International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Safeguarding the Future: The Evolution of International Child Rights and the Indian Context

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Abstract

This article provides an overview of the international normative and institutional framework established for the protection and well-being of children. It traces the historical trajectory of child rights, from early legal traditions to the modern era of the United Nations (UN) and the Convention on the Rights of the Child (CRC). The discussion highlights the core principles of the contemporary child rights regime, including the "best interests of the child" and "participation rights," while examining the mechanisms for accountability such as the Committee on the Rights of the Child. Finally, the article evaluates Indian state practice, contrasting India's robust constitutional and legislative commitments with the significant ground-level challenges of malnutrition and administrative apathy. It concludes by emphasizing the need for stronger compliance measures, participatory welfare governance, and structural reform to translate legal standards into tangible outcomes for children.

Keywords: Child Rights; CRC 1989; International Human Rights Law; Indian Constitution; Juvenile Justice; UN Child Protection Mechanisms.

I. Introduction

Children constitute one of the most vulnerable demographic groups in any society. Their physical, cognitive, and emotional dependence on adults and institutions renders them susceptible to exploitation, neglect, and systemic discrimination. Historically, legal frameworks positioned children as passive subjects, whose interests were mediated through parental authority or state sovereignty. In the post-colonial world, however, child rights increasingly became a subject of international concern, reflecting the recognition that childhood is a universal developmental stage requiring specialized legal protection.[1] This shift, from welfare-oriented charity models to rights-based approaches, is pivotal in the evolution of international family and constitutional law. The universalization of child rights under international instruments like the Convention on the Rights of the Child, 1989 (CRC) marked a global consensus that children are not merely dependents but rights holders whose interests, opinions, and identities require affirmative legal protection.[2]

[1]Convention on the Rights of the Child, pmbl., Nov. 20, 1989, 1577 U.N.T.S. 3.
[2]Convention on the Rights of the Child, pmbl., Nov. 20, 1989, 1577 U.N.T.S. 3.

II. Historical Foundations and the Shift to International Norms

The concept that children possess specific rights has a long history, with roots in non-western traditions; for example, classical Muslim law prescribed parental duties and recognized rights such as maintenance, custody, and consent for marriage.[3] In the modern era, international law expanded to address these concerns as transnational priorities, particularly following World War II and the establishment of the UN. Contemporary legal frameworks recognize children as subjects of rights with evolving capacities, rather than merely passive recipients of protection.[4]

In the Indian context, historical legal texts including the Dharmashastra recognized guardianship and maintenance obligations, indicating that social systems acknowledged differentiated needs of minors.[5] The Roman legal doctrine of patria potestas, although patriarchal in nature, introduced fundamental ideas of parental accountability that indirectly influenced later Western legal frameworks.[6]

These early developments demonstrate that child rights, while institutionally consolidated in the 20th century, draw on a long global lineage of ethical, moral, and legal commitments toward children.

III. The Global Legal Architecture for Child Rights

Child rights are situated at the intersection of International Human Rights Law, Humanitarian Law, and Labour Law, reflecting multidimensional protection needs. While the 1924 Geneva Declaration of the Rights of the Child offered the first global articulation of protection standards, the decisive normative shift occurred with the 1948 Universal Declaration of Human Rights, which recognized that childhood is entitled to special care and assistance.[7]

The CRC (1989)—now ratified by every nation except the United States—remains the cornerstone of the global child rights regime.[8] The Convention establishes four central pillars:

1. Non-discrimination (Art. 2)
2. Best interests of the child (Art. 3)
3. Right to life, survival, and development (Art. 6)
4. Participation rights (Art. 12)

In addition, three Optional Protocols extend protection to:

- Child soldiers in armed conflict (2000),
- Sale of children, child prostitution, and child pornography (2000),
- Communications procedure enabling individual complaints (2011).[9]

The CRC's interpretive body, the Committee on the Rights of the Child, expands state obligations through General Comments, which function as quasi-authoritative guidance. For instance, General Comment No. 14, on the right of the child to have their best interests taken as a primary consideration, is routinely cited by domestic courts worldwide.[10]

A. Related International Frameworks Supporting the CRC

InstrumentFocus

[3]TAHIR MAHMOOD, Muslim Law in India and Abroad 115 (LexisNexis 2019).
[4]MANFRED NOWAK, Introduction to the International Human Rights Regime 44 (3d ed. 2020).
[5]Dharmashastra references cited in P.V. Kane, History of Dharmasastra (Bhandarkar Oriental Research Institute, 1930).
[6]Roman Law and the Legal World of the Romans (Andrew M. Riggsby, Cambridge Univ. Press 2010).
[7]G.A. Res. 217A (III), Universal Declaration of Human Rights art. 25 (Dec. 10, 1948).
[8]UNICEF, UN Treaty Ratification Status: CRC, https://www.unicef.org/child-rights-convention(last visited Dec. 28, 2024).
[9]United Nations Treaty Collection, Optional Protocols to the CRC, https://treaties.un.org(last visited Dec. 28, 2024).
[10]UN Committee on the Rights of the Child, General Comment No. 14 (2013).

