
CRITICALLY ANALYSING THE CHILD PROTECTION LAWS IN INDIA

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ABSTRACT

Children's rights as Individuals begin while they remain in the fetus. Since Children are considered the future of India, laws and legislation must protect them. The Declaration of Rights of Child, 1924, was the first law about children's rights. It was ratified by the League of Nations' fifth assembly. Child protection laws are necessary to be implemented to protect them from various challenges like Abuse, exploitation, and trafficking. This research paper critically analyses the importance of child protection laws in India. It also focuses on examining the legal framework that governs the child protection laws in India. The laws related to children primarily focus on the child's care, protection, education, and well-being. The socio-cultural elements of child protection practices in India, such as poverty, inequality in access to healthcare and education, and traditional norms, are also examined in this investigation. A multifaceted strategy including social, economic, and educational initiatives and legislative reforms is needed to address these underlying causes. This paper also aims at effective methods of prevention of violation of children's rights.

Keywords: Declaration of Rights of Child, 1924, Child protection, socio-cultural elements of child protection.

I. RESEARCH METHODOLOGY

The research methodology used in this study is strictly theoretical (doctrinal research). The research's nature encompasses descriptive, critical, and explanatory analyses. This study attempts to examine in detail the many child rights that are available in India as well as the

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steps that the legislature and judiciary have taken to strengthen these rights. Additionally, the study offers a range of implementable options.

II. INTRODUCTION

Every kid has the right to be shielded from abuse, exploitation, and violence. The importance and welfare of children cannot be undervalued because the overall well-being of the community, including their growth and development, totally depends upon the growth of the children in society.

There are children, who face physical and mental abuse, and its effect on them becomes long-lasting. There had to be some laws that provide safety to those children and promote their healing and recovery.

The main aim of child protection laws is the children of India are the future of India and because of that, every citizen must ensure their protection.

Many organizations² and movements work for the welfare and protection of children. One of the most important organizations for the protection of laws of children, the United Nations International Children's Emergency Fund, UNICEF, works to ensure that the rights of children are protected. Apart from this, the people involving their children in illegal work shall be held responsible for their acts. Violating a child's right is equivalent to violating the rights of the entire world.

III. CURRENT STATUS OF CHILDREN IN INDIA

The children of India belong to different categories and different communities. Therefore, their living conditions primarily depend on the household in which they are born. The children who are born in rich families do not suffer any social or economic issues. On the other hand, children born in poor families are unable to get their basic requirements fulfilled by their parents, like quality education, good food, and safe shelter to live. Now, the children belonging to the socio-economically backward sections of society suffer the scarcity of resources and are unable to meet their necessities of life. The parents of these children due to lack of money, indulge their children in life-hazardous activities, the result of which is the deprivation in their education.

² UNICEF, <https://www.unicef.org/india/what-we-do/child-protection> (Last visited Feb 25, 2024).

The families of such children aim for their child to contribute towards the family income. These children then get involved as child labourers and face child abuse and child trafficking.

IV. EVOLUTION OF CHILDREN LAWS IN INDIA

The evolution of children's laws in India is connected with foreign invasion. The economic and socio-cultural philosophy of Indian Children was deteriorating. After the foreign invasion, the families were not able to feed their children with nutritious food, and also, they lacked all the basic education facilities that they had before the foreign invasion.

No steps were taken by the people or the rulers to curtail the situation. Many initiatives were taken by leaders like Mahatma Gandhi, Bal Gangadhar Tilak, and Lala Lajpat Rai to lessen the social issues faced by the children.³

The leaders made the families understand to change their orthodox opinions on illiteracy or child marriage. The changes in the social issues faced by the children gained momentum after the Constitution of India was formulated. Some laws like the Apprentices Act and Reformatory Schools Act were the initiating steps to help the children of India grow and develop.

Another law that was related to the welfare of children was the Declaration of Rights of the Child, 1924. This document talked about the prosperity of children and the responsibility of adults to provide proper care and protection to the children.

