc, and the committee will decide the final order, if there is any history of abuse, neglect, exploitations and educations and medical status of such child. The Committee also verifies if it is safe to return them to the family or guardian
- iv. **Determines the well-being of children** the committee shall ensure the safety of CNCP by providing protection, if it is not safe to return them to the family, they shall be provided an alternative remedy such as placing them in foster care, or for adoption, sponsorship programs and Child Care Institutions (CCIs) as last option. The committee shall see to it that the children get the necessary support legally and financially and rehabilitations.

“After completion of the inquiry, if the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to an SSA if the child is below six years of age, children’s home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of 18 years”⁴²

4.8.2 Conducting inquiries and declaring children legally free for adoption-

In the orphaned and abandoned child, the CWC will trace out the guardians or the parents of such a child. In case, upon proper enquiry, the committee verifies that the child is indeed orphaned without possessing any guardian or has been left behind, then it should formally pass an order that the child is independent for adoption under the law, which is to be done in two months or four months depending on the age of the child, adopted under the CARA. The State

⁴² Child Welfare Committee, Module 5, UNICEF, p.13 last visited 23rd march, 2025

of the World's Children Report by UNICEF (2014) had stated that India was found to have around 29.6 million children who were orphans. However, CARA states that fewer than 500,000 children are institutionalized every year, and fewer than 3,000 to 4,000 adoptions occur every year.⁴³

Conducting Legal investigations/ inquiries

- i. The child will become free legally only if adopted after due inquiry on the part of committee or biological parents should either surrender or (parents voluntarily relinquished due to social or economic reasons) voluntarily, or the child shall have to be declared abandoned (child left without parental care or guardianship) or orphaned (both parents dead) by CWC. The committee makes investigations into the history of the child and determines if the child is CNCP. In abandoned children, after two months' mandatory search for biological parents/family members, orders pronouncing children legally free for adoption are issued.
- ii. Legally Free for Adoption declaration of the child: after inquiry is done, the committee issues a Legally Free for Adoption Certificate under JJ Act, 2015, and placement in the due process, and forwarded the child to CARA system for adoption.

Abandoned child: The child is taken into safe custody by social workers, police officers etc, and produced them before CWC within 24 hours, a missing child report shall be issued and if no claim is made by the family, CWC shall declared them as free for adoption under the law.

Orphaned child: Death certificate of the parents should be verified and declared under the law for adoption after a family traced has been conducted, and they shall be placed in CCIs.

In case of surrendered child: when the written request issued by the parents or guardian to CWC is received, within 60 days reconsideration period, the parents or guardian can withdraw such filing, but in default thereof the child shall be deemed to be free for adoption under the law.

4.8.3 CWC ensures Rehabilitation and Social Re-integration of rescued children and child victim

CWC works with Government and NGOs to provide children with education, foster care,

⁴³ The Baby Bureaucracy: Child Trafficking And Adoption Laws In India <https://theamikusqrae.com/the-baby-bureaucracy-child-trafficking-and-adoption-laws-in-india/>

Last visited 19th march, 2025

sponsorship programs, and institutional care. Section 39 specifies that CWC should select a recognized institution to place a children who requires it, based on their gender, needs and handicap. Which is being done while retaining the available capacity of the institution.

- **What is Rehabilitation?**

According to WHO, rehabilitation is a “set of interventions designed to optimize functioning and reduce disability in individuals with health conditions in interaction with their environment”⁴⁴.

- **Foster Home**

Forster home is “A household in which care is provided to a child who has been orphaned or removed from the home of his or her natural parents (as for reasons of abuse, neglect, or delinquency).”⁴⁵

- **Child Care Institutions (CCIs)**

The committee monitored CCIs to make sure that children received the required nutrition, protection and development opportunities by guaranteeing the care, restoration, protection to those in need. If Children in need of care and protection has been placed in CCIs, and that it is or the well-being of the child, effort must be made to restore them to their family or legal guardian, as the main goal of the provision is family friendly care and prevent unnecessary institutionalization of the children and an institutional care such as Child Care institutions should be used only when family based care is not optional, however the committee must make sure that returning to the family or guardian is safe for the children. This is determined by the specific care plan for that child, it also entails giving parents, guardians, and other suitable individuals, as well as children's homes or facilities, the essential instructions, and the committees conducts a follow-up checks to be certain about the well-being of the child.

- **The Juvenile Justice (Care and Protection) Act, 2015**

⁴⁴ WHO <https://www.who.int/news-room/fact-sheets/detail/rehabilitation#:~:text=Rehabilitation%20is%20defined%20as%20%E2%80%9Ca,in%20interaction%20with%20their%20environment%E2%80%9D>. last visited 21st march, 2025

⁴⁵<https://www.merriam-webster.com/dictionary/foster%20home#:~:text=Legal%20Definition-.foster%20home,abuse%2C%20neglect%2C%20or%20delinquency>) last visited on 3rd march, 2025

The JJ Act main principle is recovery, not punishment. A child is considered to have fallen out of the safety net if they ever come close to the system of justice for criminals and been denied the privilege to have a safe and stable life as a child. In difficult situations, Children in Conflict with laws is to be viewed as children, and those justice system should intervene to resolve the situation. A person is not born criminals, therefore they should be given a chance to redeem themselves back into the society and rehabilitate them and not punish them as an offender, by enrolling them in schools under RTE Act, 2009 and ideally by returning them to the family or guardian if not to observations homes.

The ultimate goal of any children's home should be to return a child who has been neglected, mistreated, or abandoned to his family environment; but, if such restoration is impossible, a child can be placed. The Child in need of care and protection is also entitled to legal representation and free legal assistance from the State Legal Services Authority (SLASA) or Probation Officer in District care and protection unit (DCPU).⁴⁶

4.8.4 CWC deals with cases of child abuse and neglect.

This issue is still a prevalent and very worrisome issue in India, affecting millions of youngsters every year. Between 2017 and 2020, almost 24 lakh cases of abuse of children were reported and girl child being the most abused. In response to the situation, the government has provided various legal provisions to prevent such issues. These laws emphasize prevention, early identification, and punitive action against violators. The JJ Act of 2015 explains child abuse includes all type of physical, sexual, emotional, or financial harm inflicted on a child. This includes neglect, abandonment, exploitation, and any other sort of mistreatment that jeopardizes a child's health.

Child abuse can take various forms, including sexual, emotional, physical and neglect. Bodily abuse happens when the guardian deliberately causes inflict to a body to the children. Sexual abuse occurs when children are sexually exploited and engages in such activity. and when a the mental health development of the children is negatively impacts by the parents

⁴⁶ <https://www.nipccd.nic.in/file/reports/kit17.pdf> last visited 18th march, 2025

is an emotional abuse. Neglect is when a guardian fails to provide the required care and support for a child.⁴⁷

CWCs are tasked to identify such victims, and hear and decides the such cases, whether they should be placed in a foster home, child care institution or with another guardian. CWCs is empowered to receive cases of emotional, sexual and physical abuse and child labor from police officer, NGOs, or individuals under POCSO Act, 2012, they conduct counselling and hearings to decide on protective measures, including placing the child in institutional care, they also recommend legal action against abusers and ensure the child receives protection under POCSO (2012) and JJ Act (2015). Section 31 of JJ Act 2015 authorised CWC to intervene in cases of child exploitations and abuse. They further provide counselling and medical care for victims, placement in child protection homes if family reintegration is not possible.

In *Shiela Barse v. UOI (1986)* the Supreme Court held that CWCs is responsible to ensure rehabilitation of children placed in government- run shelter and that children should not be abandoned, neglect and abuse.

- **CWC identifies and inquire into reports of child abuse and neglect:**

- i. Children who is being abused in various forms and who are being neglected can be reported to CWC through police, social workers, NGO's, or self-reporting by the child etc.
- ii. And when the child is produced the committee shall provide such children immediate care and protection including medical treatment and psychological counselling will be provided if necessary.
- iii. The committee is responsible for ensuring the victims have entry to legal aid assistance and are adequately represented and that their voice are heard in the proceedings.
- iv. Appointing Guardians for Child victims as in many cases the abuser may be their parents or family members.

- **Protection of Children from Sexual Offences Act's role**

⁴⁷Neha Singh- Legal research on Child Abuse
https://theadvocatesleague.in/assets/pdf/papers/legal_research_on_child_abuse.pdf last visited 18th february, 2025

In case of sexual abuse, the JJ Act defines Child in need of care and protection as any child “who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts”⁴⁸ CWC is the vital points in the POCSO Act in ensuring protection of the victim of sexual abuse.

The act required the children who is does not have a home, a family or the support of their family be brought before the CWCs

i. **Ensuring legal representation for child victim**

Section 40 of the act child victim has the right to free legal aid, and CWC will ensure sure rights provided to child victim, who are helpless and vulnerable, and will appoints a support person such as social worker, Child Welfare Offices or trained counsellor to support the child during the proceedings.

ii. **Protection of the Child identity**

CWC have to make sure that the identity of the children is protected and not unveiled in public records or any media also by maintaining confidentiality

iii. **Monitoring court proceedings**

The committee sees to it that the face to face interaction of the victim and the accused is avoided and follow a child friendly court proceedings.

