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# **THE UNFINISHED MANDATE: EXAMINING THE HUMAN RIGHTS OF VULNERABLE GROUPS WITH SPECIAL FOCUS ON WOMEN AND CHILDREN IN INDIA**

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## **Abstract**

The promise of the Indian Constitution, enshrined in its Preamble and the fundamental rights chapters, is one of equality, dignity, and justice for every person. Yet, nearly eight decades after independence, the realization of these rights for women and children—two of the most vulnerable groups in any society—remains deeply uneven. This research paper examines the human rights framework for women and children in India, analyzing the gap between progressive legislation and lived reality. It explores three critical fault lines: the persistent conflict between personal laws and criminal statutes, particularly around child marriage and the age of consent; the paradox of protective legislation like the POCSO Act that sometimes re-victimizes the very individuals it seeks to protect; and the structural barriers—poverty, caste, lack of education—that prevent vulnerable groups from accessing justice. The paper argues that India suffers not from a deficit of laws but from a crisis of implementation, judicial inconsistency, and a failure to address the social determinants of vulnerability. Drawing on recent judicial pronouncements, NHRC interventions, and empirical data, this paper proposes a roadmap centered on legal harmonization, gender-sensitive judicial training, and community-based rights awareness.

## **1. Introduction: The Constitutional Promise and Its Gaps**

On a humid morning in Hyderabad, a five-member bench of the National Human Rights Commission listens to case after case. A tribal woman trafficked across state lines. A child who died in a hospital fire. A fifth-standard student pleading about stray dogs. A family socially boycotted for caste-based reasons. These are not isolated tragedies. They are the everyday texture of human rights violations in India—a nation whose Constitution guarantees equality before law (Article 14), prohibits discrimination (Article 15), and declares that no person shall

be deprived of life or personal liberty except according to procedure established by law (Article 21).

The term "vulnerable groups" is not merely a policy euphemism. It denotes populations who face systemic barriers—legal, social, economic, and political—that prevent them from claiming their rights. In the Indian context, women and children occupy a unique position within this category. They are not small minorities; women constitute nearly half the population, and children under 18 comprise approximately 39 percent of India's 1.4 billion people. Yet, their vulnerability persists because of deep-seated patriarchy, inadequate implementation of protective laws, and a justice system that often compounds rather than cures their suffering.

This paper proceeds in five parts. First, it establishes the constitutional and legislative framework for women's and children's rights in India. Second, it examines the persistent conflict between personal laws and criminal statutes, using recent judicial controversies around the age of consent and child marriage as case studies. Third, it analyzes the implementation gaps in protective legislation, particularly the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the legal paradoxes it creates. Fourth, it explores the structural determinants of vulnerability—poverty, caste, education, and regional disparities—that mediate access to rights. Fifth, it concludes with policy recommendations grounded in a human rights-based approach.

## **2. The Constitutional and Legislative Architecture**

India's legal framework for protecting women and children is, on paper, among the most progressive in the Global South. The Constitution does not merely prohibit discrimination; it enables affirmative action. Article 15(3) explicitly permits the State to make "any special provision for women and children." This clause has been the constitutional foundation for a range of protective legislations.

For women, the key statutes include:

- The Dowry Prohibition Act, 1961 (amended 1986): Criminalizes the giving, taking, or demanding of dowry.
- The Protection of Women from Domestic Violence Act, 2005 (PWDVA): A civil law that recognizes domestic violence as a violation of human rights and provides protection orders, residence rights, and monetary relief.

- The Sexual Harassment of Women at Workplace Act, 2013 (POSH Act): Mandates internal complaints committees and creates a legal obligation on employers to prevent and redress workplace sexual harassment.
- The Criminal Law (Amendment) Act, 2013 (the "Nirbhaya Act"): Expanded the definition of rape, criminalized stalking and voyeurism, and introduced the death penalty for the most severe cases of sexual assault.

