



CHILD PROTECTION LAWS IN INDIA AND SPECIFIC ISSUES WITH REGARD TO THEM *

ABSTRACT

The future of any State depends on the healthy growth and development of its children. Since independence, India has framed a wide range of laws for the protection and harmonious growth of children. The Constitution of India guarantees these rights to children through Chapter III and IV. Apart from this, India is also a signatory to the United Nations Conventions on Rights of the Child, 1989 which has incorporated in its various articles rights of children without any discrimination whatsoever. It is based on four basic principles- non-discrimination, best interest of the child, right to life survival and development and the right to be heard. In addition to this, there are three protocols to the Convention of which two have been signed by India. Both the Constitution and the UNCRC provide the basis for the formulation of legislations about rights of children.

Currently the legislations such as the Indian Penal Code, 1860, Juvenile Justice (Care and Protection of Children) Act, 2015, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2000, Child Marriage Restraint Act, 1929 (Amended in 1979), Child Labour (Prohibition and Regulation) Act, 1986, Protection of Children from Sexual Offences Act, 2012, The Child Labour (Prohibition and Regulation) Amendment Bill, 2012, The Right of Children to Free and Compulsory Education Act, 2009 etc. provide for the child rights and their protection in India. There are however, numerous challenges faced for implementation and upgradation of these Acts which will be discussed in detail in this paper.

Key Words: *Child Rights, Juvenile Justice, Convention on Rights of Child.*

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Introduction

The hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual.¹ The importance of children and their welfare cannot be underestimated since the welfare of the entire community, along with its growth and development, depends on the health and well-being of its children. It can be said that the welfare of the children is the prime concern for both national and international community. Kofi A. Annan, Secretary-General of the United Nations, observed that:² “There is no trust more sacred than one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.”

In the ancient times, in India, the Laws of Man identify the child, though located very near the bottom of a social pyramid, but was bestowed with the society’s protection. In those times, children were only to be beaten with a rope or bamboo stick split at the end, which does not inflict much pain. Even this punishment had to be carried out only on the back and not on the head or the chest.

There is a plethora of statutes, Acts, legislations, judicial pronouncements at national and international levels dealing with the protection of child rights. Most of these have provisions to deal with the rehabilitation and protection of the socially and economically abused and neglected children. Though the word child has not been defined under the Constitution of India, the Constitution makers were conscious of the fact that the children require special treatment on account of their physical and mental immaturity. The various laws and legislations on the rights of child have been mentioned further.

United Nations Convention on the Rights of the Child (UNCRC) 1989

The UNCRC consists of fifty-four articles that exclusively mention child rights and the way governments ought to work along to grant them to all children irrespective of any discrimination. Under the terms of the convention, governments are needed to fulfill children’s basic desires and

¹ V.R. Krishna Iyar, Jurisprudence of Juvenile Justice: A Preambular Perspective.

² Foreword by Kofi A. Annan in The State of the World’s Children, 2000.

facilitate them to reach their full potential. The main objective behind it is to acknowledge that each kid has basic elementary rights. It sets up the following goals,

- Life, survival and development
- Protection from violence, abuse or neglect
- An education that permits youngsters to fulfil their potential
- Be raised by, or have a relationship with, their folks
- Express their opinions and be listened to

In 2000, two optional protocols were included to it. These are the Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to CRC on the involvement of Children in Armed Conflict. One asks governments to confirm that youngsters underneath the age of eighteen don't seem to be forcibly recruited into their soldiers. The second calls on states to ban prostitution involving children, pornography and also the sale of children into slavery. These have currently been sanctioned by quite one hundred twenty states.

Furthermore, a third optional protocol was introduced in 2011, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure which permits youngsters whose rights are desecrated to complain on to the International Organization Committee on the Rights of the Child.

