



## Constitutional, statutory and human rights of children

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### Abstract

Our Country India is considered as the youthful Nation. In India more than 444 Million people belong from the age of 0 –18 years. Among which 253 Million of Indians are Adolescent belonging from the age of 10 – 19 years. Since, there is a huge population of people who are children. It is the fundamental duty of the Nation as well as of the State to protect the Rights of the Children. It is often said that the way children are nurtured and guided during their childhood shapes their future due to which it is considered very important to establish good habits among children by ensuring their all round development in all aspects of life in a sustainable environment. So that they could become highly successful in their life so that by making use of their potential children would be able to contribute in overall development of the Society.

However, in Patriarchal Society children including girl child and orphans are highly exploited and discriminated incidents like killing of female child in mother's womb, sexual molestations, child trafficking, kidnapping has been practiced in our Society so they suffer from different kinds of molestations and discrimination. There are many circumstances where justice has been denied to the children. Social evils like child marriage and child labor are still performed in the society. The main reasons behind such practices are lack of educational facilities available, lack of basic awareness, poverty etc. In order to solve such issues the Indian Legal System including the Constitutional Law of India tried to guarantee and protect basic fundamental rights and privileges of children by introducing several laws, rules and regulations. In spite of all these bits of the legal framework, there is still a scarcity which is prevailing; there are still challenges to be faced both in present and in the future.

**Keywords:** child, constitutional rights

### Introduction

#### Child Rights

Rights of children is considered as an important national asset of a Nation as the future of any Nation depends on how its children mature and develop. Even today children are considered as a part of disadvantaged minority group so far as the realization of human rights and social justice are concerned and protection of children and abuse has become the main objective of our Society.

According to UNICEF "Declarations which articulates that all people owe children the right to means for their development, special help in times of need, priority for relief, economic freedom and protection from exploitation and upbringing that creates social consciousness and duties are called Child Rights or Rights for Children".

As minors, by law children do not have any power to make decisions on their own. They depend upon the decisions made by their Parents, Teachers or Guardians where Guardians are either Natural or Testamentary Guardian either appointed by birth or by law. It is generally believed that the State gives insufficient control over their own lives and makes them vulnerable.

Children Rights are the Human Rights of Children which draws special attention to the special protection and care afforded to the minors. Many Govt. Policies and NGOS have specific approach to prevent abuse and exploitation done against children which lead to lack of educational and health facilities, child labor, physical and mental traumas made against children by adults. Through this view, children are considered to be the minority group towards whom the society needs to reconsider the way it behaves towards them.

Various Govt. Policies and Activities of NGOS introduced several Welfare Measures for children. The Concept of children rights emerged in the twentieth century which was a replacement of Welfare with Rights considered as a significant approach in the field of Constitutional, Statutory and Human Rights of Children. Rights primarily consist of Social Justice, Non Discrimination, Protection, Equity and Empowerment. The Rights perspective is embodied in the United Nations Conventions on the Rights of the Child 1989 which was a landmark in the international human rights legislation.

A Critical Concept in most culture regarding rights children is that younger the children the more they are vulnerable both physically and psychologically. Life of a person is based on Ashrama divided into four parts which are Brahmacharya Ashrama, Grihastya Ashrama, Vanprastha Ashrama and Sanyasa Ashrama. Whereas, more than 50% people belong from less than 25 Years of Age, in the Constitution of India and Child Labor ( Regulation and Prohibition ) Act, 1986 a 'child' is considered as a person below 18 Years of Age. According to Juvenile Justice Act, 2015 children between (16-18) Years of Age may be treated as Adults if they commit heinous crimes like Rape, Murder, Kidnapping, Acid Attack etc. tried in Juvenile Court. Since more than 50% people belong from people less than 25 Years of Age. Nation of India is considered as Youthful Nation. The Constitution Makers were aware that children of India shape the future of the Nation. They were concerned about making provisions for the protection of children when children suffers from Physical and Psychological Trauma and Violence and specially when children are Orphans to protect children many Govt. Policies and NGOS are introduced. By protection they

meant protection of mind, protection of body, protection of rights, protection of dignity etc. The Constitution has laid down many provisions which dealt with lives of children. In order to strengthen provisions of Constitution, there has been introduction of many legislation, policies and schemes. There have been many examples of child exploitation in the form of sexual molestation, child marriage and child prostitution. Due to which child protection is regarded as one of the main responsibility of the Govt. as well as the society considering challenges and problems faced by children.