For children, the framework is equally comprehensive:

- The Protection of Children from Sexual Offences Act, 2012 (POCSO Act): A gender-neutral, child-friendly law that defines a child as any person below 18 years. It criminalizes penetrative sexual assault, sexual assault, and sexual harassment, and mandates the reporting of offenses.
- The Juvenile Justice (Care and Protection of Children) Act, 2015: Consolidates laws relating to children in conflict with law and children in need of care and protection.
- The Prohibition of Child Marriage Act, 2006 (PCMA): Declares child marriage voidable at the option of the contracting party who was a child at the time of marriage, and provides for maintenance and residence for the female contracting party.
- The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act): Guarantees free and compulsory education to all children aged 6 to 14 as a fundamental right.

Despite this robust legislative architecture, the gap between law and reality remains vast. The explanation lies not in the absence of laws but in three intersecting problems: conflicts within the legal system itself, failures of implementation, and the structural inequalities that prevent vulnerable groups from accessing their rights.

### **3. The Personal vs. Criminal Law Conflict: A Jurisprudential Minefield**

One of the most contentious areas in Indian human rights jurisprudence is the relationship between personal laws (governing marriage, divorce, inheritance, and succession for different religious communities) and secular criminal statutes like the POCSO Act and the Prohibition of Child Marriage Act. This conflict came to a head in 2025, generating a series of judicial pronouncements that reveal deep inconsistencies in how Indian courts interpret the rights of women and children.

### 3.1. The Muslim Personal Law Controversy

In August 2025, the Supreme Court dismissed a Special Leave Petition filed by the National Commission for Protection of Child Rights (NCPCR) challenging a Punjab and Haryana High Court judgment. The High Court had held that a 16-year-old Muslim girl could enter into a valid marriage with a Muslim man under Muslim Personal Law, which recognizes puberty as the age of majority for marriage. The court granted protection to the couple from threats, effectively validating a marriage that would be illegal under the POCSO Act—since any sexual activity with a person under 18 is a criminal offense regardless of marital status.

Priyank Kanoongo, then former chairperson of NCPCR and later a member of the NHRC, expressed "shock and surprise" at the ruling. In a post on social media platform X, he argued that the court had "considered the consent of minors as the basis but ignored the laid down guidelines of the POCSO Act, a law enacted by the Parliament that protects children from offenses of sexual assault, sexual harassment and pornography". He warned: "If children are given the consent to engage in sex, it will lead to ruin."

This case crystallizes a fundamental legal contradiction. The POCSO Act, passed by Parliament, sets a uniform age of consent at 18. Muslim Personal Law, recognized under the constitutional framework of religious freedom (Article 25), permits marriage after puberty—traditionally understood as 15 or 16 years. When a 16-year-old Muslim girl marries and has a sexual relationship with her husband, is she a victim of child sexual assault under the POCSO Act, or is she exercising her religious right to marry?

The Supreme Court's dismissal of the NCPCR's petition suggests a reluctance to resolve this contradiction definitively. Legal scholars have noted that this ambiguity places vulnerable girls in an impossible position: if they seek legal protection from their families or communities, the law may criminalize their consensual relationships; if they remain silent, they may face violence or forced marriage without recourse.

### 3.2. The Delhi High Court's Call for a Uniform Civil Code

The same contradiction prompted the Delhi High Court to issue a significant observation in September 2025. Hearing a case where a stepfather had been accused of raping his minor daughter—leading to a pregnancy and adoption at age 14—the court flagged a "recurring conflict" between personal laws and the POCSO Act. The stepfather had been arrested, but the prosecutrix (now claiming to be 20 years old) had married another man under Islamic law and sought bail for him, expressing a desire to live with her husband.

The court noted the dilemma: "Should society be criminalized for adhering to long-standing personal laws? Is it not the time to move towards a Uniform Civil Code (UCC), ensuring a single framework where personal or customary law does not override national legislation?"

The judges acknowledged the political and constitutional sensitivity of the UCC debate, noting that opponents "caution that uniformity risks eroding religious freedom guaranteed to every citizen as a fundamental right in the Constitution of India." However, they argued that "such freedom cannot extend to practices that expose individuals to criminal liability." The court suggested a pragmatic middle path: standardizing core protections, such as prohibiting child marriages across all communities with penal consequences, while allowing less contentious personal matters to evolve gradually.

