

COMPARATIVE ANALYSIS ON CHILDREN PROTECTION LAWS IN INDIA, AMERICA, UNITED KINGDOM, AUSTRALIA AND CANADA

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INTRODUCTION

A comparative analysis of child protection laws in India, the United States, the United Kingdom, Australia and Canada involves examining the similarities and differences in how these countries address the safety, welfare and rights of children. Each country has developed its own legal laws, policies and system of child protection influenced by its unique cultural, social and legal framework. While all five countries share a commitment to safeguarding children from abuse, neglect, human trafficking and exploitation their approaches vary significantly in terms of legislation, policy implementation and the roles of government agencies and non-governmental organizations. This analysis aims to explore these differences and similarities providing insights into how child protection is managed across different legal jurisdictions and what lessons can be learned from each country's experiences.

COMPARATIVE ANALYSIS

Comparing the child protection laws of India with those of the United States, United Kingdom, Australia and Canada provides a comprehensive understanding of how different jurisdictions address the issue of child protection, particularly in the context of sexual offences.

1. India

The child protection laws in India cover various aspects of child welfare, safety and rights. The laws and policies for the protection of children in India include,

- The Protection of Children from Sexual Offences Act (POCSO) 2012 is designed to safeguard children from crimes involving sexual assault, sexual harassment and pornography. It provides for stringent punishment for offenders, ensures the safety of the child during the trial and mandates the reporting of sexual offences against children. It also includes child-friendly procedures for reporting, recording of evidence, investigation and speedy trial of offences

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through designated Special Courts.

- The Juvenile Justice (Care and Protection of Children) Act, of 2015, focuses on the care, protection, treatment, development and rehabilitation of children in conflict with the law and those in need of care and protection. It includes provisions for the establishment of Juvenile Justice Boards and Child Welfare Committees. It also provides for the adoption of children and sets the framework for the operation of observation homes and special homes.
- The Child Labour (Prohibition and Regulation) Act, of 1986, aims to prohibit the engagement of children in certain types of hazardous employment and regulate the working conditions of children in other occupations. The amendment in 2016 prohibits the employment of children below the age of 14 years in all occupations and adolescents (14-18 years) in hazardous occupations and processes.
- The Right of Children to Free and Compulsory Education Act 2009 guarantees free and mandatory education for all children between the ages of 6 to 14 years. It mandates non-discrimination in admissions, sets minimum norms for schools and specifies duties for governments to provide school infrastructure, trained teachers and a conducive learning environment.
- The Prohibition of Child Marriage Act, of 2006, aims to prevent child marriages and protect the rights of children who are subjected to such marriages. It provides for the prohibition of child marriage, protection of children involved and punishment for those who promote or facilitate child marriage.
- The Information Technology Act, of 2000, while primarily a cyber law, it includes provisions for protecting children from online abuse and exploitation. Sections of this act deal with the transmission of obscene material and child pornography through electronic means, with stringent penalties.
- The National Policy for Children, 2013, focuses on the rights of children and their protection, survival, development and participation. It provides a framework for child health, nutrition, education, protection and overall development. It also emphasizes creating a child-friendly environment through legislation, policy and programmatic measures.
- The Commissions for Protection of Child Rights Act, 2005, establishes the National

Commission and State Commissions for the protection of child rights.¹ These commissions are tasked with monitoring the implementation of laws, policies and programs related to children's rights and to investigate complaints of violations.

2. United States

In the United States, child protection laws are designed to safeguard children from abuse, neglect, and exploitation and ensure their overall well-being. These laws operate at both federal and state levels with each state having its own specific regulations and child protection services. It includes,

