

OVERVIEW OF CHILD CARE AND PROTECTION LEGISLATION

FROM 1986 TO 2015

Introduction:

India has significantly evolved its approach to children's care and protection from 1986 to 2015, recognizing the importance of children's rights and their holistic development.

Key Points:

- Children in India are now viewed as valuable members of society, with rights beyond basic needs, focusing on their overall development.
- The Constitution of India, particularly Article 14, 15, 15(3), 19(1) (a), 21, 21(a), 23(1), 24, 39(f) and 45, plays a crucial role in outlining children's welfare and rights.
- The Juvenile Justice Act of 1986 was the first major law addressing children's needs and rights, emphasizing rehabilitation and care for juvenile offenders.
- The 2000 amendment changed this law to the Juvenile Justice (Care and Protection of Children) Act, broadening its scope to include all vulnerable children needing care, not just those in trouble with the law.
- The 2000 revision included measures for identifying and protecting children in abusive or neglectful situations, focusing on their welfare and development.
- By 2015, concerns about juvenile delinquency led to amendments allowing minors aged 16 to 18 to be tried as adults for serious crimes, while still maintaining a focus on rehabilitation.
- The Act established specialized institutions for psychological support and education for children, ensuring they had opportunities for a better future.
- Children in Need of Care and Protection include those abandoned, orphaned, neglected, or abused, and those facing unsafe environments, such as child labor or homelessness.
- The legislation establishes various services, including Child Welfare Boards and special police units, to support these children.
- The laws evolved to address crimes against children, including trafficking and sexual abuse, introducing tougher penalties in the 2015 amendment for serious offenses.

- The 2015 Act also called for special courts to expedite trials for child crimes, ensuring juvenile victims receive protection during legal proceedings.

Conclusion:

The changes in legislation from 1986 to 2015 illustrate a consistent focus on the care, protection, and rehabilitation of children in India, aiming to safeguard them from harm and provide a nurturing environment for growth and development.

UNDERSTANDING KEY LEGAL PROVISIONS OF
THE JUVENILE JUSTICE (CARE & PROTECTION of CHILDREN) ACT, 2015

RELEVANT SECTION & PROVISION	BASIC INGREDIENTS	PUNISHMENT
(9) “ best interest of child ” means <i>the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development;</i>	<ul style="list-style-type: none">• any decision should be in line with fundamental requirement of child.• fundamental need for mental, emotional, physical, social and intellectual development	
(12) “ child ” means <i>a person who has not completed eighteen years of age</i>	<ul style="list-style-type: none">• child is below 18 years	
(14) “ child in need of care and protection ” means a child— (i) <i>who is found without any home or settled place of abode and without any ostensible means of subsistence; or</i> (ii) <i>who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or</i> (iii) <i>who resides with a person (whether a guardian of the child or not) and such person—</i> (a) <i>has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or</i> (b) <i>has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or</i> (c) <i>has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or</i> (iv) <i>who is mentally ill or mentally or physically challenged or suffering from terminal or</i>	<ul style="list-style-type: none">• child living without any financial means• child living with abusive or neglectful person• person has made threats of harm to child• person having a history of harming children and hence likely to harm• parent/guardian who is unfit or incapacitated• parents/guardian abandoned or surrendered• child is at risk of sexual abuse/ illegal acts/ unconscionable gains	

<p><i>incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or</i></p> <p><i>(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or</i></p> <p><i>(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or</i></p> <p><i>(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or</i></p> <p><i>(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or</i></p> <p><i>(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or</i></p> <p><i>(x) who is being or is likely to be abused for unconscionable gains; or</i></p> <p><i>(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or</i></p> <p><i>(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;</i></p>		
<p>(15) “child friendly” means any behaviour, conduct practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;</p>	<ul style="list-style-type: none">• behaviour in the best interest of child	
<p>(31) “guardian” in relation to a child, means his natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings;</p>	<ul style="list-style-type: none">• guardian is natural or any other person having charge	
<p>3. General principles to be followed in administration of Act.</p> <p><i>The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—</i></p> <p><i>(i) Principle of presumption of innocence: Any child</i></p>	<ul style="list-style-type: none">• for appropriate administration, child/children must be treated with dignity & equality• principle of natural	

shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child’s views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

justice to be followed in decision making

<p><i>(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.</i></p> <p><i>(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.</i></p> <p><i>(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.</i></p> <p><i>(xv) Principle of diversion:</i></p> <p><i>(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.</i></p>		
<p>30. Functions and responsibilities of Committee.—</p> <p><i>The functions and responsibilities of the Committee shall include</i></p> <p><i>(i) taking cognizance of and receiving the children produced before it;</i></p> <p><i>(ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;</i></p> <p><i>(iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;</i></p> <p><i>(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;</i></p> <p><i>(v) directing placement of a child in foster care;</i></p> <p><i>(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;</i></p> <p><i>(vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and</i></p>	<ul style="list-style-type: none"> • welfare committee to take suo moto actions for children not brought before it. 	

<p><i>keeping in mind the available capacity of the institution;</i></p> <p><i>(viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;</i></p> <p><i>(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;</i></p> <p><i>(x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;</i></p> <p><i>(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;</i></p> <p><i>(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;</i></p> <p><i>(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);</i></p> <p><i>(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;</i></p> <p><i>(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;</i></p> <p><i>(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or child line services, as the case may be;</i></p> <p><i>(xvii) accessing appropriate legal services for children;</i></p> <p><i>(xviii) such other functions and responsibilities, as may be prescribed.</i></p>		
<p>75. Cruelty to the Child</p> <p><i>“Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes</i></p>	<ul style="list-style-type: none">• whoever (parent, guardian, in charge, caretaker) having charge/control of a	<p>GENERAL</p> <ul style="list-style-type: none">• imprisonment up to 3 yrs. or• fine 1 lac. or

<p><i>or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:</i></p> <p><i>Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:</i></p> <p><i>Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:</i></p> <p><i>Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees</i></p>	<p>child/children</p> <ul style="list-style-type: none"> assaults, abandons, abuses, exposes or wilfully neglects the child or procures child for that purpose or a manner likely to cause unnecessary mental/physical suffering proviso 1 biological parents in case of circumstances beyond control proviso 2 Rigorous imprisonment for person running or engaged in child centric organisation (5 yrs. punishment – 5 lac fine) proviso 3 consequences if harm is severe (10 yrs., 5 lac fine or both) mental & physical suffering is sine qua non 	<ul style="list-style-type: none"> both <p>CRUELTY BY CHILD CENTRES</p> <ul style="list-style-type: none"> rigorous imprisonment up to 5 yrs. fine 5 lac. <p>SEVERE CONSEQUENCES</p> <ul style="list-style-type: none"> rigorous imprisonment up to 10 yrs. fine 5 lac
<p>88. Alternative punishment</p> <p><i>Where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the offender found guilty of such offence shall be liable for punishment under such law which provides for punishment which is greater in degree.</i></p>	<ul style="list-style-type: none"> greater punishment to prevail. 	
<p>109. Monitoring of implementation of Act</p> <p><i>(1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17 (herein referred to as the National Commission or the State Commission, as the case may be), of the Commissions for Protection of Child rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under the said Act, also monitor the implementation of the provisions of this Act, in such manner, as may be prescribed.</i></p>	<ul style="list-style-type: none"> NCPC has obligation for implementation of act at national level SCPC has obligation for implementation of act at state level 	

<p>(2) <i>The National Commission or, as the case may be, the State Commission, shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in the national Commission or the State Commission under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).</i></p> <p>(3) <i>The National Commission or, as the case may be, the State Commission, shall also include its Activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).</i></p>		
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THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 with AMENDMENT OF 2006 and 2011