Home to every fifth of the world's children, India has sanctioned the Convention on Rights of the Child in 1992, granting standards in health care, education and legal, civil and social services. The passage of the Education Bill, and therefore the Prohibition of Child Labour and Child Marriage Act shows how the Indian Government is championing the rights of children. Progress has been seen towards distinguishing and addressing child protection violations and targeting essential services to marginalized teams. The National Commission for the Protection of Child Rights was established in India in March 2007 and a few State Commissions are additional.

However, the challenges to the implementation of these rights still remain. Widespread and entrenched exploitation, gender discrimination and caste bias in India cannot be ignored for long. The recent world fuel, food and economic crises will also have an effect on the country's social progress, posing an obstruction to the recent gains in child survival and education. We have a

tendency to assure that rights will be declared, and policies developed, however, unless the lifetime of the child within the family and community is improved, all our efforts within this realm are nonsense. We as common voters should pledge to not settle for work from children, not tolerate child marriage and guarantee all children, particularly women, the right to complete their education.

Constitutional Provisions Regarding Rights of Children

The Constitution of India guarantees certain rights to the children of India which are mentioned in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). These are elaborated below,

Part III:

Article 14: Voters of India, as well as children, should be treated equally before law and should be equal protection by the law with no discrimination.

Article 15(3): Discrimination is prohibited by the constitution. However, it shall not hold a ground to forestall the state from creating special provisions for children for his or her advantage.

Article 21: Nobody shall be bereft of his life or personal liberty unless by a due process of law. An individual should have proper and adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.

Article 21A: The State shall offer free and required education to any or all the children falling within the age group of six to 14 years in such manner which the State could, by law, determine.

Article 23: Prohibits trafficking in citizenry and beggar or the other sort of forced labour.

Article 24: Prohibits employment of youngsters beneath the age of fourteen years in an exceedingly mill, mine or in the other dangerous employment.

Part IV:

Article 39 (e): The state shall thrive to make sure that the tender age of youngsters isn't abused, and that people aren't forced by financial necessity to enter into activities which are unsuited to their age or strength.

Article 39 (f): The state shall guarantee children opportunities and facilities to develop in an exceedingly healthy manner and in conditions of freedom and dignity. It should even be ensured that childhood and youth of the child is protected against exploitation and against unethical and material abandonment.

Article 41: The state is obligated to, among its economic capability and development, secure provisions for academic opportunities and facilities.

Article 44: The state shall create all potential efforts to secure an identical Civil Code for all the citizens, thereby implying an identical code for the adoption of youngsters.

Article 45: The state shall endeavor to produce free and required education to kids till they attain they age of fourteen years.

Article 46: It's the duty of the state to push the economic interests of weaker sections of the society with special care and thus, the children in that.

Article 47: The state is obligated to boost the extent of nutrition and also the normal of living and to enhance public health, as well as that of youngsters.

Article 51(c): International laws and treaties shall be revered by the state to each potential extent, as well as the CRC and its optional protocols.

Article 51(k): It shall be the duty of each national of India who may be a parent or guardian to produce opportunities for education to his kid or, because the case could also be, ward between the age of six and fourteen years.