- The Child Abuse Prevention and Treatment Act is a federal law that provides funding to states to support prevention, assessment, investigation, prosecution, and treatment activities related to child abuse and neglect.² It establishes definitions for child abuse and neglect, mandates the reporting of suspected abuse, and sets out guidelines for the treatment and investigation of child abuse cases. CAPTA also supports programs that train professionals on how to handle cases of child abuse.
- The Adoption and Safe Families Act of 1997, aims to promote the safety, permanency and well-being of children in foster care. The ASFA emphasizes child safety as the paramount concern in child welfare decisions, mandates timely permanency planning, and requires that states make reasonable efforts to prevent the removal of children from their homes and to reunify families when possible.³ It also speeds up the process of adoption for children who cannot return home.
- The Family First Prevention Services Act of 2018, aims to keep children safe and supported at home or with family members to prevent the need for foster care placement. It allows states to use federal funds to provide mental health services, substance abuse treatment, and in-home parenting skill training. FFPSA also places restrictions on the use of federal funds for congregate or group care placements and encourages family-based foster care placements.
- The Child Welfare Services Program (Title IV-B of the Social Security Act), aims to promote

¹ Dr. Vandana Rai, Laws for Children: Protecting the Rights of Minors, July 27, 2023 <https://www.icliniq.com/articles/parenting-and-childrens-health/laws-for-children-protecting-the-rights-of-minors> accessed on 5th September 2024

² Children Bureau, About CAPTA: A Legislative History, February 2019, <https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/about.pdf> accessed on 6th September 2024

³ Bill Track 50, <https://parenting.ra6.org/child-welfare-act.htm>

child welfare and provide preventive and protective services for children and families. This program provides federal funding to states for a wide range of child welfare services, including family preservation, family support, time-limited family reunification, and adoption promotion.

- The Foster Care Independence Act of 1999 (Chafee Foster Care Program), assists older children in foster care in becoming independent adults. It provides funding to states to offer independent living services for youth aged 14 and older who are in foster care, including education, employment, and housing assistance. It also allows states to provide health care coverage to former foster youth until age 26.
- The Individuals with Disabilities Education Act is to ensure that children with disabilities have the opportunity to receive a free appropriate public education, just like other children. The IDEA mandates special education and related services tailored to meet the individual needs of children with disabilities. It includes provisions for early intervention services for infants and toddlers with disabilities.
- The Victims of Child Abuse Act in the year 1990 was to improve the investigation and prosecution of children in an abuse case. The act provides for the establishment of Children's Advocacy Centres, which coordinate the multidisciplinary investigation and response to child abuse. It also supports training programs for professionals involved in child abuse cases.
- The Trafficking Victims Protection Act is to combat human trafficking, including the trafficking of children for sexual exploitation or forced labour. The Act establishes a comprehensive enrolment save federal approach to prevent trafficking, protect victims, and prosecute traffickers. It includes special provisions for child victims of trafficking, including eligibility for immigration relief and social services. The Amber Alert System is to quickly disseminate information about child abductions to aid in the swift recovery of missing children. This system is a voluntary partnership between law enforcement agencies, broadcasters, transportation agencies, and the wireless industry to send out emergency alerts about abducted children.
- The McKinney-Vento Homeless Assistance Act is to ensure educational rights and protections for children and youth experiencing homelessness. The act provides for the attendance, and success of homeless children in school, including transportation to and from the school of origin, and requires that schools provide a liaison to make sure that the rights of homeless

students are protected in all stands.⁴

3. United Kingdom

In the United Kingdom, child protection laws are designed to safeguard children from abuse, neglect, and exploitation and ensure their overall well-being. The legal system comprises a range of laws and regulations that are applicable throughout England, Scotland, Wales, and Northern Ireland.⁵ It includes,

- The Children Act 1989 (England and Wales), provides a comprehensive framework for the care and protection of children. It establishes the duties of local authorities, courts, parents, and other agencies to ensure the welfare of children. It includes provisions for the protection of children from harm, including child protection orders, care orders, and supervision orders. It also sets out the responsibilities of local authorities to provide services and support to children in need and their families.
- The Children Act 2004 (England and Wales), Building on the 1989 Act, focuses on the framework for services and inter-agency cooperation to improve children's well-being. It established the role of the Children's Commissioner for England, promoted integrated services for children through local safeguarding children boards, and set out Every Child Matters framework focusing on five main outcomes: maintaining good health, ensuring safety, experiencing enjoyment and success, contributing positivity, and attaining economic well-being.⁶
- The Children and Young People (Scotland) Act 2014, aims to ensure children's rights and well-being are at the heart of planning and services. It includes provisions for a Named Person service for every child, ensuring a single point of contact for children and their families. It also emphasizes the duty of public bodies to report on children's rights and provides for the establishment of children's Plans to support children's needs.
- The Social Services and Well-being (Wales) Act 2014, reforms and integrates social services law in Wales, focusing on well-being and safeguarding for children and adults. It emphasizes