### **Legal Definitions of child**

The term 'Child' is defined in Indian Constitution in the name of a 'Minor'. According to (Article 1) 'The United Nations Convention on the Rights of the Child 1989, 'every human being below the age of eighteen years and is unable to form an Agreement considered as a Minor unless the law makes certain provision which considers that a person has obtained age of Majority earlier is considered as a Child.'

According to Indian Majority Act, 1875 'The Age of Majority is eighteen years and in case of a minor for whose person and property a guardian is appointed or whose property is under the supervision of the Court of Wards the age of majority was considered as twenty one years. Children are considered as greatest gift of god to Man, our most precious and important assets. The Welfare and Development of any community depends largely on the health and well being of children. Justice V.R. Krishna Iyer said that it is our obligation to the generation by opening up all opportunities for every child to unfold its personality and rise to its full structure either physical, moral, mental and spiritual and it is the birth right of every child that demands Justice from the World at large. During (World War – II) Winston Churchill said "there is no finer investment for any community than putting milk into babies." This appeal to the people everywhere, this fundamental faith in Juvenile Justice, this reorganization of the worth of the infants born and unborn, is the beginning of Juvenile Justice, said Justice Krishna Iyer.

### **Major Child Issues in India**

1. Child Labor
2. Malnutrition
3. Poverty
4. Illiteracy
5. Child Marriage etc.

Different kinds of Rights are provided to children among which three of them are Constitutional Rights, Statutory Rights and Human Rights.

### **Constitutional Provisions Protecting Rights of Children in India**

The Constitution ensures the rights and protection of children through its various provisions. Children on the account of their sensitive age and immature age need special care and protection.

They have specific rights and legal entitlements that are being recognized nationally and internationally. The Constitution has recognized the rights of children to a great extent and included many articles dealing with the compulsory and free education, liberty and development in childhood, non discrimination in educational spheres and

prohibition of their employment in factories, mines and hazardous conditions.

### **The Legal Provisions are:- Article 14- Right to Equality**

According to this Article, the State shall not deny to any person the equality before Law or equal protection of Laws within the Territory of India. Citizen of India including children must be treated equally before Law and must be given equal protection by Laws without any discrimination. This Right provided in the Indian Constitution protects rights of children so that their dignity and integrity as a child is not exploited. Children being Vulnerable have more chance to be treated unequally in Indian Society. Article 15 of Indian Constitution prohibits discrimination. Under Article 15(3) it has been stated that nothing in this Article shall prevent the State from making special provisions for women and children.

### **Article 21(A) - Right to Education**

According to this Article, the State shall provide free and compulsory education to all the children of the age of six to fourteen years in such manner as the State determine.

The Constitution (Eighty – Sixth Amendment) Act, 2002 inserted Article 21(A) in the Constitution to provide free and compulsory education to all the children in the age group six to fourteen years as a Fundamental Right. There have been many struggles in providing education to all the children in State. The Right to Education is reflected in International Law in Article 26 of the Universal Declaration of Human Rights and Article 13 and 14 International Covenant on Economic, Social and Cultural Rights. Article 21(A) provides to every child educational opportunities without any discrimination so that no children is deprived of his/her basic education. Everyone shall be provided with elementary education.

### **Article 24- Prohibition of Employment of children in Factories**

According to this Article, no child below the age of eighteen shall be employed to work in any factory or industries if by working in such factories or industries prevents children to gain access to basic educational facilities and also working under hazardous conditions if by working under such situations which includes construction work or working in railways may create certain Risks to health. This Article provides the regulation and prohibition of child labor in India.

Child Labor is defined as the work which deprives children of their livelihood, potential and their dignity which causes serious threat to their physical and mental development. According to the estimate calculation made by UNICEF India has a high population of Child Labors.

### **Article 39**

(Article 39) determines certain principles of the policy to be followed by State. Child Labor is a form of social evil force by social necessity, it is the responsibility of the State to ensure that no child is subjected to any physical or mental abuse.(Article 39)(1)(f) states that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and physical abuse. This Provision also protects

childhood and provides opportunities and facilities to grow within a safe environment.

#### **Article 45**

This Provision is for early childhood care and education for children below six years. According to this provision State shall endeavor to provide early childhood care and education for all the children until they complete the age of six years. According to this Act of the Indian Constitution the State shall protect the child and is responsible for the development within them. The State shall ensure safe growing environment. After that it is the responsibility of the State to provide them with free and compulsory education, Whatever condition child may suffer from whether the child is protected and nurtured by their parents or their rights are protected or not. The State needs to introduce measures to guarantee overall development of the child.

