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Children as Victims, Witnesses, and Perpetrators in International Criminal Law with Special Reference to India³

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Abstract

The involvement of children in international crimes as victims, witnesses and, in some cases, offenders raises complex legal and ethical issues for both international and national justice systems. This study examines the development of international criminal law in relation to children, with particular emphasis on India's legislative and judicial approach. Drawing on key instruments, including the Rome Statute of the International Criminal Court, the United Nations Convention on the Rights of the Child (UNCRC) and related protocols, the article examines the responsibilities of states to protect child victims of serious crimes, including genocide, war crimes and crimes against humanity. It examines the special procedural protections required for child witnesses to avoid re-traumatisation and promote credible testimony, including in camera hearings and psychological assistance. Moreover, the study addresses the controversial issue of children accused of committing serious crimes, considering the broad international consensus that children under eighteen, particularly where they have been recruited, coerced or exploited, should be treated primarily as victims.

Keywords: international criminal law, child victims, juvenile justice, Convention on the Rights of the Child; genocide.

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Dzieci jako ofiary, świadkowie i sprawcy w międzynarodowym prawie karnym ze szczególnym odniesieniem do Indii⁴

Streszczenie

Sytuacja dzieci występujących w kontekście zbrodni międzynarodowych jako ofiary, świadkowie oraz, w niektórych przypadkach, sprawcy stanowi złożony problem prawny i etyczny dla międzynarodowych i krajowych systemów wymiaru sprawiedliwości. Autor analizuje rozwój międzynarodowego prawa karnego w odniesieniu do dzieci, ze szczególnym uwzględnieniem indyjskiego podejścia legislacyjnego i orzeczniczego. Odwołując się do kluczowych instrumentów, takich jak Statut Rzymski Międzynarodowego Trybunału Karnego, Konwencja ONZ o prawach dziecka (UNCRC) oraz powiązane protokoły, artykuł analizuje obowiązki państw w zakresie ochrony dzieci będących ofiarami najpoważniejszych zbrodni, w tym ludobójstwa, zbrodni wojennych i zbrodni przeciwko ludzkości. Omówiono w nim szczególne gwarancje proceduralne przysługujące dzieciom występującym w charakterze świadków, służące zapobieganiu wtórnej traumatyzacji i wspieraniu wiarygodności zeznań, w tym przesłuchania z wyłączeniem jawności oraz zapewnienie pomocy psychologicznej. Ponadto w artykule podjęta została kontrowersyjna kwestia dzieci oskarżanych o popełnienie poważnych czynów zabronionych, przy uwzględnieniu szerokiego międzynarodowego konsensusu, zgodnie z którym dzieci poniżej osiemnastego roku życia, zwłaszcza gdy zostały zwerbowane, przymuszone lub wykorzystane, powinny być traktowane przede wszystkim jako ofiary.

Słowa kluczowe: międzynarodowe prawo karne, dzieci będące ofiarami, wymiar sprawiedliwości w sprawach nieletnich, Konwencja o prawach dziecka, ludobójstwo.

⁴ Badania opisane w tym artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

Children in armed conflict and organised violence have become one of the most serious challenges confronting the international legal order in the twenty-first century. Evidence gathered by UN agencies and non-governmental organisations has consistently revealed a deeply disturbing trend: children are being systematically targeted and recruited by both state and non-state actors, and many are forced into roles ranging from combatants to logistical support. In addition to being used as child soldiers, children are also exposed to targeted attacks, sexual violence, abduction and other serious violations of international humanitarian law. The extent and persistence of these abuses highlight a deep normative crisis, as, although there is a substantial body of legal instruments that proscribe such conduct, such as the Geneva Conventions and the Convention on the Rights of the Child (CRC), persistent enforcement gaps and impunity remain. It is against this background that the intersection between international criminal law and child protection takes on a greater sense of urgency, because it offers not only a punitive form of accountability but also a framework for recognising the agency and suffering of children.⁵

The body of international criminal law dealing with children as victims, witnesses and alleged perpetrators has developed considerably, and India has made significant legislative and institutional progress in this field. The National Crime Records Bureau (NCRB) report for 2022 states that, in 2021, 162,000 cases involving crimes against children were recorded in India, representing an 8.7% rise over the preceding year.⁶ This increase, particularly in the context of COVID-19 pandemic-related lockdowns, once again demonstrates children's vulnerability to various forms of abuse, including sexual violence, abduction and child marriage. The Protection of Children from Sexual Offences (POCSO) Act, 2012, as amended in 2019, forms a core part of India's legal framework and criminalises various forms of sexual offences against children, including penetrative sexual assault, sexual harassment and the use of children for pornographic purposes. The amendments introduced more stringent penalties, including life imprisonment for aggravated

⁵ *Convention on the Rights of the Child*, United Nations, New York 1989. Available from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

⁶ *Crime in India 2021*, National Crime Records Bureau, Ministry of Home Affairs, New Delhi 2022. Available from: <https://ncrb.gov.in>.

