

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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LEGAL CHALLENGES IN HANDLING ORPHANED AND ABANDONED CHILDREN: AN ANALYSIS

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INTRODUCTION

India, being the second-most populous country in the world, is home to a large number of orphaned children. As India struggles with poverty, hunger and corruption, many children either lose their parents or are abandoned by their families. Children represent the foundation of any society, and their protection is not merely a social obligation but a legal and constitutional mandate. Among them, orphaned and abandoned children constitute the most vulnerable group, deprived of parental care, emotional support, and socio-economic security. Their condition raises serious concerns relating to human rights, social justice, and state responsibility.

An orphaned child is generally defined as one who has lost both parents, while an abandoned child refers to one whose parents or guardians have deserted without any provision for care or support. These children often lack access to basic necessities such as shelter, education, healthcare, and identity, making them highly susceptible to exploitation, trafficking, child labour, and abuse.

According to [UNICEF](#), there were around [25 million orphaned children in India](#) in 2007. With the onset of the COVID-19 pandemic in 2020, the number of orphans in India has rapidly increased. Hence, it is important to explore the existing legal framework in India that seeks to protect orphans.

According to [Article 39\(f\)](#) of the [Indian Constitution](#), the state can make policies to ensure that children are provided with adequate opportunities and resources, which are essential to their growth and to protect them from exploitation and abandonment. In most circumstances, only an orphanage can provide orphaned children with basic necessities such as food, shelter, clothing and education till the age of 14. Therefore, the state is empowered to make laws to ensure that orphanages in the country are well-maintained and receive adequate funding in order to protect the rights of orphaned children.

Despite the existence of such comprehensive legal frameworks, the ground reality reveals significant gaps in implementation. Issues such as delay in adoption procedures, inadequate institutional care, lack of coordination among authorities, and insufficient monitoring

mechanisms continue to undermine the effectiveness of the law. In many cases, children remain in institutional care for extended periods without proper rehabilitation, affecting their psychological and emotional development.

The importance of this study lies in examining the disconnect between legal provisions and their practical enforcement. It seeks to analyse whether the existing laws are sufficient to address the needs of orphaned and abandoned children and to identify the challenges that hinder their effective implementation. The study also aims to contribute to policy discourse by suggesting reforms that can enhance the protection and welfare of such children.

DEFINITION OF ORPHAN

An orphan is someone who has lost his/ her parents. There are other definitions of orphans such as paternal orphans (a child who has lost his father), maternal orphans (a child who has lost his mother) or double orphans (a child who has lost both the parents). However, the Indian Legislation makes no such distinction. Section 2(k) in The Juvenile Justice (Care and Protection of Children) Rules, 2007 defines an Orphan as “a child who is without parents or willing and capable legal or natural guardian”. In India, there is no specific legislation that talks about the rights of an orphan. There are no rules and regulations which explicitly mention their welfare. Section 2(42) of JJ Act defines orphan" as a child-(i)who is without biological or adoptive parents or legal guardian; or (ii)whose legal guardian is not willing to take, or capable of taking care of the child;

DEFINITION OF ABANDONED CHILD

An abandoned child is a minor deserted by parents or guardians with the intent to permanently relinquish responsibility, often leaving them without necessary care. It includes physical desertion, severe neglect, or leaving a child in a safe haven

Section 2(2) of the JJ Act defines abandoned child" means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry.

EXISTING LEGAL RIGHTS OF ORPHANS

- Right to life

[Article 21](#) of the Indian Constitution guarantees the protection of the life and liberty of every person. This would protect orphans, as they are extremely vulnerable. Article 21 upholds their right to live and exercise liberty just like everyone else.

- Right to health

The interpretation of Article 21 is inclusive of the right to health. Every orphan child has the right to good physical and mental health.

- Right to citizenship

[Part II](#) of the Indian Constitution elaborates on the right to citizenship. Every orphan has the right to have a name that is legally recorded and citizenship to any country. This ensures that any state would protect their welfare.

- Protection from exploitation

[Articles 23](#) and [24](#) of the Indian Constitution guarantee to protect the orphans from trafficking, forced labour and employment in hazardous places if they are below the age of fourteen.

- Right to education

[Article 21-A](#) promises all children between the age of six to fourteen that they shall receive free education. This puts the responsibility on the state to ensure that orphans receive basic education just like other children.