#### **Fundamental Rights**

Fundamental Rights are defined in (Part III) Constitution from Article 12 to 35 which are applied to every persons including children applied irrespective of race, place of birth, religion etc. There are various kinds of Rights provided to children including Right to Education and Health facilities, Right to Survival, Right to Protection, Right to Participation and Right to Development.

#### **Fundamental Duties**

Duties of child towards a Country are considered as very important. They need to maintain their dignity and focus on overall development by leading the Nation towards a developed country which are moral commitments performed in the form of moral responsibilities. There are also certain fundamental duties available to parents to take proper care and guide their children.

#### **Statutory Rights of Children:- Indian Penal Code 1860**

According to Section 82 of the Indian Penal Code, nothing is an offence which is an offence done by a child under the age of seven years and Section 83 states that, nothing is an offence which is done by a child above seven years of age and under twelve.

As in this age, the children will not attain the maturity to distinguish between what is right and what is wrong. The child will not be aware of the consequences of his/her conduct.

Section 305 of the Indian Penal Code states that if any person under the age of eighteen years of age commits suicide and whoever abets them to does such an act shall be punished under the punishments under the act.

Section 315 refers to Infanticide in the Indian Penal Code which comes in the category of crimes against children. This Section of the Indian Penal Code provides punishment for the act of killing an infant. Here, Section 316 of the Indian Penal Code states Female foeticide whoever does the act of causing death of quick unborn child by act amounting to culpable homicide

Section 317 states the exposure and Abandonment of a child under twelve years, by parent or person having care of it. The exposure and abandonment by a father or mother of a child under the age of 12 will be punished for the same.

Section 369 of the Indian penal code states the punishment of kidnapping a child under the age of ten with an intention to steal from its person.

Section 366A of the Indian Penal Code states the punishment for the Procreation of minor girls (for inducement to force or seduce, to illicit intercourse). This section provides the action against the said crime to ensure the protection of the girl child in India.

Section 372 and 373 states the punishment for buying, selling or attain the possession of a person under the age of eighteen at any age employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful purpose.

#### **Prohibition of Child Marriage Act, 2006**

The Government of India introduced the Prohibition of Child Marriage Act 2006 after the repeal of the Child Marriage Restraint Act. The main aim of this Act is to prevent child marriage. This Act ensures that child marriage is completely eradicated from society. A child according to this Act is female who has not attained the age of eighteen and a male who has not attained the age of twenty-one.

#### **Juvenile Justice act, 2015**

This Law, brought in compliance of the Child Rights Convention repealed the earlier Juvenile Justice Act of 1986. This Act was further amended in 2006 and 2010. This Act was again repealed in 2015, This Act provides a special approach to the protection, treatment and development of children, this law mentions how a child should be protected in a home, without a home, begging etc...Under section 15 of this Act special provision had been made to tackle child offenders committing heinous offences under the age group of 16-18 years.

#### **The child Labor (Prohibition and regulation) act, 1986**

This prohibits the engagement of children in certain employment which is hazardous to the child who can affect the child mentally and physically. It regulates the conditions of work of children in other employment.

#### **The guardian and wards act, 1890**

This Act deals with the qualification, appointment and removal of guardians of children by the courts and is applicable to all the children irrespective of religion. When it comes to divorce there is confusion about with whom the child should go with. It is the wish of the child that the court consider first, there can be influences on the child due to the factor of their age and hence after the pleading by both the parties the court comes to a conclusion where the court ensures the protection of the child.

#### **The hindu adoption and maintenance act, 1956**

This Act generally dealt with the provisions for a Hindu adult to adopt a child and the Hindu law of maintenance to wives, parents and children.

#### **The hindu minority and guardianship act, 1956**

This Act deals with appointment of Natural Guardian by Birth and Testamentary Guardian for Minors by Court.

#### **Probation of offenders act, 1958**

This law lays down the restrictions on the imprisonment of offenders fewer than twenty-one years of age. This Act is in order to prevent the conversion of young offenders to obstinate criminals. Since there are chances for their transformation when they are transferred to jails along with other criminals.

### **The Protection of children from sexual offences (POCSO) Act, 2012**

The POCSO Act, 2012 is a law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography while safeguarding the interest of children in every stage of the judicial process by incorporating child-friendly mechanisms.

The Act provides for Special courts that conduct the trial in-camera and without revealing the identity of the child.

The Protection of children from sexual offences (POCSO) 2012 lays down the procedure for reporting sexual crimes against children.

The Prohibition of Child Marriage Act 2006, where lawful age for marriage of girls is increased from 15 to 18 years and of boys from 18 to 21 years. This Act made child marriage voidable.