This judicial intervention is significant because it moves beyond the binary of "personal law versus UCC" and instead focuses on harmonization of criminal liability. The court recognized that the legislature must ultimately resolve this conflict, but its observations provide a framework for doing so without abolishing personal law entirely.

### 3.3. The Property Rights Connection

The conflict between personal and criminal law is not the only legal tension affecting women's rights. Property rights—specifically, inheritance laws—have a direct impact on women's bargaining power within households and, consequently, on child welfare. A 2023 study using data from the Hindu Succession Act Amendment (HSAA), which granted inheritance rights to unmarried women, found that the policy improved child health outcomes. The study concluded that "children do better when their mothers control a more significant fraction of the family resources. Thus, policies that empower women can have additional positive spillovers for children's human capital".

This finding underscores a crucial point: legal protections are not isolated. When women gain economic rights (like inheritance), they gain bargaining power within the household, which translates into better nutrition, healthcare, and education for their children. Conversely, when legal regimes treat women as perpetual minors—subject to fathers, husbands, or male relatives—the harm cascades across generations.

## **4. The POCSO Paradox: Protection or Persecution?**

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is widely regarded as a landmark legislation. Before POCSO, child sexual abuse was prosecuted under the Indian Penal

Code's provisions on rape and assault—laws that were not designed with children's needs in mind. POCSO introduced child-friendly procedures: recording statements in informal settings, using audio-video means, and protecting the child's identity. It also made the reporting of offenses mandatory, a provision that dramatically increased the number of registered cases.

According to National Crime Records Bureau (NCRB) data, cases of child sexual abuse rose from 8,541 in 2012 to 53,874 in 2021—a staggering increase. However, this rise is not necessarily an indication of increased abuse; it largely reflects increased reporting. The mandatory reporting provision means that doctors, teachers, social workers, and even family members are legally obligated to report suspected abuse.

#### 4.1. The Consensual Relationship Problem

But POCSO has created an unintended and deeply troubling paradox. Because the Act defines any sexual activity with a person under 18 as an offense—regardless of consent—it criminalizes consensual sexual relationships between adolescents. This has led to the arrest of thousands of young men (and, less frequently, young women) for having sexual relationships with their minor partners, even when the relationship is non-coercive and the minor partner asserts that she consented.

A 2025 opinion piece by lawyers from Majlis, a legal center for women and children, provides a devastating account of this paradox. They write:

- "Most victims are from marginalized communities and trying to escape violent homes, sexual abuse by family members, discrimination, and/or threats of forced marriage. The age of the victim in some of these cases is as low as 12 years; the man is much older. The man promises her love and a better life. Having had sex with him, she believes the man and agrees to elope... Once a case is filed, all hell breaks loose and the pressure from the accused's family to withdraw the complaint mounts. For the girls, it is a Hobson's choice—continue the pregnancy while confined in a shelter home until the age of 18 with the hope that the man and his family will accept her, or go back to the natal family where violence and forced marriage await her. In either scenario, the minor girl's agency is crushed—first by the family and then by the law."
- Data from Mumbai supports this account. In 2021, the city reported 524 cases of penetrative sexual assault under POCSO. A report by the Praja Foundation found that in 54 percent of these cases, the accused were romantic partners, friends, or individuals who had promised marriage and later deserted the victim. Another 26 percent were

household employees, 12 percent were neighbors, and only 8 percent were family members or guardians.

#### 4.2. The Age of Consent Debate

The paradox has reignited a contentious debate: Should the age of consent be reduced from 18 to 16? Child rights activists are divided. Some argue that reducing the age of consent would align POCSO with the Prohibition of Child Marriage Act (which declares child marriages voidable but does not criminalize the minors themselves) and would prevent the criminalization of adolescent sexuality.

