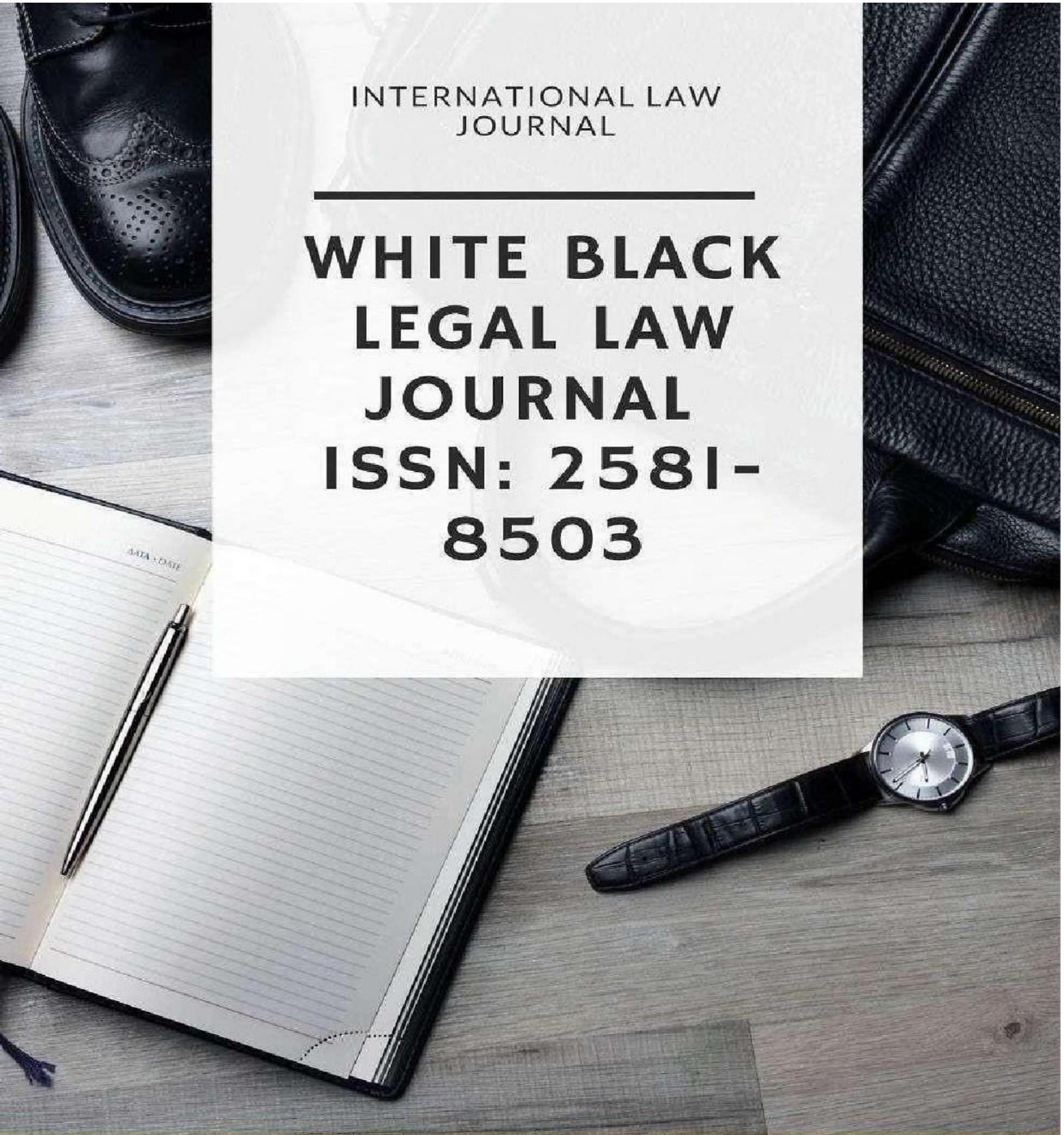


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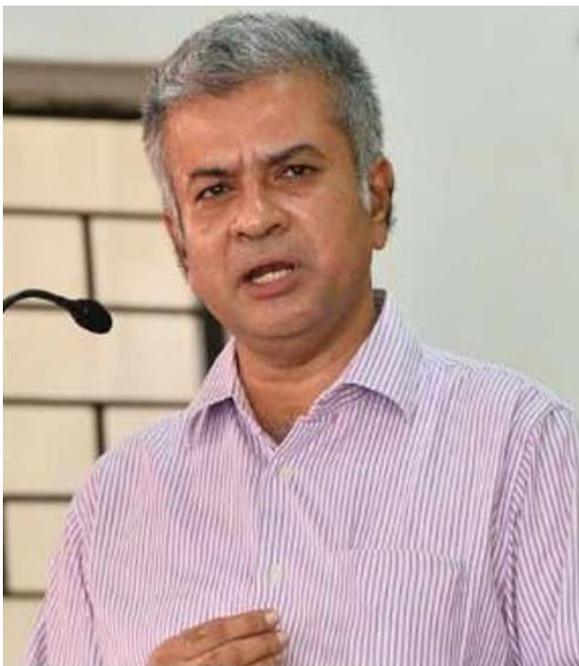
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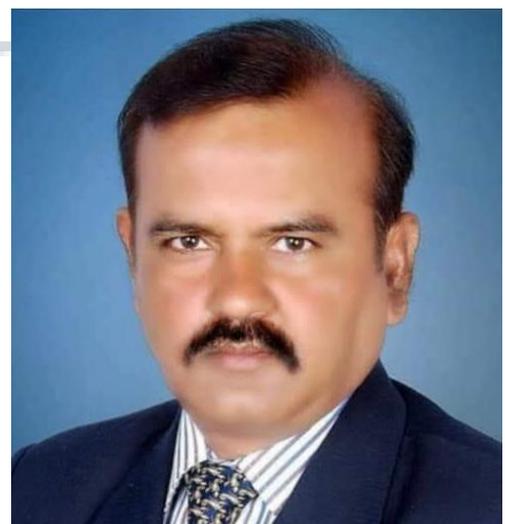
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Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

