

Legal and Policy Framework for Children - An Update

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Policy documents specifically for children

- 1986 National Policy on Education (modified in 1992 along with the Programme of Action, 1992)
- 2003 National Policy on Child Labour
- 2003 National Children's Charter
- 2013 National Policy for Children

Other policy documents having a bearing on children's rights:

- 1993 National Nutrition Policy
- 2000 National Population Policy
- 2001 National Policy for the Empowerment of Women
- 2003 National Aids Prevention and Control Policy
- 2006 National Policy for Persons with Disabilities
- 2014 National Youth Policy
- 2017 National Health Policy

Implementation on Policies requires formulation of Action Plans at National level and in the States. Increasingly the need for District level Action Plans is also being recognized.

Laws for Children

Special Laws

- 1890** - Guardians and Wards Act (Amended in 2010)
- 1933** - Children (Pledging of Labour) Act
- 1956** - Women's and Children's Institutions (Licensing) Act
- 1956** - Young Persons (Harmful Publications) Act
- 1960** - Orphanages and Other Charitable Homes (Supervision and Control) Act
- 1992** - Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act (amended in 2003)
- 1994** - Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (amended in 2003 to become Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act)
- 2005** - Commission for the Protection of Child Rights Act, as amended in 2006
- 2006** - Prohibition of Child Marriages Act, 2006 (A law replacing the Child Marriage Restraint Act of 1929)
- 2009** - Right of Children to Free and Compulsory Education Act, 2009

- 2012** - Protection Children from Sexual Offences Act, 2012
- 2015** - Juvenile Justice (Care and Protection of Children) Act, 2000 was amended in 2006 and in 2011 (to bring it in conformity with the Mental Health Act of 1987 and ensure that children with mental illness or addicted to drugs or with diseases such as leprosy are not be segregated from other children, unless absolutely necessary in accordance with the laws in force and on recommendation of a specialist only for a specified time for the purpose of treatment). In 2015, this Act was replaced by a new Act that introduced a system of judicial waiver for children aged 16 to 18 years alleged to have committed heinous offence entailing minimum punishment of more than seven years. It also allows family adoptions under the JJ Act.
- 2016** - The Child Labour (Prohibition and Regulation) Amendment Act amends the 1986 law to ban all child labour below the age of 14 years and prohibit employment of adolescent labour aged 14 to 18 years in hazardous sectors, while regulating their employment in non-hazardous sector.

Other Special Laws having a bearing on children's rights:

- 1875 Indian Majority Act
- 1925 Indian Succession Act
- 1937 Muslim Personal Law (Shariat) Application Act
- 1948 Factories Act (Amended in 1949, 1950 and 1954)
- 1951 Plantations Labour Act (Amended in 1953, 1960, 1961, 1981, 1986 and 2010)
- 1952 Mines Act
- 1954 Special Marriage Act
- 1955 Hindu Marriage Act
- 1956 Hindu Adoptions and Maintenance Act (Amended in 2010)
- 1956 Hindu Succession Act (Amended in 2005)
- 1956 Immoral Traffic (Prevention) Act (Amended in 1978 and 1986)
- 1958 Probation of Offenders Act
- 1958 Merchant Shipping Act
- 1961 Apprentices Act
- 1961 Motor Transport Workers Act
- 1966 Beedi and Cigar Workers (Conditions of Employment) Act
- 1969 Registration of Births and Deaths Act
- 1970 Contract Labour (Regulation and Abolition) Act
- 1971 Medical Termination of Pregnancy Act, 1971(amended in 2002 through the Medical Termination of Pregnancy (Amendment) Act, 2002)
- 1976 Bonded Labour System (Abolition) Act
- 1978 Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (came into force w.e.f 25 June 1987)
- 1986 Indecent Representation of Women (Prohibition) Act
- 1987 Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act
- 1989 Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act
- 1992 Rehabilitation Council of India Act
- 1994 Transplantation of Human Organ Act
- 1995 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act
- 1999 National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act
- 2000 Information Technology Act, (amended in 2008 to include child pornography)
- 2005 Protection of Women from Domestic Violence Act
- 2013 National Food Security Act

- 2017 The Maternity benefits (Amendment) Act, 2017 amended the 1961 Maternity Benefits Act as well as its amendment dated 2008 to enhance maternity leave to six months.
- 2017 The Mental Health Care Act of 2017 replaces the 1987 Mental Health Act

Local Laws

- 1959 Bombay Prevention of Begging Act (Applicable in Delhi also)
- 1982 Karnataka Devadasi (Prohibition of Dedication) Act
- 1986 Andhra Pradesh Devadasi's (Prohibition of Dedication) Act
- 2003 Goa Children's Act