penetrative sexual assault and, in the most serious cases, the death penalty. Special Courts, which are intended to ensure expeditious trials and child-friendly procedures, including the use of video-conferencing for recording statements, are designed to reduce the trauma of child victims and witnesses, in line with international guidelines such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). Nevertheless, problems remain, including underreporting caused by social stigma and inadequate law enforcement, with statistics for 2017–2020 indicating that 80% of victims were girls younger than 14.⁷

At the same time, the legal classification of children as victims, witnesses and alleged perpetrators reveals distinctive vulnerabilities that cannot be reduced to straightforward categories. As victims, children suffer cumulative trauma with long-term effects on their psychosocial development and dignity, which underscores the need for legal systems grounded in reparative justice and rehabilitation. As witnesses, they occupy a precarious evidentiary position: their testimony may be essential to the prosecution of mass atrocity crimes, but testifying can re-traumatise them or expose them to retaliatory violence. These tensions are further compounded where children are accused of committing crimes, as questions of moral responsibility, diminished capacity and the extent to which retributive justice may be applied become particularly complex. International norms, such as the Rome Statute of the International Criminal Court (ICC), reflect a degree of ambivalence: on the one hand, individuals under eighteen years of age are excluded from the jurisdiction of the Court; on the other hand, some ad hoc tribunals and domestic jurisdictions have taken different approaches, resulting in a normative patchwork.⁸

The plight of children in the context of international and domestic criminal law raises not merely questions of legal formalism but also engages fundamental commitments to human dignity, restorative justice, and the rule of law. The lack of effective implementation of protections for child victims and witnesses continues to perpetuate cycles of victimisation and erode the credibility of systems of accountability. Similarly, uncritical criminalisation of children who offend can reproduce the structural violence to which they may already have been subjected. These dilemmas are especially relevant in India, where insurgency, communal violence and trafficking may intersect, drawing children into criminal procedures that are ill-suited to their special status.

⁷ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, United Nations, New York 2002. Available from: <https://www.ohchr.org/en/treaties/opac>.

⁸ *Rome Statute of the International Criminal Court*, International Criminal Court, The Hague 2011. Available from: <https://www.icc-cpi.int/resource-library>.

The Juvenile Justice (Care and Protection of Children) Act, 2015, shapes India's approach to children alleged to have committed offences within the criminal justice system, placing greater emphasis on rehabilitation than on punitive sanctions for children in conflict with the law. The Act defines a child as any person below the age of eighteen and establishes Juvenile Justice Boards and Child Welfare Committees to deal with children in conflict with the law, with a view to promoting restorative justice and reintegration. Nonetheless, it allows children aged between sixteen and eighteen who are alleged to have committed heinous offences to be tried as adults following a preliminary assessment, a move that has raised controversy because it may be inconsistent with the UNCRC (1989), particularly its best-interests principle. According to NCRB data, juvenile offending remains a concern, and socio-economic factors such as poverty and educational deprivation are commonly associated with children's involvement in crime. At the international level, the ICC, established in 2002, addresses war crimes involving children, particularly the recruitment, enlistment and use of child soldiers; however, India is not a State Party to the Rome Statute and is therefore not generally subject to the Court's jurisdiction absent a specific jurisdictional basis. This non-membership limits India's participation in ICC mechanisms for addressing international crimes involving children, including crimes occurring in conflict zones; however, domestic laws seek to bridge this gap through specialised frameworks.⁹

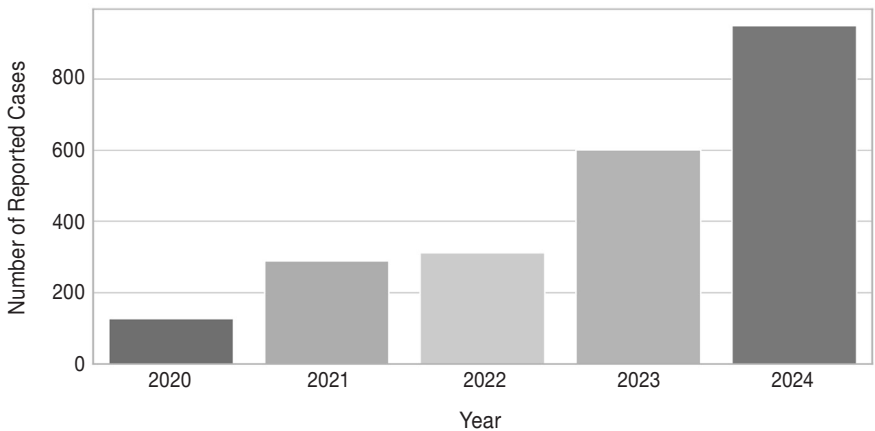
Even with a strong legal framework, ineffective implementation in India compromises the safety of children as victims and witnesses. The NCRB report highlights that alleged perpetrators are often known to the child, including parents, relatives or caregivers, making reporting difficult because of fear, dependency or family pressure. Law enforcement officials and judicial administrators often lack awareness and training in child-sensitive procedures, which hinders effective prosecution and victim support. According to UNICEF India, greater emphasis on prevention and rehabilitation is needed, as, although laws such as the POCSO Act and the Juvenile Justice Act are extensive, their effectiveness is hampered by poor coordination among state governments, police, the judiciary, and medical professionals.¹⁰ Efforts to establish one-stop centres and CHILDLINE services reportedly operating in 82 cities suggest that some immediate support is available, yet coverage remains limited because of resource constraints and inconsistent implementation across different states. Globally, the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005) provide guidance on protecting child victims and witnesses, focusing on their rights to privacy, safety

⁹ A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford 2017.