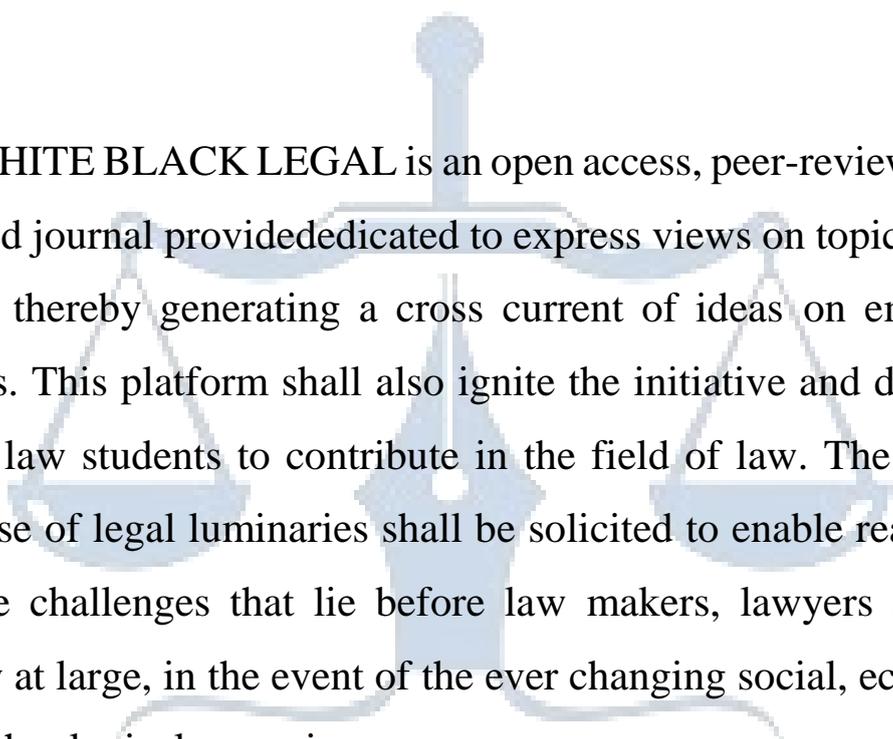


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you



CHILDREN RIGHTS AND THE CONSTITUTION: A CRITICAL ANALYSIS OF LEGAL PROTECTIONS IN INDIA

AUTHORED BY - A.MONIGA

Ist year of LLM, The Central Law College, Salem

ABSTRACT

Children are among the most vulnerable members of society, requiring strong legal safeguards to protect them from exploitation, abuse, child labor, trafficking, and lack of education. International conventions, constitutional provisions, and judicial interventions have played a pivotal role in ensuring child rights. Despite comprehensive legal frameworks, enforcement challenges persist due to administrative inefficiencies, judicial delays, and socio-economic barriers. This paper explores the legal framework protecting children, including international treaties (UNCRC, ILO Conventions), constitutional safeguards (Article 21A, Article 24), and key legislations such as the POCSO Act, Juvenile Justice Act, and Right to Education Act. The paper also analyzes landmark judicial pronouncements, including *Unni Krishnan v. State of Andhra Pradesh* (1993), *Laxmi Kant Pandey v. Union of India* (1984), and *Bachpan Bachao Andolan v. Union of India* (2017), which have shaped child welfare laws. Furthermore, the paper identifies critical implementation gaps, particularly in adoption laws, child labor regulations, and the rehabilitation of rescued children. Finally, policy recommendations such as fast-track courts for child abuse cases, stronger enforcement of child protection laws, and simplification of adoption processes are proposed to enhance child welfare.

Keywords

Children's Rights, Child Protection Laws, Juvenile Justice, Child Labour, Right to Education, POCSO Act, Adoption Laws, Judicial Interpretation, Policy Implementation, Forensic Analysis of Injuries.

1. INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”

– Nelson Mandela

Children are among the most vulnerable members of society, requiring strong legal safeguards to protect them from exploitation, abuse, neglect, and discrimination. Due to their physical, emotional, and intellectual immaturity, they are susceptible to violence, forced labor, sexual exploitation, lack of access to education, and unfair treatment. Governments, international organizations, and legal institutions have recognized the necessity of child-specific legal protections, leading to the development of international conventions, constitutional provisions, and judicial interventions aimed at ensuring the safety, welfare, and development of children.

The evolution of child protection laws has addressed critical issues such as child labor, sexual exploitation, adoption laws, and the right to education. Despite comprehensive legal frameworks, enforcement challenges persist due to social, economic, and political barriers. Courts, through landmark judgments, have played a crucial role in interpreting and strengthening child rights, ensuring that laws evolve to meet modern societal challenges.

