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**THE CHALLENGES AND LIMITATIONS OF LEGAL FRAMEWORK IN THE  
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## THE CHALLENGES AND LIMITATIONS OF LEGAL FRAMEWORK IN THE PROTECTION OF CHILDREN

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### Abstract

The purpose of this research paper is to provide an in-depth analysis of the challenges and limitations of the legal framework in the protection of children. The paper will explore the challenges and limitations that are faced when it comes to the implementation of the legal framework for the protection of children. It will also provide suggestions on how to improve the current legal framework for the protection of children. The legal framework for the protection of children is defined as the laws, policies, regulations, programmes, institutions and practices implemented to protect the children.

**Keywords:** *Legal framework, Deficiencies, Laws, Policies, Regulations, Protection, Children*

### Introduction

The legal framework for the protection of children is one of the most fundamental functions of government. The State must safeguard the welfare of its citizens, particularly those who are most vulnerable. The legal system provides a framework for the resolution of disputes and the enforcement of decisions and therefore contributes significantly to the well-being of society. The legal framework for the protection of the children, however, is woefully inadequate (MOHAMMED & ALIYU, 2022). The legal framework for the protection of children has been established over many years and has evolved to meet the needs of the changing legal landscape. As such, the current framework, which was first codified in India in the year 1960, is far from perfect and has numerous deficiencies that need to be addressed to achieve the best possible protection for children in our society. This study will explore some of these deficiencies and will provide some suggested reforms that would improve the current framework for the protection of children. We will begin by providing a background on the current legal framework for the protection of children and will discuss some of the deficiencies of the current framework (D'Costa, 2019).

The purpose of this study is to highlight the deficiencies in the current legal framework that governs the protection of children. The focus will be on the background of the topic, the current legal framework, and the issues with the current legal framework. However, certain aspects of other legal frameworks will also be discussed. The literature review will be divided into three main sections.

### Objectives of the study

The purpose of this research paper is to investigate the deficiencies of the legal framework in the protection of children. The study will focus on the challenges and limitations of the implementation of the legal framework in the protection of children.

### Research Methodology

The purpose of this research paper is to study the deficiencies of the legal framework in the protection of the child. The research study will focus on the challenges and limitations of the information of the legal framework in the protection of children. The paper will be structured in the following manner: firstly, an introduction; secondly, a review of the literature; thirdly, an introduction to the legal framework; fourthly, challenges and limitations for implementation; and fifthly, Conclusion. All information gathered is from various sources of information i.e., scholarly articles from different journals.

### Literature Review

The purpose of this literature review is to highlight the deficiencies in the current legal framework that governs the protection of children.

The legal framework for the protection of children in India is complex and fragmented. It is primarily based on the Indian Constitution, which provides for certain fundamental rights for children and mandates the State to protect them. It is also based on a large number of statutes, which provide for different services and benefits to children, such as education, healthcare, and social security, among others. The legal framework also includes a large number of executive orders and departmental rules which provide for additional services to children (D'Costa, 2019).

The legal framework governing the protection of children in India is complex and often contradictory. The constitution of India protects the rights of children, but in practice, the laws and policies of the government often fail to ensure their safety and well-being (Noriega Rodriguez, 2019).

The protection of children in India is primarily governed by the Indian penal code and the Indian Protection of Children from Sexual Offences Act. The Indian penal code is composed of the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act, and several other acts and regulations. The Indian penal code outlines several crimes against children, including rape, molestation, kidnapping, trafficking, and sexual exploitation. The Indian Protection of Children from Sexual Offences Act is a piece of legislation that defines what constitutes child sexual abuse and sets forth the minimum age at which a child can consent to sexual activity (Betts, 2008).

The legal framework governing the protection of children in India is largely based on the Indian Constitution, the UN Convention on the Rights of the Child, and various statutory laws. The Indian Constitution provides the most comprehensive legal framework for the protection of children, and it is the supreme law of the land. The UN Convention on the Rights of the Child guides the minimum standards for the protection of children, and it is an important source of international legal norms for the protection of children in India. The statutory laws that are passed by the parliament and the state legislatures provide additional legal protection for children, and they complement the legal framework that is provided by the Constitution and the Convention on the Rights of the Child (Salemot & Birhanu, 2021).