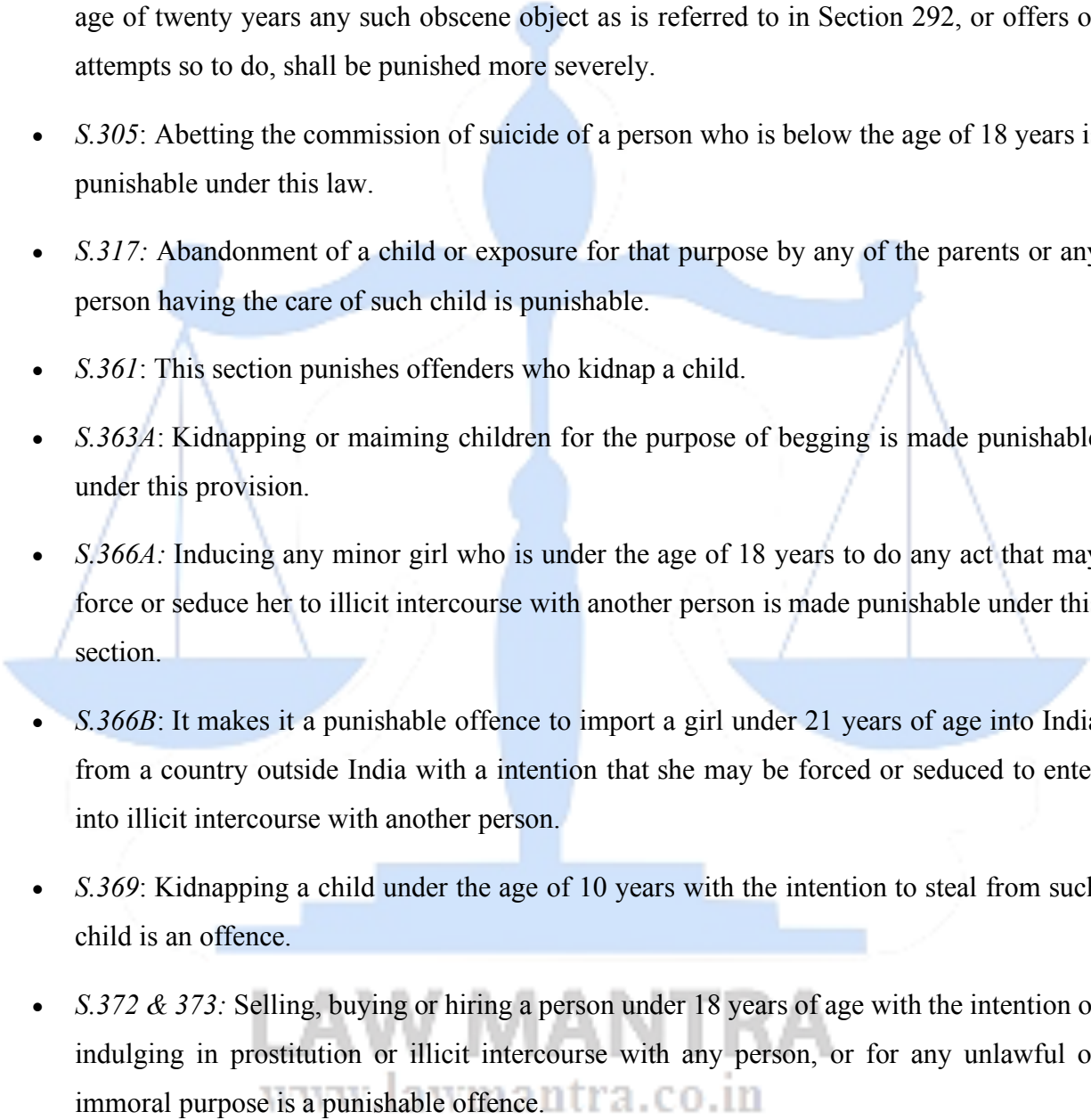
Article 243G: It provides for the institutionalization of child care by seeking to entrust programs of Woman and Child Development to Panchayat (Item twenty-five of Schedule 11).

Indian Penal Code 1860

The Indian Penal Code offers protection to children and their rights by its various sections.

Some of these sections are:

- *S.83*: An offence which is done by a child above seven years of age and under twelve, and has thereby not attained sufficient maturity in order to understand the nature and consequences of his action shall not be liable for the same.