Others, including the Majlis lawyers, argue that a blanket reduction would be dangerous. They ask: "If we have to extend this logic, why stop at 16 and not 14? Also, if the victim's autonomy and the impact of the system are the issues at hand, why not extend the logic to cases of family members' or guardians' abuse, as most victims, even in those cases, do not wish to pursue legal action due to stigma or dependency?"

The deeper problem, they argue, is not the age of consent but the conditions that drive young girls into these relationships in the first place. Most "elopement" cases involve girls from impoverished, violent, or abusive homes. The solution is not to decriminalize the adults who exploit them but to address the structural vulnerabilities—poverty, lack of education, domestic violence—that make elopement seem like the only option.

The Supreme Court has taken note of this dilemma. In a case from West Bengal, Justice Abhay S. Oka observed: "The victim did not get any opportunity to make an informed choice. Society judged her, the legal system failed her, and her own family abandoned her." He instructed the state to provide the best possible care and protection for the young woman and her child—a recognition that the legal system's response to these cases has been woefully inadequate.

### **5. Structural Determinants of Vulnerability**

Laws alone do not protect rights. The most progressive legislation is meaningless if vulnerable groups cannot access it. In India, the realization of women's and children's rights is mediated by a range of structural factors: poverty, caste, education, geography, and social norms.

#### 5.1. Poverty and Child Marriage

India witnessed 1.6 million child marriages in 2022, yet barely 900 cases were registered under the Prohibition of Child Marriage Act. The drivers of child marriage have shifted. While

traditional explanations emphasized "Brahminical patriarchy" and custom, contemporary research suggests that poverty, lack of education, and fear of sexual violence are now the primary drivers. As the Majlis report notes, "Poverty-stricken parents marry off their daughters young to safeguard them, not due to tradition but out of desperation".

This is a crucial insight. It suggests that addressing child marriage requires not just legal enforcement but poverty alleviation, girls' education, and protection from violence. A girl who is safe at home, attending school, and has economic opportunities is far less likely to be married off as a child.

### 5.2. The Rural-Urban and Regional Divide

One-third of India's population—approximately 373 million people—is between the ages of 10 and 24. However, the distribution of rights and services is highly uneven. Rural areas, where the majority of India's poor live, have fewer schools, fewer functioning health centers, and fewer police stations. A girl in rural Bihar faces vastly different barriers to accessing justice than a girl in urban Mumbai.

The NHRC's open hearing in Hyderabad in July 2025 heard cases from across Telangana: death of children in hospitals due to fire, trafficking of tribal women, forcible eviction of tribal families, lack of primary schools, food poisoning in Gurukul schools, malnutrition cases, and non-registration of FIRs by police. These cases illustrate that vulnerability is not abstract; it is rooted in specific failures of the state to provide basic services and protections.

### 5.3. Caste and Intersectional Vulnerability

Caste compounds vulnerability. Dalit and Adivasi women face both gender discrimination and caste-based discrimination. The NHRC hearing included a case of "caste-based harassment and a social boycott in Khammam district." Following the Commission's intervention, the police took action and ensured that villagers refrained from caste-based discrimination. But such interventions are reactive, not systemic. The fact that caste-based social boycotts still occur in 2025 is an indictment of the state's failure to enforce the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

A 2009 report by Plan India, titled "Because I am a girl," observed that "more than others, girls from poor communities bear the brunt" of discrimination, including female foeticide, infanticide, chronic neglect, unequal wages, and lack of access to resources. Nearly two decades later, this remains true.

#### 5.4. Health and Reproductive Rights

India's maternal mortality ratio was 178 per 100,000 live births between 2010 and 2012. Twenty percent of all maternal deaths worldwide occurred in India in 2010, with half of those deaths involving young women aged 15 to 24. Abortion is widely legal in India, but barriers prevent all women—especially adolescent girls—from accessing safe abortions. Close to two-thirds of abortions in India are unsafe, and a woman dies every two hours from complications arising from unsafe abortion.