RELEVANT SECTION & PROVISION	INGREDIENTS	PUNISHMENT
<p>Section 2 (k.) "juvenile" or "child" <i>means a person who has not completed eighteenth year of age;</i></p>	<ul style="list-style-type: none"> • juvenile also recognised as child • children above 18 years of age 	
<p>s. 2 (d) "child in need of care and protection" <i>means a child- (i) who is found without any home or settled place or abode and without any ostensible means of subsistence,</i></p> <p><i>3[(ia) who is found begging, or who is either a street child or a working child,]</i></p> <p><i>(ii) who resides with a person (whether a guardian of the child or not) and such person-</i></p> <p><i>(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or</i></p> <p><i>(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,</i></p> <p><i>(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,</i></p> <p><i>(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,</i></p> <p><i>(v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered] him or who is missing and run away child and whose parents cannot be found after</i></p>	<ul style="list-style-type: none"> • child in need of care & protection is • who resides with a person or a guardian & who has threatened to cause injury & there is a reasonableness of the threat being carried out. • resides with person/guardian who has abused or neglected of some other child/ children or there exists a likelihood of such abuse or neglect • child residing with a parent/guardian – who is unfit or incapacitated to exercise control • child who is abandoned by the parent • child whose parents have abandoned/ surrendered him • child who is or likely to be grossly abused, 	

<p><i>reasonable injury,</i></p> <p><i>(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,</i></p> <p><i>(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking.</i></p> <p><i>(viii) who is being or is likely to be abused for unconscionable gains,</i></p> <p><i>(ix) who is victim of any armed conflict, civil commotion or natural calamity;</i></p>	<p>tortured or exploited for sexual abuse or illegal acts</p> <ul style="list-style-type: none">• child who is or likely to be abused for unconscionable gains	
<p>2 (j.) "guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority;</p>	<p>Guardian is</p> <ul style="list-style-type: none">• natural guardian or• any other person having charge or control over the child	
<p>23.Punishment for Cruelty to Juvenile or Child</p> <p><i>Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both</i></p>	<ul style="list-style-type: none">• cruelty; mental & physical to child• by whoever in actual charge/control• cruelty such as assault, abandonment, exposed to neglect or wilfully neglect• cruelty cause or procured to the child• such cruelty be punished with maximum 6 months imprisonment/ fine/ both	<ul style="list-style-type: none">• Imprisonment up to 6 months• or fine• or both

THE JUVENILE JUSTICE ACT, 1986

RELEVANT SECTION & PROVISION	INGREDIENTS	PUNISHMENT
2 (h) " juvenile " means <i>a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years</i>	Juvenile <ul style="list-style-type: none">boy below 16girl below 18	
2 (l) " neglected juvenile " means juvenile who— <i>(i) is found begging ; or</i> <i>(ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute;</i> <i>(iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or</i> <i>(iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life ;</i> <i>(v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain;</i>	Neglected Juvenile is <ul style="list-style-type: none">who is under control of incapacitated or unfit parent/guardianunfit and incapacitated to exercise controljuvenile is or likely to be abused, exploited for immoral/ illegal/ unconscionable gain	
2 (s) " supervision " in relation to a juvenile placed under the care of any parent, guardian or other fit person or fit Institution under this Act, means the supervision of that juvenile by approbation officer for the purpose of ensuring that the juvenile is properly looked after and that the conditions imposed by the competent authority are complied with	<ul style="list-style-type: none">juvenile under care of any parent, guardiansupervision by probation officerensuring that juvenile is properly looked and legal condition by J’ board are complied	
41. Punishment for Cruelty to Juvenile <i>(1) Whoever, having the actual charge of, or control over, a juvenile, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.</i> <i>(2) No Court shall take cognizance of an offence punishable under sub-section (1) unless the complaint is filed with the previous sanction of the</i>	<ul style="list-style-type: none">defines cruelty & its consequencescruelty- mental & physicalby whoever in actual charge/ control over juvenilecruelty in form of assaults, exposed to neglect or wilfully neglect which could	<ul style="list-style-type: none">Imprisonment up to 6 monthsOr fineOr Both

<i>State Government or an officer authorised by it in this behalf.</i>	cause mental/physical suffering, abandoned	
<p>45. Alternative punishments</p> <p><i>Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree</i></p>	<ul style="list-style-type: none">• in case the act is an offence under any other act• higher punishment shall be imposed	