• **What happens after identifying a child who is abused and neglected?**

Once an abused or neglected child is being identified, particularly under laws like POCSO Act, JJ Act, the CWCs follows a set of legal and procedural steps to make sure that a child is rehabilitated, protected and safeguarded:

- i. **Immediate protection and safety** - by placing them in a safe and protective environment such as foster care, or Child Care Institutions, Section 17 of the Act required the medical test of the child victim by registered medical professional
- ii. **Social Investigation Report (SIR)** – CWC appoints or assigns Child Welfare Officers or DCPU to conduct detailed inquiry into the Child’s background, by

⁴⁸ CWCs posted by OptimizeIAS Team <https://optimizeias.com/child-welfare-committee-cwcs/-:~:text=Rules%20under%20POCSO%20Act%20make,to%20be%20produced%20before%20CWC.> Last visited on 26, march, 2025

- investigating the a) nature and severity of abuse and neglect, b) Family environment and history.
- iii. **Legal Proceedings and action Against the perpetrators** – CWC shall work with the POCSO Special Courts, Police for criminal investigation, Legal actions can be taken under POCSO Act (for Sexual Abuse), Indian Penal Code (IPC) (physical abuse, assault, cruelty), JJ Act, 2015.
- iv. **Decision of CWC** – CWC decides on the well being of the children for their rehabilitation and care and may be;
- placed in CCIs or Homes if it is unsafe for the child to return back to the family,
 - or Foster Care
 - Guardianship – if the children is orphaned and no such suitable foster care is available, CWC may appoint them a legal guardian
- v. **Psychological counselling and rehabilitation** – in sexual abuse cases which affected the mental health of the child, the committee ensures their recovery by providing them counselling and rehabilitation.
- vi. **Monitoring and follow-ups** – after placement in homes, CCIs, or for adoption, the committee conduct a continuous monitoring, by District Care and Protection Unit officers and also conduct periodic reviews

The committee is a crucial body in the protection, rehabilitation, and welfare of the children who have been abused or neglected, the committee also ensures that the child victim receives necessary medical treatment, psychological support, and legal aid safeguard their rights, as provided under laws like Juvenile Justice Act and Protection of Children from Sexual Offences Act, it prioritizes their long-term rehabilitation, and thrive free from abuse or neglect.

CHAPTER V

CHALLENGES FACED BY CWCS (INCLUDING CASES HIGHLIGHTING THE GAPS)

5.1 Introduction

Child Welfare Committees are intended to be a protective agency for vulnerable children like neglected, abandoned, physically and mentally abused or vulnerable to exploitation. CWCs must be constituted as per the Juvenile Justice Act, 2015 only with the mandate of care, protection, and rehabilitation of child in need of care and protection. They are quasi-judicial agencies with a first priority decisions on the future of a child, i.e., foster care, adoption or child care in a CCI. On paper, CWCs are to be effective, well-equipped, and child-friendly, but in reality, they are struggle with severe resource shortages, bureaucratic inefficiencies, lack of coordination with the police, and opposition from society. This results in thousands of children falling through the gaps of the very system that was supposed to rescue them. This chapter discusses the major issues CWCs encounter, the influence of CWCs on the well-being of children, and case studies in the framework of system failure. It also elaborates on milestone judgments that have contributed to India's child protection system.

5.2 Structural and administrative challenges

5.2.1 Shortage of functional Child Welfare Committee

Dysfunction or lack of CWCs poses serious ramifications on the protection of vulnerable children. CWCs are opened with children being in mind, to serve importantly as custodians of the child protection and welfare by making regulations in cases of adoption procedure, conducting a study into situations of child abuse, and monitoring care and protection of vulnerable children. When such circumstances arise when these committees are not functional, as was the case with West Bengal during 2013-2015, the whole child protection system is affected. The non-functional CWCs during this time left a Child Welfare governance gap, which was taken advantage of by illegal practices, including child trafficking. Due to a report submitted by the NCPCR, failure by effective CWCs in the key years resulted in the breakdown of child protection mechanisms and children were exposed more to abuse and exploitation (NCPCR, 2021). Establishment of an-hoc committee in lieu of legislatively mandated CWC further worsened the situation since no such committees are defined under JJ Act, 2015, and did not possess legal powers to perform the significant child welfare duties efficiently. Additionally, the Indian Journal of Social Work identifies that CWCs in general do not easily get their orders executed, particularly when they are deprived of adequate resources and legal assistance. The absence of adequate infrastructure, monitoring, and training of personnel renders CWCs unable to safeguard children. In West Bengal, the non-functioning of the CWC facilitated child trafficking syndicates to flourish, and CWC members confessing to being intimidated into issuing adoption certificates against their will.

In the year 2012, Child Rights organizations complained that as per norms only 36 percent i.e. every district should have 11 CWCs and as of now only six are functioning in Delhi Districts in spite of the directive of Juvenile Justice Act and Supreme Court order.

This insufficiency of functioning CWCs is no exception but a sign of a broader systemic problem where child welfare systems are usually underpowered by weak resources, absent proper frameworks, and feeble accountability mechanisms. Augmenting the functional competency of CWCs is hence inevitable to ensure that Indian children are well protected and safe.⁴⁹

5.2.2 Shortage of Trained Members

⁴⁹ Ann Sarasa K R, The Criminal Law Blog, Why we need to strengthen Child Welfare Committees <https://criminallawstudiesnluj.wordpress.com/2022/01/11/why-we-need-to-strengthen-child-welfare-committees> last visited 23, march 2025

Each CWCs is supposed to consist of a chairperson and four other members, with at least one woman and one expert in child welfare, However, in many states, vacancies remain unfilled for months or years, making it difficult for CWCs to function properly, it also creates several challenges in their work, which can have significant implications for child protection and welfare, and many members lack expertise in child psychology, law, or social work, affecting the quality of decisions regarding a child's future. Since CWCs members work on an honorary basis, many treat their responsibilities as secondary, leading to inconsistent attendance and lack of commitment, also such member may be a social worker or a lawyer, but without proper, ongoing training in trauma care, child psychology or legal issues surrounding children's rights, they may not be equipped to handle cases appropriately. The complexities of abuse, especially psychology or sexual abuse, require a delicate, informed approach. If CWCs members aren't adequately trained, it can result in decision that are not in the best interest of the child. Many CWCs, such as Chennai CWCs struggles with lack of sufficient members, inadequate leadership, and poor infrastructure. These shortcomings hinder their ability to function efficiently and provide necessary services to CNCP.

The effectiveness of CWCs heavily relies on the expertise and skills of their members, who are responsible for making critical decisions about children's well-being, unfortunately, many members of CWCs are not fully equipped to handle these challenges, leading to significant gaps in the protection and care that children receive.

a) Lack of specialized Training

One of the most glaring amongst the numerous challenges that most CWCs deal with is lack of specialized training among members. While some members might possess education in law or social work and health, they would not, as a general rule, have the specialized know-how and capability for dealing with children who are victims. As Baipai observes, child welfare education is not all about learning law and policy, it is learning about the impact of trauma on a child's mind, emotions, and behaviour, and intervention for the best long-term interest of the child. Absent such specialized training, members of CWCs may not be capable or not have the ability to identify the required needs for the children or decides for the children. Eg, a trafficked child can present distress that is not even readily apparent to one lacking proper training. If CWCs members are not knowledgeable enough to deal with such cases in a sensitive manner, they will end up making decisions that do not aid a child's recovery and reintegration into society in a complete manner.

b) Insufficient knowledge of children Rights and legal frameworks

CWCs members have to make irreversible decisions, such as putting the children in residential care or going ahead with adoption. In order for this to be effective, they must know about children's rights and legal systems that incorporate such rights. But Kumari finds that many of the members of CWCs are poorly aware of laws and procedures that have been put in place for safeguarding children, e.g., Juvenile Justice Act, and Protection of Children from Sexual Offences Act. Despite that these laws aim to safeguard children, they are intricate, and if poorly interpreted, may be challenging to apply in the proper way. Under-informed members may hinder interventions on time or make inappropriate decisions that injure instead of saving vulnerable children. Secondly, there is usually no continuous legal training or professional capacity building to provide members with exposure to recent law knowledge or developing international child protection policies, thus leaving them untrained in the rapidly changing field of child welfare.⁵⁰

c) Inadequate continuing education and capacity building

The lack of continuous training procedures is a key problem facing CWCs, according to Bajpai. Child protection is a multifaceted field, and law, policy and best practice change. Nevertheless, the majority of CWCs members do not have access to systematic, formal training or education. This reduces their ability to respond to new issues like cyberbullying, trafficking, or other concerns brought in by the digital era. As Mick Doel in his *'Social Work with Children and Families'* book points out, short of the powers to learn more, CWC members are inundated with stale information that is impacting their effectiveness and ability to care for children. With the evolving nature of child abuse and exposures to new forms of abuse in the new world, CWCs need to be equipped to understand and deal with such challenges. In the absence of professional development, members are unable to grow and learn the competencies required to address the new and more cunning forms of abuse. Children continue to be overlooked by the congested system.⁵¹

d) High turnover and burnout due to inadequate support

⁵⁰ Kumari, R. (2017). *Child Rights and Child Protection*. Roli Books

⁵¹ Bajpai. Asha, (2014). *Child Protection in India: Policy, Law, and Practice*. Oxford University Press

The high CWCs member turnover rate is also to blame for the untrained staff shortage. Social workers and counsellors, in particular, quit their jobs because of stress, burnout, and absence of supervision. Intensive emotional demands, combined with labor-intensive work, as well as being saddled with the responsibility of making decisions affecting the long-term lives of vulnerable children, combined with long working hours and an unsatisfying resource environment, cause many professionals to become burnt out. Additionally, the absence of career development and opportunity for recognition within CWCs as a cause for such turnover. This forms a vicious cycle new, inexperienced staff often fail to overcome difficulties with the job, further perpetuating the issue of the system. Continuity in the case of child protection is needed, but the turning over of trained staff means it is impossible to maintain a stable, experienced staff. Therefore, children will most probably experience delay or variable care, which will negatively affect their health.⁵²

e) Impact on Decision-making and child protection outcomes

Insufficiency of properly trained human resources has a direct correlation with the decisions made by CWCs. As Bajpai pointed out in her book '*Child Protection in India: Law and Practice*', if the members of CWCs are not adequately trained with required skills and knowledge, they might fail to evaluate the needs of a child properly, and this could result in substandard decisions that inadvertently re-traumatize the child, further worsening their healing process, apart from, dealing with vulnerable children demands emotional strength and proper training, without required skills, employees might not be able to provide the care and support such children deserve and require. This creates burnout and frustration, and thus impacts the quality of decision-making. Without proper support, both emotionally and professionally, members of CWCs are less likely to provide the reflective, child-centered interventions. Lack of trained staff in CWCs is one of India's biggest child protection system challenges. Since there is no access to both child welfare procedures and legal information training, CWCs members can't address the children's advanced needs.