POLICIES ON ORPHANS: DIFFICULTIES AND CRITICAL VIEWPOINT

1. Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice Act, 2015, offers a legislative framework for the rehabilitation, protection, and care of orphaned, abandoned, and turned-in young people. Under the Central Adoption Resource Authority (CARA), it rules Child Care Institutions (CCIs) and advances foster care and adoption.

➤ Challenges and Critical Opinion: Notwithstanding its comprehensive character, the JJ Act presents many difficulties, including bureaucratic delays in adoption procedures, inadequate monitoring of CCIs, and inadequate financial resources. Furthermore, making it difficult for orphaned youngsters to find appropriate homes is corruption within adoption organisations and creates demanding legal processes. To guarantee the Act's efficacy, responsibility systems must be strengthened, and adoption processes accelerated.

2. Integrated Child Protection Scheme (ICPS), 2009

Established in 2009, the ICPS seeks to construct service delivery systems, training staff, and provide institutional and non-institutional care, thereby providing a secure and protected environment for children in need, including orphans.

➤ **Challenges and Critical Opinion:** While the ICPS works to close gaps in child welfare services, it suffers from insufficient budget, a dearth of skilled social workers, and uneven application among states. Many Child Care Facilities under ICPS continue to be underfunded and insufficiently watched, which results in inadequate living circumstances. Services' quality has to be raised through a more open and strong financing source.

3. Adoption Regulations, 2017

The adoption of orphaned, abandoned, and surrendered children is ensured by these rules, which were established under the JJ Act. Therefore, simplifying the adoption procedure in India.

➤ **Challenges and Critical Opinion:** Notwithstanding its goals, the adoption process is still long and difficult because of protracted legal processes and ineffective bureaucracy. With an excessive volume of cases, the Central Adoption Resource.

Authority (CARA) suffers delays in giving children stable homes and extended waiting times for potential parents. Simplifying legal formalities and increasing digital efficiency in the adoption process can address these issues.

4. Sponsorship and Foster Care Guidelines, 2015

These guidelines encourage alternative care systems such as foster care, sponsorship, and kinship care as viable options for orphaned children instead of institutionalization.

➤ **Challenges and Critical Opinion:** Due to society's hesitations, ignorance, and inadequate laws, foster care is still an underused choice in India. Cultural and economic limitations may cause many families to be hesitant to adopt an orphaned children. Strengthening financial incentives, awareness campaigns, and monitoring systems helps develop care as a practical substitute.

5. Mission Vatsalya (formerly ICPS, 2009)

By combining services for children in need—including orphaned and abandoned children—Mission Vatsalya seeks to enhance child protection systems.

➤ **Challenges and Critical Opinion:** Though Mission Vatsalya sees a comprehensive approach to child welfare, weak inter-agency coordination, inadequate infrastructure, and scattered implementation compromise its effectiveness. To guarantee the success of the project, efficient monitoring, sensible financial allocation, and active NGO cooperation are desperately needed.

6. Right to Education (RTE) Act, 2009

The RTE Act guarantees children's access to high-quality education by mandating free and obligatory education for all between the ages of six and fourteen, including orphaned youngsters.

➤ Challenges and Critical Opinion: Though the RTE Act offers a structure for educational participation, orphaned children often suffer from financial constraints, a lack of appropriate documents, and prejudice. Bad infrastructure and insufficient Teacher preparation makes many institutionalised children unable to obtain high-quality education. Good policy execution should concentrate on removing administrative challenges and enhancing orphanage school amenities.

7. National Policy for Children, 2013

This policy seeks to provide children a foundation for their survival, growth, protection, and involvement in society, as it acknowledges them as a priority.

➤ Challenges and Critical Opinion: Notwithstanding its all-encompassing strategy, the policy remains mostly declarative with little practical application. Its efficacy is undermined by the lack of strong enforcement systems and the absence of specific financial distribution. It is strengthening legislative requirements and guaranteeing policy implementation by improving state-level cooperation.

India has developed a robust legislative and regulatory framework to assist orphaned children, but problems with implementation, financing and execution still compromise its efficacy. The lives of orphaned children in India may be improved by means of addressing bureaucratic inefficiencies, establishing monitoring systems, raising public awareness, and guaranteeing inter-agency collaboration. To guarantee that every orphaned kid gets the care and assistance they are due, a more aggressive government strategy, along with community engagement and improved NGO participation, is required.

INTERNATIONAL LEGAL FRAMEWORK ON THE RIGHTS OF CHILDREN

UN DECLARATION OF THE RIGHTS OF THE CHILD

The United Nations Declaration has suggested the following points on different grounds such as:

- Non-discrimination: Special protection, opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of

freedom and dignity.