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- *S.292 & 293*: Selling, distribution, publishing, public exhibition or circulation of obscene material such as books, magazines, drawings, paintings, etc. is prohibited under Section 292. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in Section 292, or offers or attempts so to do, shall be punished more severely.
 - *S.305*: Abetting the commission of suicide of a person who is below the age of 18 years is punishable under this law.
 - *S.317*: Abandonment of a child or exposure for that purpose by any of the parents or any person having the care of such child is punishable.
 - *S.361*: This section punishes offenders who kidnap a child.
 - *S.363A*: Kidnapping or maiming children for the purpose of begging is made punishable under this provision.
 - *S.366A*: Inducing any minor girl who is under the age of 18 years to do any act that may force or seduce her to illicit intercourse with another person is made punishable under this section.
 - *S.366B*: It makes it a punishable offence to import a girl under 21 years of age into India from a country outside India with a intention that she may be forced or seduced to enter into illicit intercourse with another person.
 - *S.369*: Kidnapping a child under the age of 10 years with the intention to steal from such child is an offence.
 - *S.372 & 373*: Selling, buying or hiring a person under 18 years of age with the intention of indulging in prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose is a punishable offence.
 - *S.375*: This section defines rape as intercourse with a woman without her consent or with a woman below 16 years of age.
 - *S.376*: The section provides for stringent punishments if:

- rape is committed by management or staff of Remand Home or any other place of custody established by law or children's institution,
- rape is committed upon a woman under 12 years of age,
- gang rape is committed.
- *S.376C*: Inducing or seducing a woman into sexual intercourse by the Superintendent or manager of a remand home or a place of custody as 'children's institution' by taking advantage of his position, he is entitled to stringent punishment under this provision.

Guardians and Wards Act 1890

This Act is said to supersede all the laws relevant to the guardianship of a child. It is treated as a universal code specifically designed for Muslims, Parsis, Christians and Jews, since their personal laws do not permit full adoption but only guardianship. This Act deals only with the guardianship of the person and property of the minor. In appointing or declaring the guardian of the minor the court shall take into consideration the circumstances of the case for the welfare of the minor and consistent with the law to which the minor is subject. Among the entire factor considered by the court, the welfare of the child is the paramount consideration.³

Immoral Traffic (Prevention) Act (Amended in 1986), 1956

This Act particularly deals with person or persons who procure or attempt to procure any child for the purpose of prostitution or person who is found with a child in a brothel (then it will be presumed that child has been detained for this purpose) and provides punishment for them. It also lays provisions for the care of rescued children.

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2000

The primary objective of this Act is the regulation and prevention of the pre-natal sex determination in order to prevent female foeticide. The Act intends to address the issue of female foeticide and Sex-Selection by imposing a ban on pre-conception tests or other procedures for the purpose of ensuring or increasing the probability that the child will be of a particular sex. Medical advancement in the field of assisted reproduction necessitated such

³ Section 17, Guardians and Wards Act, 1860.

provisions. The Act also provides for strict regulation of genetic clinics, laboratories or centers with minimum standards prescribed in terms of space, equipment and qualification of staff.

As per the provisions under the Act, before conducting any prenatal diagnostic procedure, the medical practitioner must obtain a written consent from the pregnant woman in a local language that she understands. Prenatal tests can only be performed in specific circumstances, such as risk of chromosomal abnormalities in the case of women over 35, and genetic diseases evident in the family history of the couple.⁴ In *Vinod Soni vs. Union of India*⁵, the constitutionality of Pre-Conception and pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 2003, was challenged on the basis of right to privacy. Mumbai High Court upheld the Act as constitutional.

Protection of Children from Sexual Offences Act, 2012

This Act is aimed at punishing the offenders guilty of sexual offences against children (below the age of 18 years of age). It also prescribes procedures for trial, such as, the name of victim shall not be disclosed since he is a child, proceedings of the case will be conducted in the court with cameras recording the trial, and that the accused is not to be kept in-front of the child victim while the examination or cross-examination is being conducted.

The Act defines different forms of sexual abuse, such as penetrative and nonpenetrative assault, including sexual harassment and pornography, and also deems a sexual assault to be “aggravated” under certain circumstances, such as when the child abused is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor. People who traffic in children for sexual purposes are also punishable under the provision relating to abetment in the said Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence, if he fails to do so, he may be punished with six months’ imprisonment and/or a fine.