The shortage of trained personnel in CWCs is one of the most significant challenges in India's child protection system. Without adequate training, both in legal knowledge and child welfare practices, CWCs members struggle to meet the complex needs of children in their care. To remedy this situation, the Indian Government and relevant child welfare organizations must

⁵² Doel, M. (2012). *Social Work with Children and Families*. Sage Publications

invest in the continuous training and professional development of CWCs members. Only by ensuring that CWCs members have the right tools and support will the child protection system be able to provide the care and protection that vulnerable children truly need.

5.2.2 Bureaucratic (Government) Delays and inefficiencies

The role of CWCs is greatly impacted by bureaucratic red tape, or bureaucratic obstacles, that results in a delay in the disposal of cases of abandoned, orphaned and abused children, and declaration of children legally free for adoption, liaison with police, child protection units and judiciary. The undue delays in making decisions keep the children awaiting in shelters or in insecure situations for months and years. Most children miss early adoption because their documents are not being cleared in a timely fashion.

a) Bureaucratic delays

This delay occurs when there is ineffective or slow reaction to issues as a result of levels of bureaucracy, procedural formality that is unnecessary, and government department lack of coordination. For CWCs, delay can be disastrous for children requiring urgent care, protection, or intervention. In the majority of cases, the children can be kept in care homes or shelters for prolonged periods because their cases are slowly processed, either for adoption, rehabilitation, or for court intervention. The children are therefore subjected to long periods of emotional distress and their health is negatively impacted.

In *Bachpan Bachao Andolan V. Union of India* .⁵³ the court emphasized the havoc wrought by child labour and the government's inability to safeguard vulnerable children. Bachpan Bachao Andolan, brought to light that bureaucratic inefficiencies and delay were thwarting enforcement of law intended to put an end to child exploitation. These delays resulted in children still suffering in insecure working conditions, and rescue and rehabilitation efforts were in fits and starts. The court called for action immediately, calling on the government to put an end to the red tape and ensuring that measures put in place to safeguard children were actually safeguarding them. The case highlighted the fact that administrative delays were not only a technical issue, but a real bar to children receiving the safe and dignified lives to which they are entitled.

⁵³ (2011) 5 SCC 1

Sheela Barse v. Union of India (1986) ⁵⁴

The Supreme Court focused on child-friendly judicial processes and ordered that, cases involving children should be handled on a priority basis, CWCs should look into ensuring children residing in institutions are not sheltered in conditions below standards or neglected, and legal assistance must be offered to children for their protection.

In spite of these instructions, bureaucratic delays continue to slow down the child protection system due to mounting unnecessary paperwork, and other formalities, leaving thousands of children without timely action

The *Deccan Herald* report, '*A lifetime of consequences for minors in the justice system,*' recognizes the long-term impact of bureaucratic delays in the Juvenile Justice System, which tends to delay the timely rehabilitation and fair treatment of juveniles. It brings to the fore the manner in which children within the legal system are subjected to prolonged detentions and tardy trials, causing severe psychological damage and curtailing their chances to become useful citizens of the world. Rather than giving them the care that they would require for rehabilitation, the institutional inefficiencies drive these children through an unjust cycle of prolonged legal battles and uncertainties. This article throws light on the bureaucratic obstacles behind such delays, e.g., the lack of coordination between various authorities, sluggish hearings, and weak resources. Instead of rehabilitation, these system defaults do not provide timely justice and adequate intervention to children. This article advocates for immediate reformations of the youth justice system, maintaining that bureaucratic red tape should be pared away in order to ensure children who are trouble with the law receive the aid and assistance that they must reshape their lives. Through this process, it stresses the pressing demand for a justice system that not only reforms, but also rehabilitates, compared to the delayed processing and punish mentality.⁵⁵

b) Administrative inefficiencies in coordinating services

Another significant challenges faced by CWCs is the lack of coordination between various government departments and agencies. Child protection requires a multidisciplinary approach,

⁵⁴ (1986) 3 SCC 596

⁵⁵ A lifetime of consequences for minors in the justice system article by Varsha Gowda

<https://www.deccanherald.com/india/karnataka/bengaluru/a-lifetime-of-consequences-for-minors-in-the-justice-system-3008893> last visited on 3rd march, 2025

with CWCs needing to work closely with police, social workers, healthcare providers, and judicial bodies. However, often these agencies do not communicate effectively or share information in a timely manner, leading to gaps in care and decision-making delays.

In trafficked children's cases, prompt coordination between the CWCs and law enforcers will give the child security. Bureaucratic inefficiency normally leads to children being dumped at unsafe places or not legally or socially helped where needed. This administrative lapse can be observed through the case of *M.C. Mehta v. State of Tamil Nadu (1991)*, wherein the inefficiency of government departments in handling child labor and exploitation came to the forefront. The Supreme Court noted that the absence of coordination between departments had enabled children to continue working in dangerous environments even though it was prohibited under law.⁵⁶

c) Procedural Delays in decision making

Bureaucratic inefficiency also manifests in procedural delays in CWCs, where administrative and legal processes take more time than required to make a decision. Under the Juvenile Justice Act 2015, CWCs must make care and protection decisions of children within a specific timeframe. Delay in completing legal formalities, for example, investigations in cases and reporting, is the norm. "When court decisions in a heinous crime like rape come after a generation has passed, the common man feels that the judicial process lacks sensitivity," said the President, highlighting the crucial need for the judiciary to address delays that corrodes public faith in the justice system, "It is a sad aspect of our social life that, in some cases, people with resources continue to roam around fearlessly and freely even after committing crimes," she added during the conference organised by the Supreme Court of India.⁵⁷

Laxmikant Pandey v. Union of India (1984) ⁵⁸

The court passed this ruling, putting before us the means in which bureaucratic ineffectiveness in adoption procedures was causing delay to children in need of adoption and to potential adoptive parents. The court imposed stringent standards of adoption procedures in India in an

⁵⁶ (1991), (1991) 1 SCC 283

⁵⁷ The President touched upon the broader challenges facing the judiciary, particularly the backlog and pendency of cases <https://www.hindustantimes.com/india-news/delays-in-justice-administration-undermine-public-s-trust-president-murmu-101725255255601.html> last visited on 1st April, 2025

⁵⁸ 1984 AIR 469, 1984 SCR (2) 795 1984 SCC (2) 244, 1984 SCALE (1)159,

effort to ascertain that orphaned, abandoned, and surrendered children are being put into safe environments through an open process. The apex court ruled that CWCs must ensure children declared legally free for adoption are not trafficked or exploited, and only registered Child Care Institutions (CCIs) can engage in adoptions. CWCs must ensure adoptive parents are background-checked prior to surrendering a child to them.

Yet, in spite of all these measures, procrastination by CWCs in issuing orders making children legally free for adoption has led to gaps in the effectiveness in safeguarding children.

d) Consequences for children's well-being

The impact of CWC inefficiencies and administrative delays can be severe. Children subjected to prolonged waiting periods in shelters or temporary homes are subjected to emotional, psychological, and physical stress, a UNICEF study found institutionalized children, particularly those under indefinite placements with no determinations of their futures, are at greater risks of abuse, neglect, and poor mental health.

These inefficiencies and these times demand systemic reform and child welfare commitment. Several things have been proposed in the years past, including the establishment of more effective monitoring systems for CWCs, enhancing inter-departmental coordination, and the provision of sufficient staffing and training for workers who work in child protection services

The NCPCR has also recommended steps to streamline processes and avoid delays in child protection services. They include computerization of case files, establishing child protection committees at the district level, and cases being processed within time frames laid down.

5.3 Legal procedural challenges

5.3.1 Lack of Enforcement power

CWCs are responsible for deciding what is the best interest for the child, but they do not possess direct enforcement powers. They depend on police, district authorities and child protection units to carry out their orders, which often leads to; delays in rescuing children from abusive situations, failure to ensure that families to ensure that families comply with rehabilitation orders. Lack of follow up to check if a child is safe after being reintegrated into their family. Their inability to enforce the decisions they make is one the pressing issues.

While CWCs are empowered to recommend interventions such as placing in foster care, institutional care, or restoring them to their families, they often lack the power to ensure that these decisions are actually implemented, for example, if a CWCs orders a child to be placed in a safe institution due to abuse, the success of this decision depends on the cooperation of local authorities or the institution itself. It is such organizations as these that are short-staffed, under-funded, or plain unresponsive, which allow the welfare of the child to be in the balance. When that occurs, those children who urgently need protection are left in hazardous situations, ongoing and ongoing. The psychological impact on children who may already be experiencing trauma, is huge, left waiting around in unstable and dangerous environments simply because the CWCs cannot impose its orders.

In the absence of an effective mechanism for ensuring accountability to the concerned agencies, the CWCs themselves may themselves begin feeling helpless and reduce their credibility and effectiveness among the children and families that they serve. This weakness in the enforcement power has been specifically highlighted in most reports on the functioning of CWCs, however, reference the lack of resources and coordination as generally discouraging successful intervention in emergency cases.⁵⁹

5.3.2 Limited legal authority and Jurisdictional conflict

Another challenge is the limited authority CWCs have over family-related issues, particularly when it comes to child custody disputes. CWCs are entrusted with decisions about children's care and protection, but they do not have jurisdiction over family law matters such as custody and guardianship. These matters often fall under the purview of Family Courts, which can create a significant gap in child protection. CWCs faced challenges in Jurisdictional conflict with other judicial and quasi-judicial bodies, such as family Courts, Juvenile Courts and even the National and State Commissions for Protection of Child Rights, these overlaps in authority often lead to confusion and delays, impacting the speed and effectiveness of child protection intervention.

Although CWCs are authorized to recommend actions like foster care placement, institutionalization, or returning them to their parents, they are usually not entrusted with the authority to make sure that such decisions are actually implemented, for instance, if a CWCs

⁵⁹ NCPCR (2018). Report on the Challenges and Impact of Child Protection Mechanisms in India. NCPCR

orders a child to be admitted in a secure institution because of abuse, the efficacy of this decision will depend on the cooperation of the authorities in the region or the institution itself. It is such organizations that are understaffed, underfunded, or worse still, unresponsive, who are capable of having the child's welfare left in the balance. When that is possible, children who so desperately need to be safeguarded are permitted to continue being threatened, day in and day out. The psychological impact on children who might already be enduring trauma, is immense, to be left standing around in unstable and dangerous environments simply because the CWCs are unable to enforce its regulations.⁶⁰

Without an effective accountability system in front of the concerned authorities, the CWCs themselves would themselves lose efficacy and credibility and potency among the families and children they work with. This lack of strong enforcement authority has actually been highlighted in most accounts of the operation of CWCs, although refer to insufficient resources and coordination as often discouraging effective intervention in emergencies.

