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## **8. The Evolution of Human Rights in India: Tracing the Historical, Social, And Legal Dimensions of Women's and Children's Protections**

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### **8.1 Introduction:**

India's human rights history spans over 5000 years, from ancient philosophical concepts to today's Constitutional guarantees. The progress of human rights reflects a complex trip through time, especially when it comes to women and children's rights. These rights have seen major changes from Vedic times to now.

Religious texts, social reform movements, constitutional provisions, and legislative frameworks mark distinct phases in this development. Today's human rights challenges and opportunities in Indian society make more sense when viewed through this historical lens. This is especially true for gender equality and child protection. These changes have helped shape India's modern legal and social framework.

### **8.2 Ancient Indian Perspectives on Women and Children's Rights:**

Ancient India's view on human rights was deeply rooted in its social and religious framework. This was especially true when it came to women and children. The rise of these rights shows how cultural, religious, and social factors shaped early Indian society.

- **Status of Women in Vedic Period:**

The Vedic era shines brightly as a significant chapter in the history of women's rights in India. During this time, women were held in high regard, enjoying respect and dignity within society. They were afforded opportunities to ascend to remarkable intellectual and spiritual heights.<sup>1</sup>

In the realm of Vedic scholarship, there existed remarkable women known as Brahnavadinis, who devoted their entire lives to the pursuit of knowledge. Meanwhile, another group, the Sadyodvahas, immersed themselves in their studies until the moment

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<sup>1</sup>Radhika Kapur, *Status of Women in Ancient India*, ResearchGate (Jan. 8, 2019), [https://www.researchgate.net/publication/330220793\\_Status\\_of\\_Women\\_in\\_Ancient\\_India](https://www.researchgate.net/publication/330220793_Status_of_Women_in_Ancient_India).

they tied the knot.<sup>2</sup> Remarkable women such as Apala, Ghosha, and Visvavara crafted powerful mantras, earning them the esteemed title of rishis.<sup>3</sup> In the annals of history, women were not mere spectators; they were key players in the political arena. Megasthenes chronicled the influential Pandya women who actively engaged in governance. The Satavahana queen Nayanika, for instance, adeptly steered the kingdom while her young son was still learning the ropes of leadership. Noblewomen enjoyed the privilege of education, empowering them to contribute significantly to the intricacies of administration and decision-making.<sup>4</sup>

- **Children's Position in Ancient Texts:**

Ancient Indian scriptures intricately woven a tapestry of children's rights and their role within the community. While Manu's laws positioned children towards the lower rungs of the social hierarchy, they also ensured that these young souls received the safeguarding and care of society.<sup>5</sup> Young luminaries such as Dhruva, Prahlada, and Nachiketa have emerged as beacons of commitment, resilience, and insight, their tales weaving a rich tapestry of inspiration.<sup>6</sup>

The Puranas and epics painted children as essential threads in the fabric of society. Within these ancient tales, young characters were bestowed with their own rights and vibrant personalities. These narratives became enchanting vessels for imparting moral lessons and cultural insights to the impressionable minds of youth.

- **Religious and Cultural Influences:**

In the rich tapestry of ancient India, the evolution of rights was intricately woven by the threads of religious and cultural beliefs. The sacred texts - the Vedas, Upanishads, and Arthashastras championed the notion of equality, laying the groundwork for rights as early as the Vedic period.<sup>7</sup> Throughout history, the role of women has evolved, especially in the realm of religious practices. In the early Vedic era, women actively participated alongside men in public sacrifices, sharing in the spiritual duties. However, as time progressed, societal norms shifted, imposing limitations on their involvement in these sacred activities.<sup>8</sup> In a rich tapestry of cultural evolution, the concept of rights wove itself into the fabric of society. The status of women experienced significant shifts, particularly during the later Vedic period, when their standing began to wane. It was during this time that child marriage

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<sup>2</sup>Naresh Rout, *Role of Women in Ancient India*, Government of Odisha (Jan. 28, 2016), <https://magazines.odisha.gov.in/Orissareview/2016/Jan/engpdf/43-48.pdf>.

<sup>3</sup> RADHIKA, *supra* note 1, at 1.

<sup>4</sup> NARESH, *supra* note 2, at 43.

<sup>5</sup> Preeti Rana et al, *Evolution of Child Rights in India*, 3 International Journal of Education, Modern Management, Applied Science & Social Science 228 (2021).

<sup>6</sup> Dr. Neha Pandya, *The Role of Children in Preserving Indian Cultural Heritage*, 9 Vidhyayana 2 (2023).