⁴ Understanding Educational Rights for Homeless and Unstable Housed Students, Seattle\ King County Coalition on Homelessness, 2024 <https://homelessinfo.org/homeless-students-rights/>

⁵ Understanding legislation, <https://www.legislation.gov.uk/understanding-legislation>

⁶ What changes were made after Victor Climbie death, <https://www.classace.io/answers/what-changes-were-made-after-victoria-climbie-death>

the importance of well-being, early intervention, and preventative services. It also outlines the duties of local authorities to assess children's needs and offer services aimed at preventing harm while ensuring care and support.⁷

- The Children (Northern Ireland) Order 1995, provides the main legal framework for child protection in Northern Ireland. It outlines the duties and powers of health and social care trusts in protecting children from harm. It includes care and supervision orders, child protection registration, and emergency protection orders.
- Working Together to Safeguard Children (Statutory Guidance) details how organizations and individuals should collaborate to protect and promote children's welfare.⁸ It provides a framework for inter-agency cooperation, sets out the responsibilities of local safeguarding children boards, and defines the roles and responsibilities of different agencies in responding to child protection concerns.
- The Safeguarding Vulnerable Groups Act 2006 aims to prevent individuals who are unsuitable from working with children and vulnerable adults.⁹ It established the Disclosure and Barring Service (DBS) in England and Wales, which conducts criminal record checks and maintains a barred list of individuals prohibited from working with children and vulnerable groups.
- The Children and Families Act 2014, addresses a range of issues related to children, including adoption, family justice, and special educational needs. It includes provisions to speed up adoption processes, improve support for children with special educational needs (SEN), and enhance the rights of parents in the family justice system. It also promotes shared parental leave and flexible working for parents.
- The Education Act 2002, focuses on the role of schools and educational institutions in safeguarding children. It imposes an obligation on schools and educational authorities to protect and promote children's welfare. It includes provisions for safe recruitment practices and requires staff training in child protection.

⁷ Family Code, the parent child relationship and the suit affecting the parent child relationship <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.264.htm>

⁸ Working together to safeguard children, HM Government, 2006 https://lx.iriss.org.uk/sites/default/files/resources/working%20together_0.pdf

⁹ Safeguarding Vulnerable Groups Act, Online Learning College, October 11, 2022, <https://online-learning-college.com/knowledge-hub/care/safeguarding-vulnerable-groups-act/#:~:text=The%20Safeguarding%20Vulnerable%20Children%20Act%202006>

- The Sexual Offences Act 2003, addresses various sexual offences, including those against children, and provides protections for child victims of sexual abuse. It defines offences such as sexual assault, rape, and grooming, with enhanced penalties for offences committed against children. It also includes provisions for the sex offenders register and preventive measures against grooming and exploitation.
- The Children's Services and Safeguarding Reforms, various reforms and initiatives have been introduced over the years to strengthen the child protection system in the UK. These reforms focus on improving the quality of social work practice, increasing accountability, and ensuring that child protection services are adequately funded and resourced. They also emphasize the importance of listening to children's voices and involving them in decisions that affect their lives.