¹⁰ *Child Protection Strategy 2021–2030*, UNICEF, New York 2019. Available from: <https://www.unicef.org>.

and psychological assistance; India has partially incorporated these standards but has not fully implemented them in practice.¹¹ Recent data from the NCRB (2023) reveal a concerning rise in child sexual abuse and cybercrime against children, especially in the post-pandemic period. Furthermore, India's 2024 legislative and policy responses, such as the strengthened implementation of the Juvenile Justice (Care and Protection of Children) Amendment Rules, reflect an evolving legal landscape.

Figure 1. Rise in Cybercrimes Against Children in India (2020–2024)



Source: NCRB, Crime in India reports.

In the Figure 1 it shows cases increasing every year. Reported cases grew from around 120 in 2020 to nearly 950 in 2024. The biggest jumps were from 2022 to 2023 and again in 2024.

Overall, cybercrimes against children rose more than 7 times in just five years. The identification of children as victims in international criminal law rests on the recognition of children's extreme vulnerability and the specific, often irreparable harm they endure in the course of armed conflict and mass violence. The term 'child victim' is commonly used to refer to any individual under the age of eighteen years who is directly or indirectly harmed as a result of the commission of international crimes, including genocide, crimes against humanity, war crimes, and acts of aggression. These offences commonly take the form of deliberate attacks on schools and hospitals, the recruitment and use of child soldiers, sexual and gender-based violence, forced disappearance, and unlawful deprivation of liberty.

¹¹ *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (ECOSOC Resolution 2005/20), United Nations, New York 2005. Available from: <https://www.un.org/ruleoflaw>.

For instance, *Prosecutor v. Thomas Lubanga Dyilo*¹² was a landmark ICC case in recognising the unlawful conscription and enlistment of children under the age of fifteen as a war crime and thus institutionalising the normative obligation to protect children in international law. Notably, this jurisprudence highlights the multidimensional nature of children's victimhood, reflected not only in physical and psychological harm but also in the loss of family and community, forced displacement and structural marginalisation, which may continue long after the war ends.

The Rome Statute of the ICC is a principal legal instrument for safeguarding children as victims of international crimes. Article 8(2)(b)(xxvi) and Article 8(2)(e) (vii) explicitly criminalise the conscription, enlistment or use of children under the age of fifteen to participate actively in hostilities. In addition to these substantive criminal prohibitions, the Statute contains procedural protections designed to secure child-sensitive victim participation and access to reparations. Article 68(1) requires the Court to take appropriate measures to protect the safety, physical and mental integrity, dignity, and privacy of victims, particularly children. Similarly, Article 75 provides for reparations, which may include restitution, compensation and rehabilitation, reflecting a restorative orientation sensitive to children's developmental needs. In addition to the Rome Statute, the CRC and the Optional Protocol on the Involvement of Children in Armed Conflict impose binding obligations on States Parties to take steps to prevent recruitment and provide for demobilisation and reintegration. The Optional Protocol also strengthens restrictions on the recruitment and use of children under eighteen, further enhancing the normative framework for safeguarding children against militarisation.¹³

Jurisprudence has increasingly defined the boundaries of this protection through landmark cases. In the Lubanga, the ICC Trial Chamber held that the conscription, enlistment and use of child soldiers constitute grave violations of international humanitarian law and acknowledged the psychological and social harm experienced by child soldiers. The ruling clarified that support roles connected with hostilities, such as serving as porters or spies, may also fall within the scope of the prohibition. Similarly, attacks launched on civilians, including children, in the Ituri region of the Democratic Republic of the Congo were found by the ICC to constitute crimes against humanity and war crimes in *Prosecutor v. Germain Katanga*.¹⁴

Within the Indian context, even though India is not a State Party to the Rome Statute, there is a considerable degree of convergence between international stan-

¹² ICC-01/04-01/06.

¹³ J. Winterdyk, J. Jones, *Juvenile Justice: International Perspectives, Models and Trends*, Boca Raton 2012.