MC. Mehta v. State of Tamil Nadu (1996)⁶¹

The Supreme Court ruled that children must be removed from hazardous labor and rehabilitated, CWCs and district authorities should oversee the reintegration of rescued child labourers into schools and safe environments. However, due to the limited authority of CWCs, many rescued children return to exploitative labor because there is no strict enforcement of rehabilitation programs.

5.4 Infrastructure and Financial Constraints

5.4.1 Poor Infrastructure

CWCs should be a safe and welcoming space for children. However, many Committee function in overcrowded and poorly maintained offices, rooms shared with other government departments, reducing privacy. Locations within police stations or court premises, which can intimidate children.

⁶⁰ 55 Zeeshan Thomas, CWC Can't Act As Family Court In Child Custody Matters: Madhya Pradesh High Court Dismisses NGO's Plea Seeking Transfer Of Power With 10K Cost <https://www.livelaw.in/news-updates/madhya-pradesh-high-court-power-to-decide-custody-of-children-family-court-cwc-jj-act-191494> last visited 20th march, 2025

⁶¹ (1996) 6 SCC 756

Digitalising cases recorded is essential to keep the documents protected “Rule 25(i) of the Model Rules 2007 direct CWCs to maintain a detailed record of every on going case and every closed case should have the summary of the whole case along with the final order given by the CWCs”, “CWCs were all provided with computers to digitise their records,” said former UNICEF child protection specialist, R Vidyasagar. “Most CWCs are underutilized for a variety of reasons. The goal was to create a national network in which all of the children’s information could be linked to the bigger network for missing children. This type of device would aid in locating missing children. CWCs must digitize their records since preserving physical documents insufficient”⁶², However, there is lack of an operational computer which results in the delay of digitizing records.

As per Rule 82(2) of the Model Rules, 2007, state governments are responsible for ensuring that every Child Welfare Committee (CWC) has adequate staff, including a welfare officer and a computer operator. However, in reality, many CWCs operate with minimal resources, making it difficult to maintain proper records and carry out their duties effectively. This shortage of support puts additional strain on committee members and impacts their services for children. The National Commission for Protection of Child Rights (NCCPR) conducted a study on CWCs, and found out that CWCs of some of the largest states that holds a large population of children does not have reliable data recorded on their cases.

Sampurna Behura v. Union of India (2018)⁶³

The court pointed out the importance of the Juvenile Justice Act, 2015, and the requirement for adequate infrastructure, facilities, and services in child care institutions. The case specifically addressed the conditions in child care homes, which often suffer from poor infrastructure, inadequate resources, overcrowding, and lack of proper care for children. The governments are directed to ensure the effectiveness conditions of CWCs and other child care institutions comply with the standards set forth in the Juvenile Justice Act. This includes ensuring proper infrastructure, cleanliness, security, and the provision of necessary services for the rehabilitation of children in such institution

⁶² Child Welfare Committee grappling with issues

<https://www.newindianexpress.com/cities/chennai/2018/Sep/24/child-welfare-committee-grappling-with-issues-1876179.html> Last visited on 26th february, 2025)

⁶³ (2018) 4 SCC 433

Despite this, many CWCs across India still lack proper facilities, making it difficult for them to function effectively.

5.4.2 Inadequate funding and staff shortages

While central to children's welfare, CWCs are always insufficiently funded. This has the following effects such as delayed salaries for CWC members leading to lack of motivation, limited funding for rehabilitation schemes among children, insufficient support staff such as social workers and psychologists. CWCs are unable to offer even basic services, like counselling, medical attention, and vocational training to children under their care if they are not properly funded.

A shortage of funding directly affects their capacity to offer basic services, it prevents the committees from taking care of their facilities in the best way, investing in crucial resources such as medical treatment, education and therapy services, and providing full-service programs to treat the multiple needs of the children they serve. The outcome of a shortage of funding usually is overcrowded facilities, old infrastructure, and underdeveloped support systems that cannot cope with the increasing demand for child welfare services.

Case study; Muzaffarpur shelter home scandal 2018;⁶⁴

Girls in a government operated shelter home in Bihar were sexually exploited for years even though CWCs were entrusted with their welfare. Failure to exercise proper regular monitoring and financial supervision enabled exploitation to occur. The case brought forth extreme failure in functioning of CWCs and child care institutions, and increased regulation and monitoring was demanded. The case emphasized how absence of supervision of CWCs and insufficient resources have disastrous effects on children.

Additionally, CWCs have serious staff shortages that worsen the issues created by underfunding. With so few trained personnel, such as social workers, psychologists, and caregivers, exhausted current personnel endure burnout, compromised quality of care, and inability to provide individualized attention to children who may need highly specialized treatment in order to heal and recover. CWCs in the majority of instances are under the pressure

⁶⁴ Muzaffarpur shelter home: India court convicts 19 in abuse case <https://www.bbc.com/news/world-asia-india-51172513> (Last visited on 26th february, 2025)

of disposing of emergency cases and leaving the children with long-term care problems, thereby neglecting the due attention and service. Excessive numbers of staff result in loss of continuity of care due to frequent changes of caretakers by children, negatively affecting their emotional well-being as well as overall development.

The intersection of limited resources and insufficient employees fuels a cycle of poverty, in that too little does too little, that results in placing more on the already overburdened workers. Thus, the services of CWC are generally reduced, that robs vulnerable children of the care needed to heal and develop in a healthy and safe environment. The situation calls for prompt reform, including increased government investment in child welfare services, improved conditions of the workforce, and a long-term commitment to stable models of funding that will allow CWCs to address the needs of children in their care.

CWC were envisioned as a ray of hope for the distressed child, the abandoned child, the abused child, the neglected child, and the child ensnared in circumstances beyond his or her control. But reality on the ground fails to meet this ideal. CWCs, who have the vital responsibility of protecting the rights and welfare of children, are usually burdened with system problems which impede them from being in a position to function effectively. Whether it is the ongoing battle with limited funds, the absence of proper support staff, or the burden of negating through administrative and legal red tape, these considerations disable them from acting expediently and mercifully toward a needy child.

At the centre of all cases lies a child at risk, too often without a voice, and urgently requiring protection and care. If CWCs are overworked and under-resourced, then it is the children who suffer. Inordinate delay can mean trauma prolonged, bureaucratic ineffectiveness can mean opportunities to intervene at the optimal time. The system that must be a safety net all too frequently becomes one more obstacle to the very lives it seeks to safeguard.

To truly empower CWCs and honour their mandate, we must move beyond token reforms and invest meaningfully in strengthening their capacity financially, legally, and administratively. It is only then that we can create a child protection system that not only exists on paper but also delivers on the ground, with empathy, urgency, and justice at its core.

CHAPTER VI

INTERNATIONAL COMMITMENTS, AND BEST PRACTICES IN CHILD PROTECTION

India's approach to child protection is not just shaped by its Constitution and domestic legislation, but also by robust framework of international treaties, conventions, and declarations. As a responsible member of the global community, India has ratified several international instruments that global community, India has signed several international instruments that lay down minimum standards for child protection from abuse, neglect, exploitation, and violence. These international commitments not only reinforce the country's moral and legal responsibility but also act as the base for national laws, policies, and institutions, including the Child Welfare Committees (CWCs), which play a pivotal role in implementing these protections on the ground.

Child protection is a humanitarian commitment, at the heart of this commitment lies a simple yet profound idea, 'every child, regardless of their circumstances, deserves to be safe, valued and heard'. The commitment of India towards the rights of children is a result of its signing of UNCRC back in 1992. It is guided by four important principles: equality for all children, emphasizing their best interests, safeguarding their right and healthy development, and providing them a voice in issues that affect them.

The UNCRC is the most detailed framework, it serves as the foundation for shaping the core values of the child protection.⁶⁵ These principles guide CWCs in making a thoughtful, compassionate decisions for every child they work with. When a child is in need, it is not just about paperwork or procedures, it is also about real lives and real emotions, this is where the

⁶⁵A Comparative Review of UNCRC and Indian Legislation from the Child Mental Health Perspective
<https://journals.sagepub.com/doi/10.1177/02537176241226714?icid=int.sj-abstract.similar-articles.4> last visited 30, march 2025

CWC plays various ways, such as placing them in homes, foster cares or decides if it is safe for the child return to their home, CWCs are there to put the children's well-being first.

India is also a signatory to the **Sustainable Development Goals (SDGs)**, Goal like 16.2 is important, which makes a call for cessation of trafficking, abuse and exploitation and any other form of violence against children. Achieving this goal requires a strong, responsive child protection system at the local level, and CWCs are often the first line of defence. Their ability to intervene promptly, make informed decisions, and ensure long-term rehabilitation is crucial to translating this global goal into local action.

6.1 International Commitments Related to CWCs

6.1.1 United Nation Convention on the Rights of Children (UNCRC), 1989

The convention of 1989 is a milestone in the codification of a children's rights internationally, being a broad and extensive human rights treaty, it transformed the legal and ethical obligations of the states to children under eighteen, with 196 (as of July 2022) state parties being a signatory to the convention, it has become the most accepted human rights instrument ever. India ratified it in 1992, and has become committed to the spirit of this conventions.

The 54 articles offer different children's that covers all aspects of their lives. The treaty is universal as all children enjoy these rights and they are also binding on all children, and assistance that the government and adults need to give so that all children will be able to enjoy all of their right.⁶⁶

As a document, the UNCRC departs from traditional welfare-based approaches that viewed children as passive recipients of adult protection and charity. Instead, it firmly positions children as autonomous rights holders, entitled to participate in decisions affecting their lives, and guaranteed dignity, protection, and opportunities for development. UNCRC has significantly influenced domestic child protection systems including those in India.