1.1.BACKGROUND OF THE STUDY

This study aims to provide a comprehensive legal analysis of children's rights by examining international, constitutional, and judicial perspectives.

1. To examine legal frameworks that safeguard children's rights
 - Understanding global and national legal mechanisms designed to protect children from exploitation, labor, abuse, and discrimination.
 - Studying international conventions such as the United Nations Convention on the Rights of the Child (UNCRC, 1989), International Labour Organization (ILO) Conventions on Child Labor, and the Hague Convention on Inter-country Adoption.
 - Analyzing constitutional provisions in India, including Article 21A (Right to Education), Article 24 (Prohibition of Child Labor), and Article 39 (Protection from Exploitation).
2. To analyze the role of the judiciary in shaping child protection laws
 - Evaluating how courts have interpreted and expanded child rights.

3. To discuss challenges in enforcing child rights and possible solutions
 - Identifying gaps in implementation, such as:
 - Weak enforcement mechanisms in rural and economically backward regions.
 - Judicial delays in cases involving child rights violations.
 - Lack of rehabilitation programs for victims of trafficking, child labor, and abuse.

2. LEGAL FRAMEWORK FOR CHILDREN'S RIGHTS

Children's rights are protected through international treaties, constitutional provisions, and national legislations. These legal frameworks ensure that children are safeguarded from exploitation, abuse, child labour, trafficking, and lack of education.

2.1 INTERNATIONAL CONVENTIONS & TREATIES

1. United Nations Convention on the Rights of the Child (UNCRC, 1989)

The UNCRC is a legally binding international agreement that defines child rights, ensuring protection from abuse, exploitation, and discrimination. It was adopted by the United Nations General Assembly on November 20, 1989 and is ratified by 196 countries, making it the most widely accepted human rights treaty in history¹.

- It recognizes four core principles:
 1. Non-discrimination – Every child is entitled to rights regardless of race, gender, or nationality.
 2. Best interests of the child – Laws and policies must prioritize the child's well-being.
 3. Right to life, survival, and development – Every child has the right to live and develop in a safe environment.
 4. Respect for the views of the child – Children have the right to express their opinions in matters affecting them².

2. ILO Conventions on Child Labour

The International Labour Organization (ILO) has adopted various treaties to combat child labour globally.

¹ United Nations General Assembly, Convention on the Rights of the Child, 1989

² UNICEF, Convention on the Rights of the Child: A Guide, 2021.

- ❖ ILO Convention No. 138 (Minimum Age Convention, 1973)
 - Establishes a minimum age for employment (generally 14–16 years, based on national laws).
 - Countries must develop policies to eliminate child labour over time³.
 - ❖ ILO Convention No. 182 (Worst Forms of Child Labour Convention, 1999)
 - Calls for immediate prohibition and elimination of the worst forms of child labour, including:
 - Slavery, trafficking, and forced labour.
 - Use of children in armed conflict, drug trade, and hazardous industries⁴.
3. Hague Convention on Inter-country Adoption (1993)
- The Hague Convention regulates international adoptions to prevent child trafficking and ensure ethical adoption practices.
- Establishes legal guidelines for cross-border adoption.
 - Ensures that adoption occurs in the best interests of the child and with proper legal safeguards.
 - Mandates that inter-country adoptions should not result in improper financial gain⁵.

CONSTITUTIONAL PROVISIONS IN INDIA

Article 21A – Right to Free and Compulsory Education

- Added by the 86th Constitutional Amendment Act, 2002.
- Ensures free and compulsory education for children aged 6–14 years⁶.
- Implemented through the Right to Education (RTE) Act, 2009.

Article 24 – Prohibition of Child Labour

- Prohibits employment of children below 14 years in hazardous industries⁷.
- Supported by the Child Labour (Prohibition and Regulation) Act, 1986 (Amended 2016).

Article 39(e) & (f) – Protection Against Exploitation

- Article 39(e): Protects children from economic necessity that forces them into

³ International Labour Organization (ILO), Convention No. 138: Minimum Age for Employment, 1973.

⁴ International Labour Organization (ILO), Convention No. 182: Worst Forms of Child Labour, 1999.

⁵ The Hague Conference on Private International Law, Hague Convention on Inter country Adoption, 1993.

⁶ The Constitution of India, Article 21A, 86th Amendment Act, 2002.

⁷ The Constitution of India, Article 24, Prohibition of Child Labor.

hazardous jobs.

- Article 39(f): Directs the state to ensure that children grow in a healthy environment, free from neglect and exploitation⁸.

Article 45 – Early Childhood Care & Education

- Originally mandated free education for children up to 14 years but was later replaced by Article 21A.
- Now directs the state to provide early childhood care and education for children below six years⁹.

2.2 KEY CHILD PROTECTION LEGISLATIONS IN INDIA

1. The Child Labour (Prohibition and Regulation) Act, 1986 (Amended 2016)
 - Prohibits employment of children under 14 years in any occupation.
 - Allows children to work in family enterprises and entertainment industries under restrictions¹⁰.
2. The Protection of Children from Sexual Offences (POCSO) Act, 2012
 - Provides stringent laws against child sexual abuse.
 - Defines penetrative and non-penetrative sexual assault, sexual harassment, and child pornography.
 - Mandates child-friendly procedures for trials and strict penalties for offenders¹¹.
3. The Juvenile Justice (Care and Protection of Children) Act, 2015
 - Governs juvenile justice and child rehabilitation.
 - Introduced provisions for trying juveniles (16-18 years) as adults in heinous crimes.
 - Provides guidelines for adoption and child welfare programs¹².
4. The Right of Children to Free and Compulsory Education (RTE) Act, 2009
 - Enforces Article 21A, ensuring free education for children aged 6-14 years.
 - Mandates 25% reservation for economically weaker sections (EWS) in private schools¹³.