¹⁴ ICC-01/04-01/07.

dards and domestic law. The Juvenile Justice (Care and Protection of Children) Act of 2015 establishes a holistic approach to the care, protection and rehabilitation of child victims, with provisions on child-friendly procedures, psychosocial support and compensation. The POCSO Act of 2012 penalises a wide range of sexual offences against children, requires *in camera* proceedings and provides for the designation of support persons. Nevertheless, its implementation continues to be affected by structural impediments such as insufficient infrastructure, cultural stigma, and limited victim assistance services. The Supreme Court of India has emphasised on several occasions the need for a child-centric approach, as seen in *Nipun Saxena v. Union of India*,¹⁵ where the Court established specific rules for safeguarding the identity and dignity of child victims of sexual abuse. However, children exposed to armed violence in conflict-affected areas such as Jammu and Kashmir and the North-East, as well as victims of trafficking and organised crime, often face substantial barriers to justice and reparations. The mismatch between normative commitments and realities on the ground remains a significant obstacle to the realisation of children's rights recognised in both international and domestic law. The case of *State v. Rakesh Kumar*¹⁶ reaffirmed that child victims must be provided with trauma-informed care during trial, mandating *in camera* proceedings, and prohibiting aggressive cross-examination.

Children as Witnesses in International Criminal Law

Children occupy a paradoxical position in international criminal law, as they are among the most vulnerable participants in proceedings and, in the prosecution of atrocities, frequently the most important sources of evidence. Their testimony often provides the only first-hand accounts of crimes such as recruitment into armed forces, sexual slavery or mass killings, making it important in establishing the contextual elements of international crimes. This point is emphasised in the jurisprudence of ICC, especially in the case of *Prosecutor v. Thomas Lubanga Dyilo*,¹⁷ in which the conviction for conscripting, enlisting and using children under the age of fifteen to participate actively in hostilities relied in part on the testimony of former child soldiers. However, this reliance creates complex normative concerns regarding the reliability of young witnesses, the risk of manipulation or intimidation and the severe psychological effects of testifying about traumatic experiences

¹⁵ (2019) 2 SCC 703.

¹⁶ 2024 SCC Online Del 1032.

¹⁷ ICC-01/04-01/06.

in adversarial proceedings. These tensions between probative necessity and protective obligations underpin the procedural and normative frameworks that regulate child-witness testimony in international law.

In response to these vulnerabilities, the ICC has established a set of procedural protections designed to mitigate harm and safeguard the dignity of child witnesses. The protective measures provided for under Rule 87 of the ICC Rules of Procedure and Evidence allow for closed sessions, pseudonyms, and the redaction of identifying information where necessary to protect anonymity. Rule 68 also allows for the introduction of prior recorded testimony, which helps to minimise the number of in-court appearances. Rule 88 also provides for special measures, including the possible use of video-link evidence and intermediaries to assist questioning, reflecting a more child-sensitive approach to justice. In the Lubanga proceedings, the Trial Chamber applied these protections where appropriate, and children were allowed to testify behind screens and through video technology, which helped to reduce re-traumatisation while preserving the accused's right to a fair trial. These efforts represent the ICC's attempt to balance evidentiary integrity with the welfare of minors.¹⁸

Beyond the ICC, minimum standards for the treatment of child witnesses are elaborated within a wider normative framework. The United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (ECOSOC Resolution 2005/20) define key principles, including the right to dignity and compassion, the right to effective assistance, and the right to protection from hardship in the justice process. The Guidelines focus on the personalised methods of communication, special training for professionals, and procedural adjustments, such as child-friendly locations and the avoidance of direct cross-examination where possible. Despite being soft-law instruments, these guidelines have acquired considerable persuasive authority and have influenced the practices of international tribunals as well as domestic reforms. Their integration into ICC proceedings reflects normative convergence towards a rights-based approach to child witnesses in international criminal justice.¹⁹

In the Indian context, the POCSO Act of 2012 represents a paradigm shift in how child witnesses are treated procedurally and expressly orders child-friendly procedures. Section 33 requires evidence to be reported in a child-friendly setting and prohibits aggressive questioning. *In camera* proceedings are required under Section 36, and videoconferencing can be used under Section 37. The case of *State*

¹⁸ D. Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham 2009.

¹⁹ *Child Soldiers Global Report 2007*, Human Rights Watch, New York 2007. Available from: <https://www.hrw.org>.

of *Maharashtra v. Bandu @ Daulat*²⁰ emphasised the need to handle the statements of child victims with special care, directing courts to guard against secondary victimisation. Moreover, the Juvenile Justice (Care and Protection of Children) Act, 2015, reiterates the need to consider the best interests of the child in any proceedings. The High Courts in India have increasingly emphasised the importance of trained support persons, psychological counselling and the prevention of repeated depositions. Such procedural innovations are progressive, but their implementation remains uneven, especially in lower courts, where infrastructural and training gaps exist. Updated international guidance on child-friendly justice recommends the use of testimonial aids and separate waiting areas in participating or implementing jurisdictions. These provisions align with Indian guidelines on children as witnesses under the POCSO Act and Sections 273 and 164 of the Code of Criminal Procedure (CrPC).