UNCRC and the Protection of children in India

⁶⁶ <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/> last visited 27th March, 2025

India which is a home to nearly one fifth of the children population of the world, therefore a legal framework that is so broad like the UNCRC is the best suitable to the country, this convention acknowledges the children as an individual, with a rights and dignity to respect for.

India upholds these four principles of UNCRC:

- Non-discrimination
- Best interest of the child
- Right to life and development
- Respect for the views of the child

These principles are directly instituted in CWCs for the purpose of their mandate of making child centred decisions on rehabilitation, care and protection. CWCs have to function and also expected to work in the direction to achieve these conventions principles while dealing with children who are in their hands. However, to put these principles into an action can be a real challenge when are tons of stories to tell about the violations of children's rights, their dignity, abusing them in all kinds of abuse possible.

India reflected the above principles in several key laws:

- **Juvenile Justice (JJ) Act 2015**

It is the main Indian legislation aligned with UNCRC, it recognises categories such as “children in need of care and protection” and mandate child-friendly procedures, rehabilitation, and restoration. It make it compulsory the formation of Child Welfare Committees (CWCs) to care children without family support, Juvenile Justice Boards (JJBs)⁶⁷, JJBs for a child accused of an offence, a child facing legal trouble, and Rehabilitation-focused children care institutions, not punitive detention⁶⁸, the Aligned with Article 39 of the Constitution and UNCRC Articles 19, 20, 37 and 40 concentrating and paying attention on a child well-being and rehabilitation.

- **Right to (Free and compulsory) Education (RTE) Act, 2009**

Rooted in UNCRC Article 28, the RTE Act transformed education from a privilege into a legal entitlement for all children who is from the age between 6 to 14 years. More than just classroom access, the act emphasises equity and inclusion, safe and child-friendly schools, prohibit

⁶⁷ Sec 26 JJ Act

⁶⁸ Sec 4 JJ Act

physical or corporal punishments and psychological abuse, special provisions for marginalised and disabled children

- **Protection of Children from Sexual Offences (POCSO) Act, 2012**

In direct alignment with UNCRC Art. 19 and 34, the POCSO Act provides legal framework. Sexual offences committed against a person below 18 are especially addressed in this act. Sexual harassments⁶⁹, penetrative⁷⁰ and non-penetrative activities, and employ an under age kid for the purpose of pornography are among the abuses defined under this law. This Act requires the creation of a court specifically for a child to speed up cases and punishes violators with severe penalties like fines and imprisonments. In order to reduce trauma, the Act emphasizes sensitivity towards child victims and provides child-friendly protocols for investigation and trials. Additionally, it guarantees that minor witnesses would be supported and protected during court procedures, the POCSO Act gives access to counselling, healthcare, and educational help so as to prioritize the social well-being and social rehabilitation of child victims.⁷¹

- **Child labour (Prohibition and Regulation) Amendment Act, 2016**

The 2016 Act prohibits employing a child for a labour in India, by completely banning employment of child labour below 14 to 18 in all kinds of occupations and enterprises⁷², this provision is aligned with Article 32 of UNCRC, which prohibits employment of children below 14 years in any occupation, strictly regulates employment of adolescents and introduces penalties for employers.

- **The Prohibition of Child Marriage Act, 2006**

Reflecting UNCRC Articles 19 and 24(3), the Act sets minimum age of marriage, 18 for girls, and 21 for boys, and also declares child marriage as voidable⁷³, and enables annulment and protection for affected children. This act attempts to break the chain of early motherhood, school dropouts and lost childhoods, especially for girls.

Integrating the UNCRC into India's Constitutional Framework

⁶⁹ Sec 11 POCSO Act

⁷⁰ Sec 3 POCSO Act

⁷¹ Manali vyas, defending childhood: a comprehensive analysis of india's pocso act and an international comparative analysis <https://ijirl.com/wp-content/uploads/2024/08/defending-childhood-a-comprehensive-analysis-of-indias-pocso-act-and-an-international-comparative-analysis.pdf> (last visited on 6, march, 2025)

⁷² page. 9 <https://www.ijrar.org/papers/IJRAR1944642.pdf> last visited 30th, march 2025

⁷³ Sec. 3

Beyond statutory laws, child rights are also protected under the Indian Constitution, when the UNCRC was ratified, it did not need to amend its constitution, because the rights enshrined in the UNCRC were already embedded in India's constitutional philosophy, Articles such as Article 14⁷⁴, and 15(3)⁷⁵ correspond to Article 2 of the UNCRC⁷⁶, which bans on the discrimination against a child. Similarly, Article 39(e) and (f) of DPSP directly reflect the UNCRC's commitment to safeguarding and protecting a child from exploitations, abuse and neglect.

More importantly, the Indian constitution approaches childhood not merely as a biological phase but as a legally protected and developmentally significant period of life. Article 21 is broadly interpreted and included the free access to education and free from harm this provision is closely aligned with the UNCRC Article 6 that guarantees the rights to development of the children. ⁷⁷ these rights have also been included in various municipal legislations

In *Bach Bachao Andolan v. Union of India*⁷⁸ the SC specifically invoked the UNCRC in deciding guidelines for the rehabilitation of child labourers and trafficked children, thus bringing international norms into national law.

Finally, the connection between the UNCRC and the Indian Constitution is not one of imposition but of complementarity. The UNCRC reinforces the Constitution's commitment to justice, equity, and dignity for all children, especially those marginalized by poverty, caste, gender, or disability. It offers a broad-based paradigm widely accepted that not only justifies India's domestic child protection agenda but also encourages the State to go beyond tokenism and to adopt child rights in their totality. For children all over the country, whether a girl saved from child marriage, a boy saved from bonded labour, or a child with disability who wants inclusive education, this coming together of constitutional hopes and international obligation is the jurisprudence that gives life to their legal right to reclaim their right to be heard, perceived, and protected.

⁷⁴ Art. 14

⁷⁵ Art. 15(3)

⁷⁶ Article 2 of UNCRC

⁷⁷ Article 6 of UNCRC

⁷⁸ (2011) 5 SCC

The UNCRC has been a change agent in India's child protection system, affecting law, directing institutional responses such as CWCs, and most critically, changing the way we perceive children, as rights holders, not welfare objects. Legislation can't safeguard children alone. Protection comes from a culture of rights, a listening government, and a civil society that would rather see every child, in some remote village or city slum, as a promise and potential for hope than as a problem to be solved. As India presses ahead on its development path, the spirit of the UNCRC needs to be a living document, interpreted not just by courts of law but by classrooms, police stations, panchayats, and most importantly, in the hearts of those who have been charged with the responsibility of taking care of children.

6.1.2 Optional Protocol to the UNCRC on Sale of Children, Child Prostitution and Child Pornography (2000)

The main aim of this is the portrayal of a child is to define and forbid the minor in in pornography, these actions are classified as criminal offences and grave abuses of children's rights.

While UNCRC lays a broad and powerful foundation for the safeguard of the rights of children, it soon became clear to the international community that certain crimes against children, particularly sale, sexual exploitation, and trafficking, needed more targeted, urgent and enforceable action. These were not just issues of individuals abuse, but symptoms of deep-rooted, systemic, violations, often driven by organised crim, poverty, gender inequality, and digital anonymity. To address this urgent gap this optional protocol was adopted by the UN General Assembly in the year 2000, and came into effect in 2002.

India signed the OP in August 2005, reaffirming its commitments to protecting children not just from neglect and maltreatment within the home or school, but from being bought, sold, exploited and violated in the darkest corners of society.

The Optional Protocol is not a mere legal add-on to the UNCRC. It is a life-saving expansion, one that recognises the unique vulnerabilities of children in world where they can be trafficked across borders, exploited in the name of entertainment, or abused behind screens. The protocol specifically defines and criminalises;

- The sale of children where a child is transferred for any consideration (money, services, or otherwise) for exploitation.
- Child prostitution- using a child in sexual activities for remuneration or any other form of consideration.
- Child pornography- representing a children engaged in real or simulated sexual activity in any medium, including digital formats.

Since ratifying the protocol, India has taken several legislative and institutional steps to bring its national systems in line with its international obligations, such as creating laws like **Protection of Children from Sexual Offences Act, 2012**, which does not only recognises physical abuse, but also digital and visual forms of exploitation⁷⁹, laws like **Juvenile Justice Act, 2015** which created CWC ⁸⁰ to ensure that the victims receive psychosocial care, legal support by directly serving the goals of the OP, **Information Technology Act, 2000 (Amended in 2008)** criminalises the online distribution and possession of material of sexual violation of children (CSAM), and section 67B of the act particularly provides a child pornography and grooming.⁸¹

This Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography is a moral commitment to protect children from the world's most unspeakable harms. For India, ratifying the protocol was a significant step, but living up to its ideals requires constant vigilance, investment, and empathy. The fight against child exploitation is not one that ends in a courtroom or legislation, it ends or begins when a rescued child sits in front of a CWC member and is met with kindness instead of judgment, care instead of blame. That moment, perhaps, is where international law becomes most real.

6.1.3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1978 - Protecting the Girl Child through the Lens of Gender Justice

CEDAW was adopted in 1979, and in 1993 India ratified the same, it is also known as “Bill of Rights for women”, though its main focus is on adult women, the treaty's reach extends meaningfully to girls, it protects the girl child from systemic Discrimination, and acknowledges that discrimination against women begins in childhood. It recognises the intersectional

⁷⁹ Section 13, 14, 15 POCSO Act

⁸⁰ Section 26 of JJ Act

⁸¹ Section 67B IT Act, 2000

vulnerability of the girl child affected not just by age, but also by gender norms, poverty, and social exclusion.⁸² In India, where practices like female-foeticides, child marriage, and gender-based neglect are prevalent, CEDAW has been crucial in pushing for legal reforms and social change.

CEDAW influenced on Indian laws

India's legislative framework, including the POCSO Act, is influenced by the principles of CEDAW. These laws aim to create safer, more equitable environments for girls both in private and public spheres. This convention calls for not just protection but empowerment. It advocates for giving girls the tools to thrive, equal access to education, healthcare, safety, and justice. This aligns with India's national policies such as Beti Bachao, Beti Padhao, which, while not flawless, echo the protocol's intent.