The government spends only 3.9 to 5 percent of GDP on healthcare, compared to 10 to 12 percent in other developing countries. The government's share of total healthcare expenditure is around 1 percent of GDP, shifting the burden to a relatively unregulated private sector. A greater proportion of the population resorts to private health facilities due to the lack of affordable and accessible public health infrastructure.

For adolescents, the situation is even worse. India does not have a consolidated national policy legislating comprehensive sexuality education. Piecemeal information is provided through various policies and curriculum frameworks, but state governments can reject subjects on the basis of "perceived cultural acceptance" rather than evidence-based approaches. This leaves adolescents—particularly girls—without accurate information about their bodies, contraception, or their rights.

#### **6. The Disability Dimension: The "Miniscule Minority" Question**

The rights of vulnerable groups extend beyond women and children. However, examining the intersectionality of vulnerability is crucial. One of the most revealing recent judicial interventions concerns disabled cadets—young men and women, typically aged 18 to 24, who join elite defense academies (NDA, IMA, OTA, AFA, INA) after clearing competitive national examinations. When injuries sustained during training render them unfit for service, they are medically "boarded out"—neither commissioned as officers nor permitted to complete their educational qualifications. They receive only a token ex gratia payment, unlike trainee recruits and Junior Commissioned Officers who receive full disability pensions.

The Supreme Court, hearing the case suo moto, appointed a retired Delhi High Court judge as amicus curiae. The amicus submitted that approximately 40 to 50 cadets are boarded out annually, and since inception, about 400 cadets have suffered this fate. Nearly 10 percent sustain injuries so severe that they become unfit for any employment. Yet, the total financial

implication of granting full benefits to this group would be "negligible" in the context of the defense budget.

Justice B.V. Nagarathna observed that since the number of cadets injured during training is "absolutely minuscule," it was "expected that a scheme of facilities and amenities would be provided" to them. This reference to "minuscule minority" is significant. In *Suresh Kumar Kaushal v. Naz Foundation* (2013), the Supreme Court had used the same phrase to dismiss the rights of the LGBTQ+ community, arguing that the group affected was so small that its rights did not require special protection. That reasoning was overruled in *Navtej Singh Johar v. Union of India* (2018), which decriminalized homosexuality. By using the phrase in the context of disabled cadets, the Court signaled that even a small minority deserves the State's protection, especially when their suffering stems from service to national institutions.

This case illustrates a broader principle: vulnerability is not solely about numbers. It is about power, voice, and the ability to claim rights. A "minuscule minority" can still face catastrophic harm if the state fails to protect it.

### **7. The Role of Institutions: NHRC and the Judicial Process**

Institutional mechanisms for protecting human rights in India include the National Human Rights Commission (NHRC), State Human Rights Commissions (SHRCs), the National Commission for Women (NCW), and the National Commission for Protection of Child Rights (NCPCR). Their effectiveness varies.

The NHRC's open hearing mechanism, as seen in Hyderabad, is a valuable tool. By hearing cases directly from victims and complainants, the Commission can bypass bureaucratic delays and issue directions to state authorities. In the Hyderabad hearing, the Commission recommended payment of Rs. 49.65 lakh in monetary relief across nine cases, with Rs.22.50 lakh already paid by the Telangana government. The Commission also closed 29 cases on merit after hearing both parties.

However, the NHRC's powers are primarily recommendatory. It cannot enforce its directions; it relies on state governments to comply. The Commission's meeting with the Chief Secretary and DGP of Telangana—where it "emphasized that human rights concerns impacted by

environment, climate change, and business needed to be addressed"—was an attempt at persuasion rather than compulsion.

The Supreme Court, by contrast, has coercive powers. Its continuing mandamus in the disabled cadets case—keeping the matter under active judicial supervision—has pressured the Union government to respond. The Court has chosen "patience over pressure" for now, but its willingness to take up the case suo moto signals that judicial activism remains a crucial tool for protecting vulnerable groups.

## **8. Toward a Human Rights-Based Approach: Recommendations**

The analysis above suggests that India's human rights challenges for women and children are not primarily legal—they are primarily implementation challenges. The laws exist; what is lacking is the political will, administrative capacity, and social transformation necessary to enforce them. The following recommendations are grounded in a human rights-based approach, which emphasizes empowerment, participation, non-discrimination, and accountability.