Nevertheless, significant evidentiary dilemmas arise in relation to the use of child testimony. As research on developmental psychology highlights, children's recollections may be susceptible to suggestion, raising questions about the probative value and consistency of their accounts. In the Lubanga case, the Defence repeatedly questioned the credibility of child witnesses by citing coaching and inducement by intermediaries, which prompted the Chamber to treat some testimony with caution. Indian courts have also grappled with this tension. In *Rai Sandeep v. State (NCT of Delhi)*,²¹ the Court held that the evidence of a child witness should be examined with caution but may itself support a conviction if found to be credible and reliable. This nuanced approach takes into account both the necessity and the vulnerability of child evidence. At the same time, the need to safeguard children against re-traumatisation must be balanced against the right of the accused to fair cross-examination and a public trial; this remains an imperfect balance requiring constant doctrinal and procedural adjustment.

Children as Perpetrators Under International Criminal Law

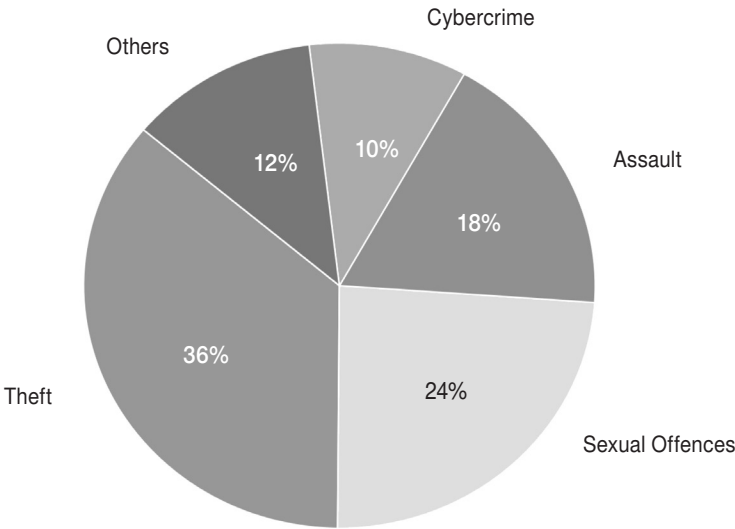
The issue of children's criminal culpability in international criminal law is bound up with the tension between their evolving capacities and demands for accountability. Conceptually, the debate turns on whether children, especially those involuntarily recruited as child soldiers or drawn into organised violence, possess the mental maturity and volitional capacity to be held criminally responsible for

²⁰ AIR 2017 SUPREME COURT 5414.

²¹ AIR 2012 SUPREME COURT 3157.

serious crimes such as genocide or crimes against humanity. International norms generally avoid the exercise of criminal jurisdiction for punitive purposes over children under the age of eighteen.²² The minimum age of criminal responsibility is not uniform and varies considerably across jurisdictions, and although the CRC does not specify a particular age, it encourages States Parties to determine the age below which children are presumed not to have the capacity to commit an offence punishable by penal sanction. This normative uncertainty has given rise to a fragmented legal landscape in which some domestic legal systems are willing to prosecute children as young as 12 or 14 for grave international crimes, even where there is increasing evidence of coercion, duress, and lack of agency.

Figure 2. Types of Juvenile Crimes in India (2023)



Source: NCRB, Crime in India 2023, Chapter on ‘Juveniles in Conflict with Law’.

The recent data of NCRB being shown in the Figure 2 shows the distribution of offences committed by juveniles. Theft accounts for the largest share at 36%, followed by Sexual Offences at 24% and Assault at 18%. Cybercrime contributes 10% while other offences make up 12%. The data indicates property and sexual offences together form 60% of total juvenile crimes recorded in 2023.

²² *Child Soldiers Global Report 2007*, Human Rights Watch, New York 2007. Available from: <https://www.hrw.org>.

Under the Rome Statute of the ICC, Article 26 expressly provides that persons under the age of eighteen are not subject to the jurisdiction of the Court. This exclusion reflects a broad international consensus that a purely retributive approach to international criminal law is difficult to reconcile with children's developmental vulnerabilities. A complementary position is reflected in Article 40 of the CRC, alongside the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), which emphasise the rehabilitative paradigm, favouring reintegration over retribution. The complication, however, is that children accused of committing serious offences may also be victims of recruitment or indoctrination, making their moral culpability and the appropriate modalities of accountability highly complex. Although the Special Court for Sierra Leone had jurisdiction *ratione personae* over persons aged fifteen and above, it did not prosecute child soldiers; instead, accountability for children's participation in atrocities was addressed primarily through truth-seeking and restorative mechanisms.²³

In India, the Juvenile Justice (Care and Protection of Children) Act, 2015, introduced a nuanced classification of offences as petty, serious and heinous and allows the Juvenile Justice Board, where a child aged between sixteen and eighteen is alleged to have committed a heinous offence, to conduct a preliminary assessment of the child's mental and physical capacity, ability to understand the consequences of the alleged offence and the circumstances in which it was allegedly committed. This procedural innovation represents a partial shift away from the purely welfare-based approach of the previous Juvenile Justice Act, 2000, and arguably reflects a move towards retributive reasoning in response to public backlash against violent juvenile offending. In *Dr. Subramanian Swamy v. Raju*,²⁴ the Court upheld the constitutional validity of different treatment on the basis of age and held that juvenility should be determined with reference to the date of the offence. Later, in *Jitendra Singh v. State of U.P.*,²⁵ the Court emphasised the need for strict compliance with the statutory safeguards governing preliminary assessment to ensure that minors are not automatically tried as adults, thereby remaining faithful to the principles of proportionality and of the best interests of the child.