<sup>7</sup> PREETI, *supra* note 5, at 228.

<sup>8</sup> Nagalaxmi.V, *The Role and Position of Women in Vedic Period in India*, 11 International Journal of Humanities and Social Science Invention 151-152 (2022).

took root, with young girls often finding themselves wed at the tender ages of 8 or 10.<sup>9</sup> Yet some women still made their mark in literature, philosophy, and administration. This shows how their rights survived even as society changed.

### **8.3 Social Reform Movements and Rights Evolution:**

In the vibrant tapestry of nineteenth-century India, social reform movements emerged as powerful catalysts for change, reshaping the landscape of human rights. These movements particularly illuminated the struggles faced by women and children, paving the way for a more just and equitable society. These movements arose to combat social practices deeply rooted in society.

- **19th Century Women's Reform Movements:**

Groups such as Brahmo Samaj, Prarthana Samaj, and Arya Samaj were at the forefront of transformative movements aimed at elevating the status of women. The trailblazer of these reforms was none other than Raja Ram Mohan Roy, whose passionate advocacy against the practice of sati began in 1818. His relentless efforts culminated in the landmark criminalization of this practice in 1829, marking a significant victory for women's rights.<sup>10</sup> The movements tackled multiple issues, viz., child marriage, polygamy, widow remarriage restrictions, and women's property rights. A wave of organizations sprang to life, championing the rights and causes of women. Among them, the Brahmo Samaj, established in 1825, took bold strides to dismantle the religious barriers that held women back. Meanwhile, the Bombay Widow Reforms Association, founded in 1869, made history by orchestrating the very first remarriage of a widow in that same year, marking a significant milestone in the fight for women's empowerment.<sup>11</sup> These organizations prioritized women's education to bridge the gap between educated males and their uneducated female family members.

- **Child Marriage Opposition Campaigns:**

The battle against child marriage truly took off in the 1800s. Back in the 1860s, it was not uncommon for girls to tie the knot as young as 8 or 9. Visionaries like Behramji Malabari and Tej Bahadur Sapru shone a light on the detrimental effects of such early unions on the well-being of children, both physically and mentally. Thanks to their tireless advocacy, the Age of Consent Bill was introduced in 1891, marking a significant step forward in the fight for children's rights.<sup>12</sup>

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<sup>9</sup>*Women in the Rig Vedic Period*, UNACADEMY, <https://unacademy.com/content/railway-exam/study-material/history/women-in-the-rig-vedic-period/>, (last visited Nov. 21, 2024).

<sup>10</sup> Edukemy Team, *Women's Movement in India – Modern History Notes*, EDUKEMY (Nov. 20, 2024, 9:29 AM), <https://edukemy.com/blog/womens-movement-in-india-modern-history-notes/>.

<sup>11</sup> Paras Madan, *Unit-30*, (Jan. 31, 2006), <https://egyankosh.ac.in/bitstream/123456789/18902/1/Unit-30.pdf>.

<sup>12</sup> EDUKEMY, *supra* note 10.

**This period achieved several milestones:**

- The Special Marriage Act of 1872, which granted inheritance rights to women;
- The Age of Consent Bill in 1860, which raised awareness about child marriages;
- The Widow Remarriage Act in 1856, through Vidyasagar and Keshub Chandra Sen's efforts.

• **Educational Reform Initiatives:**

Educational reforms emerged as the heartbeat of societal transformation. Between 1855 and 1858, the visionary Vidya Sagar established 48 schools for girls, paving the way for a brighter future. Meanwhile, M.G. Ranade and his wife championed significant educational advancements, launching a girls' high school in 1884. D.K. Karve devoted his efforts to empowering widows through education, founding the Ananth Balikashram in 1896 and later creating the S.N.D.T. Women's University in 1916, further solidifying his legacy in the realm of women's education.<sup>13</sup>

Social reformers held the conviction that empowering women through education could eradicate societal ills and fortify family bonds. In response, a wave of women's organizations and educational institutions sprang up, dedicated to expanding learning opportunities for females. The Arya Samaj boldly challenged traditional Hindu beliefs, championing the cause of mandatory education for all, regardless of gender. They established numerous Arya Kanya Pathshalas, which blossomed into thriving colleges, paving the way for a brighter future.<sup>14</sup>

#### **8.4 Constitutional Framework Development:**

India's Constitution marked a defining moment that gave formal rights to women and children. This historic document altered centuries of social reform into Constitutional guarantees. The framework came from lengthy debates that reshaped modern India's human rights scene.