Criminal Laws

Provisions directly relating to children

Indian Penal Code, 1860

- Section 82 Age of criminal responsibility is fixed at 7 years as nothing done by a child under 7 years of age is an offence
- Section 83 *Doli incapax* – Need to establish sufficient maturity of a child between the ages of 7 to 12 years with respect to a particular act of crime as nothing is an offence which is done by such a child, who has not attained sufficient maturity of understanding to judge the nature and consequences of his action
- Section 185 Illegal purchase or bid for property by a public servant on account of a person who does not have the legal capacity to do so by himself/herself
- Section 228 A Disclosure of identity of a minor victim of rape is permitted only on the written authorisation of the next of kin of the victim
- Section 293 Selling, hiring, distributing, exhibiting or circulating obscene objects to persons below the age of 20 years
- Section 299 Offence of culpable homicide is made out when the death of a living child is caused and any part of that child has been brought forth, even though the child may not have breathed or been completely born
- Explanation 3
- Section 305 Abetment of suicide of child (person under 18 years) or insane person
- Section 310 Habitual association with others for child-stealing by means of or accompanied and 311 with murder
- Sections 312 and 313 Voluntarily causing a pregnant woman to miscarry the unborn baby or causing miscarriage without a woman's consent
- Section 315 Act done with intent to prevent child being born alive or to cause it to die after birth
- Section 316 Causing death of quick unborn child
- Section 317 Exposure and abandonment of child under 12 years, by parent or person having charge of its care
- Section 318 Concealing the birth of a child by secretly disposing her/his body
- Sections 361, 362 and 363 Kidnapping (Section 361) or abduction (Section 362) of a male minor under 16 years of age or a female minor under 18 years of age out of the lawful guardianship of such minor, without the consent of the guardian and punishment for it (Section 363)
- Section 363 A Kidnapping or maiming a minor (under 16 years in case of males and under 18 years in case of females) for purposes of begging

Section 366 A	Procuration of minor girls (under 18 years) for illicit intercourse
Section 366 B	Importation of girls (under 21 years) to force them into illicit intercourse
Section 369	Kidnapping/abducting a child under ten years with intent to steal from its person
Section 370	Trafficking a person, including minors
Section 370 A	Exploitation of a minor trafficked person
Section 372	Selling a minor (person under 18 years) for the purpose of prostitution
Section 373	Buying a minor (person under 18 years) for the purpose of prostitution
Section 375 (Sixthly)	Rape of a girl under 18 years of age, with or without consent
Section 375 (Seventhly)	Sexual acts of a husband with his wife, where the wife is below the age of 15 years
Exception 2 to Proviso	
Section 376 (2)	Higher punishment for rape in certain cases – (i) custodial rape; (ii) rape by persons in position of authority/trust/control (including police, public servants, member of armed forces, staff or management of children's institutions, relative/guardian/teacher, staff of a hospital); (iii) rape on women in vulnerable situations (including women under 16 years of age, physically or mentally challenged women, pregnant women, in a situation of communal or sectarian violence); and (iv) rape with additional harm (including grievous injury or danger to life, repeated rape)
Section 376 C	Sexual intercourse by person in authority e.g. manager or in-charge of a children's institution

Other relevant IPC Provisions that deal with offences against children

Section 166 A	Failure of the police to register an FIR in cases of rape, assault on women with intent to outrage her modesty, sexual harassment and trafficking is an offence punishable with rigorous imprisonment up to six months and fine
Section 166 B read with Section 357C of CrPC	Failure of any hospital, government or private, to provide free of cost first aid and medical treatment to victims of rape is an offence punishable with imprisonment up to one year or fine, or both
Section 228 A	Disclosing identity of a rape victim and publishing the court proceedings of a rape case without prior permission of the concerned court
Section 354	Assaulting a woman to outrage her modesty
Section 354 A	Sexual harassment
Section 354 B	Assaulting a woman with intent to disrobe her
Section 354 C	Voyeurism
Section 354 D	Stalking
Sections 364	Kidnapping/abduction in order to murder
Section 364 A	Kidnapping/abduction for ransom
Section 365	Kidnapping/abduction for wrongful confinement
Section 366	Kidnapping/abduction of a woman to compel her marriage or for illicit intercourse and use of criminal intimidation or any other method of compulsion
Section 367	Kidnapping/abduction for slavery or to subject a person to grievous injury
Section 368	Wrongful concealment or keeping in confinement a kidnapped or abducted person
Section 371	Habitual import / export / buying / selling / trafficking / dealing in slaves
Section 374	Unlawful compulsory labour