⁸ The Constitution of India, Article 39, Directive Principles of State Policy.

⁹ The Constitution of India, Article 45, Directive Principles on Early Childhood Care

¹⁰ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, Government of India.

¹¹ The Protection of Children from Sexual Offences (POCSO) Act, 2012, Ministry of Women & Child Development.

¹² The Juvenile Justice (Care and Protection of Children) Act, 2015, Government of India.

¹³ The Right of Children to Free and Compulsory Education (RTE) Act, 2009, Ministry of Education.

5. The Guardians and Wards Act, 1890 (Adoption-Related Legal Framework)
 - Regulates guardianship of minors, especially for non-Hindus (as Hindus follow Hindu Adoption and Maintenance Act, 1956).
 - Courts must ensure the welfare of the child in guardianship matters¹⁴

3. CHILD LABOUR AND LEGAL PROTECTIONS

Child labour is a serious violation of children's rights that deprives them of education, health, and a normal childhood. It is driven by poverty, lack of education, trafficking, and weak enforcement of laws. Despite national and international legal frameworks, child labour remains prevalent in agriculture, mining, domestic work, and hazardous industries.

3.1 NATURE AND CAUSES OF CHILD LABOUR

Child labour is defined as the employment of children below the minimum legal working age, preventing them from accessing education, health services, and safe working conditions. Major

Causes of Child Labour:

1. Economic Necessity – Poverty forces children to work to support their families.
2. Lack of Education – Limited access to schooling increases child labour rates.
3. Trafficking and Forced Labour – Many children are trafficked and forced into labour, particularly in brick kilns, factories, and domestic work¹⁵.
4. Family Pressure – In some cultures, children are expected to contribute economically from an early age.
5. Weak Law Enforcement – Many countries fail to effectively enforce child labor laws, leading to continued exploitation.

Industries Where Child Labour is Prevalent:

- Mining and Quarrying – Children are employed in stone crushing, coal mining, and mineral extraction, exposing them to toxic substances and physical risks.
- Domestic Work – Many children work as household servants, often facing abuse and poor living conditions.
- Hazardous Industries – Fireworks, glasswork, carpet weaving, and chemical industries expose children to harmful chemicals and extreme working conditions.

¹⁴ The Guardians and Wards Act, 1890, Government of India.

¹⁵ International Labour Organization (ILO), Convention No. 182: Worst Forms of Child Labour Convention, 1999.

3.2 LEGAL PROVISIONS AGAINST CHILD LABOUR

The Child Labour (Prohibition and Regulation) Amendment Act, 2016

The Child Labour (Prohibition and Regulation) Act, 1986, was amended in 2016 to strengthen child labour laws.

Key Provisions:

1. Complete prohibition on employment of children under 14 years in any occupation or process¹⁶.
2. Regulation of adolescent labour (14-18 years) – Adolescents cannot be employed in hazardous occupations¹⁷.
3. Exception for family businesses – Children are allowed to work in family-based occupations, provided it does not interfere with their education¹⁸.
4. Stringent penalties –
 - Employers violating child labour laws face 2 years imprisonment and fines up to ₹50,000.
 - Repeat offenders face higher penalties and stricter legal action¹⁹.
5. Special courts are set up for speedy trials of child labour cases.

This amendment brought Indian laws in line with ILO Conventions No. 138 and 182, ensuring that children are protected from hazardous labour²⁰.

3.3 CASE LAWS ON CHILD LABOUR

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

The Supreme Court of India held that child labour in hazardous industries violates Article 24 of the Constitution (which prohibits employment of children under 14 in hazardous jobs).

The Court ordered the government to identify and withdraw children from hazardous industries and provide them with education and rehabilitation programs. It directed the establishment of a Child Labour Rehabilitation Welfare Fund, where employers of child labourers must contribute ₹20,000 per child. The Court further ruled that children rescued from hazardous labour must be enrolled in schools and their families provided

¹⁶ Supreme Court of India, M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756.

¹⁷ Kailash Satyarthi Foundation, Status of Child Labour in India, 2019.

¹⁸ Bachpan Bachao Andolan, Child Labour in India: The Legal Framework, 2021

¹⁹ Government of India, Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁰ Indian Penal Code (IPC), Section 370, Human Trafficking and Child Exploitation Provisions

with an alternative means of livelihood²¹.

2. *Bachpan Bachao Andolan v. Union of India* (2017)

- The Supreme Court of India ruled that strict implementation of child labour laws is necessary to prevent violations²².
- Directed state governments to ensure proper identification, rescue, and rehabilitation of child labourers.
- Ordered the creation of district-level Task Forces to monitor and prevent child labour activities²³.
- Mandated compulsory reporting of missing children, ensuring their immediate rescue and legal protection²⁴.

4. CHILD SEXUAL EXPLOITATION AND LEGAL PROTECTIONS

Child sexual exploitation is a grave violation of children's rights, leaving lasting physical, emotional, and psychological trauma. It includes various forms of abuse, such as trafficking, prostitution, child pornography, and sexual violence within families and institutions. These crimes are often difficult to detect due to social stigma, lack of awareness, and delayed reporting by victims. To address these concerns, the Indian legal system has established stringent laws, with the Protection of Children from Sexual Offences (POCSO) Act, 2012 being the most significant legal framework specifically designed to deal with child sexual abuse.