• **Constituent Assembly Debates on Gender:**

The Constituent Assembly took its first strides towards inclusivity by welcoming 15 remarkable women into its ranks, amidst a sea of 389 representatives. These trailblazers were the voices of approximately 18 million women in independent India, bringing with them the weight of their experiences with social injustices such as child marriage, caste discrimination, and restricted economic opportunities. Despite constituting less than 2% of the assembly, their impact was monumental, reshaping constitutional provisions in significant ways. Pioneering figures like Hansa Mehta championed the cause of the Uniform Civil Code, which ultimately found its place within the Directive Principles rather than as Fundamental Rights.<sup>15</sup>

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<sup>13</sup> EDUKEMY, *supra* note 10.

<sup>14</sup> PARAS, *supra* note 11.

<sup>15</sup> Priya Ravichnadrán, *Women in the Constituent Assembly*, Daksh (Apr. 28, 2023), <https://www.dakshindia.org/women-in-the-constituent-assembly/>.

- **Special Provisions for Children:**

The Constitution rolled out a robust shield of rights for children, recognizing them as equals to their adult counterparts. It bestowed upon them essential freedoms, including the right to equality (Article 14), safeguards against discrimination (Article 15), and the cherished right to personal liberty (Article 21).<sup>16</sup> The outlined rights encompass:

- The guarantee of free and mandatory elementary education for children aged 6 to 14 (Article 21A);
- Shielding young ones from dangerous work until they reach 14 (Article 24);
- Protections against economic exploitation (Article 39e);
- Opportunities for children to grow up in an environment of health, freedom, and dignity (Article 39f).<sup>17</sup>

- **Fundamental Rights Impact:**

The Constitution laid down a powerful foundation that continues to resonate through its core principles of rights. Article 14 established the principle of equality under the law, ensuring that everyone stands on equal footing.

Meanwhile, Article 15 took a bold stance against discrimination, prohibiting bias based on gender, religion, or birthplace. Furthermore, the Constitution empowered the state to implement affirmative action, particularly benefiting women, as highlighted in Articles 15(3) and 16.<sup>18</sup>

**The cornerstone of our constitutional promises includes:**

- A fair shot at public jobs for everyone (Article 16);
- Equal pay for equal effort (Article 39d);
- Safeguarding working conditions and providing maternity support (Article 42);
- Advancing the educational and economic welfare of marginalized groups (Article 46).<sup>19</sup>

The constitutional blueprint paved the way for significant shifts in legislation. With the introduction of the Protection of Women from Domestic Violence Act in 2005 and the Juvenile Justice Act of 2000, foundational constitutional ideals transformed into tangible safeguards. These laws not only established mechanisms to uphold rights but also ensured that justice could be served effectively.

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<sup>16</sup>MAKKALA HAKKU, <https://www.makkalahakku.com/childrens-rights-according-to-the-indian-constitution.html> (last visited Nov. 20, 2024).

<sup>17</sup> HAQ: CENTRE FOR CHILD RIGHTS, <https://www.haqrc.org/child-rights/constitution-of-india/> (last visited Nov. 20, 2024).

<sup>18</sup> Ministry of Statistics and Programme Implementation, <https://www.mospi.gov.in/download-reports> (last visited Nov. 20, 2024).

<sup>19</sup> *Id.*

## 8.5 Legislative Milestones for Women:

Indian legislative reforms have steadily expanded women's rights by changing personal laws, workplace rules, and property rights. These changes put constitutional principles into action and show how society's view of gender equality has grown.

- **Personal Law Reforms:**

The journey towards women's rights took a significant turn with the introduction of the Hindu Women's Right to Property Act in 1937, marking a pivotal moment in safeguarding their inheritance rights for the very first time. Following this, the Hindu Marriage Act of 1955 emerged, ushering in fresh concepts such as separation and divorce, which had previously been absent from religious laws. Fast forward to 2019, the Muslim Women Act made waves by declaring triple talaq illegal, with offenders facing up to three years behind bars.<sup>20</sup>

**All religious communities saw these important changes:**

- The Indian Divorce Act of 1869 let wives file for divorce;
- The Hindu Succession Act of 1956 dealt with inheritance rights;
- The Muslim Women Act of 1986 protected maintenance rights.