⁴ Section 4(3).

⁵ 2005 Cr LJ 3408: 2005 (3) Mah LJ 1131: 2005 (4) Rec Cri R 590.

The Act also casts upon the police, the role of acting as a child protector during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child. The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of female child, by a female doctor.

The Right of Children to Free and Compulsory Education Act, 2009

The Right of Children to Free and Compulsory Education Act, 2009 defines ‘child’ as a male or female child of the age of six to fourteen years.⁶ Elementary education means the education from first class to eight classes⁷ ‘Capitation fee’ means any kind of donation or contribution or payment other than the fee notified by the school.⁸ According to this law, a child belonging to disadvantaged group means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification⁹ and child belonging to weaker section means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification.¹⁰

The Act guarantees that no child shall be denied admission in a School for lack of age proof.¹¹ For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be

⁶ Section 2(c), The Right of Children to Free and Compulsory Education Act, 2009.

⁷ Section 2(f) *ibid.*

⁸ Section 2(b), *ibid.*

⁹ Section 2(d), *ibid.*

¹⁰ Section 2(e), *ibid.*

¹¹ Section 14(2), *ibid.*

prescribed.¹²The Right to Free and Compulsory Education Act prohibits a School from holding back a child in any class or expelling a child from School till the completion of elementary education.¹³ The Act also prohibits the School from giving any type of physical punishment or mental harassment to any child¹⁴ and whoever contravenes this provision shall be liable to disciplinary Action under the service rules applicable to such person.

The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force from 15th January, 2016 and repeals the Juvenile Justice (Care and Protection of Children) Act, 2000. It follows certain principles such as the Principle of presumption of innocence, Principle of dignity and worth, Principle of participation, Principle of best interest, Principle of family responsibility, Principle of safety, Positive measures, Principle of non-stigmatizing semantics, Principle of non-waiver of rights, Principle of equality and non-discrimination, Principle of right to privacy and confidentiality, Principle of institutionalization as a measure of last resort, Principle of repatriation and restoration and other principles like the Principle of fresh start, that is all past records of any child under the Juvenile Justice system should be erased except in special circumstances.

The Commissions for the Protection of Child Rights Act, 2005

In view of the National and International development and concern towards child rights violation the need for a National Commission for Protection of Child Rights has been articulated by many social scientists and non-governmental organizations. The Government accordingly decided to set up the National Commission for Protection of Child Rights and for better protection of their rights by providing speedy trial of offences against children or for violation of child rights. The States have also been authorized to set up State Level Commission for Protection of Child Rights in their respective states. India has also participated in the United Nations General Assembly Summit in 1990 which adopted a Declaration on Survival, Protection and Development of children.

The National Commission of the Protection of Child Rights consists of, one Chairperson and six members. The Chairperson shall be a person of eminence who has done outstanding work for

¹² Section 14(1), The Right of Children to Free and Compulsory Education Act, 2009.

¹³ Section 16, *ibid*.

¹⁴ Section 17, *ibid*.

promoting the welfare of the children.¹⁵ Out of six members, at least two should be women. The other members should be persons of eminence, ability, integrity, standing and experience in the field of education, child health care, and welfare and child development, juvenile justice care of neglected or marginalized children or children with disabilities, elimination of child labour or children in distress, child psychology or sociology or Laws relating to children.

The Prohibition of Child Marriage Act, 2006

It restrains child marriage until the minimum age, i.e. 21 for male and 18 for female, has been attained by them. It applies to the people of all the religions. The basic objective of the Prohibition of Child Marriage Act, 2006 is to provide for the prohibition of solemnization of child marriages and for matters connected therewith or incidental thereto.

Child Labour (Prohibition and Regulation) Act, 1986

This act regulates the working conditions for children in employment and prohibits working of children in certain kinds of employments.