- The right to a name and nationality.
- The right to social security, adequate nutrition, housing, recreation and medical services.
- The differently-abled child to be given special treatment, education and care.
- The need for love and understanding so that the child grows in the care and responsibility of his/her parents, and in an atmosphere of affection and moral and material security entitlement to education, which should be free and compulsory, at least in the elementary stages.
- The child should be among the first to receive protection and relief in all circumstances.

UNITED NATIONS CONVENTION OF RIGHTS OF THE CHILD.

The broad underlying goals of the treaty are outlined in the preamble. It ties the United Nations Charter's general human rights principles to the advancement and defence of children's rights. The International Covenant on Economic, Social and Cultural Rights of 1966 and the International Covenant on Civil and Political Rights, two human rights treaties negotiated under the aegis of the United Nations. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were negotiated under the auspices of the United Nations. The Universal Declaration of Human Rights. Articles 1-41 cover the rights that the convention guarantees. Articles 42 to 45 talk about the convention's oversight, while Articles 46 to 54 talk about how the convention will take effect. "The rights of the child, recognised by the convention, can be subdivided in five headings in line with the traditional classification of human rights:

1. **Civil rights** - In general, these correspond to the rights recognised by the first 18 articles of the Universal Declaration of Human Rights (1948). Examples are the right to a name to acquire a nationality (Article 7) and the right to an identity (Art. 8); the right to life (Art. 6) and the principle of non-discrimination (Art. 2). But there are also the so called "integrity rights", such as the ban on torture (Art. 37), the right to protection from physical violence (Arts. 19 & 34), from arbitrary arrest (Arts. 37 & 40), the right to privacy (Art. 16).
2. **Political rights** - These cover freedom of opinion (Art. 12), freedom of expression (Art. 13), freedom of association (Art. 15), freedom of opinion, religion and conscience (Art. 14), freedom of access to information (Art. 17).
3. **Economic rights** - Article 4 states in general terms that state parties shall take all appropriate legislative, administrative and other measures regarding economic, social and cultural rights. More specifically, this involves, among other things, the right to be

protected from exploitation (Arts. 32 & 36). 4. Social rights - The heading of article 4 covers the right to education (Arts. 28 & 29), health care (Art. 24) and social security (Art. 26).

4. **Cultural rights** - In addition to Article 4 once again, in this context we need to mention Article 31, recognising the right to rest and leisure, to engage in play and to participate fully in cultural and artistic life”.

The agreement has expanded significantly in scope by recognising a variety of children's rights and the means by which they should be exercised. The treaty simultaneously puts child issues on the political forefront and positions them in an international perspective by granting children civil, political, economic, social, and cultural rights. Additionally, the convention has facilitated future advancements in the international legislation on children's rights, which serves to increase public acceptance of particular children's rights.

The UN Secretary-General's Study on Violence against Children

The Violence Study is due to be launched on 11 October 2006 at the General Assembly 61st session in New York. The report will contain a set of recommendations to end violence against children. Below are some of the recommendations relevant to neglect:

- States should ensure the provision of child-friendly services
- Information services should be established to identify children at risk
- Reporting and monitoring systems should be established
- Parents and other care-givers should be supported to give children adequate care and protection
- Where possible, children should be given community-based alternatives rather than placed in institutions
- In cases where children are in institutions or alternative care, their placement should be regularly reviewed

Council of Europe

The European Convention on the Exercise of Children's Rights aims to protect the best interests of children. It provides a number of procedural measures to allow the children to exercise their rights.

The Convention provides for measures which aim to promote the rights of children, in particular in family proceedings before judicial authorities. It requires States to specify at least three categories of family proceedings to judicial authorities to which the Convention will

apply. These include questions of custody, residence, access, questions of parentage, legitimacy, adoption, legal guardianship, administration of property of children, care procedures, removal or restriction of parental responsibilities, protection from cruel or degrading treatment and medical treatment.

Article 3 of the Convention stipulates children's right to be informed and to express his or her views in proceedings, either for themselves or through representatives. Article 8 (Acting on own motion) enables judicial authorities to act on their own motion, or without a formal application in cases where the welfare of a child is in serious danger. This is limited to cases determined by internal law as such an intervention represents an interference in family life.

OPTIONAL PROTOCOL TO THE CONVENTION OF RIGHTS OF CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY.