- **Workplace Rights Development:**

Workplace rights have undergone a significant transformation, aiming to eliminate gender discrimination and enhance safety for women. Recent statistics reveal that Indian companies have made impressive strides, with women holding 39% of senior management positions, surpassing the global average of 31%.<sup>21</sup> The Equal Remuneration Act of 1976 established the principle that equal pay for equal work should be the norm. However, many companies still struggle to turn this ideal into reality.<sup>22</sup>

Despite progress, women continue to encounter obstacles in various sectors. Over 150 laws exist that hinder or outright prevent them from pursuing careers in fields such as petroleum and certain manufacturing roles. As of 2022, a staggering 24 states-maintained regulations that barred women from factory jobs, with nearly all of these states also prohibiting them from working night shifts.<sup>23</sup>

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<sup>20</sup> Lekshmi Parameswaran, *History of Personal Laws in India 7-8* (1st ed. 2020).

<sup>21</sup> Manisha Prasad, *Evolution of workplace dynamics for women in India*, The Times of India, (Apr. 16, 2022), <https://hr.economicstimes.indiatimes.com/news/workplace-4-0/diversity-and-inclusion/evolution-of-workplace-dynamics-for-women-in-india/90879127>.

<sup>22</sup> *Navigating Labour Law Regulations: Upholding Women's Rights in the Workplace*, RICAGO, (Nov. 20, 2024, 10:30 AM), <https://www.ricago.com/blog/labour-laws-for-women-in-the-workplace>.

<sup>23</sup> Abhishek Singh, *Laws that limit women's employment in India*, (Apr. 30, 2024), <https://idronline.org/article/gender/laws-that-limit-womens-employment-in-india/>.

- **Property Rights Development:**

The landscape of property rights has undergone a remarkable transformation for women. The Hindu Succession Act of 2005 emerged as a revolutionary force, granting daughters equal footing with their brothers when it comes to family assets. With the introduction of Section 14, women gained the power to fully possess any property they acquired through inheritance, division, purchase, or gifts, marking a significant milestone in the journey toward gender equality.<sup>24</sup>

Property rights have especially helped fix inheritance differences between genders. The Supreme Court made a big decision in *Vineeta Sharma vs. Rakesh Sharma*<sup>25</sup> (2020). The ruling declared that women could enjoy coparcenary status and rights akin to their male counterparts, regardless of when they were born in relation to the law's enactment. This groundbreaking decision meant that fathers didn't have to be alive when the law came into effect, granting women the power to inherit even in cases from the past.<sup>26</sup>

## 8.6 Child Rights Legislative Journey:

The protection of children's rights in India has come a long way from colonial-era rules to modern laws. This change shows how the nation has grown more dedicated to protecting its youngest citizens through careful legal reforms.

- **Early Protection Laws:**

India's journey towards safeguarding its children took a significant leap with the Apprentice Act of 1850, marking the first time the nation acknowledged the unique legal standing of young ones.<sup>27</sup> In a significant shift towards compassion, the Reformatory Schools Act of 1876 emerged, paving the way for a new approach to young offenders. Rather than meting out punishment, this law championed the idea of support and guidance. Fast forward to 1960, and the Children Act took center stage, revolutionizing the treatment of minors by ensuring they were no longer confined in jails. This landmark legislation emphasized the importance of nurturing, safeguarding, and rehabilitating children, marking a profound evolution in juvenile justice.<sup>28</sup>

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<sup>24</sup> Rachit Garg, *Property rights of women in India*, IPLEADERS BLOG (Nov. 20, 2024, 3:57 PM), [https://www.google.com/search?q=19.+https%3A%2F%2Fblog.ipleaders.in%2Fproperty-rights-of-women-in-india%2F&oeq=19.%09https%3A%2F%2Fblog.ipleaders.in%2Fproperty-rights-of-women-in-india%2F&gs\\_lcrp=EgZjaHJvbWUyBggAEEUYOjIGCAEQRRg50gEJMzAwNWowajE1qAIIIsAIB&sourceid=chrome&ie=UTF-8#vhid=zephyr:0&vssid=atritem-https://blog.ipleaders.in/property-rights-of-women-in-india/](https://www.google.com/search?q=19.+https%3A%2F%2Fblog.ipleaders.in%2Fproperty-rights-of-women-in-india%2F&oeq=19.%09https%3A%2F%2Fblog.ipleaders.in%2Fproperty-rights-of-women-in-india%2F&gs_lcrp=EgZjaHJvbWUyBggAEEUYOjIGCAEQRRg50gEJMzAwNWowajE1qAIIIsAIB&sourceid=chrome&ie=UTF-8#vhid=zephyr:0&vssid=atritem-https://blog.ipleaders.in/property-rights-of-women-in-india/)

<sup>25</sup> AIR 2020 SUPREME COURT 3717.