Today, the legal framework that governs the protection of children in India is a complex system of laws and policies that has evolved over the past few decades (Savage & Longo, 2013). While the system has achieved some successes in protecting the most vulnerable children, it is also beset with major limitations. For instance, it does not adequately protect the rights of children, particularly at the preschool and school-going ages; it has not been able to successfully identify and provide services to children who need them the most; and it is not designed to tackle the complex causes and realities of child poverty, which is a root cause of many children's vulnerabilities (Ngubane, 2022). The system is also not responsive enough to changing realities, such as the rise of new kinds of risks and vulnerabilities in children, or the impact of economic inequality on children's access to education (Lavrysen, 2014).

The current legal framework that governs the protection of children in India is a major limitation. The law provides a framework to protect children from harm and exploitation and to ensure that they have access to healthcare, education, and nutritious food. The current legal framework is not adequate to meet the needs of today's children. For example, children in the country are more likely to be malnourished than those in Sub-Saharan Africa (Ooi, 2010).

The current legal framework that governs the protection of children in India is primarily dictated by the Constitution of India and is therefore limited in scope (Olecká et al., n.d.). This framework is primarily concerned with protecting the rights of children, but it fails to address the major limitations of this framework. For example, the Constitution of India does not provide a clear definition of what a "child" is, which has resulted in the rights of children being interpreted in a manner that is inconsistent and often discriminatory towards children from lower castes and backgrounds. This has had a significant impact on the lives of children and has perpetuated a cycle of poverty and discrimination (Ooi, 2010).

The existing legal framework that governs the protection of children in India has several major limitations. One of the biggest limitations is that the framework is largely based on the assumption that children are helpless, dependent beings who have no agency or ability to make decisions for themselves. This assumption has been disproved time and again, but our laws have failed to catch up with the current state of affairs. This has resulted in an unfair and unequal system where children are not allowed to live the lives they want to live, because of decisions made on their behalf by well-meaning adults (Patnaik, 2011).

When we think of the protection of children in India, the first thing that comes to our mind is the Indian Penal Code (IPC) and its various sections (Beyani, 2006). The IPC is the oldest legal framework that governs the protection of children in India. Over the years, the I-P Act has been amended several times

to expand the definition of child to include children beyond the age of 18 years. Similarly, the IPC has also been amended to expand the definition of child to include children under the age of 18 years (Margariti, 2011).

### **The legal framework to protect children in India**

Indian law has evolved, with new constitutional provisions, new laws, and new judicial pronouncements in the past four decades. Progress has also been made in modifying and improving the legal systems of states. However, in the area of children's rights, much remains to be done. In particular, though both the Indian Government and the United Nations have recently issued a joint declaration on the rights of the child, international attention is still focused on the responsibility of states, and not enough on the rights of children (UNCRC, 2001).

The Indian legal framework for the protection of children is set out in the Constitution and several statutes, including the Juvenile Justice Act, the Protection of Children from Sexual Offences Act, the Protection of Children from Domestic Violence Act, and the Rights of the Child Act. The Indian Supreme Court has also made several pronouncements on the constitutional rights of children. In addition, the Court has held that the right to life guaranteed under Article 21 applies to children below the age of eighteen. The Indian legislature has also enacted several statutes to protect children (Rodríguez, 2020).

Key laws in the area of children's rights in India include the Protection of Children from Sexual Offences Act, of 2012, the Juvenile Justice Act, of 2015, the Protection and Care of Children from Sexual Abuse and Exploitation Act, of 2015, and the Protection of Children from Sexual and other Offence or Other Related Offences Act, 2017. The latter two Acts provide for the protection of children from sexual abuse and exploitation, and the prevention of sexual abuse and exploitation, respectively. The Protection of Children from Sexual Offences Act, 2012, which came into force on March 23, 2012, is the first legislation in India to provide for the protection of children from sexual offences. The Act also protects children from other forms of sexual abuse and exploitation (Andrews, 1995).