Discussion of concerns relating to commercial sexual exploitation within the United Nations system. The Special Rapporteur on the sale of minors, child prostitution, and child labour was established in response to the 1990s' wave of child exploitation, pornography and the 1996 Stockholm, Sweden-based First World Congress against Commercial Sexual Exploitation of Children. Concerns relating to commercial sexual exploitation are discussed inside the United Nations system. In response to the 1990s wave of child exploitation, the Special Rapporteur on the sale of children, child prostitution, and child labour was established. The 1996 First World Congress against Commercial Sexual Exploitation of Children, which took place in Stockholm, Sweden. "The exploitative use of children in prostitution and pornography as well as sale of children and child trafficking is covered by articles 34 and 35 of the Convention on the Rights of the Child"

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION.

The Hague Convention on the Civil Aspects of International Child Abduction, commonly referred to as the Hague Abduction Convention, is an international treaty that aims to protect children from the harmful effects of abduction and wrongful retention across international borders. It provides a legal framework for the prompt return of children to their habitual residence and ensures that custody and visitation rights are respected. On October 24, 1980, the Hague Conference on Private International Law unanimously adopted the Hague Convention on the Civil Aspects of International Child Abduction in an attempt to address the considerable problem of international child abduction.¹⁰ The primary aims of the Convention

are to restore abducted children promptly to their states of habitual residence⁴ and to facilitate the access⁵ of noncustodial parents to their children living in foreign countries.¹¹ The Convention does not require a prior custody arrangement, allows merely a short court action, and forbids any hearing on the custody issue's merits because it is assumed that a child's best interests are met by an immediate return to her previous parenting position. The Convention is a significant step towards international collaboration in resolving individual cases as well as towards awareness of the issues surrounding child abduction abroad.

Constitutional Protection of Orphans and Orphanages in India

In the Constitution of India, there are various rights related to the protection of orphans and their homes. According to **Articles 14 and 15** of the Indian Constitution, the Right to equality, and the Right against discrimination, Orphan children also have equal rights as any other child irrespective of their gender. Special provisions for women and children can also be made under **Article 15(3)**.

Article 21 of the [Constitution of India](#), Protection of Life and Personal Liberty, illustrates that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” It ensures that every citizen has the right to life as a fundamental right, which also includes orphan children or abandoned children. According to **Article 21(a)**, free and compulsory education is provided to all children between 6-14 years of age. Moreover, **Article 29(2)** states that admission of any person into educational institutes should not be denied by the state on the basis of caste, religion, language, race, or any of them.

Articles 23 and 24 of the Constitution of India provide or guarantees of protection to orphans from forced labour, trafficking, and employment in hazardous places in case a child is below 14 years of age.

Article 39(e) guarantees that “the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.” This means that orphan children are also protected from being abused and are not forced to work in areas where their strength or age does not support them.

Article 39(f) ensures that every individual has equal opportunities and facilities for developing themselves in a healthy manner as well as protects the youth and childhood against material or moral abandonment as well as exploitation.

LEGAL FRAMEWORK FOR ADOPTION IN INDIA

India has a double legal regime for adoption depending on the religion of the adoptive parents. It is governed by two prominent laws in India which are:

1. The Hindu Adoption and Maintenance Act, 1956 (HAMA):

HAMA applies only to Hindus, Buddhists, Jains, and Sikhs. It allows any Hindu man or woman who is of sound mind to take in a child as long as certain conditions are met. The conditions are as follows:

- A Hindu male must be 18 or older to adopt and must also get his wife's consent if he is married.
- A Hindu woman must be 18 or older to adopt and if married must obtain the consent of her husband for the same.
- The child should be a Hindu must be below 15 years and should have never been adopted previously.
- A Hindu family can adopt a child of the opposite sex only if they do not already have a biological child of that gender.

Through HAMA a quick and easy adoption process exists yet the system fails to authorize children's adoption by people outside the Hindu religion.

2. The Juvenile Justice Act, 2015 (JJ Act):

The JJ Act is a secular legislation, which is applicable to adoptions for all Indians, regardless of whether they are Hindus or not. It establishes a legal system for the adoption of orphaned, abandoned, and surrendered children. This process comes under the JJ Act, which is regulated by the Central Adoption Resource Authority (CARA), a statutory body under the Ministry of Women and Child Development. CARA is responsible for regulating domestic and inter-country adoptions in India, with a focus on transparency and ethics. Under the JJ Act:

- A child can be adopted by any Indian citizen irrespective of religion.
- In the case of a couple, the consent of both spouses is required.
- Singles, even unmarried women, can adopt but a single male cannot adopt a girl child. Any adoption must comply with CARA guidelines that place the child's best interests at the center of the process.