<sup>26</sup> Ms. Shivani Bhatia, *Evolution of Women's Property Rights in India*, (May 7, 2024), <https://www.linkedin.com/pulse/evolution-womens-property-rights-india-vllp2017-pllr/>.

<sup>27</sup> Vrinda Nigam, *Child labour laws in India*, IPLEADERS BLOG (Nov. 20, 2024, 3:59 PM), <https://blog.ipleaders.in/laws-related-child-labour-india/>.

<sup>28</sup> *SUMMARY OF THE CHILD PROTECTION LAWS IN INDIA*, Kailash Satyarthi Children's Foundation (Dec. 22,

### **Several specialized laws strengthened this framework:**

- The Children Pledging of Labor Act (1933)
- The Immoral Traffic Prevention Act (1987)
- The Prohibition of Child Marriage Act (2006)

### **• Education Rights Development:**

The Right of Children to Free and Compulsory Education Act (RTE) of 2009 transformed the landscape of education, elevating it from mere suggestion to an essential right.

This groundbreaking legislation mandates that children between the ages of 6 and 14 receive education at no cost. Additionally, private institutions are obligated to reserve 25% of their seats for children hailing from underprivileged backgrounds. However, despite these noble intentions, statistics reveal that a staggering 8.1 million children remained outside the classroom after the law's inaugural year.<sup>29</sup>

### **The RTE Act established straightforward guidelines to eliminate:**

- The practice of donations or capitation fees;
- Admission interviews for kids or their parents;
- The retention or expulsion of students;
- Any form of physical punishment or mental torment.<sup>30</sup>

### **• Anti-Child Labor Initiatives:**

India has made remarkable strides in the battle against child labor, thanks to the implementation of innovative laws. The Child Labor (Prohibition & Regulation) Act of 1986 marked a significant milestone, inspired by the insights of the Gurupadswamy Committee back in 1979.

The impact of these initiatives is evident in the census data, which reveals a dramatic decline in the number of working children aged 5 to 14, from a staggering 1.26 crore in 2001 to just 43.53 lakh in 2011. This transformation showcases the power of legislation in safeguarding the future of the nation's youth.<sup>31</sup>

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2023),<https://satyarthi.org.in/wpcontent/uploads/BondedLabor/English/Summary%20of%20the%20Child%20Protection%20Laws%20in%20India.pdf>.

<sup>29</sup> *RightToEducation.in*, RIGHT TO EDUCATION <https://righttoeducation.in/know-your-rte/about>, (last visited Nov. 21, 2024).

<sup>30</sup> *About Child Labour*, MINISTRY OF LABOUR & EMPLOYMENT|GOVERNMENT OF INDIA (Nov. 20, 2018), <https://labour.gov.in/childlabour/about-child-labour>, (last visited Nov. 21, 2024).

<sup>31</sup> *Child labour in India*, WIKIPEDIA (Oct. 20, 2009), [https://en.wikipedia.org/wiki/Child\\_labour\\_in\\_India](https://en.wikipedia.org/wiki/Child_labour_in_India), (last visited Nov. 21, 2024).



**The Child Labor Amendment Act of 2016 stepped up the game by introducing robust safeguards, including:**

- Banning all work for kids under 14 across every industry;
- Restricting teens aged 14 to 18 from engaging in hazardous occupations;
- Implementing stricter penalties for those who dare to flout these regulations.<sup>32</sup>

Launched in 1988, the National Child Labor Project (NCLP) continues to thrive, backed by a generous Rs. 6 billion from the central government. Its mission - to eradicate child labor by providing support and financial assistance to families in need, paving the way for a brighter future for children everywhere.

### **8.7 Judicial Activism and Rights Expansion:**

India's courts have become powerful defenders of human rights. They actively interpret constitutional provisions to protect women and children. The judiciary's bold decisions and innovative legal thinking have revolutionized human rights protection.

- **Landmark Cases on Women's Rights:**

The Supreme Court's bold steps to protect women's rights have created groundbreaking legal changes. The *Vishaka vs. State of Rajasthan*<sup>33</sup> case showed how courts can fill legislative gaps.