The Act prohibits the employment of children in certain occupations and processes set forth in Part A58 and Part B59 of the Schedule.¹⁶ The Court also must strive to interpret the statute as to protect and achieve the objective and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case. The Act also provides that the Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the Child Labour Technical Advisory to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.¹⁷ The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government. The Act penalizes the person who employs any child or permits any child to work in contravention of the provisions of section 3, with imprisonment for a term which shall not be less than three months, but which may extend to one year or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both. Upon

¹⁵ Section 3(1), The Commission for the Protection of Child Rights Act, 2005.

¹⁶ Section 3, Child Labour (Prohibition and Regulation) Act, 1986.

¹⁷ Section 5(i), Child Labour (Prohibition and Regulation) Act, 1986.

repeating the act of employing the child in contravention of provisions of section 3, the employer shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years.¹⁸

The Medical Termination of Pregnancy Act, 1971

In order to save the pregnant women's health, strength and sometimes, life, the Medical Termination of Pregnancy Act was passed in 1971. It legalized abortions under certain conditions. So, it is obvious that the Medical Termination of Pregnancy Act, 1971 is made in favour of mother and as well as in favour of unborn child. It put forth the principal that death is better than sufferings, as the Act allows killing of child in mother's womb, where there is substantial risk that the child, if born, would suffer from deformities and diseases. The provisions of this Act are however, sometimes misused. The right to abortion is essential for a woman to have control over her reproductive process. But in Indian society, the reason behind a large number of abortions is neither the health of the woman, nor reproductive right but the sex of the unborn child. Abortions are generally performed to get rid of the child who is female (sex-determination test), which is illegal and criminal both on the part of parenting as well as doctor who performs such abortion.

Specific Issues: Child abuse and Child Right Violation

Child welfare has been given considerable importance both nationally and internationally. But it is also true that child abuse and Child Rights violation is rampant at large scale. According to Black's Law Dictionary,¹⁹ child abuse is defined as any form of cruelty to a child's physical, moral or mental wellbeing. It is also used to describe some forms of sexual attack which may or may not amount to rape. Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen years and is a globally prevalent phenomenon. The extent, magnitude and trend of the problem have not been understood properly in the developing countries. The growing complexities of life and the dramatic changes brought about by socioeconomic transition in India have played a major role in increasing the vulnerability of children to various and newer forms of abuse. Child abuse is a violation of basic human rights of a child and is an outcome of a set of inter-related, familial, social, psychological and economic

¹⁸ Section 14(2), *ibid.*

¹⁹ 5th Edition.

factors. The problem of child abuse and human rights violation of a child is one of the most critical matters on the International Human Rights agenda.

Problem of Forced Labour

It is widely known that forced labour is a growing menace in our society. Although laws have been enacted to prevent this, but we have not been able to achieve the desired results. Article 23 and 24 – which takes upon itself, to curb this menace for almost, thirty years, could not be activated effectively in controlling bonded labour. But after 1982 especially due to the *Asiad Workers case*,²⁰ these articles have been used as potent weapons to combat this menace. Article 23(1) States that all kinds of trafficking in human beings or any form of forced labour is prohibited and that any contravention of this law is punishable. In this case, the condition of the workers was miserable, they were denied their minimum daily wages, they were living in hovels, their children dying of malnutrition and they themselves frequently becoming victims of accidents. These terrible working conditions of the workers were first brought to public notice by the Fact-Finding Team of the People's Union for Democratic Rights (PUDR). The report found that “almost all the major laws were being violated by the contractors, right in the heart of the Indian capital and under the nose of the Union Government.”²¹

In the *Sanjit Roy vs. State of Rajasthan*,²² the Apex Court held that even during the famine relief work minimum wages should be paid to those who are employed for famine relief. Although it was the contention of the State that it was only providing relief to the affected people and that if required to pay the minimum wages it could affect the State's potential to help the famine affected people, the judges fell back on the *Asiad workers case* emphasizing that Article 23 was aimed at eradicating the pernicious practice of forced labour. Another landmark case highlighting the judicial attitude towards bonded labour is found in the *Bandhua Mukti Morcha vs. Union of India*.²³

Trafficking, Exploitation and Sexual Abuse

Children constitute the weakest and most vulnerable and defenseless section of human society. It is thus, the duty of the State to protect and promote their human rights with a view to ensuring full

²⁰ People's Union in Democratic Rights vs. Union of India AIR 1982 SC 1473.