ILO Convention 182 (1999)Eliminating Worst Forms of Child Labour
Hague Convention (1993)Intercountry Adoption Safeguards
Optional Protocols to CRCArmed Conflict / Sexual Exploitation / Complaints
Together, these instruments form a layered architecture of legal protections supported by institutional mechanisms such as UNICEF, UNHCR, UNESCO, and ILO.[11]

IV. Institutional Mechanisms for Accountability

The success of global child rights enforcement depends on treaty monitoring, state reporting, and judicial incorporation into domestic law. The CRC Committee evaluates state compliance through periodic reports, shadow reports from civil society, and inter-state communications.[12]
Notably, the Third Optional Protocol strengthens accountability by recognizing children's individual procedural capacity—a landmark acknowledgment of children as autonomous rights holders.
UNICEF's programmatic monitoring further identifies systemic vulnerabilities, especially in the digital era. Emerging challenges include:

- Online sexual exploitation,
- Algorithmic discrimination against minors,
- AI-mediated profiling,
- Cross-border cyber trafficking.[13]

The speed of technological growth has outpaced legal adaptation, suggesting the need for a CRC 2.0 era capable of addressing 21st-century child rights threats.

V. Child Rights in India: Commitment vs. Reality

India's commitment to child welfare predates the CRC, rooted in the Directive Principles of State Policy and Fundamental Rights. Articles 21A, 23, 24, 39(e)-(f), and 45 create a constitutional mandate for protection against exploitation, access to education, and conditions of development in dignity.[14]
Key legislation aligning India with international standards includes:

- Right of Children to Free and Compulsory Education Act, 2009,
- Protection of Children from Sexual Offences (POCSO) Act, 2012,
- Juvenile Justice (Care and Protection of Children) Act, 2015,
- The Child Labour (Prohibition and Regulation) Amendment Act, 2016,
- The Prohibition of Child Marriage (Amendment) Bills, periodically introduced.

A. The Implementation Gap

India houses approximately 430 million children, nearly one-fifth of the global child population.[15] Yet, the Union Budget allocation for children remains between 3–4%, disproportionately low for a nation of this scale.[16]
Major concerns include:

- Malnutrition (36% stunting; 19% wasting)[17]

[11]UNICEF, The State of the World's Children 2023 (United Nations Children's Fund 2023).
[12]UN Treaty Body Database, Committee on the Rights of the Child, https://www.ohchr.org.
[13]UNICEF, Children and Digital Dangers Report (2023), https://www.unicef.org.
[14]INDIA CONST. arts. 21A, 23, 24, & 39(e).
[15]NITI Aayog, NFHS-5 Report (2019-2021), https://www.niti.gov.in.
[16]Union Budget Analysis, Child Budget (2023–24), https://www.indiabudget.gov.in.
[17]NFHS-5, supra note 15.

- Learning poverty and digital divide (post-pandemic)
- Child trafficking and unsafe migration
- Overburdened juvenile justice boards
- Insufficient child protection officers at district levels

Although the Supreme Court of India has repeatedly recognized the best interests of the child doctrine, judicial intervention alone cannot compensate for administrative deficits.[18]

VI. Areas of Reform: What India Needs

To align constitutional guarantees with CRC obligations, the following reforms are critical:

1. Budgetary Restructuring:Ring-fenced allocations for child protection schemes to avoid diversion.
2. District-Level Monitoring:Mandatory reporting dashboards for Child Welfare Committees.
3. Digital Rights Charter for Children:To regulate surveillance capitalism, AI systems, and data extraction practices targeting minors.
4. Cross-border Trafficking Prevention Units:In collaboration with SAARC Child Protection Frameworks.
5. Integration of SDGs with Domestic Law:SDG 4 (Education) and SDG 16 (Justice) as statutory mandates rather than policy targets.

VII. Conclusion

While a global consensus has emerged regarding the status of children as custodians of the world's future, a significant divide remains between normative legal frameworks and the lived experience of children in developing nations. States must transition from legislative symbolism to implementation accountability, prioritizing autonomous institutions, transparent governance, and grassroots participation. The evolution of child rights reveals that legal recognition, though essential, is not transformative in isolation. Within the current social and technological context, the future of child rights depends on whether States can institutionalize equitable, accessible, and enforceable protection structures. For India, the road ahead requires embracing constitutional morality and international cooperation to ensure that every child not only has rights on paper, but experiences them in life.

[18]ABC v. State (NCT of Delhi), (2015) 10 SCC 1 (India).