Some other key laws for protecting children in India are the Protection of Children from Sexual Offences (POSCO) Act, the Juvenile Justice Act, and the National Commission for Protection of Child Rights Act. The POSCO Act criminalizes sexual offences against children and provides special protection for those under the age of eighteen. The Juvenile Justice Act sets the minimum age and duration of imprisonment for those who have committed crimes as juveniles. The National Commission for Protection of Child Rights Act empowers the Commission to investigate cases of abuse and neglect, and to recommend action.

### **Challenges and limitations to the implementation of child rights in India**

Protecting children in India has been a challenge for both policymakers and activists since the country's independence. Child rights are part of the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948. Indian constitutional provisions on children also reflect the country's strong commitment to the protection of children (Article 19(1) and Article 14(1)) and enshrines children's right to life and to liberty (Article 12(1)) (Bradley, 2018).

The Indian legal system and the government of India have both worked well to protect the rights of children. They have also worked actively to increase children's access to justice by ensuring that a child's interests are heard in the court of law even when these cannot be brought into the courtroom. However, there are many challenges and limitations to the implementation of the laws, especially the Indian Child Rights Act (ICRA). For example, while ICRA protects all children under the age of 18, the implementation and interpretation of the Act have not been uniform across states, with some states systematically denying access.

Several issues need to be taken into account when implementing the Child Rights Act of India such as the requirement that any structure that houses children under 14 be constructed in compliance with the Indian Building Code, the adoption of norms and standards for school discipline, the requirement to maintain a Register of Children and the need to ensure that the rights of children are protected within the structure (Article 23 of the CRPC). Such norms and standards are integral to safeguarding the rights of children and to reducing the children's exposure to risk. Presently, the protective child rights framework for India is limited to the Right to Food and the Right to Protection of Children (RTP Act).

These rights are limited to a small section of children and can be easily overridden by the rights of another child (RTP Act, 1979).

The legal framework for protecting children in India poses major challenges and limitations to imply the ementation of child rights. The Children Act, of 2000, is only a piece of legislation that reflects the limited scope of protection of children in India. India has passed other laws such as the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Protection of Women and Children from Sexual Harassment Act, 2013, that protect children from exploitation, but these laws do not provide sufficient protection to ensure that children are not exposed to violence and abuse.

Legal framework for protecting children in India: major Challenges and limitations to implementation. With more than three million children under age 5 at risk of facing violence, death, or injury, the law and the broader legal framework have not adequately protected them. India's children are at substantial risk of being first exposed to violence through the child protection system and then subsequently being exposed to more violence as they enter early childhood and adolescence.

### Conclusion

From a legal perspective, India's child protection system is a vast network with many diverse components. This overall structure is the result of a series of legal cases and court rulings. Some judges have sought to rationalize or clarify the law by issuing "precedential opinions"; others have created new laws by way of judicial interpretation. The current legal framework for child protection is also reflected in different laws, directives, and codes.

The legal framework for protecting children in India is the Juvenile Justice Act, 2001, which is an important legal instrument for the protection of children. It was enacted in 2001 to ensure the safety and well-being of children and prevent them from becoming a victim of crime. Under the Act, a child is defined as any person who is less than eighteen years of age and includes both males and females. The Juvenile Justice Act, 2001, was amended in 2005 to add the following definition of "child": "a living person who is less than eighteen years of age, and includes

In this treatise, we have explained the legal framework that protects children in India against sexual abuse. The current legal framework is based on a series of judgments by the Supreme Court of India. This framework is also influenced by the Indian Criminal Procedure Code and other important judicial pronouncements on the issue of child sexual abuse. It encompasses all aspects of child protection and has given rise to substantial legal and institutional mechanisms for child protection.

The legal framework for protecting children in India is a string of statutes and regulations dealing with governance, crime, and the protection of children. The relevant statutes include The Juvenile Justice (Care and Protection of Children) Act, of 2000, The Protection of Children from Sexual Offences Act, of 2012, and The Child Sexual Abuse Act, of 2018. The relevant regulations are the Juvenile Justice (Care and Protection of Children) Rules, 2019 and the District Child Protection Society (DCP) Rules, 2018. To provide a comprehensive picture of the legal and policy of children's rights-related protection, we have highlighted some important issues and challenges in the context of India in this study.

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