4. Australia

The Child protection laws in Australia are primarily state and territory-based although there are overarching national standards and frameworks. Each state and territory has its own legislation and child protection services which are responsible for safeguarding the welfare of children and young people. It includes,

- The National Framework for Protecting Australia's Children 2021-2031 is a nationwide effort focused on safeguarding children and reducing instances of child abuse and neglect.¹⁰ It sets out a shared agenda for governments, non-government organizations and the community to work together to ensure the safety and well-being of children. It focuses on prevention, early intervention and providing support to vulnerable families.
- The Children's Protection Laws by State and Territory and each state and territory has specific legislation for child protection which generally includes provisions for the mandatory reporting of child abuse, investigation of allegations and intervention to protect children from harm.
- In New South Wales, the Children and Young Persons (Care and Protection) Act 1998, provides the legal framework for the care and protection of children and young people in NSW. It sets out the responsibilities of the Department of Communities and Justice to investigate allegations of abuse or neglect, take action to protect children and provide care for children in

¹⁰ What is Safe and Supported?, SNAICC, <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/safe-supported>

need.

- In Victoria, child protection, out-of-home care, and family services are regulated by the Children, Youth and Families Act 2005.¹¹ It outlines the processes for reporting and responding to child abuse and neglect, including child protection orders, the role of Child Protection Services and the support provided to families and children.
- In Queensland, the Child Protection Act 1999, aims to protect children from harm, promote their well-being and support families. It includes provisions for reporting child abuse, conducting investigations, taking emergency action and placing children under care orders when necessary.
- In South Australia, the Children and Young People (Safety) Act 2017, focuses on the safety and well-being of children and young people in South Australia. It includes mandatory reporting requirements, guidelines for assessing risk and provisions for intervention and support for families and children at risk.
- The Children and Community Services Act 2004 serves as the legal foundation for child protection and family support services in Western Australia.¹² It includes mandatory reporting laws, provisions for child protection orders and the role of the Department of Communities in safeguarding children.
- In Tasmania, Children, the Young Persons and Their Families Act 1997, governs the protection and care of children and young people in Tasmania. It outlines the procedures for responding to child abuse and neglect, the role of Child Safety Services and the powers to intervene and provide care for children.
- The Australian Capital Territory, the Children and Young People Act 2008, provides for the care and protection of children and young people in the ACT. It includes guidelines for mandatory reporting, risk assessment and child protection orders and it establishes the roles of child protection workers and support services.
- The Northern Territory, the Care and Protection of Children Act 2007, focuses on the care,

¹¹ Children, Youth and Families Act 2005, Victorian Legislation, 2005, <https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005>

¹² Children and Community Services Act 2004, Western Australia, Finds & Connect, <https://www.findandconnect.gov.au/entity/children-and-community-services-act-2004/>

protection and well-being of children in the Northern Territory. It sets out the responsibilities of Territory Families, and the child protection services and includes mandatory reporting, investigation and child protection intervention procedures. In most states and territories, there are laws requiring certain professionals, such as teachers, doctors and police officers, to report suspicions of child abuse or neglect to child protection authorities. The specific requirements for mandatory reporting, including who must report and what must be reported, vary between states and territories.

- The Family Law Act 1975 (Commonwealth), provides for the best interests of the child in family law matters including custody and visitation. It includes provisions that ensure the welfare of children is a paramount consideration in family law cases. The act allows for the court to make orders to protect children from harm, including from family violence or abuse.
- The Australian Human Rights Commission Act 1986, provides the basis for promoting and protecting human rights, including the rights of children. The National Children's Commissioner, under this act, advocates for the rights of children, investigates complaints about violations of children's rights and provides recommendations for policy and legislative changes.
- Working with Children Checks, these checks are a screening mechanism used to prevent unsuitable people from working with children. All states and territories have laws that require individuals working or volunteering with children to undergo background checks. The checks aim to identify people who pose a risk to children and prohibit them from working in child-related fields. The Child Safe Standards, these standards are guidelines designed to help organizations create safe environments for children. They include principles such as the involvement of children and families in decision-making, policies and procedures for child safety, training and education for staff and systems for reporting and responding to child abuse.
- The Online Safety, to protect children from online abuse, exploitation and exposure to harmful content. The safety Commissioner is empowered to tackle issues such as cyberbullying, image-based abuse and unlawful online content.¹³ The Online Safety Act 2021 provides the safety Commissioner with enhanced powers to tackle online harms.
- The Human Trafficking and Exploitation Laws protect children from trafficking, forced labour,

¹³ Our legislative functions, Australian Government, 2021, <https://www.esafety.gov.au/about-us/who-we-are/our-legislative-functions>

and exploitation. The Criminal Code Act 1995 includes offences related to human trafficking, slavery and child exploitation with severe penalties for offenders.