4.1 FORMS OF CHILD SEXUAL ABUSE

Child sexual abuse takes multiple forms, each severely affecting the victim's safety, dignity, and mental health.

- **Trafficking** involves the forceful or deceptive movement of children for sexual exploitation, often leading to their sale into prostitution or online exploitation²⁵.
- **Child prostitution** occurs when minors are forced or coerced into engaging in sexual activities for commercial gain, violating their fundamental rights and dignity²⁶.
- **Child pornography** refers to the production, distribution, or possession of sexually explicit material featuring minors, a crime that has been significantly exacerbated by

²¹ Supreme Court of India, *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756.

²² Human Rights Watch, *The Invisible Chains: Forced Child Labour and Trafficking*, 2021.

²³ International Labour Organization (ILO), *Eliminating Child Labour: Progress and Challenges*, 2020.

²⁴ United Nations Office on Drugs and Crime (UNODC), *Trafficking in Persons Report*, 2022.

²⁵ United Nations Office on Drugs and Crime (UNODC), *Global Report on Human Trafficking*, 2022

²⁶ International Labour Organization (ILO), *Commercial Sexual Exploitation of Children*, 2021

the rise of the internet and dark web platforms²⁷.

- **Sexual abuse** within families and institutions occurs when trusted individuals, such as relatives, teachers, or religious leaders, exploit their position to harm children, making detection and reporting particularly challenging²⁸.

4.2 THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

Recognizing the need for a dedicated law to combat child sexual abuse, the Indian Parliament enacted the POCSO Act, 2012. This comprehensive legislation defines and penalizes various forms of sexual offenses against children. It criminalizes penetrative and non-penetrative sexual assault, sexual harassment, and child pornography, ensuring that children are legally protected against all forms of exploitation²⁹. The Act prescribes **rigorous imprisonment of at least 10 years for aggravated sexual assault**, which may extend to life imprisonment in extreme cases³⁰. To prevent delays in justice, the Act mandates that all child sexual abuse cases be tried in **special fast-track courts**, ensuring resolution within one year from the date of reporting³¹. Additionally, the POCSO Act lays down **child-friendly procedures**, requiring that victims' statements be recorded in a non-intimidating environment, minimizing re-traumatization during investigations and trials.

4.3 CASE LAWS ON CHILD SEXUAL EXPLOITATION

1. State v. Anil Kapoor (2014) (Delhi HC) Issue:

- The case involved sexual assault of a minor by a trusted family acquaintance.
- The child was threatened and coerced into silence, delaying the complaint.

Judgment:

- The Delhi High Court convicted the accused under the POCSO Act, imposing rigorous imprisonment for 12 years.
- Emphasized that delay in reporting does not invalidate the survivor's testimony.
- Stressed the importance of child-friendly investigation procedures³².

²⁷ UNICEF, Child Pornography and Online Exploitation, 2020.

²⁸ National Crime Records Bureau (NCRB), Crime Against Children in India Report, 2021

²⁹ The Protection of Children from Sexual Offences (POCSO) Act, 2012

³⁰ Government of India, POCSO (Amendment) Act, 2019.

³¹ Supreme Court of India, State v. Anil Kapoor (2014), Delhi HC.

³² Supreme Court of India, State v. Anil Kapoor (2014), Delhi HC.

2. Independent Thought v. Union of India (2017) Issue:

- Section 375 of the IPC (Exception to Marital Rape) previously allowed sexual intercourse with a minor wife (aged 15-18).
- The petition challenged this exception as unconstitutional.

Judgment:

- The Supreme Court struck down the marital rape exception for minor girls, ruling that sexual consent is essential, even in marriage³³.
- Declared that any sexual intercourse with a wife below 18 years is rape, even if legally married.
- Strengthened child protection against forced sexual relations in early marriages.

5. ADOPTION LAWS AND RELATED CHALLENGES

Adoption is a legal process that enables a child who has been orphaned, abandoned, or surrendered to become a part of a new family. Adoption plays a crucial role in ensuring that children receive proper care, love, and security. However, despite the existence of various legal frameworks governing adoption, several challenges persist, including illegal adoptions, prolonged legal procedures, and lack of transparency in the adoption process. Additionally, inter-country adoptions, while offering a chance for children to be placed in stable homes, pose significant risks, including child trafficking and abuse.

5.1. ISSUES IN ADOPTION

One of the most pressing issues in adoption is illegal adoptions, where children are unlawfully taken from their biological parents and sold to prospective adoptive families through unauthorized agencies. This practice is particularly common in developing countries, where poverty-stricken families are misled into relinquishing their children. Delays in the legal adoption process are another major hurdle, with prospective adoptive parents often waiting years due to bureaucratic inefficiencies³⁴. In many cases, adoption agencies operate with little transparency, leading to fraudulent practices where adoptive parents may be given incomplete or misleading information about a child's background, health, or legal status.

Inter-country adoption, though meant to provide better opportunities for orphaned children,

³³ Supreme Court of India, Laxmi Kant Pandey v. Union of India (1984).

³⁴ Central Adoption Resource Authority (CARA), Annual Report on Adoption in India, 2022.

carries risks of child trafficking and exploitation. Many children adopted internationally have been found to be victims of fraudulent paperwork, false orphan status, or abduction from birth families³⁵. The lack of stringent global oversight makes it difficult to track and regulate these adoptions, leading to potential human rights violations.