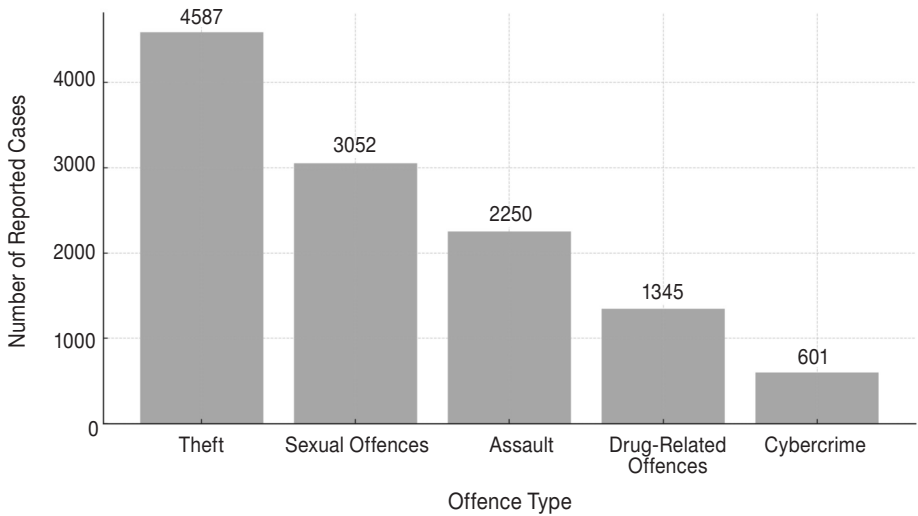
According to NCRB data (2023), the highest proportion of juvenile offences in India involved theft (36%), followed by sexual offences (24%) and assault (18%). A significant rise was also noted in cybercrime cases involving minors, which reportedly doubled from 312 cases in 2022 to 601 in 2023.

²³ *Digital Dangers: Rising Online Crimes Against Children Post-Pandemic*, UNICEF India, New Delhi 2024. Available from: <https://www.unicef.org/india/reports/digital-dangers-2024>.

²⁴ (2014) 8 SCC 390.

²⁵ 2024:AHC-LKO:1920.

Figure 3. Types of Juvenile Offences in India (2023)



Source: NCRB, Crime in India 2023, ‘Juveniles in Conflict with Law’ tables.

The recent data of NCRB presented in the Figure 3 reported cases across five categories. Theft is the most common offence with 4587 cases, followed by Sexual Offences at 3052 cases and Assault at 2250 cases. Drug-Related Offences account for 1345 cases while Cybercrime is the least reported at 601 cases. The data shows property and sexual offences form the bulk of juvenile cases, with theft alone making up over 35% of the total reported offences in 2023.

Comparative Analysis

The convergence between international law and Indian law is especially pronounced in the normative articulation of standards for victim protection. Through the Rome Statute and the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, international criminal law adopts a holistic approach by treating protection, participation and reparations as closely connected rights of child victims. The statutory framework in India, particularly the POCSO Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015, has embraced several congruent principles, such as child-friendly procedures, victim support and rehabilitation. At the international level, mechanisms such as the ICC

and, in different ways, the Special Court for Sierra Leone, have developed modalities of victim participation that view children as rights-holders rather than merely as objects of protection; by contrast, Indian criminal procedure may still exhibit a degree of vestigial paternalism that limits children's agency and complicates the conduct of cross-examination in adversarial trial settings.²⁶

The same can be said of procedures for handling witnesses, which show a degree of harmonisation but still reveal certain gaps in practice. Child witnesses are afforded strong protective mechanisms under international instruments, including identity protection, the use of video-linked evidence and testimonial aids, and the assignment of support persons. Similar protections have also been incorporated into Indian law, including the recording of statements before magistrates, the use of audio-visual facilities, and restrictions on hostile or aggressive cross-examination. However, implementation remains uneven; infrastructural shortcomings and judicial inconsistencies can often undermine the effectiveness of such safeguards.²⁷ Moreover, although international jurisprudence increasingly subjects children's testimonial competence to nuanced reliability assessments, Indian courts have at times shown disproportionate scepticism about the credibility of child witnesses, which may reflect evidentiary conservatism in tension with child-rights standards.²⁸

One of the most apparent areas of conflict concerns criminal responsibility. The Rome Statute, as a central instrument of international criminal law, categorically excludes individuals under the age of eighteen from the jurisdiction of the ICC, which embodies the principle that children recruited or used in hostilities should primarily be regarded as victims. Conversely, a more complicated framework is set forth in India's Juvenile Justice (Care and Protection of Children) Act, 2015: although the general rule is that children under eighteen are to be treated as children in conflict with the law, the 2015 framework introduced an exception allowing the preliminary assessment of 16–18-year-olds alleged to have committed heinous crimes, potentially allowing them to be tried as adults. This dual policy has received considerable criticism because it may conflict with India's international commitments under the CRC and its Optional Protocols, which emphasise rehabilitation and reintegration rather than retributive accountability.