5. Canada

In Canada, child protection laws are primarily administered at the provincial and territorial level with each province and territory having its own legislation and child protection services. These laws are designed to protect children from abuse, neglect and exploitation and also to ensure their well-being and safety. It includes,

- The Constitution Act, of 1867 assigns responsibility for child welfare to the provinces and territories. However, the federal government has roles in related areas such as Indigenous child welfare, criminal justice and immigration.
- The United Nations Convention on the Rights of the Child, Canada is a signatory to the UNCRC, committing to uphold children's rights, including protection from abuse and neglect, access to education and health care. Each province and territory in Canada has its own child protection legislation, which outlines the roles and responsibilities of child protection agencies, defines what constitutes child abuse and neglect, and sets out procedures for reporting and responding to child welfare concerns.
- In Ontario, the Child, Youth and Family Services Act, 2017, governs child protection, adoption and youth justice services in Ontario. It sets the duty to report suspected child abuse or neglect, defines the role of Children's Aid Societies, and includes provisions for the care and protection of children including temporary care agreements, child protection orders, and adoption services.
- In Quebec, the Youth Protection Act is focused on protecting children whose security or development is or may be considered to be in danger. It outlines the responsibilities of the Director of Youth Protection, the criteria for determining if a child is in need of protection and the procedures for intervention and support. The act also emphasizes the rights of children and the involvement of families in decision-making.
- In British Columbia, the Child, Family and Community Service Act, is the primary legislation for child protection in British Columbia. It sets out the duty to report child abuse or neglect, establishes the roles of the Ministry of Children and Family Development and outlines the

processes for investigating child welfare concerns and taking protective action.

- In Alberta, the Child, Youth and Family Enhancement Act, provides the framework for child protection and family support services in Alberta. It includes mandatory reporting requirements, criteria for assessing child protection concerns and the powers of the Director of Child and Family Services to intervene, provide support and make arrangements for the care of children in need.
- In Manitoba, the Child and Family Services Act oversees the safeguarding of children and the delivery of family services.¹⁴ It outlines the roles of Child and Family Services agencies, mandatory reporting requirements and procedures for investigating child abuse, placing children in care, and providing family support services.
- In Saskatchewan, the Child and Family Services Act sets out the legal framework for child protection and family support services in Saskatchewan. It includes provisions for the investigation of child abuse and neglect, temporary and permanent care orders and support for children in care. It also emphasizes the importance of family involvement and cultural considerations, particularly for Indigenous children.
- In Nova Scotia, the Children and Family Services Act, governs child protection services in Nova Scotia. It includes mandatory reporting of suspected child abuse, defines the powers of child protection workers and outlines the procedures for emergency intervention and long-term care planning.
- In Newfoundland and Labrador, the Children, Youth and Families Act, provides the legal framework for the protection and care of children in Newfoundland and Labrador. It includes provisions for the duty to report, investigation of child protection concerns and the role of Child, Youth and Family Services in providing care and support to children and families.
- In New Brunswick, the Family Services Act defines child protection services and associated responsibilities within the province.¹⁵ It mandates reporting of child abuse, sets out criteria for child protection and includes provisions for intervention, family support and the placement of

¹⁴ Review of Child Welfare Legislation in Manitoba, December, 2017, https://cwrp.ca/sites/default/files/publications/discussion_guide_mb.pdf

¹⁵ Child Abuse- Recognize it, report it, Prevent it!, PLEIS-NB, 2016, https://www.legal-info-legale.nb.ca/en/child_abuse_recognize_report_prevent

children in care.