The Parliament enacted the Child Labor Prohibition and Regulation Act, 1986 which specifically prohibits the employment of children in certain industries. In addition to legislation, many other laws enacted before and after the commencement of the Constitution, prohibit Child Labor, e.g., The Employment of Children Act, 1938; The Children (Pledging of Labor) Act, 1933.

Adoptions for Hindus are regulated by Hindu Adoption and Maintenance Act, 1956 and for the and for other Religions by Guardians and Wards Act, 1890.

The Orphanage and Other Charitable Homes (Supervision and Control) Act, 1960 is to provide supervision and control of orphanages, homes for neglected women and children and other like institutions that for matters.

The Juvenile Justice (Care and Protection) Act 2005, given much importance to Orphans and laid down certain procedures and guidelines regarding Adoption, provide registration to CCIs (Child Care Institutions). Section 58 of the Juvenile Justice (Care and Protection of Children) Act defines that any Indian citizen of India, irrespective of their religion if someone is interested to adopt an orphan or abandoned or surrendered child, he/she have to apply for the same to a Special Adoption Agency (SAA). Section 57 under the Juvenile Justice (Care and Protection of Children) Act tells about the eligibility of prospective adoptive parents. As per Section 57 of Juvenile Justice (Care and Protection of Children) Act, the adoptive parents should be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing hi/her a good upbringing and both partners must consent for the adoption.

### **CARA (Central Adoption Resource Authority)**

Central Adoption Resource Authority (CARA) is a statutory body of the Ministry of Women & Child Development, Government of India. It functions as the nodal body for the adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by the Government of India in 2003.

CARA primarily deals with the adoption of orphan, abandoned and surrendered children through its associated adoption agencies.

### **Landmark Cases in Promoting Rights of Children**

Children by definition are unable to petition the court themselves, they have to rely on the parents patria role of

the state. The needs of the children were responded by the court through public interest litigation, in the conditions where some improvement is significant. There has been a decision made by the court on almost all the matters which is related to a child..

### **M.C Mehta v. State of Tamil Nadu**

The judgment passed states the direction to prohibit child labor in hazardous conditions; the petitioner was concerned about the high rate of child labor in the Match factories of Savakis in Kamraj district of Tamil Nadu. The judgment gave out the visions of the constitution and also linked between child labors with poverty, the judgment also stated that there has been no proper eradication of child labor by the state,

### **Gaurav Jain v. Union of India**

The Supreme Court held that segregating the children of prostitutes would not be in their interest. The Supreme Court held that the children of the prostitute have the right to equality of opportunity, dignity, care and protection to be a part of the mainstream of social life without any pre-stigma attached on them.

### **Vishal Jeet v. Union of India**

Several directions were issued to end the sexual exploitation of children. The court issued directions to the state government to set up rehabilitation homes for the children found begging in the streets and also minor girls pushed into 'flesh trade' to protective homes.

### **National Commission for Protecting Rights of Children**

The Ministry has enacted the Commission for Protection of Child Rights Act (CPCR), 2005 extending over India except for the state of Jammu and Kashmir under which the National Commission for the protection of Child Rights is mandated to function for the protection and promotion of child rights.

The Commission inquiry into the complaint and take sue - moto notice of matters relating to-

1. Deprivation and violation of child rights.
2. Non-implementation of the laws providing for the protection and development of children;
3. Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring the welfare of the children by providing reliefs

### **Child Line**

CHILDLINE 1098 is a phone number that spells out hope for millions of children across India. It is a 24 hour, 365 days a year, free call service for the aid and assistance of children in India. It not only reaches out for the emergency calls but also links them with the relevant services for their long term care and rehabilitation.

Role of NGO's in Protecting Rights of Children Tens of millions of Indian children are made the victims of exploitative practices like child labor, sexual abuse and trafficking. Despite aggressive attempts to implement a pro-child rights policy environment, India still needs the support of civil society, and concerned citizens to help children. At every stage, India's children face difficult challenges. The many improvements made for children's welfare can be credited to India's NGOs, which have tirelessly provided

on- ground support and activism while working with officials.

Functions of India's NGOs as working for child development NGOs

### 1. Eliminating child labor

Ten million children today are forced to work 14-16 hour shifts in horrible working conditions, in sectors like farming, stone cutting sector, embroidery and mining industries.

India ranks among the 74 countries with 'significant incidence of critical working conditions' (US Department of Labor report – List of Goods Produced by Child Labor or Forced Labor).

To end child labor, NGOs offer intervention, both at the demand and supply side.