V. CONSTITUTIONAL PROVISIONS RELATED TO CHILDREN

Children require extra care and protection because of their young age. Various rights are enshrined in them under the Constitution of India. The Articles of the Indian Constitution deal with their liberty, right to livelihood, right to education, and prohibition of their employment in factories.

The first constitutional provision related to children is Article 21-A⁴, which talks about the Right to education. This article says that every child who is in the age group of six to fourteen years shall get by State, free and compulsory education. This article was added to the

³ Preeti Rana, Evolution of Child Rights in India, 03, IJEMASSS, 228, 01 (2021), <https://www.inspirajournals.com/uploads/Issues/1394505837.pdf>

⁴ Constitution of India, § 21-A, amended by The Constitution (Eighty-sixth Amendment) Act, 2002

constitution just to ensure that every child gets an education, regardless of their socio-economic background.

Article 45⁵ of the Indian Constitution states, that within 10 years of the adoption of this Constitution, the State will make every effort to ensure that all children receive free and obligatory education until they turn fourteen.

As stated in Article 23⁶, To protect children from exploitation in whatever form, the Right against Exploitation was introduced. According to this article, no youngster may be made to work for no pay at all.

On the other hand, Article 24⁷ states that no child under the age of fourteen is allowed to work in a mine, factory, or other hazardous job. Children under the age of fourteen are considered to be in the feeding stage. Since they are a valuable asset to the nation, they need to be encouraged to pursue their education and build safe futures for themselves rather than being locked behind the four walls of a workplace.

VI. LEGISLATIONS FOR THE PROTECTION OF CHILDREN

- **Juvenile Justice (care and protection) Act, 2015**

An update to the Juvenile Justice (care and protection) Act of 2000 is the Juvenile Justice (care and protection) Act of 2015. The amending legislation strengthens the laws already in place for children's safety.

Under this act, it is mentioned that if any heinous offense has been committed by a child who is of the age of sixteen years or has completed the age of sixteen years, the board shall check his mental and physical capacity to do such offense.⁸

- **The Prohibition of Child Marriage Act (2006)⁹**

In the history of India, child marriage has been the biggest issue. It was necessary to protect them from marriage in the early stages because of their immaturity level at that age. The first act enacted to put a restraint on child marriage was the Child Marriage

⁵ Constitution of India, § 45

⁶ Constitution of India, § 23

⁷ Constitution of India, § 24

⁸ Juvenile Justice (care and protection) Act, 2000, §15, No. 56, Acts of Parliament, 2000(India).

Restraint Act, of 1929. However, this act was not up to the mark and did not achieve the goal that the government desired.

Following that, the Legislation Commission of India suggested a new legislation, which was eventually passed in 2006 and is known as the Prohibition of Child Marriage Act. In such an act, the definition of a kid is specified. A child is defined as an individual who is younger than twenty-one years old for boys and older than eighteen years old for girls. According to this statute, child marriages that occurred before or after its implementation are deemed to be voidable at the option of the engaged parties when they reach Majority. In general, the Prohibition of Child Marriage Act is crucial for upholding children's rights and welfare, encouraging.

- **The POCSO, Act (2012)¹⁰**

The POCSO Act addresses sexual assaults against minors and protects them from such acts. It established certain special courts to handle matters involving sexual assault, harassment, and pornography to protect minors from these kinds of situations.

The act was amended in 2019. This act mandates that the investigation regarding the offenses mentioned in the POCSO Act is to be completed within two months from the date, the FIR has been registered and the trial has to be completed within six months. As punishment for serious penetrative sexual assault, it calls for harsh imprisonment for a minimum of 10 years, with the possibility of a life sentence, as well as a fine. It also includes measures to prevent the youngster from becoming a victim of the legal system again. Reporting such incidents is also required by the Act. It makes reporting sexual abuse a legal obligation for anybody aware of the offense. Should he neglect to do so, the offender faces a fine or six months in jail. Additionally, it imposes penalties on those who traffic youngsters for sex. The Act also stipulates penalties for making fictitious complaints or providing incorrect information.