²¹ “The other face of Asiad 82”, PUDR Report, October 1982, p.4

²² AIR 1983 SC 328.

²³ AIR 1984 SC 802

development of their personality and with human dignity, otherwise, the right to life and liberty would become meaningless for them. In spite of the specific constitutional mandate, child labour exists in almost all parts of the country. Their tender age and strength is exploited. They are denied the right to live with human dignity. In *Vishaljeet vs. Union of India*,²⁴ the Court issued that all State Governments must direct their law enforcing authorities to take appropriate speedy steps against child trafficking and also directed to set-up an advisory Committee with experts from all fields to make suggestions regarding measures for eradication of child prostitution, for care and rehabilitation of rescued girls, for setting up of rehabilitation homes, and for surveying the existence of devdasi and jogan traditions in their respective States.

*Gaurav Jain vs. Union of India*²⁵ is a historic judgment on rights of child of prostitutes. The petitioner filed a Public Interest Litigation seeking appropriate directions from the Union of India for the improvement, protection and rehabilitation of the children of prostitutes. In *Jayesh Thakkar vs. State of Maharashtra and Internet users Association of India (Interveners)*²⁶ the Mumbai High Court appointed a Committee which laid down several restrictions on cyber cafes to provide for an adequate degree of supervision and control so that minors are protected from being exposed to pornographic sites on the internet in cyber cafes. The Committee recommended child friendly or child safe Cyber Zones where minors could safely access and use the internet for information, education, communication and entertainment.

Other Matters of Protection of Rights of Children

The judiciary in India has shown its deep concern for the human rights of these children. In *M.C. Mehta vs. State of Tamil Nadu*,²⁷ the SC while keeping the interest of the children, as also the constitutional mandate in view held that employment connected with manufacturing process in the match factory is not to be given to children. They can, however, be employed in packing process and the packing must be done in area away from the place of manufacture.

²⁴ AIR 1990 SC 1412 Cr. LJ 1469: (1990) 3 SCC 318.

²⁵ AIR 1997 SC 3021: 1997 AIR SCW 3055: (1997) 8 SCC 114.

²⁶ *Suo Motu Writ Petition No. 1611 of 2001*, (Mumbai High Court).

²⁷ AIR. 1991 SC. 417

In *Lakshmi Kant Pande vs. Union of India*,²⁸ a letter was written by an advocate to the judges of the Supreme Court complaining about the malpractices by some social organizations and other voluntary agencies engaged in offering Indian children in adoption to foreign parents. The Court treated this letter as a writ petition in the nature of public interest litigation. After observing the absence of legal framework in the area of inter-country adoption and failure of the Parliament to enact law in this regard, the SC formulated the guidelines and norms which must be observed in permitting inter-country adoption.

Besides the above discussed issues, there are other problems that prevail in the Indian Society, where every day rights of the child are violated and are deprived of such as abuse of child as domestic help, problem of genocide, but it is not possible to make a study of each and every SC cases regarding the relevant aspects. Hence a glance through these cases clearly and remarkably spells out the changing role of the judiciary from its earlier conservative and narrow stance to a very broad and socially sensitive institution of the State constantly guarding Human Rights of all children.