5.2. LEGAL FRAMEWORK FOR ADOPTION IN INDIA

In India, adoption is governed by multiple laws, depending on the religion of the adoptive parents. The primary laws regulating adoption include:

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

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is the most comprehensive law governing adoption in India. It allows for the adoption of orphaned, abandoned, or surrendered children, irrespective of religion³⁶. The Central Adoption Resource Authority (CARA) is the regulatory body under this Act, ensuring that all adoptions take place through legal means and in the best interests of the child. The JJ Act mandates stringent background checks for adoptive parents and enforces strict penalties for any fraudulent adoption practices³⁷.

2. The Hindu Adoption and Maintenance Act, 1956

The Hindu Adoption and Maintenance Act, 1956 (HAMA) applies to Hindus, Buddhists, Jains, and Sikhs. This law allows any Hindu male or female to adopt a child, provided they meet certain eligibility criteria³⁸. Under HAMA, an adopted child is considered a biological child and has the same inheritance rights. However, HAMA does not provide clear provisions for inter-country adoption, necessitating reliance on the JJ Act for such cases.

3. Guardians and Wards Act, 1890

For non-Hindus, adoption is regulated by the Guardians and Wards Act, 1890. Unlike the JJ Act or HAMA, this law does not grant full parental status to adoptive parents but instead allows them to be appointed as legal guardians³⁹. This means that under this Act, adopted children do not automatically acquire inheritance rights in the adoptive family. The limitations of this Act have led to calls for a uniform adoption law applicable to all communities, irrespective of religion.

³⁵ United Nations Office on Drugs and Crime (UNODC), *Intercountry Adoptions and Child Trafficking*, 2020.

³⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015.

³⁷ Government of India, *National Policy for Children*, 2013.

³⁸ The Hindu Adoption and Maintenance Act, 1956.

³⁹ Guardians and Wards Act, 1890.

5.3. **CASE LAWS ON ADOPTION**

1. Laxmi Kant Pandey v. Union of India⁴⁰(1984)

Before 1984, inter-country adoptions in India were largely unregulated, leading to several cases of child trafficking and exploitation. Many foreign adoption agencies operated without proper oversight, leading to concerns that children were being adopted internationally under false pretences.

Judgment

The Supreme Court of India recognized the urgent need for regulating inter-country adoptions and established strict guidelines to prevent trafficking and fraud. The Court ruled that:

1. Inter-country adoptions must be strictly monitored by the Central Adoption Resource Authority (CARA)⁴¹.
2. Foreign adoptive parents must undergo thorough background verification before adoption is approved.
3. The child's welfare must be the primary consideration in all adoption proceedings.
4. Periodic post-adoption reports must be submitted to ensure that children are being properly cared for⁴².

2. Shabnam Hashmi v. Union of India (2014)

Issue:

Before 2014, adoption in India was primarily governed by personal religious laws, which meant that non-Hindus had limited adoption rights. The petitioner, Shabnam Hashmi, a Muslim woman, sought to adopt a child but faced legal barriers under Islamic personal laws.

Judgment:

The Supreme Court ruled that adoption is a fundamental right, irrespective of religion⁴³.

The Court held that:

1. The Juvenile Justice Act, 2015, provides a secular legal framework for adoption applicable to all citizens, irrespective of religion.
2. Adoption is a child-centric process, meaning that a child's best interests must

⁴⁰ Supreme Court of India, Laxmi Kant Pandey v. Union of India (1984).

⁴¹ United States Department of State, Trafficking in Persons Report, 2022.

⁴² Bachpan Bachao Andolan, Child Trafficking and Exploitation in India, 2021.

⁴³ Supreme Court of India, PUCL v. Union of India (2013) 12 SCC 143.

take precedence over religious restrictions.

3. Personal religious laws cannot override a child's right to be adopted into a safe and stable family.

6. RIGHT TO EDUCATION AND CHILD DEVELOPMENT

Education plays a crucial role in shaping a child's future, providing them with the skills and knowledge needed for economic independence, social empowerment, and overall well-being. The Right to Education (RTE) Act, 2009, is a landmark legislation ensuring that every child in India has access to free and compulsory education. Judicial interventions, particularly in *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993), have significantly contributed to strengthening the right to education by recognizing it as a fundamental right under Article 21A of the Indian Constitution.

6.1 IMPORTANCE OF EDUCATION IN CHILD WELFARE

Education is a fundamental tool for breaking the cycle of poverty and preventing child labor. Children who receive formal education are less likely to be engaged in hazardous work, as schooling provides them with alternative opportunities for skill development and future employment. Education also fosters social inclusion, empowering children from marginalized communities to secure their rights and actively participate in society⁴⁴.

Ensuring access to education is also vital for reducing gender inequality. Educated girls are more likely to avoid early marriages, access healthcare, and contribute to economic growth, reinforcing the broader goals of child development.

6.2 THE RIGHT TO EDUCATION ACT, 2009

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), was enacted to implement Article 21A of the Indian Constitution, guaranteeing free and compulsory education for children aged 6-14 years⁴⁵. The Act mandates that government and private schools provide equitable access to quality education without discrimination.

One of the most significant provisions of the RTE Act is the mandatory 25% reservation for

⁴⁴ Ministry of Education, Annual Report on Right to Education in India, 2022.