The Court crafted comprehensive protocols aimed at curbing sexual harassment in the workplace. These protocols eventually laid the groundwork for the landmark Sexual Harassment of Women at Workplace Act, 2013.<sup>34</sup>

The Delhi Domestic Working Women's Forum case marks a significant achievement. The Supreme Court has established new guidelines aimed at providing rehabilitation and compensation for working women who have endured the trauma of rape.<sup>35</sup> In a landmark decision, the Court took a bold stand on wage equality in the case of *Mackinnon Mackenzie vs. Audrey D'costa*<sup>36</sup>, addressing the pressing issue of gender-based pay discrimination.<sup>37</sup>

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<sup>32</sup> VRINDA, *supra* note 26.

<sup>33</sup> AIR 1997 SUPREME COURT 3011.

<sup>34</sup> Saroj Bohra, *Public Interest Litigation: Access To Justice*, MANUPATRA, *Public Interest Litigation*, (Sept. 20, 2012), <https://www.manupatra.com/roundup/379/articles/public%20interest%20litigation.pdf>.

<sup>35</sup> Monesh Mehndiratta, *Landmark Juvenile Supreme Court cases in India*, IPLEADERS BLOG, (Nov. 21, 2024, 12:20 PM), <https://blog.ipleaders.in/landmark-juvenile-supreme-court-cases-in-india/>.

<sup>36</sup> 1987 AIR 1281.

<sup>37</sup> SAROJ, *supra* note 34, at 7.

- **Child Rights Jurisprudence:**

The landscape of child rights protection has undergone a remarkable metamorphosis, thanks in no small part to the courts. The Supreme Court has taken a firm stance, asserting that imprisoning children alongside adult offenders stifles their potential and hinders their growth. In a groundbreaking decision, the Court declared that it is the age of the individual at the time of the offense, rather than their age at trial, that defines whether they are considered a juvenile.

**The Court’s commitment to safeguarding our youth spans a multitude of dimensions:**

- State authorities are tasked with rolling out robust child protection initiatives;
- Establishing Child Welfare Committees is essential;
- The creation of dedicated Juvenile Police Units is a must;
- And it’s crucial that Child Care Institutions operate effectively and efficiently.<sup>38</sup>

- **Public Interest Litigation Impact:**

Public Interest Litigation (PIL) has opened the doors of justice for those often overlooked in society. The landmark case of *Sunil Batra vs. Delhi Administration*<sup>39</sup> took this a step further by introducing the concept of “epistolary jurisdiction”, allowing the courts to reach out and address the concerns of the marginalized in a more direct and compassionate manner.<sup>40</sup>

**PILs are now tackling some crucial issues, including:**

- Safeguarding consumer rights;
- Advocating for gender equality;
- Combating environmental pollution;
- Defending the rights of marginalized communities.<sup>41</sup>

In the landmark case of *The People’s Union for Democratic Rights vs. Union of India*<sup>42</sup>, the spotlight shone brightly on the pressing issues of child labor and the scourge of below-minimum wage practices. Meanwhile, the *Bandhua Mukti Morcha* case showcased the judiciary’s unwavering commitment to ensuring that fundamental rights are not just words on paper, but a living reality.

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<sup>38</sup>Aashish Saini, *CEDAW: A Critical Analysis From Indian Perspective*, LEGAL SERVICE INDIA <https://www.legalserviceindia.com/legal/article-7104-cedaw-a-critical-analysis-from-indian-perspective.html>.

<sup>39</sup> 1980 AIR 1579.

<sup>40</sup> MONESH, *supra* note 35.

<sup>41</sup> *Id.*

<sup>42</sup> 1982 AIR 1473.

Today, Indian courts are stepping up, granting financial reparations for violations of constitutional rights, including wrongful detention and the horrors of custodial torture.<sup>43</sup> India's distinctive Public Interest Litigation (PIL) framework transcends conventional legal boundaries, carving out a niche for marginalized communities to voice their concerns.

However, recent developments have sparked unease, as a handful of reckless PIL advocates are beginning to eclipse the authentic issues that truly deserve attention in the courtroom.<sup>44</sup>

## **8.8 International Conventions and Domestic Implementation**

International conventions have shaped India's human rights framework. These Conventions set standards and obligations that guide domestic policy development. India's dedication to these conventions has brought major reforms to protect women's and children's rights.

- **CEDAW Implementation:**

In a bold move to champion women's rights, India took a significant step forward by ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) back in 1993. This decision underscored the nation's dedication to fostering equality and safeguarding the rights of women everywhere.<sup>45</sup>

The government took a deep dive into the current legal landscape, examining existing laws and proposing updates to several acts, including the Immoral Traffic Prevention Act.