When it comes to compliance, the fact that India has formally ratified some of the most significant treaties, including the CRC and the Optional Protocol on the

²⁶ M.A. Drumbl, *Child soldiers and clickbait crimes*, "The American University International Law Review" 2012, 27(2), pp. 1–30.

²⁷ N. Sharma, R. Iyer, *Child Testimony Under POCSO: Evidentiary Trends in High Courts*, "Indian Law Review" 2024, 10(1), pp. 1–29.

²⁸ L. Grover, *Child victimization and international justice: Preventing retraumatization*, "International Journal of Children's Rights" 2010, 18(2), pp. 277–299.

Involvement of Children in Armed Conflict, indicates a declared intention to pursue child protection and restorative justice. However, persistent implementation gaps reflect shortcomings in the practical fulfilment of those commitments.²⁹ Weaknesses in enforcement, insufficient training of child protection workers, and inconsistency in jurisprudence all undermine India's compliance with its treaty obligations. At the same time, there are good practices from which India can learn: ICC victim-reparation orders and evolving participation mechanisms have provided important precedents, while Indian courts have also shown progressive tendencies, as illustrated by *Sampurna Behura v. Union of India*,³⁰ which called for systematic reform in juvenile justice administration. Community-based rehabilitation programmes, despite their uneven institutionalisation, provide a promising model for reconciling accountability with reintegration needs.

Challenges and Emerging Issues

Use of Child Soldiers by Non-State Actors

Child soldiering by non-state armed groups is one of the most serious violations of modern humanitarian standards and the principle of the best interests of the child, which is enshrined in Article 3 of the CRC. The use of children in combat, as porters or as victims of sexual slavery by insurgent groups reflects a systematic breach of fundamental international norms prohibiting the use of children in hostilities. Although the Rome Statute criminalises the conscription, enlistment and use of children under the age of fifteen in armed conflict, the prosecution of non-state actors remains juridically challenging owing to issues of jurisdiction and evidence. Areas experiencing insurgency in India, including certain areas of Chhattisgarh and Jammu and Kashmir, have allegedly seen practices approximating child soldiering; however, prosecutions have been uncommon, and policy responses have tended to conflate victims of violence with perpetrators. This uncertainty compromises both accountability and rehabilitation requirements under international law and reveals a gap in India's implementation of its commitments under the Optional Protocol.³¹

²⁹ *Implementation Audit of Child Witness Protection Guidelines*, National Commission for Protection of Child Rights (NCPCR), New Delhi 2025. Available from: <https://ncpcr.gov.in/audit-2025>.

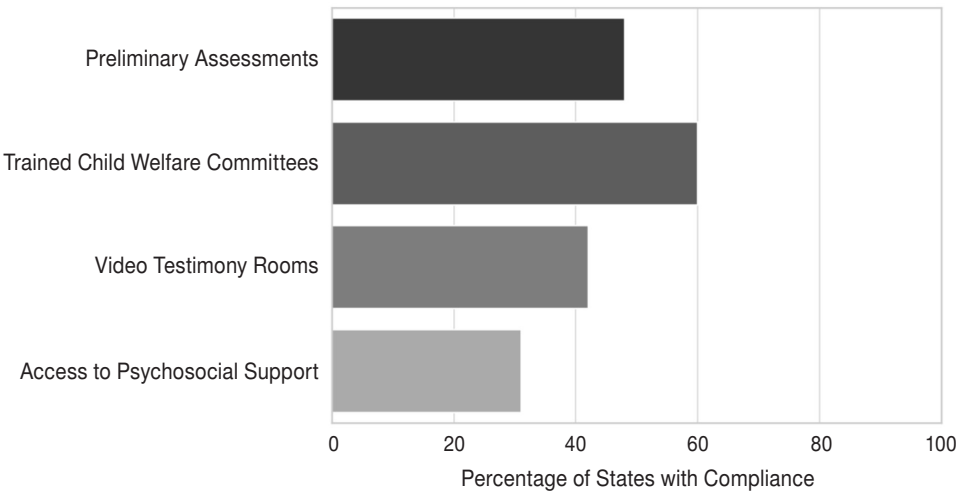
³⁰ (2011) 9 SCC 801.

³¹ N. De Silva, *The role of child witnesses in international criminal trials*, "Leiden Journal of International Law" 2012, 25(4), pp. 925–946.