6.1.4 ILO (International labour Organisation) Conventions on Child Protection

India is one of the founding members, it focused on eliminating child labour, particularly its most hazardous and exploitative forms.

ILO Convention no. 138 – Minimum Age for Employment

In 2017, India ratified this convention, determining the legal age of employment or other forms of work for children is one of the best ways to prevent them from working at the young age. 1) It set up an age eligibility for entry into employment and 2) creates the ideals for prohibiting child labour.⁸³ ILO Convention no, 138 on the minimum age seeks to effectively eradicate child labour.

Convention 138 sets the minimum legal age for employment at 14 (in developing nations like India), making sure that a child is not drawn into labour at the cost of their education or well being, this forms the basis of India's Child and Adolescent Labour (Prohibition and Regulation) Act, especially 2016 amendment, which bans children under 14 from all occupations.

⁸² Article 10, 12,16 of CEDAW

⁸³ ILO Conventions on Child Labour <https://www.ilo.org/international-programme-elimination-child-labour-ipecc/what-child-labour/ilo-conventions-child-labour> last visited on 31st march, 2025

The convention isn't only about legal minimums, it is about a vision of childhood free from premature burdens. It champions the idea that childhood belong in schools, not in fields or factories.

ILO Convention No. 182 – Worst Forms of Child Labour

The Convention NO.182 is the first ILO Convention to achieve universal ratification, as the data makes abundantly evident. It determined that strengthening the child Labor convention present then was essential after carefully looking into the matter and conducting an investigation. Convention no. 182 assisted in drawing attention to the pressing need to prioritize the eradication of the most severe types of child labor while staying committed to the longterm mission of truly eliminating every form of child labor. According to Convention No. 182, nations must act quickly, effectively, and within a set timeframe to put stop to the worst kind of child labour.

India ratified this convention in 2007, the convention addresses the gravest threats to child safety, including slavery, trafficking, prostitution, drug trade involvement, and hazardous labour. It pushes countries to take immediate and effective action to eliminate these abuses. CWCs act as localised bodies that operationalise India's international commitments, when a child is rescued from labour, exploitation, or abuse, CWCs step in to ensure protection, medical care, legal aid, counselling and long-term rehabilitation.

6.1.6 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002

This regional treaty, signed by India and its neighbouring countries, aims to improve cooperation in safeguarding child's rights across borders. The Convention recognises common regional challenges like child trafficking, missing children, child marriage, and being unable to get essential services, it encourages cross-borders collaboration and the standardisation of child protection practices.^{84 85}

- **Regional Solidarity for Children's Rights**

⁸⁴ SAARC <https://byjus.com/free-ias-prep/south-asian-association-for-regional-cooperation-saarc/> last visited on 31st march, 2025

⁸⁵ SAARC <https://byjus.com/free-ias-prep/south-asian-association-for-regional-cooperation-saarc/> last visited on 31st march, 2025

The Convention was born from the recognition that children's issues transcend national boundaries, and that regional cooperation is essential to respond to challenges like cross-border trafficking, missing children, child labour, and exploitation. It draws its spirit from UNCRC but contextualizes those global principles within the south Asian framework. It emphasizes a collective moral and legal duty to ensure that every child in the region lives with dignity, protection, and opportunity irrespective of nationality or legal status.⁸⁶

- **Key provisions of the SAARC Convention**

1. Non-discrimination – this convention upholds that every child, regardless of gender, caste, ethnicity, or status, must enjoy equal access to protection and care echoing the principles of Article 2 of UNCRC.
2. Right to Survival, protection, and development – it ensures that every child has access to essential healthcare, nutrition, education and legal protection, with extra care for those in vulnerable situations, like orphans, street children, refugees, and those who have suffered abuse or neglect.
3. Combatting child trafficking and exploitation – it urges SAARC countries to take coordinated measures against trafficking, cross-borders investigations, and the safe repatriation and rehabilitation of rescued children.
4. Data sharing and regional Collaboration – the convention emphasizes the need for information exchange on missing or trafficked children, child protection best practices, and coordinated child welfare programs across member states.
5. Strengthening National Child Protection Systems – member countries, including India, are encouraged to build robust national-level institutions to ensure effective implementation of the Convention which directly ties into India's development of systems like CWCs under the JJ Act.

- **Relevance to India's Child Welfare Committees (CWCs)**

The SAARC Convention finds practical relevance in the everyday functioning of CWCs in India, these statutory bodies are always the first one to be contacted for children rescued from trafficking, abuse, or abandonment, especially those trafficking across borders or of undocumented nationality. India's ratification of the SAARC Convention not only reinforces

⁸⁶ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia <https://www.jus.uio.no/english/services/library/treaties/02/2-05/child-welfare-asia.html> last visited on 1st April, 2025

its commitments to regional cooperation but also reflects in domestic legal and institutional frameworks. Instruments like the Integrated Child Protection Scheme (ICPS), Standard Operating Procedures for repatriation, and inter-agency protocols on child trafficking are part of India's effort to translate regional promises into meaningful protection on the ground

6.1.7 Sustainable Development Goals (SDGs)

The Sustainable Development Goals reinforce the constitutional pledge and promise in safeguarding and protecting children from neglect, exploitations, and abuse. Goals like SDG 16 that focus on the peaceful environment with access to justice for all, and that oblige strengthening the development of children protection system, and SDGs 5 and SDGs 3 that focus upon gender equality and health respectively are in direct connect with the legal and institutional steps being taken for child protection in India. CWCs, being quasi-judicial forums for CNCP, have a pivotal role to play in the achievement of these objectives.

Enhancing their role is part of India's overall international commitment to the SDGs. CWCs are already working tirelessly towards the achievement of these international goals. Goal 16.2 requires the eradication of child abuse, exploitation, trafficking, and violence, and now more than ever it is essential to establish robust systems of child protection and safeguarding.

CWCs, being critical support systems for vulnerable children like CNCP, have an important role to play in achieving this vision. A reformed committee is a legal requirement in moving towards achieving India's pledge to protect and secure every child and maintaining global commitments to the SDGs.⁸⁷

Goal 16.2 calls for a halt in child violence, abuse, exploitation, trafficking, and thus now more than ever effective child protection and safeguarding systems must be established. CWCs, being essential support mechanisms for at-risk children like CNCP, have a very significant role in making this vision a reality. Strengthening the committee is a juridical imperative in working towards fulfilling India's promise to ensure each child is secure and safe as well as the fulfilment of world promises to the SDGs.

⁸⁷ United Nations, (2015) Transforming our world: the 2030 Agenda for sustainable Development (UN General Assembly, 2015) A/RES/70/1.

India is committed to the 2030 Agenda containing targets most directly relevant to child protection;

- Goal 16.2 – End abuse, exploitation, trafficking, and all forms of violence against and torture of children.
- Goal 5.3 – Eliminate harmful practices such as child marriage.
- Goal 3 – Ensure inclusive and equitable quality education (relevant for CWCs dealing with children out of school).

CWCs work directly to meet these goals by intervening in exploitations, neglect and abuse, lack of access to critical services. The constitution of India provides a strong foundation for the protection of children, particularly from neglect and abuse. Provisions such as Article 15(3) empower the State to make special laws for children; Article 21 ensure the Right to Life and Personal Liberty, which the Supreme court has interpreted to include the right to live with dignity and protection from exploitation; Article 21A mandates free and Compulsory education for all children aged 6 to 14; Article 39(e) and (f) of the DPSP urge the state to protect children from abuse and to ensure they are not forced by economic necessity to enter vocation unsuited to their age or strength, while also promoting their healthy development in freedom and dignity. These constitutional mandates align closely with the Sustainable Development Goals (SDGs).

6.2 Global Best Practices in child Protection: Learning from the world

While keeping child from abuse and neglected, it is evident that a one-sized-fits-all approach is inadequate. Examining how other nations have succeeded in getting it's right can be educational, even optimistic. Globally, they have established a system that are infused with empathy, responsibility, along with a profound regard for the rights of children. These models, with their roots various legal culture and traditions, have causes in common with India's constitutional commitment to safeguard its children. They also have cause in common with the function child Welfare Committees are intended to perform in our system Various nations have developed effective mechanisms of child protection which India can incorporate to make the CWCs more effective.

6.2.1 Multi-Disciplinary Child Protection Team Norway and the Netherlands

Globally, nations have developed innovative and human ways of compassionate protection children that provide lessons for enhancing CWCs in India. Norway and the Netherlands, treat the protection of the child as a collective social responsibility. They have created

multidisciplinary teams wherein child psychologists, social workers, educators, law enforcement and legal professionals to respond collectively to each child's case as collective responsibility. This coordinated process minimizes delay, prevent fragmentation approach reduces delays, prevent fragmentation, and ensures that the entire range of child's overall needs: emotional, physical, and legal are addressed.⁸⁸ Institutionalizing such multidisciplinary collaboration could improve the quality and speed of CWC decisions.

6.2.2 Child Advocacy Centres (CACs), United States

The first CAC was established in 1985 to responses to more effectively addressing child maltreatment, abuse cases and solve issues related to the disorganized response to child abuse. CACs are multidisciplinary organizations that operate locally in an attempt to provide every victim of child abuse with services reduce child victims and non-offending members trauma when going through an investigation and promote response, investigation and prosecution of child abuse in the United States.⁸⁹ The Model of CAC In the US has revolutionized the manner in which the justice system deals with victims of abuse and neglect among children. These centres provide an environment that is child-friendly, where children are provided with medical care, counselling, legal help, and investigative services all in one place. By minimizing the number of times, a child must recount their trauma, this approach protects the mental health of the child and, at the same time, ensures accountability.