- **The Child Labour (Prohibition and Regulation) Act, 1986¹¹**

Children who have not reached the age of fourteen are discussed in this statute. The statute attempts to control young labourers' working hours and working environment.

¹⁰ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India)

¹¹ The Child Labour (Prohibition and Regulation) Act, 1986, No. 61, Acts of Parliament, 1986(India)

Additionally, it forbids kids from working in dangerous environments. The condition of the children was deteriorating. It was essential for the act to be amended.

After the amendment, it was held that any child below the age of fourteen years would not work as a labour anywhere or would not be employed by anyone. As per the Right to Education Act, Education was made compulsory for all children below the age of fourteen years. Any child above the age of fourteen years could only work after school hours.

The child below the age of fourteen could only work in their family business and that also if that was not hazardous to life. Children between the ages of fourteen to eighteen years are called adolescents and are not allowed to work in hazardous places.

VII. CASE LAWS RELATED TO CHILD PROTECTION

- **M.C. Mehta v. State of Tamil Nadu¹²**

M.C. Mehta, a lawyer, filed a writ petition about this matter. By Article 32 of the Indian Constitution, he submitted the plea. Sivakasi was the name of a town in the Tamil Nadu state. Regarding child labour, it was one of the worst-affected municipalities in the nation.

According to M.C. Mehta, it is unlawful to employ minors in dangerous matchstick manufacturers. The state that responded acknowledged the opposing viewpoint and provided suggestions for resolving it.

The court in the case issued directions suggesting means to improve the lives of affected children.

- **Sanjay Suri v. Delhi administration¹³**

The petitioners in this case were a news editor and his trainee. Article 32 of the Indian Constitution was the basis for the writ petition they submitted. The issue was related to the juvenile under-trial prisoners of Tihar Jail and they prayed for appropriate directions from the respondents. The court in this case transferred some guilty officers and also it laid down some rules to protect children in jails. The juveniles were kept with other adult prisoners. It was contended that juveniles should be kept separate from adult

¹² M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699

¹³ Sanjay Suri v. Delhi administration, MANU/SC/0137/1987

prisoners, which would prevent them from bad influence and help them with proper rehabilitation.

- **Gaurav Jain v. Union of India¹⁴**

It was a case in which Gaurav Jain was an advocate and by Article 32 of the Indian Constitution, he submitted a writ petition to the Supreme Court. Here, he said, there should be separate schools for the offspring of prostitutes until they are sixteen.

The court did not agree with the petitioner and said that the setting up of separate educational institutes and hostels would be against the well-being of the child. Though they did not approve of the separation of various facilities for such types of children but instead gave some guidelines which could help the separation of children from their prostitute mothers and to keep them in reformatory houses.

- **Vishal Jeet v. Union of India¹⁵**

He argued against the forced prostitution of girls and requested the court to issue an order for their rehabilitation in a writ suit filed in the Supreme Court under Article 32 of the Indian Constitution. The petitioner emphasized that young girls who have reached puberty are either abducted or kidnapped and sold as prostitutes, or they are pushed into prostitution by their parents. Some parents drive their girls into these occupations when they are no longer able to care for them because they are poor.

While profit-driven brothel owners engage in complex abduction schemes. Given the above scenario, which was briefly described, the petitioner filed a PIL with the affidavits of nine females who were coerced into participating in this immoral activity and who are requesting rehabilitation.

- **Sampurna Behura v. Union of India**

In this case, the petition was filed by a social activist, Sampurna Behura. She made the court aware of the problems faced by the juveniles in observation and shelter homes. She directed the court's attention towards the state's responsibility towards children and the failure of the state to do so. The petitioner contended the establishment of welfare

¹⁴ Gaurav Jain v. Union of India, 1990 AIR 292

¹⁵ Vishal Jeet v. Union of India, AIR 1990 SC 1412

committees for children and juvenile justice boards, medical facilities for juveniles, and good living conditions for such children.

The Supreme Court in this case implemented various guidelines and said that there must be implementation of acts by states in a proper manner.