Trafficking and Exploitation in Conflict Zones

The exploitation of children in conflict, including through child labour, is a complex cross-border phenomenon that flourishes in legal and institutional gaps created by long-term conflict. Armed conflict can systematically weaken institutional protection mechanisms, leaving children at risk of abduction, forced labour and sexual exploitation. Such practices are outlawed by international law, in particular by the Palermo Protocol and by provisions of the Rome Statute dealing with enslavement and sexual slavery. Nevertheless, the illicit character of trafficking networks, the breakdown of the rule of law, and victims’ unwillingness to cooperate due to the fear of retaliation further contribute to enforcement problems.³² India has achieved normative progress through laws such as the POCSO Act of 2012, and legislation or proposed legislation on trafficking in persons; however, operational gaps in investigation, inter-agency coordination and victim protection remain.³³

Figure 4. Implementation Gaps in India’s Juvenile Justice System (2024 Audit)



Source: NCPCR or Ministry of Women & Child Development, 2024 Juvenile Justice System Audit.

The recent data of NCRB presented in the Figure 4 shows state level compliance. Trained Child Welfare Committees lead at ~60%, followed by Preliminary Assessments

³² *Annual Report on Trafficking in Conflict Zones*, United Nations Office on Drugs and Crime, Vienna 2025. Available from: <https://www.unodc.org/unodc/en/data-and-analysis/trafficking2025.html>.

³³ S. Gopalan, *Reforming India's juvenile justice system: An international perspective*, "Indian Journal of Law and Society" 2019, 10(1), pp. 45–65.

at ~48%. Video Testimony Rooms and Psychosocial Support lag at ~42% and ~32% respectively. The data reveals major gaps, with no provision fully implemented across all states.

Balancing Justice and Child Rights in Serious Offences

There is a sharp conflict between the demands of justice and the rights and developmental interests of children accused of committing serious crimes. The Juvenile Justice (Care and Protection of Children) Act, 2015, seeks to navigate this tension by permitting preliminary assessment of children aged between sixteen and eighteen who are alleged to have committed heinous offences. Although this framework purports to strike a balance between public safety and rehabilitative objectives, it has been criticised as potentially compromising the presumption of reduced culpability recognised in international juvenile justice norms. Arbitrariness in preliminary assessments and lack of uniformity in age-determination procedures may undermine children's rights guarantees. Under international juvenile justice standards, this practice raises concerns regarding compliance with Article 40 of the CRC and the UN Committee on the Rights of the Child's General Comment No. 10, both of which place greater emphasis on the rehabilitation and reintegration of children than on punishment.³⁴

Conclusion and Way Forward

The multiple roles of children as victims, witnesses, and alleged perpetrators of crimes in international criminal law highlight the urgent need to balance retributive justice with the fundamental rights and welfare of children. Although international legal instruments, including the Rome Statute and the CRC, have established important normative frameworks, shortcomings remain in the implementation of procedural protections, psychosocial support systems, and mechanisms for effective child participation in judicial proceedings. India's legal system, despite its progressive statutory protection framework, remains affected by implementation gaps, inconsistent age-determination practices and limited coherence between child-specific restorative processes and the need to prosecute heinous offences. The sociocultural stigmatisation of children accused of serious offences, together

³⁴ *India Country Report: Juvenile Justice Reform Post-2023*, Global Initiative to End All Corporal Punishment of Children, London 2024. Available from: <https://endcorporalpunishment.org/reports/india-2024>.

with bureaucratic inertia in the timely delivery of reparative remedies to victims further compounds this dissonance.

The article highlights three critical patterns:

- ❑ Increasing reliance on child testimony in both domestic and international prosecutions.
- ❑ Growing vulnerability of children to cross-border crimes, especially in conflict zones.
- ❑ The need for reforms in India's child-witness protection framework and rehabilitation mechanisms for children in conflict with the law.

The data indicate that while India has adopted comprehensive legal tools, enforcement and procedural safeguards remain inconsistent. This is evident in recent studies³⁵ that call for the institutional strengthening of the Juvenile Justice Boards and better training for Child Welfare Committees.

Going forward, a multidimensional approach is needed to close the normative-implementation gap. At the legislative level, India must pursue the harmonisation of national laws with international commitments by enshrining express procedural rights for child victims and witnesses, defining the boundaries of juvenile accountability for heinous crimes and introducing diversionary measures with a context-specific focus on rehabilitation. Institutional capacity should be enhanced through specialised training programmes for judges, prosecutors, police and child welfare committees, thus creating a legal culture sensitive to the developmental and psychological specificities of children. A robust victim-centred reparations system will also be critical, including psychosocial support, reintegration into education and community sensitisation aimed at addressing deep-rooted biases. India's participation in international criminal justice organisations must extend beyond formal ratification to include substantive compliance and international cooperation in addressing transnational crimes involving children.

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³⁵ P. Sharma, V. Reddy, *Institutional Gaps in India's Juvenile Justice System*, "Indian Journal of Law and Society" 2024; R. Kumar, *Child Offenders and the Limits of Rehabilitation*, "Children and Youth Services Review" 2025.

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