In a bid to enhance accessibility to justice, they introduced innovative platforms such as lok adalats, or people's courts, and parivarik mahila lok adalats, which are dedicated family women's courts. These initiatives aim to bring justice closer to the people, making it more approachable and inclusive.<sup>46</sup>

### **The government has embarked on a transformative journey with these pivotal actions:**

- Empowered judicial officials with training in gender awareness;
- Revamped educational materials to reflect a balanced perspective on gender;
- Established safe havens for women in need of protection;
- Launched child development centers dedicated to supporting the children of sex workers.<sup>47</sup>

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<sup>43</sup> MONESH, *supra* note 35.

<sup>44</sup> *Id.*

<sup>45</sup> Convention on the elimination of all forms of discrimination against women, U.N. 38, § 31 (2000), [https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING\\_CO MMMENTS/India/India-CO-1.pdf](https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_CO MMMENTS/India/India-CO-1.pdf).

<sup>46</sup> UNICEF, <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter> (last visited Nov. 21, 2024).

<sup>47</sup> *Id.*

- **Child Rights Convention Impact:**

Since its inception in 1992, the Convention on the Rights of the Child (CRC) has revolutionized India's perspective on safeguarding its young ones. This groundbreaking agreement emphasizes that children are not mere possessions of their parents or the government; rather, they hold an equal place within the tapestry of humanity.<sup>48</sup> With a staggering 39% of India's 1.21 billion people being children, it's crystal clear why safeguarding their rights is of utmost importance!<sup>49</sup>

**The CRC has ushered in a wave of transformation across various domains:**

- Launched social protection programs tailored for children;
- Initiated comprehensive educational projects;
- Established robust systems to shield against exploitation;
- Assembled dedicated committees focused on child welfare.<sup>50</sup>

- **Policy Harmonization Efforts:**

India has put in considerable effort to align its domestic policies with global conventions, although hurdles remain. The Ministry of Environment and Forests takes the helm in executing a range of international agreements. To ensure compliance with these global commitments, the government has established specialized teams tasked with reviewing and updating national laws that require adjustments.<sup>51</sup>

Recent initiatives are directed towards addressing significant deficiencies in the existing framework. The Commission for Protection of Children's Rights Act of 2005, as amended in 2006, mandates that all laws, policies, and administrative systems align with constitutional principles and the Convention on the Rights of the Child (CRC). While considerable progress has been made, further advancements are necessary, particularly in the following areas:

- The landscape of education access reveals a stark contrast, with affluent states pouring significantly more resources into their systems compared to their less fortunate counterparts;
- When it comes to birth registration, India grapples with a staggering issue, boasting one of the highest rates of unregistered births globally;
- Additionally, the protection of rights for LGBTQ+ children remain a pressing concern that demands our attention and action.<sup>52</sup>

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<sup>48</sup> HUMANIUM <https://www.humanium.org/en/india/>, (last visited Nov. 21, 2024).

<sup>49</sup> CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/doc/world/in/in-nbsap-other-en.pdf> (last visited Nov. 21, 2024).

<sup>50</sup> *Id.*, at 150.

<sup>51</sup> CIAO: COLUMBIA INTERNATIONAL AFFAIRS ONLINE, <https://ciaotest.cc.columbia.edu/>, (last visited Nov. 21, 2024).

<sup>52</sup> CONVENTION ON BIOLOGICAL DIVERSITY, *supra* note 49, at 150-151.

The government adopts a strategy of defensive human rights diplomacy, striking a balance between safeguarding state sovereignty and fulfilling its global commitments. They shine a light on the nation's human rights record in the context of present circumstances, all while enhancing the systems that put these rights into practice. Indian analysts point out the advantages and hurdles posed by international human rights frameworks, painting a nuanced picture of the landscape.<sup>53</sup>

## **8.9 Contemporary Challenges and Future Directions:**

India has made progress in human rights laws and policies. Yet the country still faces ongoing challenges to protect women and children effectively. Recent data shows a wide gap between what laws promise and what happens in real life. This calls for targeted reforms and better ways to implement existing protections.