Indian CWCs can learn from this model to create more integrated and trauma-informed care settings. CACs offer a good example that India's CWC and the child protection system can follow, particularly in terms of offering child-friendly, coordinated, and trauma-informed care. Contrary to the fragmented nature typically observed within child protection systems, CACs bring together police, social workers, health professionals, and who bring mental health specialist under one roof to handle cases of abuse or neglect in a fashion that reduces the emotional load for the child. One of the best-known practices is the employment of single experienced interviewer to interview the child, reducing the need for the child to recount their trauma repeatedly. These centres also provide on-site access to treatment and medical services, with a guarantee that the legal and emotional needs of the child are met simultaneously.⁹⁰

⁸⁸ Decision making in child protection emergency cases in Norway

<https://www.sciencedirect.com/science/article/pii/S0190740923003365> last visited on 2st April, 2025

⁸⁹ Joanna Elmquist, A review of Children's Advocacy Centres (CACs) response to cases of child maltreatment in the United States <https://www.sciencedirect.com/science/article/abs/pii/S1359178915000877> last visited on 2st April, 2025

⁹⁰ Children's Advocacy centres, Children's Advocacy Centres coordinate the investigation, treatment, and prosecution of child abuse cases. <https://ojdp.ojp.gov/programs/childrens-advocacy-centers> last visited on 2st April, 2025

It was made India context-specific, CWCs would profit from equivalent multidisciplinary coordination, child-friendly amenities, and strict integration with support services. The model would not only be in line with India's constitutional responsibility to safeguard children but also make child welfare proceedings more effective and sensitive.

6.2.3 A voice for children at the Highest level (Sweden and Norway)

Sweden and other countries in the Europe prioritize the child's rights to be involved in all issues concerning them and the right to be heard in all decisions that is about them. The child is not considered passive recipients of welfare but as beings with increasing capacities deserving of agency and voice. Implementing this principle more strongly in CWC hearings, through child-cantered interviewing, legal representation, and feedback mechanisms, would make decision-making processes more democratic and experience-based. Children in Sweden and Norway have an independent voice via national Child Ombudsman offices. The children's ombudsman is a government agency mandated to promote and defend the rights and interests of children in Sweden under the United Nation Convention on the Rights of the Child.⁹¹ They are not figurehead posts, they ask questions, hold governments to account, and campaign for child-focused policies. India has taken a beginning with the NCPCR, but we can learn from these nations by creating similar independent offices at state or even district levels, which would also facilitate monitoring and assistance to CWCs better, by strengthening participatory processes by offering child-friendly interviews, legal advice, and ensuring children's point of view integration in care planning.

6.2.4 Case Management System in Australia and South Africa

Case management systems in nations such as Australia and South Africa leverage computerized platforms to enable on-time follow-up, monitor results, and uphold accountability. Such systems in the Indian context of CWCs, where backlogs and delay are prevalent, would bring a much-needed boost of transparency and efficiency.

A good and efficient case management is a key factor in the well-being and safety of a child, especially in difficult cases. Both Australia and South Africa have developed models that are cantered on collaboration, cultural awareness, and personalized care.

⁹¹ About the Ombudsman for Children in Sweden <https://www.barnombudsmannen.se/english/> last visited on 2nd April, 2025

- **Australia's Approach**

The South Australian Department of Human Services has used the Safer Family Services Case Management Framework. This Framework is based on a multi-agency one, bringing together numerous services like schools, health professionals, and the police to collaborate with families holistically. This framework involves the collaborative work of professionals from other agencies working together, exchanging information, and assuming responsibility in a bid to tackle the different needs that every family presents. It also supports the building of an understanding and appreciation of cultural origin, particularly when dealing with Aboriginal and Torres Straits Islander Families. Practitioners are urged to seek advice from cultural experts and be adaptive in timelines to suit cultural commitments.⁹² From physical, psychological, social, cultural, and spiritual considerations, practitioners acquire a comprehensive knowledge of a family's circumstances, resulting in enhanced interventions.

- **South Africa's Approach**

In South Africa, child protection is the individualized support that is the focus of case management rather than any systemic coordination, whereby the process offers child-centred attention where each case is designed to meet the specific needs required by the children and family so interventions are in the directions of their development and growth and are built on available strengths.

And arrange process whereby a case management proceeds with definite steps like assessment, planning, intervention, and follow-up ensuring timely and appropriate responses. Case workers have the responsibility of dealing with cases ethically, informed consent, confidentiality, and putting the safety and well-being of the child first.⁹³

Both countries recognize that effective child protection requires more than just policies, it demands genuine collaboration, cultural understanding, and a commitment to addressing each

⁹² Case management framework- safer Family Services, SA.GOV.AU <https://dhs.sa.gov.au/how-we-help/child-and-family-support-system-cfss/practitioner-resources/practice-guides/case-management-framework#title18> last visited on 2st April, 2025

⁹³ Child Protection Case Management, Child Protection at the IRC https://childprotectionpractitioners.org/child-protection-areas-of-intervention/child-level-interventions/child-protection-case-management/?utm_ last visited on 2st April, 2025

child unique circumstances. By looking in to these principles, they create a safe environment where a child is being supported and valued

India can strengthen its system of protection of a child by gaining knowledges and understanding from the best practices in Australia and South Africa. A key takeaway is the importance of Multi Agency Collaboration, where social workers, healthcare providers, schools, and law enforcement work together to ensure as well-coordinated response. Another crucial aspect is Cultural Sensitivity, which means recognizing and respecting the diverse backgrounds of children, particularly those from tribal and marginalized communities, to build trust and improve engagement. At child-centred approach is essential, where interventions are designed to meet the children's required needs child while considering their family and social environment. Additionally, a structured case management system with clear procedures for assessment, intervention and follow-up can help prevent delays and ensure effective support. Finally, strong legal and social accountability at all levels from government agencies to NGOs and frontline workers can create a more reliable and transparent child protection framework. But incorporating these principles, India can build a system that prioritizes children's well-being and ensures they receive the care and protection they deserve.

Aligning Indian Practice with Global Standards

While the Juvenile Justice Act, gives a powerful legal provision to Child Welfare Committees, efforts to bring the operation to international standards need continued investment in training, infrastructure, inter-agency coordination, and monitoring systems. In addition, child protection needs to be treated not just as a legal requirement but as a development and human rights imperative, utilizing international best practices in local systems with cultural and contextual responsiveness.

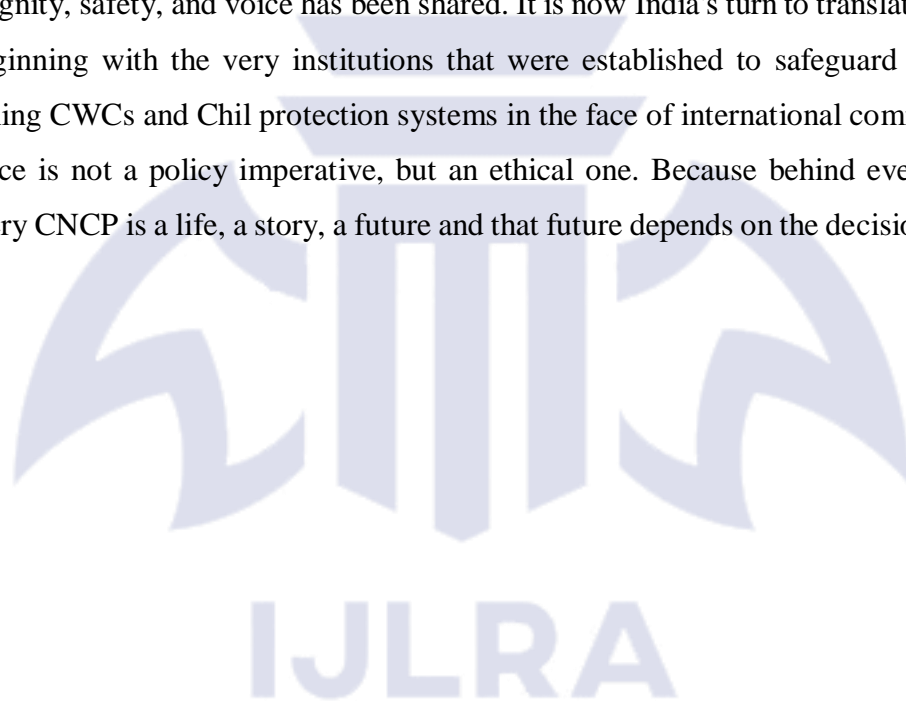
In spite of these Global norms, CWCs and Indian Child Protection system operate most of the time in far from ideal circumstances. Pitiably small budgets, sorry infrastructure. Absence of trained staff, and doubt regarding jurisdictions all eat into their capacity to work. Overworked, under-staffed, and lacking proper guidance in some districts, CWCs are expected to make life altering decisions. This gap between global aspiration and local reality is not just a policy failure, it's a human tragedy that unfolds in the lives of countless children.

Adapting foreign models to suit India's unique context is more crucial than simple imitation to bring the child protection system in India into conformity with global norms. The optimal

process should be locally focused and based on the same fundamental principles, protecting children's rights, providing immediate, well-coordinated care, and adopting a trauma-informed.

India has already put in place the strong legal framework through the Juvenile Justice Act, 2015, which declares CWCs as quasi-judicial boards with the responsibility and commitment to make the best possible order for the marginalized children. Now, the stronger political will and commitment, institutional support, and cultural change are required so that CWCs are not only statutory bodies, but also spaces of safety, compassion, and justice.

The Indian child protection scene stands at a juncture. The world has spoken, and the vision of a child's dignity, safety, and voice has been shared. It is now India's turn to translate vision into action, beginning with the very institutions that were established to safeguard its children. Strengthening CWCs and Chil protection systems in the face of international commitment and best practice is not a policy imperative, but an ethical one. Because behind every case file, behind every CNCP is a life, a story, a future and that future depends on the decisions we make today.



CHAPTER VII

RECOMMENDATIONS AND CONCLUSION

7.1 Conclusion

This dissertation analyses the role of CWC in enforcing protecting law for children and the challenges these committees encounter, and the necessary reforms to enhance the current legal and institutional framework. This research, through a comprehensive examination legal provision, case studies, and expert insights, has illuminated the strengths and weaknesses existing system, providing valuable insights into how India can better protect its most vulnerable children.

This study highlights that CWCs is crucial in protection body keeping the child from abuse, neglect and exploitation. These committees are tasked with critical decisions about the rehabilitations, protection and care of distressed children. However, this finding indicates that the effectiveness of CWCs varies greatly across different regions of India. In certain areas, CWCs function effectively, providing timely interventions and ensuring that children are placed in secure environments. Conversely, other regions encounter challenges due to insufficient resources, inadequate training, and bureaucratic inefficiencies. As a result, many children experience delays in obtaining the protection and justice they urgently required, which ultimately undermines the overall effectiveness of the child protection system.