### 2. Education and enrolment

India faces low literacy due to low enrollment, as well as high dropout rates. To promote educational facilities for child education certain steps needs to be taken:

1. Emphasizing importance of education to children and communities
2. Working to establish 'safe schools' that do not discriminate on gender, caste or socio- economic background
3. 'Inclusive Learner Friendly Environments' (children aged 3-18 years)
4. Pushing for financial framework supporting the Right to Free and Compulsory Education Act, 2009
5. Driving funding for libraries, computers, sports equipment and Mobile Learning Centers
6. Bringing street children and child laborers back to school

### 3. Rehabilitation and Relief

Through awareness campaigns on nutrition and essential health care, NGOs like Save the Children reduce newborn and child deaths. The NGO programs are closely linked with Integrated Child Development Services Scheme, Department of Health and Family Welfare and Panchayat Raj Institutions, through whom it pushes for better policies and their implementation.

Additionally, it provides on-ground assistance to Community Healthcare Workers so they can help mothers, newborns and pregnant women. Communities are educated about the importance of natal checkups, hospital deliveries, breastfeeding, and access to nutrition. Malnourished mothers and children are provided cooking demonstrations as well as health camps. In disaster situations, the NGO generates massive fundraising to provide non-stop aid to communities. It does so by reaching out to people who support NGO rescue operations at such an adverse time.

### Different ways by which child rights violated

Sadly, all child rights are regularly abused or violated. This can start at birth. For example, an estimated 290 million children globally have not had their births registered, so they have no legal identity or proof of existence. This makes it nearly impossible for them to claim their rights throughout their lives – which mean they may not be able to go to school, receive healthcare, or get a job when they are older. Girls in low-income countries have only a 50/50 chance of ever having a legal identity and accessing rights and services.

Around the world, over 61 million children do not attend primary school. An estimated 150 million girls and 73 million boys are sexually assaulted every year. In some countries, girls as young as nine are forced into marriage and children as young as six are judged as adults in criminal courts. At least 330,000 children are held in immigration detention in 80 countries every year, simply for being migrants or refugees. Many are forcibly separated from parents and families.

In 2019, one of sixth children was living in extreme poverty — a situation that puts children at greater risk of domestic violence, child labor, sexual exploitation, teenage pregnancy and child marriage. This number rose significantly during the Covid-19 pandemic.

### The international human rights framework

The United Nations set a common standard on human rights with the adoption of the Universal Declaration of Human Rights in 1948. Although the Declaration is not part of binding international law, its acceptance by all countries around the world gives great moral weight to the fundamental principle that all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status, are to be treated equally and with respect.

The United Nations has since adopted many legally binding international human rights treaties and agreements, including the Convention on the Rights of the Child. These treaties are used as a framework for discussing and applying human rights. The principles and rights they outline become legal obligations on the States that choose to be bound by them. The framework also establishes legal and other mechanisms to hold governments accountable in the event they violate human rights.

The instruments of the international human rights framework are the Universal Declaration of Human Rights and the nine core human right treaties:

- The International Convention on Civil, Political, Economic, Social and Cultural Rights of Children
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Elimination of All Forms of Discrimination against Women and Children
- The Convention on the Rights of Persons with Disabilities
- The International Convention for the Protection of All Persons from Enforced Disappearance.
- These treaties are important tools for holding governments accountable for the respect for, protection of and realization of the rights of individuals in their country.
- Understanding this framework is important to promoting, protecting and realizing children's rights because the Convention on the Rights of the Child – and the rights and duties contained in it – are part of it.

### Basic Human rights of Children

These include:

- the right to life, survival and development
- the right to a name and nationality, freedom of expression and access to information about them
- the right to live in a family environment
- the health and welfare rights
- the right to education

- special protection for refugee children, children in the juvenile justice system,

### **Conclusion**

The theory according to which all people owe children the right to: means for their development; special help in times of need; priority for relief; economic freedom and protection from exploitation; and an upbringing that create social consciousness and duty is considered as Rights for Children. It is considered that children at least till they reach the age of 5 years must be under the Custody of their Mother. The Legal System of India including the Constitutional Law of India tried to guarantee and protect basic fundamental rights and privileges of children by introducing several laws, rules and regulations. In spite of all these bits of the legal framework, there is still a scarcity which is prevailing, there are still challenges to be faced both in present and in the future. There are many circumstances where justice has been denied to the children, Social evils like child marriage and child labor are still performed in the society. The reason for child labor is poverty; there are many instances where the sections in IPC have turned out to be vain. There are instances where a child is being kidnapped, where he/she is being killed, physically mentally or sexually abused, All these instances are still happening, it should also be taken into notice that all the above said laws are for the eradication of these crimes in the society.

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