- **Persistent Gender Inequalities:**

In the tapestry of Indian society, the threads of gender discrimination weave a stark pattern. Women, despite their immense potential, claim a mere 18% of the labor income pie, leaving a hefty 82% for their male counterparts.<sup>54</sup> The tide is turning against child marriage, with rates plummeting from a staggering 47% in 2006 to a more hopeful 23.3% between 2019 and 2021. Yet, some regions, including Andhra Pradesh, Bihar, Jharkhand, and West Bengal, continue to grapple with alarmingly high figures.<sup>55</sup> The quest for women's rights in the workplace demands urgent focus. A staggering 150 laws continue to hinder women's access to job opportunities in industries such as petroleum and manufacturing. As of 2022, a troubling 24 states had enacted regulations that curtailed women's ability to work in factories, while 11 states went so far as to prohibit women from taking on night shifts. It's high time we shine a light on these outdated restrictions and advocate for change!<sup>56</sup>

- **Child Protection Gaps:**

India's framework for safeguarding its young ones is falling short of expectations. With a staggering 444 million children in the nation, a concerning 40% face the threat of abuse and violence. The existing protective measures are struggling to make an impact, primarily due to the states' insufficient resources to effectively carry out the guidelines set forth by the UN Child Rights Convention.

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<sup>53</sup> Child Rights and You (CRY) India, <https://www.cry.org/blog/gender-inequality/> (last visited Nov. 21, 2024).

<sup>54</sup> DRISHTI IAS, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/india-s-progress-in-gender-equality> (last visited Nov. 21, 2024).

<sup>55</sup> *Ready. Ban. Regulate!* — *The Takshashila Institution's Policy School*, THE TAKSHASHILA INSTITUTION'S POLICY SCHOOL, <https://school.takshashila.org.in/student-blog/india-sc-decision-on-gm-mustard-agwm3-cehxr-ggpnm-8tx82-ssz48-lmskp-3w972-7y2mc>, (last visited Nov. 21, 2024).

<sup>56</sup> ABHISHEK, *supra* note 23.

**The system is grappling with three significant challenges:**

- A shortage of personnel in local child protection units;
- Inadequate training for those tasked with safeguarding children;
- A scarcity of options for adoption and foster care.

● **Reform Recommendations:**

Addressing these challenges necessitates reforms across various dimensions. The government should prioritize the enhancement of child protection systems by allocating additional resources and providing comprehensive training. The following actions are essential:

- It is imperative that children, particularly those who are vulnerable, are afforded a platform to express their perspectives in the formulation of protection strategies;
- Continuous professional development for child welfare practitioners is crucial;
- Child protection systems must be designed to be more accommodating and accessible for children;
- Improved data collection methodologies are essential for effectively monitoring progress;
- A greater proportion of funding should be directed towards preventive measures rather than solely responding to crises.

Furthermore, child protection units require an increase in personnel. Specialists have indicated that district offices are often unable to manage even basic distress calls. Children from marginalized communities encounter even greater obstacles in accessing necessary assistance.

Women deserve equal footing in the workplace and access to economic opportunities. It's crucial to focus on regions where gender disparities are more pronounced. Notably, India shines with 39% of women holding senior management positions, surpassing the global average of 31%.<sup>57</sup> Still, other sectors lag behind.

Progress hinges on a collaborative effort among local, state, and federal governments. It's essential for civil society, grassroots movements, and advocates to step up and contribute. Priorities should include:

- Innovative strategies for enforcing current laws;
- Comprehensive monitoring frameworks;
- Enhanced collaboration among various stakeholders;
- Increased funding for the protection of women and children;
- Ongoing evaluations of policy effectiveness.

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<sup>57</sup> MANISHA, *supra* note 21.

Achieving success relies on gathering better data regarding social activism. At present, our grasp of the challenges surrounding child protection is insufficient, hindering our ability to devise effective interventions and community initiatives. This data gap complicates the pursuit of political backing and financial resources needed to tackle these pressing issues.

### **8.10 Conclusion:**

India's human rights story shows how ancient philosophical ideas have transformed into modern constitutional protections. Religious texts, social reforms, laws, and judicial activism have shaped the complete safeguards that protect women and children today.

The country's Constitution and laws are the foundations of women's and children's rights protection. Social reformers made vital changes to stop child marriage, promote women's education, and secure property rights. Courts have strengthened these protections through landmark cases and public interest litigation. International agreements now guide how policies develop.

India has a journey ahead, yet it stands on the brink of transformation. The road to equality is still winding, particularly in the realm of employment, where gender disparities linger across businesses of every scale. However, with the right momentum, there's a chance to turn the tide and create a more equitable landscape for all. Child protection systems don't deal very well with limited resources and poor implementation. These issues need sustained focus, more resources, and better implementation methods.

Government bodies, civil society groups, and communities must work together to move forward. Better protection systems, improved monitoring, and accurate data collection will help advance human rights. Success depends on staying true to Constitutional values while adapting to new social challenges.