This analysis determines various significance obstacles that CWCs face in executing their responsibilities. Resource constraints represent significance challenges as numerous CWCs faced due to insufficient funding, understaffing, and lack of necessary infrastructure. These constraints imposed difficult for CWCs to manage in increase volume of child welfare cases. Moreover, there exists a deficiency lack of specialized training for CWC members, many of whom are appointed without sufficient knowledge in fields such as child psychology, trauma-informed care, or legal proceedings. This leads to less than ideal in decision-making that may not always prioritize the best possible welfare.

Another significant challenge is the insufficient coordination among the various agencies engage in protection of children, protection, such as law enforcement, social service, and rehabilitation centers. The protracted timeline in resolving case coupled with the lack and the absence of a centralized case management system have resulted in significant inefficiencies, leaving children in vulnerable situations for longer periods. Furthermore, the level of public awareness of CWCs and child protection laws is notably insufficient resulting in numerous

instances cases of neglect and abuse going unreported, as communities and families lack knowledge of the existing protective measure of children. The absence of awareness further compounds the challenges encountered by CWCs in effectively reaching the children who need help the most.

In light of these challenges, the study conclude that India's current legal and institutional framework offers a protection of children. Nonetheless, for this framework to achieve, it's intended effectiveness enhancements in implementation are necessary. Enhancing the capacity of CWCs through increasing funding, consistent training, and more effective case tracking systems would significantly improve their capability to make prompt and well-informed decisions. Furthermore, initiatives aimed at enhancing public awareness about child protection laws and the role of CWCs could encourage more people to report cases of neglect and abuse, helping to make sure that more child gets their protection they deserve.

In conclusion, this dissertation underscores that although the legal provisions governing child protection in India are robust, their success ultimately depends on the efficacy of their implemented. CWCs is a body that plays a significant role in child welfare system, however they necessitate sufficient adequate resources, training, and coordination to effectively carry out their role responsibilities. Protecting children from neglect and abuse is not just the responsibility of the state but requires a societal commitment, with the active involvement of communities, law enforcement, and child welfare organizations.

Ultimately, the findings from this study suggest that the nation has made several significant strides in child protection, however there are still considerable work ahead in addressing the systemic challenges that impede the full effectiveness of CWCs. Strengthening child protection mechanisms, improving implementation, and fostering greater public engagement are essential steps toward ensuring that every child in India is being able to developed and protect their own rights and free from violations against them. The protection of children is a collective responsibility, and by prioritizing their well being, India will be investing in a stronger, more compassionate future for its children and society as a whole.

7.2 Recommendations

The findings of this research have highlighted both the strengths and the shortcomings of the present child protection framework in India, particularly regarding the role of Child Welfare Committees (CWCs). Though CWCs are pivotal institution for implementing of child

protection legislations, they are normally confronted with challenges that hinder their ability to provide timely and effective care for vulnerable children. These are not only legal or administrative requirements, but also a moral responsibility. Every child has the right to grow up in a safe environment which is free from abuse and exploitations.

To strengthen child protection mechanisms in India, the following recommendations are proposed.

1. Strengthening the role and effectiveness of CWCs.

- Provide proper funding and infrastructure- many CWCs function with inadequate financial and infrastructure support, limiting their ability to respond effectively to cases. Increased government funding should be allocated to improve their operational capacity, ensuring access to proper office spaces, transport facilities, and technological resources for case management.
- Improve Staffing and Training- the effectiveness of CWCs depends significantly on the knowledge and expertise of their members. Regular, mandatory training programs should be introduced to equip CWCs members with specialised skills in child psychology, trauma-informed care, and legal procedures related to child protection. This will enable them to make informed and compassionate decisions that prioritize the child's well-being.
- Decrease backlogs of cases and enhance case management- overburdened CWCs cannot perform timely interventions, with disastrous outcomes for abused and neglected children. Adding more personnel, becoming electronic with records, and establishing definitive timelines for closing cases can help speed up response in cases of abuse and neglect.

2. Legal and policy Reforms for stronger Child Protection.

- Clarify the Legal Mandate of CWCs: Although CWCs play a key role in child welfare, their legal authority and scope of action often remain ambiguous. The Juvenile Justice Act, needs to be amended to give Child Welfare Committees a clearer, authoritative and wider mandate, and to enable CWCs to pass binding orders in a timely and bureaucrat less way.
- Simplify Child Protection Procedures in Court- most child protection proceedings are delayed owing to complicated procedures, prolonging the agony of children for an extended duration. The creation of fast-track courts for child welfare cases and streamlined reporting practices can provide swift intervention.

- Render child-friendly legal procedures- it is hard for child protection officers to operate as legal liaison officers in engaging with the legal system, and simplified documentation procedures, must be employed in the justice system so that it would become child-friendly and accessible to children.

3. Strengthening coordination Among Child Protection Agencies

- Establish standard inter-agency framework- proper safeguarding of the children necessitates consistent inter-action between CWCs, police officers, medical personnel and shelter homes/NGOs so that the data on the cases must be brought out and have to be dealt with by a proper flow.
- Establish a National Child Protection Database- There should be a secure, centralized national child protection case database by which CWCs, police, and social workers can stay in touch and prevent losing cases.
- Enhanced Training for the Judiciary-Police- Police personnel and judiciary officials like Magistrates, judges handling child welfare cases need to be well-trained in child-sensitive procedures so that the children should not be further traumatized and receive justice and protection as well.

4. Strengthening Community-based Child Protection Mechanisms

- Conducting awareness campaign about the child rights and the safeguarding mechanism- The majority of child violation cases do not get reported because they are unaware of it. National and state campaigns should be initiated to inform families, teachers, and community members about the safeguard procedures in additions to privileges the children possessed, the parts of CWCs, and how to report child abuse.
- Identify Community-Based Reporting Systems: Schools, health clinics, and religious institutions can be authorized to serve as frontline reporting units for potential cases of child abuse. Volunteer community members and trained social workers can serve as intermediaries and facilitate access to care for at-risk children.
- Develop Preventative Support for At-Risk Families: Many cases of neglect arise due to financial instability, parental stress, or lack of awareness. Community outreach programs offering parenting workshops, financial assistance, and mental health counselling can help prevent cases of child neglect before they escalate.

5. Enhancing Rehabilitation and Aftercare for Children.

- Enhance the standards of child care facilities- Most of the child who are rescued from abusive homes are put in institutions, which sometimes do not have proper support systems. Minimum standards for nutrition, education, health, and emotional well-being should be strictly implemented in all childcare institutions.
- Ensure Comprehensive Psychological Support for Children in Need- Children who have faced abuse or neglect require more than just legal protection, they need emotional and psychological support to heal. Access to professional counselling services and trauma-informed therapy should be made a priority in all rehabilitation programs.
- Strengthen Education and Training Programs- For many children in institutional care, a lack of education and training makes them even more vulnerable at exit from the system. High-quality investment in education, training, and life skills interventions can help children prepare themselves as independent and confident individuals upon returning to society.

6. Learning from International Best Practices.

- Adopt Global Child Protection Standards: India should work towards aligning its child protection policies with the international frameworks such as the UN Convention on the Rights of the Child (CRC).
- Implement Successful Models of Child Welfare in Other Nations-Sweden, the UK, and Canada have highly effective child protection systems that India can use as models. If India adopts best practices from these models including mandatory social work interventions, more robust foster care programs, and government-funded child advocacy programs—it can greatly enhance the well-being of children in need.
- Establish International Partnerships: Collaboration with global organizations dedicated to child well-being can grant India the means of access to professional skills, funds, and innovative strategies for enhancing child protection systems.

Final Thoughts

The protection of children is not just a legal duty, it is a societal responsibility. While the current system in India does give a safeguarding provision for the children's protections, it does have some glaring loopholes in implementation. Improving CWCs, legal procedure reform, improving inter-agency coordination, and community interaction are all necessary steps in

establishing a better child protection system. An integrated approach is needed that not only responds to cases of abuse and neglect but also helps in preventing them. Through investments in institutional reforms and community-based interventions, India is able to move towards a future where all children are given protection, care, and opportunities they deserve. The health of our children today will determine the fate of our community in the future, and child protection is therefore a cause that should invoke immediate and unrelenting care.

Keeping children safe is not just a matter of law, it is our responsibility. India has enacted a strong legal system to ensure protection for children but the loopholes in such child protection laws continue to allow them to fall through the gaps. In order to really be of use, we must strengthen the CWCs, cut short the long legal process, assist them with infrastructure and their paperwork, enhance agency coordination, and give a child an environment safe enough to grow up in. It's not just about responding to cases of neglect and abuse, but about preventing them altogether. By investing at the grassroot level solutions, India can provide a future to a child where every child grows up safe and sound, and cared for, and provide an opportunity to shine. The manner in which we care for and protect our children today will decide the world into which they grow up and the civilization we become. This is the problem of collective responsibility to provide every child so that he feels secure, nourished, and cared for. As Mahatma Gandhi once said "the true measure of a society is how it treats its most vulnerable members", this reminds us that protection of the vulnerable children is not only our responsibility, but also a reflection of our humanity.

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COMPLETION CERTIFICATE

This is to certify that **Ms JUNIPER MALSAWMKIMI COLNEY** with Enrollment Number **A0342624026**, a student of Programme **LLM (Constitutional Law)** Batch **2024-2025** Semester at **Amity Institute of Advanced Legal Studies** has pursued **Dissertation**

LWDS600 on topic **CONSTITUTIONAL PROVISION FOR PROTECTING CHILDREN FROM ABUSE AND NEGLECT: Evaluating the ROLE OF CHILD WELFARE COMMITTEE(CWC)** under my guidance from **07/01/2025** to **07/04/2025**. The student has submitted **13** out of total **13** Weekly progress Reports. **Ms JUNIPER MALSAMKIMI COLNEY** has completed the project-related work and the work done is satisfactory.

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