⁴⁵ The Right of Children to Free and Compulsory Education Act, 2009.

economically weaker sections (EWS) in private schools. This ensures that children from low-income backgrounds have access to quality education that would otherwise be unaffordable. The Act also focuses on child-friendly education policies, prohibiting corporal punishment and ensuring that no child is denied schooling due to economic or social disadvantages.

6.3 CASE LAW ON RIGHT TO EDUCATION

1. Unni Krishnan, J.P. v. State of Andhra Pradesh (1993) Issue:

Before 1993, the right to education was not explicitly recognized as a fundamental right under the Indian Constitution. Private institutions charged exorbitant fees, restricting access to higher education for economically weaker students⁴⁶. The case challenged whether education should be considered a fundamental right under Article 21 (Right to Life and Personal Liberty).

Judgment:

The Supreme Court of India ruled that education up to the age of 14 is a fundamental right under Article 21⁴⁷. The Court held that right to life includes the right to live with dignity, which cannot be achieved without basic education. However, it clarified that higher education is not a fundamental right but should be made accessible through state policies and financial support.

2. Society for Unaided Private Schools of Rajasthan v. Union of India (2012)⁴⁸ Issue:

The case challenged the constitutional validity of Section 12(1)(c) of the Right to Education (RTE) Act, 2009, which mandates that private unaided schools reserve 25% of their seats for children from economically weaker sections (EWS) and disadvantaged groups. Several unaided private schools argued that this provision violated their autonomy, financial independence, and the right to carry on their profession under Article 19(1)(g) of the Indian Constitution.

Judgment:

The Supreme Court of India upheld the constitutional validity of the 25% reservation for EWS students in private unaided schools, ruling that:

1. Education is a fundamental right under Article 21A (Right to Free and Compulsory Education), and private institutions must participate in achieving the state's goal of universal education.

⁴⁶ Supreme Court of India, Unni Krishnan, J.P. v. State of Andhra Pradesh (1993).

⁴⁷ Supreme Court of India, Mohini Jain v. State of Karnataka (1992).

⁴⁸ Supreme Court of India, Society for Unaided Private Schools of Rajasthan v. Union of India (2012).

2. The 25% EWS quota is a reasonable restriction on the rights of private schools, as the state has a legitimate interest in ensuring equal access to quality education.
3. Private unaided schools, except minority institutions, must comply with the RTE Act, as education is not merely a private enterprise but a public function that affects societal welfare.

However, the Court exempted minority institutions from the reservation requirement, ruling that forcing religious or linguistic minority schools to admit EWS students would violate their rights under Article 30(1)⁴⁹.

7. CHALLENGES IN IMPLEMENTING CHILD PROTECTION LAWS AND POLICY RECOMMENDATIONS

Despite the existence of strong legal frameworks, child protection laws in India face significant implementation challenges. These challenges arise from administrative inefficiencies, judicial delays, corruption, and a lack of rehabilitation mechanisms, all of which hinder the effectiveness of child welfare policies.

7.1. LACK OF PROPER ENFORCEMENT DUE TO ADMINISTRATIVE INEFFICIENCIES

One of the major challenges is the failure of authorities to effectively enforce child protection laws. While The Protection of Children from Sexual Offences (POCSO) Act, 2012, The Juvenile Justice (Care and Protection of Children) Act, 2015, and The Child Labour (Prohibition and Regulation) Act, 1986 (Amended 2016) provide legal safeguards, poor implementation at the ground level weakens their impact⁵⁰. Many cases of child labour, trafficking, and abuse go unreported or are inadequately investigated due to lack of coordination among enforcement agencies.

7.2. JUDICIAL DELAYS IN CHILD PROTECTION CASES

Delayed justice remains a serious obstacle in child protection. Cases related to child sexual abuse, trafficking, and illegal adoption often take years to resolve due to overburdened courts

⁴⁹ Supreme Court of India, *Pramati Educational & Cultural Trust v. Union of India*, (2014) 8 SCC 1 – Reaffirmed the exemption of minority institutions from the RTE Act provisions.

⁵⁰ UNICEF, *India's Child Protection Laws: Implementation Gaps*, 2021.

and slow legal proceedings. According to National Crime Records Bureau (NCRB) data, thousands of POCSO cases are pending in Indian courts, causing prolonged suffering for victims⁵¹. Even with the establishment of specialized POCSO courts, the backlog of cases remains high. Judicial delays discourage victims and their families from seeking legal remedies, allowing offenders to evade timely punishment⁵².

7.3. CORRUPTION AND TRAFFICKING LOOPHOLES IN ADOPTION LAWS

Illegal adoptions and child trafficking networks exploit loopholes in the adoption process, leading to cases of children being sold under the guise of adoption. Corruption within adoption agencies, law enforcement, and border control authorities enables traffickers to bypass regulations and manipulate documentation. Despite the strict guidelines set by the Central Adoption Resource Authority (CARA) under the Juvenile Justice Act, enforcement remains weak, especially in rural areas and inter-country adoptions⁵³.

7.4. LACK OF REHABILITATION PROGRAMS FOR RESCUED CHILDREN

Even when children are rescued from trafficking, labour, or abuse, the lack of proper rehabilitation services affects their reintegration into society. Many government-run child shelters suffer from poor conditions, lack of trained personnel, and inadequate psychological support. Rescued children often face stigma, mental health issues, and limited access to education, making them vulnerable to re-exploitation⁵⁴. Without a comprehensive rehabilitation framework, merely rescuing children does not guarantee their long-term protection and well-being.