### **8.1. Legal Harmonization**

The conflict between personal laws and criminal statutes must be resolved. The Delhi High Court's suggestion of a "pragmatic middle path"—standardizing core protections like the prohibition of child marriage while allowing less contentious personal matters to evolve gradually—is a sensible starting point. Parliament should amend the POCSO Act to clarify its relationship with personal laws, perhaps by creating a narrow exception for marriages recognized under personal law while maintaining criminal penalties for non-marital sexual relationships with minors. Alternatively, Parliament could raise the age of marriage uniformly to 18 across all personal laws, removing the contradiction at its source.

### **8.2. Gender-Sensitive Judicial Training**

The inconsistent application of POCSO—with some judges acquitting adults in "Romeo-Juliet" cases while others impose harsh sentences—reflects a lack of training on child development, consent, and the dynamics of exploitation. The Supreme Court's e-Committee should develop a mandatory training module for all trial judges on POCSO, emphasizing that "consent" is not a defense when the child is under 18, while also sensitizing judges to the complex social realities that drive elopement cases.

### 8.3. Community-Based Rights Awareness

Laws are only as effective as people's knowledge of them. The government, in partnership with civil society, should launch a mass awareness campaign on POCSO, the Prohibition of Child Marriage Act, and the Domestic Violence Act. This campaign should be in vernacular languages, delivered through community health workers, anganwadi centers, and schools. The NHRC's observation that "human rights concerns impacted by environment, climate change, and business needed to be addressed" should be integrated into school curricular.

### 8.4. Strengthening Implementation Infrastructure

The NHRC's open hearing in Hyderabad heard cases of "non-registration of FIR by police," "lack of primary schools," and "malnutrition cases" . These are basic failures of the state. The government must ensure that every police station has a trained officer to handle POCSO cases, that every district has a functioning Child Welfare Committee, and that every school has a functional toilet and a teacher trained in child protection.

### 8.5. Addressing Structural Vulnerabilities

Finally, legal protections must be complemented by social and economic interventions. The evidence that property rights improve child health suggests that empowering women economically is a human rights strategy. Similarly, reducing child marriage requires not just criminalization but poverty alleviation, girls' education, and protection from violence. The government should expand cash transfer programs conditional on girls' school attendance, invest in safe transport to and from school, and create safe spaces for adolescent girls in every village.

## **9. Conclusion**

The human rights of women and children in India stand at a crossroads. On one hand, the legal framework is more progressive than ever before. The POCSO Act, the Domestic Violence Act, the Prohibition of Child Marriage Act, and the inheritance rights reforms represent genuine achievements. On the other hand, implementation remains deeply flawed. The same laws that protect some children criminalize others. The same courts that champion gender equality sometimes defer to personal laws that subordinate women. The same state that promises free and compulsory education fails to provide functional schools in rural areas.

The path forward requires a shift in perspective. Human rights are not merely legal entitlements; they are lived realities. For the tribal woman trafficked across state lines, the legal right to freedom of movement is meaningless without effective policing and border controls. For the 14-year-old girl in a shelter home, pregnant from a relationship she thought was love, the legal prohibition of child marriage offers no comfort. For the disabled cadet, denied a pension and left without a livelihood, the constitutional guarantee of equality is an abstraction. The Indian state has the laws. What it needs now is the will—political, administrative, and judicial—to enforce them. It needs to harmonize its conflicting legal regimes, train its judges and police, and address the structural vulnerabilities that drive women and children into harm's way. And it needs to listen to the voices of the vulnerable themselves—not as passive recipients of state largesse, but as rights-holders entitled to dignity, justice, and the full realization of their human potential.

As the Supreme Court observed in the disabled cadets case, even a "minuscule minority" deserves protection. The same principle applies to every woman and every child in India. The Constitution promises it. The laws provide for it. The time has come to deliver it.

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