Role of Judiciary

Human rights today occupy the top slot in priority, nationally and internationally, over other issues relating to mankind. Unfortunately, its observance leaves much to be desired. With a growing tendency of the legislature and executive to be apathetic towards human rights, the very survival of mankind is under threat. Large scale human rights violations take place right under the nose of the government. At times the State itself is a perpetrator of this crime. Under such circumstances, the role of judiciary in protecting human rights of children become crucial and important. Judiciary in India has been able to restore the human rights to the people. But even the judiciary has been found wanting at times while dealing with these issues.

Apex Court is established at the apex of the judicial system as the final interpreter and guardian of the Constitution and of the fundamental human rights of the people. In the course of its functioning it had many opportunities to expand its scope of operation through its power of interpretation. It would not be overstating that that judiciary has played a crucial and central role in protecting

²⁸ AIR 1984 SC. 469.

human rights. A large number of cases decided in the last two decades go to show that judiciary is working relentlessly towards the goal of achieving “all humans’ rights for all”.

Conclusion

The welfare of the entire community depends on the health and welfare of the child. The betterment of the child is the betterment of the community because child is the future leader. As rightly observed by Milton, ‘child shows the man as morning shows the day’. Obviously, a neglected and abused child will never become a good and responsible citizen. During the past few decades, the problem of child abuse and Child Right violation is on the rise perhaps, because of the poverty and illiteracy. The problem of child labour, poverty, nutrition, education, employment and respecting their rights at every front has acquired a very chronic nature and things cannot be done instantly, it requires time and patience. These problems further aggravated because of the greedy needs of parents, relatives, employers and society at large. Parents and relative put them to work to meet the daily needs of family and slowly become dependent on their income. The employer employs children in various dangerous and hazardous works as they are economically submissive and easy to control. Society at large employs child as domestic help.

The National Policies for the welfare of children must be dynamic and adopt itself to the changing situations and help in anticipating possible consequences of social changes. The National Policy should also view the needs of children both normal as well as those suffering from various types of handicaps, (physical, mental and social) and should also maintain provisions to promote their development into society. The children of economically weaker sections, delinquent, destitute, neglected and abandoned children must be provided facilities to overcome their difficulties and to become good citizens.

The constitutional obligation to provide free and compulsory education to all children upto the age of fourteen years must be fulfilled without any hesitation and delay. There is a need to insert a comprehensive separate chapter on the ‘Fundamental Rights of Children’ in the Constitution to protect their fundamental rights in tune with the other persons.

India is prolific legislator but a habitual defaulter. In India legislative initiatives are not lacking but their enforcement is impoverished. Legislative measures concerning children, like most other laws, inevitably remain flawed, inadequately observed, and in need of constant revision. It is very

clear that through the existing laws, children do not receive the best that mankind has to offer but they can only be shielded from the worst. There is strong evidence of the existence of well-established legal principles set out in various human rights and humanitarian legal instruments and under the Constitution of India which shows that children as such are entitled to special treatment.

There are a variety of legal provisions under various enactments for child rights protection. But for the effective application of these laws, a sensitive and effective judicial system is required. It is very rare that cases of child right violation are brought to the notice of courts under normal circumstances. The working of Juvenile Justice System in our country needs a thorough revision. There is, thus, a need that courts should take keen interest in changing the lot of abused, neglected and exploited children.

In conclusion in spite of, both legislative and constitutional provisions for the protection, as well as prevention from the sexual abuse of children, there is no stoppage of such type of incidents of exploitation and abuse. On the other hand, number of such cases is alarmingly increasing day by day. As a result, judicial intervention has been felt necessary, but such intervention is not sufficient enough to meet the necessities of time to control the exploitation of children. It has been also observed from various judgments of decided cases that in many cases at the time of pronouncing punishment for committing offence against the children, mainly in case of sexual offence, judiciary often give the lesser punishment in comparison with the gravity of offences committed by the offender.

The role of the highest court of the country is laudable in this regard and draws attention to certain alarming features of Indian society. But the judiciary alone cannot be seen to be responsible for resolving the entire problem. In fact, it should be our last resort—prevention is better than cure.

LAW MANTRA
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