Section 367	Kidnapping/abduction to subject a person to unnatural lust of another person
Section 376 A	Rape leading to death or persistent vegetative state of the victim
Section 376 D	Gang rape
Section 509	Word, gesture or act intended to insult the modesty of a woman
Section 377	Unnatural sexual offences
Section 493	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage
Section 496	Going through the marriage ceremony with fraudulent intention

Code of Criminal Procedure (CrPC), 1973

Section 125	Maintenance for a dependent wife and children
Section 98	Power to compel immediate restoration of a woman or a female under 18 years of age abducted for unlawful purpose or detained unlawfully
Section 160	Police Officer to reach certain persons at their residence for purposes of investigation instead of requiring their attendance before the police officer or in the police station. These include a male witness under the age of 15 years, or a woman, or a person above the age of 65 years, or a mentally/physically challenged person.
Section 167	In case of an accused woman under eighteen years of age, the Magistrate can order detention only in the custody of a remand home or recognised social institution.
Section 173 (1 A)	Police investigation in case of rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.
Section 198 (6)	Court not to take cognizance of an offence of rape of a woman below the age of 18 years by her own husband after a lapse of one year from the date of commission of such offence
Section 273 Proviso	Court to ensure that a rape victim below the age of 18 years is not confronted by the accused at the time of taking her evidence and the accused's right to cross-examination is also maintained

Other relevant CrPC Provisions that deal have a bearing on offences against children

Section 26	All rape cases to be tried by a court presided over by a woman judge as far as practicable
Section 51(2)	Search of a female be made by a female only with strict regard to decency
Section 53(2)	Medical examination of a female only by a female or under supervision of a female registered medical practitioner
Section 154	Information of rape or other forms of sexual violence recognized under section 354, 354 A to D, 376, 376 A to E and 509 of IPC given by a woman against whom such an offence is alleged to have been committed or attempted, shall be recorded by a woman police officer or woman officer (new)
Section 157	Recording of statement of a rape victim at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality (new)
Section 161	Statement of a victim of rape or other forms of sexual violence recognized under section 354, 354 A to D, 376, 376 A to E and 509 of IPC to be recorded

by a woman police officer or a woman officer. Statement can also be recorded by audio-visual means. (new)

Section 164 (5 A)	Mandatory and immediate recording of the statement of a victim of rape or other forms of sexual violence recognized under section 354, 354 A to D, 376, 376 A to E and 509 of IPC by a Judicial Magistrate as soon as the commission of such an offence is brought to the notice of the police; assistance of interpreter or special educator to be provided in case of mentally or physically challenged victims and their statements to be video graphed and considered in lieu of examination-in-chief and cross-examination in the course of trial.
Section 164 A	Medical examination of a rape victim and the procedure to be followed, including the need to take consent of the victim for the examination
Section 173 (2) (h)	Final Report of the police on completion of investigation to include information regarding report of medical examination of a rape victim
Section 197 (1)	No sanction required for prosecution of a public servant accused of rape, trafficking or any other sexual offence recognized under sections 354, 354 A to D, 370, 375, 376, 376 A, C and D to E and 509 of IPC or accused of an offence under section 166 A or 166 B of IPC
Section 309 (1) Proviso	Rape trials to be completed as far as possible within a period of two months from the date of filing of the charge sheet
Section 327(2)	In camera trial of all rape cases
Section 357 A	Victim compensation scheme to be put in place by the central and state governments. In addition court to have powers to order compensation in certain cases where the accused is acquitted or where there has been no trial by the victim requires rehabilitation. Also, State/District Legal Services Authorities to order free medical care and treatment.
Section 357 B	In case of gang rape, compensation payable under section 357 of CrPC to be in addition to payment of fine to the victim
Section 357 C	Public and private hospitals to provide free first aid or medical treatment to victims of rape and inform the police about the incident immediately

Indian Evidence Act, 1872

There are a few provisions in the Indian Evidence Act that protect the rights of victims of sexual offences, including children.

Section 53 A	While dealing with the issue of consent in a trial of a case of rape or sexual offences under section 354, 354 A to D, 376, 376 A to E of IPC, evidence of character of the victim or previous sexual experience is not relevant
Section 114 A	Where a woman alleged to have been raped as per section 375 of IPC tells the court that she did not consent, the court shall presume no consent. This provides some relief to the 16-18 year old victims of rape.
Section 119	Court to take assistance of interpreter or special educator in recording evidence of a person unable to communicate verbally and video graph such statement
Section 146 (3) Proviso	In a rape trial or trial of attempt to rape, questions regarding immoral character, previous sexual experience of the victim are not allowed during cross-examination
Section 151	It lays down that the court may forbid questions or inquiries that it regards indecent or scandalous.