- In Prince Edward Island, the Child Protection Act regulates the child protection services in the province.¹⁶ It includes mandatory reporting requirements, guidelines for child protection investigations and provisions for temporary and permanent care orders.
- In Northwest Territories, the Child and Family Services Act provides the legal framework for child protection in the Northwest Territories. It sets out the responsibilities of child protection workers, mandatory reporting requirements, and procedures for intervention and support.
- In Yukon, the Child and Family Services Act, outlines the child protection services in Yukon. It includes provisions for reporting child abuse, the role of child protection authorities and procedures for placing children in care and supporting families.
- In Nunavut, the Child and Family Services Act governs child protection in Nunavut. It includes mandatory reporting requirements, procedures for child protection investigations, and provisions for care and support services.
- In all provinces and territories, certain professionals and members of the public are required by law to report suspected child abuse or neglect to child protection authorities. The specifics of mandatory reporting laws vary but generally include the obligation to report physical abuse, sexual abuse, emotional harm, and neglect. Failure to report the abuse can result in legal consequences.
- Addressing the overrepresentation of Indigenous children in the child welfare system, Canada has specific frameworks for Indigenous child protection. The Act respecting First Nations, Inuit, and Métis children, youth and families was enacted in 2020.¹⁷ It affirms the rights of Indigenous communities to exercise jurisdiction over child and family services, emphasizes cultural continuity, and seeks to reduce the number of Indigenous children in state care.
- The Criminal Code includes various provisions to protect children from abuse, exploitation, and harm. It includes offences related to child abuse, child pornography, child trafficking, and sexual exploitation. It also outlines penalties for offenders and protections for child victims and

¹⁶ Cody Mackey, Proposed law would be historic for children rights on P.E.I., November, 15, 2023, <https://www.cbc.ca/news/canada/prince-edward-island/pei-legislature-nov-14-1.7027715>

¹⁷ Reducing the number of Indigenous children in care, Government of Canada, <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>

witnesses in criminal proceedings.

DIFFERENCES

- The definition of Child in all five countries defines a child as any person below 18 years of age and ensuring that minors are provided with special protection under the law.
- All five countries cover a wide range of abuses, including physical, emotional, and sexual abuse, as well as neglect and exploitation. The scope of offences is broad, ensuring comprehensive protection for children.
- India and the US have stringent mandatory reporting laws requiring citizens and professionals to report suspected abuse and sexual offences. The UK has a duty of care for professionals with ongoing discussions about extending this requirement. In Australia mandatory reporting across states and territories with varying obligations whereas in Canada mandatory reporting in all Provinces and territories for professionals working with children.
- India's POCSO Act specifically includes child-friendly procedures in the legal process such as special courts and non-aggressive questioning. The US employs Child Advocacy Centres that provide a child-friendly, multi-disciplinary approach to handling cases. The UK's legal framework includes child protection conferences and other measures to create a supportive environment for children.
- It serves Severe penalties are prescribed in all five countries for offenders with long-term imprisonment and fines. The US, UK, Australia and Canada also have sex offender registries that track convicted offenders.
- India has Special Courts under the POCSO Act for expedited and speedy trials. The US utilizes Child Advocacy Centres and multi-disciplinary teams. The UK holds Child Protection Conferences and has a comprehensive framework under the Children Act.

SIMILARITIES

The similarities between the five Countries provide comprehensive coverage of various forms of child abuse, sexual offences etc. Each country mandates reporting of suspected child abuse with varying degrees of obligation. The Procedures are designed to minimize trauma to child victims and to ensure their protection and support. All five countries impose severe penalties

for offences against children emphasizing the gravity of these crimes.

CONCLUSION

Therefore, while there are differences in the specifics of the legal frameworks, the child protection laws in India, the United States, and the United Kingdom share a common goal of safeguarding children from abuse and exploitation. Each system has developed mechanisms to ensure the effective reporting, prosecution, and prevention of child sexual offences, reflecting a global commitment to the protection of children's rights and well-being.