7.5. FUTURE PERSPECTIVES & POLICY RECOMMENDATIONS

To strengthen child protection laws, India needs more effective law enforcement, faster judicial processes, and better rehabilitation programs. The following policy recommendations can help address these challenges:

7.5.1. Stronger Enforcement Mechanisms for Child Labour and Trafficking Laws

Government agencies must improve monitoring and enforcement of child protection laws,

⁵¹ National Crime Records Bureau (NCRB), Crime Against Children Data Report, 2022.

⁵² Ministry of Law and Justice, Special POCSO Courts: Performance Report, 2021.

⁵³ Government of India, Juvenile Justice (Care and Protection of Children) Act, 2015.

⁵⁴ Human Rights Watch, The Challenges of Child Rehabilitation in India, 2021.

particularly in industries where child labour and trafficking are prevalent. The Child Labour (Prohibition and Regulation) Act, 2016, must be enforced with stricter penalties for violators, and authorities should increase inspections in high-risk sectors like agriculture, factories, and domestic labour⁵⁵.

7.5.2. Fast-Track Courts for Child Abuse Cases

To reduce judicial delays, India needs more fast-track courts exclusively for child abuse, trafficking, and adoption fraud cases. The Supreme Court has directed states to speed up POCSO cases, but implementation has been inconsistent. Specialized judges and prosecutors with training in child rights should handle these cases to ensure efficient and sensitive adjudication.

7.5.3. Simplification of Adoption Processes for Greater Transparency

The adoption process should be simplified to prevent illegal transactions and reduce delays. The Central Adoption Resource Authority (CARA) must implement stricter digital tracking systems to ensure transparency in adoption applications. Government agencies should also increase awareness programs to encourage legal adoptions while eliminating unauthorized intermediaries⁵⁶.

7.5.4. More Funding for Child Education and Rehabilitation Programs

Increased budget allocation for child protection programs is essential to provide better shelter homes, mental health support, and education opportunities for rescued children. The government should expand schemes like the Integrated Child Protection Scheme (ICPS) to ensure that rescued children receive long-term rehabilitation support, vocational training, and psychological care⁵⁷.

8. CONCLUSION

A society that fails to protect its children fails in its most fundamental duty. Despite having strong child protection laws, gaps in implementation, lack of awareness, and judicial delays prevent many children from receiving the protection they deserve. Stricter enforcement of laws, improved rehabilitation programs, and collective social responsibility are the only ways

⁵⁵ Government of India, The Child Labour (Prohibition and Regulation) Amendment Act, 2016.

⁵⁶ Ministry of Women and Child Development, National Adoption Awareness Program Report, 2021.

⁵⁷ Integrated Child Protection Scheme (ICPS), Rehabilitation and Reintegration of Rescued Children, 2021.

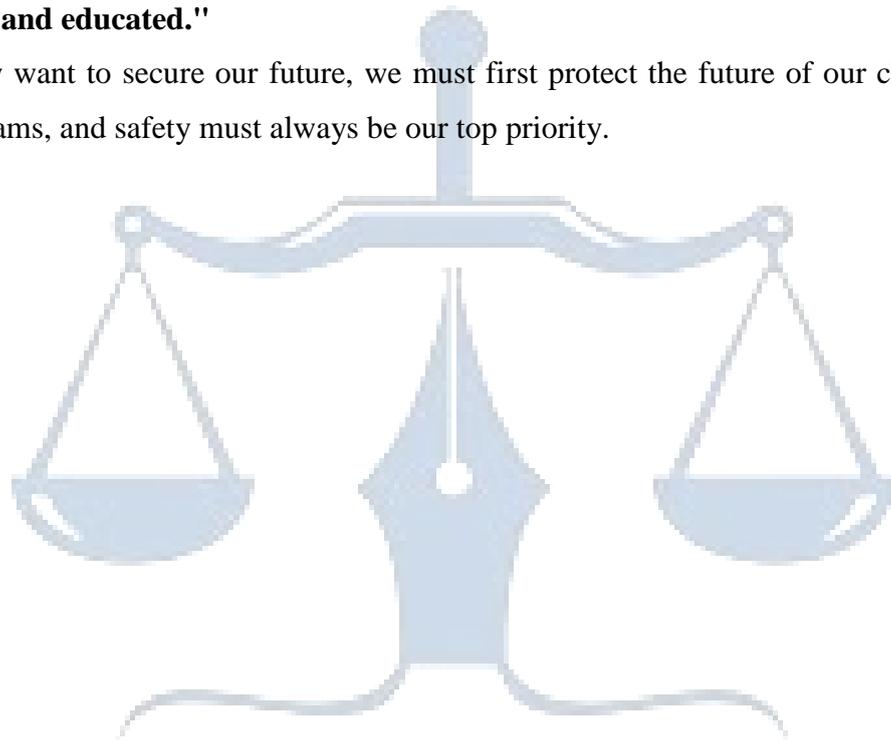
forward.

Change begins with us—parents, educators, law enforcement, and policymakers must work together to create a safer, more just world for children. Every child deserves a childhood free from fear, exploitation, and injustice.

As Kailash Satyarthi, the child rights activist and Nobel laureate, said:

"Every child matters. Every childhood is precious. Every child has the right to grow up free, safe, and educated."

If we truly want to secure our future, we must first protect the future of our children. Their rights, dreams, and safety must always be our top priority.



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