Other relevant laws and statutes

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

This Act is concerned with children in conflict with law and children in need of care and protection. It prescribes institutional care for children through shelter homes, children's homes

etc. and non-institutional care through foster care, adoption, sponsorships and after-care organizations. In 2021, the Parliament of India amended the Act, bringing changes to the provisions concerning adoption. Prior to the amendment, civil courts were entrusted with the power to issue adoption orders. With the amendment, only District Magistrates can issue such orders.

The Immoral Traffic (Prevention) Act, 1956

This Act criminalizes prostitution and trafficking, particularly the keeping of certain premises as brothels and living on the income earned through prostitution, though it doesn't criminalize prostitution done independently and voluntarily. This Act is relevant as it protects orphans from trafficking and prostitution.

The Right of Children to Free and Compulsory Education Act, 2009

According to Article 21-A of the Indian Constitution, it is a fundamental right of every child from the age of six to fourteen, to receive free education. This Act guarantees the protection of that right and allocates responsibilities to the governments at different levels. This Act ensures that orphans are not deprived of their fundamental right to free and compulsory education. As it is a requisite for orphanages to provide education, the Board of Control can inspect whether these institutions keep up with it and is empowered to revoke their certificate if they don't.

The Child Labour (Prohibition and Regulation) Act, 1986

This Act was enacted to give effect to the Constitutional provision enshrined in Article 24. According to Article 24 of the Indian Constitution, every child below the age of fourteen has the right to be protected from any sort of hazardous employment. It was enacted on the basis of [Article 39\(e\)](#), which empowers the state to make policies that protect children from forced employment that is not suitable for their age and skills. If any orphanage subjects orphans to any form of labour, a strict penalty will be imposed.

The POCSO Act, 2012

The [Protection of Children from Sexual Offences \(POCSO\) Act, 2012](#) was enacted to protect children from all forms of sexual abuse, regardless of their gender. The Act prescribes strict punishments for those who subject children to any kind of sexual harassment. This Act protects orphans who are extremely vulnerable to sexual exploitation.

The Orphan Child (Provision for Social Security) Bill

The [Orphan Child \(Provision for Social Security \) Bill](#) was introduced in Lok Sabha in 2016. However, the bill has not been passed yet. It contains many provisions that were formulated

with the intention of securing the welfare of orphan children. The following are the provisions formulated in the Bill :

- According to Section 3, the central government has to conduct surveys on orphan children every ten years.
- Section 4 provides for a national policy for the welfare of orphans to be formulated.
- Section 6 states that the central government shall constitute a fund for the purpose.
- Section 8 provides for the establishment of foster care homes.

ROLE OF JUDICIARY IN PROTECTING ORPHANS AND ABANDONED CHILDREN

The Indian judiciary has on several occasions intervened to protect the rights of children in need of care and protection. In *Lakshmi Kant Pandey v. Union of India* [(1984) 2 SCR 795], the Supreme Court laid down strict guidelines for inter-country adoption, emphasizing both the protection of children and the need for their early integration into families. More recently, in *Shabnam Hashmi v. Union of India*,¹ the Court affirmed that adoption is a legal right available to all citizens irrespective of religious background, thereby reinforcing the principle that the welfare of the child supersedes personal law limitations. In various PILs related to orphanages and CWCs, courts have criticized the State for systemic lapses, lack of monitoring, and institutional apathy. These pronouncements underscore a consistent judicial stance: the child's right to family and dignified care cannot be subordinated to administrative lethargy or procedural delays. Judicial commentary has also increasingly scrutinized the role of CWCs and adoption authorities for their inconsistent and often opaque functioning. In *Re: Exploitation of Children in Orphanages in Tamil Nadu*² the Court rebuked the State for its failure to streamline adoption mechanisms and demanded accountability from CWCs for delays in certifying children as legally free. Such interventions reveal a judicial acknowledgement of the gap between legislative intent and administrative execution. Despite a framework intended to protect, the real-world experience of abandoned children continues to be one of prolonged institutional confinement, in direct conflict with both national and international legal standards. There exists, therefore, a pressing need for judicial vigilance to be supplemented by administrative reform and legislative urgency, to ensure that the rights of the child are not rendered illusory by procedural inaction.