VIII. VARIOUS ORGANIZATIONS FOR THE PROTECTION OF CHILDREN'S RIGHT

A. UNICEF

International Children's Emergency Fund of the United Nations To reach the most vulnerable children in society, UNICEF works in more than 190 countries and territories to save children's lives, uphold their rights, and assist them in realizing their full potential from infancy through adolescence. UNICEF has a strategic plan for the year 2022-2025 that the commitments that were made for promoting the rights of all children shall be fulfilled as the children are under threat to a degree that has not been in more than a generation.¹⁶

The aim of UNICEF is

- 1) Child safety and inclusion: According to UNICEF, every child has the right to develop in a setting that is both secure and welcoming. UNICEF collaborates with partners to advance laws and provide access to services that safeguard children to support their progress.
- 2) Child survival: By striving to reach the most vulnerable children everywhere, UNICEF has contributed to the global decrease in child mortality.
- 3) Education- According to UNICEF, every child has a right to learn, and to provide quality education to every boy and girl, UNICEF works around the globe
- 4) Social policy- UNICEF works around the globe to reduce child poverty and says that every child shall be treated equally.

B. INTERNATIONAL BUREAU OF CHILDREN'S RIGHTS (IBCR)¹⁷

To create a society where every child has equal rights and opportunities under all circumstances, the IBCR has been working for almost 30 years.

¹⁶ UNICEF, <https://www.unicef.org/india/what-we-do/child-protection> (Last visited Feb 25, 2024).

¹⁷ IBCR, <https://www.ibcr.org/en/> (Last visited Feb 25, 2024).

They concentrate particularly on matters concerning children and emergencies, children and violence, and children and the legal system.

To achieve their mission of advancing children's rights, IBCR also conducts research and offers training. They give local stakeholders the knowledge, assets, and instruments they need to strengthen their ability to promote and defend the rights of children.

C. NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS¹⁸(NCPCR)

The functions of NCPCR are provided by the Commission for the Protection of Child's Rights. This organization undertakes research work to find the best initiatives for the protection of children's rights.

D. CHILD RIGHTS INTERNATIONAL NETWORK (CRIN)¹⁹-

It is a human rights organization that works for the protection of children's rights. This organization focuses on Rights- not charity. They simply say that they are working for the rights of the children and not doing any charity for such children. CRIN is an international organization that advocates for children's rights, especially proper care and conducts research, policies, and campaigns based on the UN Convention on the Rights of the Child.

IX. CONCLUSION

Protecting a child's right is an essential element that not just our country but the whole world aims to achieve. Children's rights cannot be implemented in the real world unless adults take up the responsibility of taking necessary actions to make reality. The government has made various legislation for the protection of children. Various organizations work on a large scale to ensure proper care and protection. In the early stages, the situation of children was more complicated than it is now. It is the result of the laws like Juvenile Justice Act, and the POCSO, Act that the child below the age of eighteen years is protected today. The implementation of this legislation was necessary because of the increase in the exploitation of children.

In the end, it can be said that the current laws need just some changes which will enhance the opportunities of the children in a wider way. Child protection laws play a crucial role in safeguarding the rights and well-being of children. These laws establish a framework for

¹⁸ NCPCR, <https://ncpcr.gov.in/> (Last visited Feb 25, 2024).

¹⁹ CRIN, <https://home.crin.org/> (Last visited Feb 25, 2024)

preventing child abuse, neglect, exploitation, and other forms of harm. They provide avenues for intervention, support, and rehabilitation for children who have experienced adversity. Additionally, child protection laws aim to hold accountable those who perpetrate harm against children, whether they are caregivers, family members, or others in positions of authority. These regulations also highlight society's shared need to make sure that kids are raised in secure, supportive surroundings that support their physical, emotional, and cognitive development. Child protection laws help to create a more just and equitable society by putting children's rights and best interests first. Notwithstanding the noteworthy advancements in the implementation and enforcement of child protection legislation, obstacles continue to exist. These consist of the necessity for continual education and awareness-raising campaigns, implementation gaps, and resource constraints. It will take a consistent effort from communities, people, and politicians to address these issues.