¹ (AIR 2014 SUPREME COURT 1281),

² (WRIT PETITION (CRIMINAL) NO. 102 OF 2007),

Adoption concerns two of our basic human concerns identity and family. A child's rights to an identity and family are now universally recognised. They are enshrined in the United Nation Convention on the Rights of the Child, 1989³.

The Activist Supreme Court of India in *Lakshmikant Pandey v Union of India*⁴ 1. This writ petition has been initiated on the basis of a letter addressed by one Laxmi Kant Pandey, an advocate practising in this Court, complaining of mal-practices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The letter referred to a press report based on "empirical investigation carried out by the staff of a reputed foreign magazine" called "The Mail" and alleged that not only Indian children of tender age are under the guise of adoption "exposed to the long horrendous journey to distant foreign countries at great risk to their lives but in cases where they survive and where these children are not placed in the Shelter and Relief Homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foreign foster parents." The petitioner accordingly sought relief restraining Indian based private agencies "from carrying out further activity of routing children for adoption abroad" and directing the Government of India, the Indian Council of Child Welfare and the Indian Council of Social Welfare to carry out their obligations in the matter of adoption of Indian children by foreign parents. This letter was treated as a writ petition and by an Order dated 1st September, 1982 the Court issued notice to the Union of India the Indian Council of Child Welfare and the Indian Council of Social Welfare to appear in answer to the writ petition and assist the Court in laying down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents and if so, the procedure to be followed for that purpose, with the object of ensuring the welfare of the child⁵. In this case the Supreme Court held that any adoption in violation of or non-compliance with may lead adoption to be declared invalid and expose person concerned with to strict action including prosecution. For years, social activists have used these directions to protect children and promote desirable adoptions. The Government of India framed a national policy in this regard.

The Juvenile Justice (Care and Protection) Act, 2000¹⁵ is enacted as human rights legislation and it is now in force in all State uniformly, repealing the entire Children's Act enacted by states individually. This legislation deals with the two types of juveniles. "Juvenile in conflict

³ Asha Bajpai, *Adoption Law and Justice to the Child*, Center of Child and the Law NLSIU, Bangalor, 1996, p.

1

⁴ AIR, 1986, SC, p. 1272.

⁵ Retrieved from < <http://www.manupatrainternational.in/supremecourt/1980-2000/sc1984/s840054.htm>>

with law” as defined under Section 2(1) and child in need of care and protection as defined under Section 2 (d). A juvenile or a child as defined under Section 2 (k) is a person who has not attained the age of 18 years. The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status⁶. In *Sheela Barse v. Union of India*⁷ Ms. Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally detained in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody. The Court observed that children in jail are entitled to special treatment. Children are national assets and they should be treated with special care. The Court urged the setting up of remand and juvenile homes for children in jails.⁸ In *Sheela Barse v Secretary Children Aid Society*¹⁹ the Supreme Court came forward to protect the rights of the children in the observation homes.

Conclusion

Orphaned children are one of the most vulnerable groups in India. Like every other child, they too have rights and interests which need protection. As they are more likely to be exploited and abused, they require extra attention and care. It is not enough to provide them with just food, shelter, clothing and education. They are also required to be loved and cared for as they are assets of our nation. It is essential to provide them with a healthy environment so that they can grow and develop like other children.

Though orphans in India can be protected by their distant relatives or foster care, institutional care provided by orphanages is the most preferred mode as India is a developing and low-income country. It is obvious that despite having regulatory bodies and guidelines for regulation, these institutions are not regularly inspected. The physical and mental health of orphaned children often goes unchecked. Many institutions suffer from a dearth of skilled and trained staff. The poor infrastructure at orphanages makes it even more crucial for us to promote foster care and facilitate an easier adoption process.

⁶ Article 10 of the International Convention on Civil and Political Rights, 1966.

⁷ 1986 3 SCC 596.

⁸ Retrieved from <http://www.hrcr.org/safrica/access_courts/India/Indiacases.html>

The adoption process in India is a life-changing process. The progressive legal framework of HAMA and the JJ Act notwithstanding, bureaucratic delays and societal attitudes are sparing women from getting justice. While these laws protect transparency and child welfare, the processes are often long enough to dissuade even potential adoptive parents.

In the future, we will need to streamline the adoption process, raise awareness of special needs, and promote societal acceptance to improve adoption rates. Timely legal approvals, reducing bureaucratic red tape, special needs adoptions & others can prove to be a foundation for the future of adoption in India.

