

Child problems and Legislative framework in India.

Mr. Vikram V. Irale Assistant Professor, Department of Law,
Shivaji University Kolhapur

Abstract: Child is an important national asset of a nation and as the future of any nation depends on how its children mature and develop. In the present times protection of children from all kinds of exploitation and abuses has become the main objective of our society. There have been many instances of child exploitation in the form of Sexual molestation, Child marriage, Underfeeding, Verbal abuse, Child battering, Child prostitution, Child pornography and Child labour; which indirectly highlights our society's own failure to protect our future generations. Child protection is regarded as one of the main responsibilities of the government as well as the society and considering the challenges and problems faced by the children. Historically we have witnessed a sea change in laws, policies and the recognition of human rights and child rights.

1. Introduction:

Children are like buds in a garden and should be carefully and lovingly nurtured, as they are the future of the nation and the citizens of tomorrow. I may not have time for adults, but I have enough time for children.¹

Child is an important national asset of a nation and as the future of any nation depends on how its children mature and develop. In the present times protection of children from all kinds of exploitation and abuses has become the main objective of our society. There have been many instances of child exploitation in the form of Sexual molestation, Child marriage, Underfeeding, Verbal abuse, Child battering, Child prostitution, Child pornography and Child labour; which indirectly highlights our society's own failure to protect our future generations. Child protection is regarded as one of the main responsibilities of the government as well as the society and considering the challenges and problems faced by the children.

The children are the 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 wellbeing of its children. It has been said 'who hold souls of the children holds the nation'. The physical and mental health of a nation is determined largely in the manner in which it is shaped in early stages.

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 stature physical, moral, mental and spiritual and it is the birth right of every child that cries for justice from the world as a whole."

2. Who is child-

Different Legislations in India provides different definitions of child for protection of rights of child and to avoid any injustice to the child.

¹ By Jawaharlal Nehru, First Prime Minister of India.

- The Immoral Traffic (Prevention) Act 1986 defines a ‘child’ as someone who is under the age of 16 years and a ‘minor’ who is between age group of 16-18 years.
- The Child Labour (Prohibition and Regulation) Act 1986, defines a ‘child’ as a person below 14 years of age.
- The Juvenile Justice Act 2000 defines ‘child’ as a person who is under 18 years of age.
- The Hindu Minority and Guardianship Act, 1956 defines ‘child’ as a person who is under 18 years of age.
- The Protection of Women from Domestic Violence Act 2005 defines ‘child’ as a person who is under 18 years of age.
- According to Article 1 of the United Nations Convention on the Rights of the Child 1989, ‘a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier’.
- The Indian Majority Act, 1875: The age of majority is eighteen years & in case of a minor for whose person & property a guardian is appointed or whose property is under the supervision of the Court of Wards the age of majority twenty-one years.

3. Child Problems in India

Every day 67,385 babies are born in India, that’s one sixth of the world’s child births. Every minute one of these new born dies. India is the only large country in the world where more girl babies die than boy babies. The gender differential in child survival is currently 11 per cent. One in every eight children, aged 5-14 years, work for their own household or someone else. Out of 100 students, 29 per cent of girls and boys drop out of school before completing the full cycle of elementary education, and often they are the most marginalized children. Child protection (0.04 per cent) and child health (0.58 per cent) received the lowest priority in the 2013-14 Union Budget. Nearly 54 per cent of adolescent girls and 29 per cent of boys aged 15-19 years are anaemic.² Children within India are facing following problems-

a. Child Labour:

India sadly is home to the largest number of child labourers in the world. In India, a ‘Child’ as defined by the Child Labour (Prohibition and Regulation) Amendment Act of 2016 as a person who has not completed 14 years of age. Child labour as any work that deprives children of their childhood, their potential, their dignity and one that is harmful to the physical and mental development of the child.³ It includes work that is mentally, physically, socially or morally dangerous to children

b. Child abuse and Violence:

Physical abuse means violence against children. It is any way of intentionally causing physical harm to a child such as slapping, hitting with an object, punching, kicking, shaking, throwing, biting and burning or scalding. Physical abuse is also when a child is neglected, meaning

² Data from UNICEF India.

³ As defined by - The International Labour Organisation

the caregivers don't provide for basic needs of the child, like food or safety.

c. Child Sexual Abuse:

Child sexual abuse as the involvement of a child in sexual activity as he or she does not fully understand, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society.⁴ It includes different sexual activities like fondling, inviting a child to touch or be touched sexually, intercourse, exhibitionism, involving a child in prostitution or pornography, or online child luring by cyber-predators.

d. Child Trafficking in India:

Child victim of trafficking is any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country.⁵ Female children are trafficked for marriage, sex-work, criminal activity, adoption and organ trade whereas male children are trafficked mainly for labour and exploited as beggars. Sometimes, trafficked children are also recruited into armed groups or for criminal activity.

e. Missing Children in India:

Countless number of children go missing every year. The category of missing children includes a number of possible reasons such as abduction or kidnapping of children by family members and by non-family members, run-away children or those forced to run away by family and surrounding circumstances, children who are in a difficult or aggressive environment, trafficked children or lost children. Missing children often end up on the streets in poverty.

f. Physical Health and Nutrition:

India has one of the poorest health records in the world. Every third child in India is malnourished and the infant and child mortality rate of the country is still very high. India was among top 10 countries with the highest number (522) of new born deaths in the year 2019.⁶ When it comes to food-based schemes, rampant discrimination in these schemes and the society in general, leads to starvation deaths among women and children of the Scheduled Castes and Scheduled Tribes.

g. Emotional and Mental abuse:

Emotional abuse is continuous emotional mistreatment of children that arise from a non-supportive environment. This includes restricting movement, discriminations, mockery, threats, criticism, constant blaming, making a child perform degrading acts and manipulating a child. Emotional abuse is also the persistent neglect or ignoring of a child and failing to encourage a child's social development. All these actions have a damaging effect on a child's mental health.

h. Child Drug Addiction:

The incidence of drug abuse among children and adolescents is higher than the general population. This is notably because youth is a time for experimentation and identity forming. Many street children use

⁴ The World Health Organisation

⁵ According to- UNICEF

⁶ As per report- World Health organization

cheap drugs to manage with the daily cycles of sexual, physical and mental abuse or as recreation to escape a life of poverty. Heroin, Opium, Alcohol, Cannabis and Propoxyphene are the five most common drugs being abused by children in India. Children affected by substance abuse are considered as children in need of care and protection under the Juvenile Justice Act, 2015.

i. Child Marriage:

In India, child marriage has been practiced since ancient times where young children and teenagers are married off much before their physical and mental maturity. There are many reasons why some parents' consent to child marriage and some of the reasons could be economic necessity, male protection for their daughters, child bearing, or oppressive traditional values and norms. Child marriage is defined as a marriage of a girl or boy before the age of 18 and refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married.⁷

j. Children in Conflict with Law:

In India, children in conflict with law are governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 which replaced the earlier Juvenile Justice Act, 2000. The law relates to children alleged or found to be in conflict with the law and seeks to protect children in need of care by catering to their basic needs, adopting a child-friendly approach to adjudicate matters and to rehabilitate them. Children in conflict with the law or juvenile offenders have to be presented before the Juvenile Justice Board in respected area.⁸

k. Child Begging:

Kidnapping or maiming a minor for begging is punishable under Section 363-A of IPC. "Begging" means-⁹ Soliciting or receiving offerings, in a public place whether or not under any pretence such as singing, dancing, fortune telling, performing or offering any article for sale. Presently, there is no Scheme of the Central Government on Beggary nor there is a central law on the matter. The States are responsible for taking necessary preventive and rehabilitative steps. Around 22 States and Union Territories have enacted their own anti-beggary legislation or adopted legislation enacted by other States or UTs.

4. United Nations Convention on the Rights of the Child, 1989

Children rights as described in the Convention have been summarised as follows

a. The Right to Name and Identity (Article 7 & 8)

Children are entitled to a name, legally registered with the government, and a nationality (to belong to a country). Further, they must have the right to an identity, in the form of a public record. This ensures national support, as well as access to social services.

b. The Right to Health (Article 23 & 24)

Medical care, nutrition, protection from harmful habits (including drugs) and safe working environments are covered under the right to health, and articles 23 and 24 enumerate access to special care and

⁷ As defined by UNICEF.

⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015.

⁹ As per Section 2(1) of the Bombay Prevention of Begging Act, 1959.

support for children with special needs, as well as quality health care (including drinking water, nutrition, and a safe environment) respectively.

c. The Right to Education (Article 28)

Right to free primary education is critical for helping children develop discipline, life skills while finding a safe and healthy environment to nurture a child's physiological development. This includes freedom from violence, abuse or neglect.

d. The Right to a Family Life (Articles 8, 9, 10, 16, 20, 22 and 40)

Children must live with their parents until it is harmful to them. Children who do not have access to a family life, have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.

e. The Right to be protected from violence (Article 19 and 34)

Protection from violence extends even to family members, and children must not suffer ill-treatment or sexual or physical violence.

f. The Right to an opinion (Article 12 and 13)

All children deserve the right to voice their opinions, free of criticism or contempt. In situations where adults are actively deciding upon choices on behalf of children, the latter are entitled to have their opinions taken into consideration.

g. The Right to be protected from armed conflict (Articles 38 and 39)

Armed conflict converts innocent children into refugees, prisoner, or participants in armed conflicts, and these are all circumstances which contravene with the spirit of War or any armed struggle can severely damage a child's morale as well as perceptions of ethics, and this must be corrected in a nurturing safe environment.

h. The Right to be protected from exploitation (Articles 19, 32, 34, 36 and 39)

As exploitation is usually achieved through violent means, protection from violence is critical for freeing children from exploitation. This extends to abuse, negligence and violence by parents, even if it is justified as an instrument of achieving discipline at home.

5. Child and Constitution of India

Children's rights are human rights that are accustomed explicitly to the children needs, wants and overall well-being. Children's rights aim to consider the necessity of the development of a child. Constitution provides following rights to Children-

- Article 15 (3) provides state can make any special provision for empowerment of women and Right to free and compulsory elementary education for all children in the 6-14-year age group.¹⁰
- Right to be protected from any hazardous employment till the age of 14 years.¹¹
- Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength.¹²
- Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed

¹⁰ Article 21-A of the Constitution of India, 1950

¹¹ Article 24 of the Constitution of India, 1950

¹² Article 39(e) of the Constitution of India, 1950

protection of childhood and youth against exploitation and against moral and material abandonment.¹³

- Right to early childhood care and education to all children until they complete the age of six years.¹⁴
- Right to equality (Article 14) and Right against discrimination (Article 15)
- Right to being protected from being trafficked and forced into bonded labour (Article 23)
- Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46)
- Right to nutrition and standard of living and improved public health (Article 47)

6. Child and Different Legislations

a. The Juvenile Justice (Care and Protection of Children) Act, 2015: is India's fundamental law in dealing with children in need of care and protection. It caters to their needs through care, protection, development, treatment, social reintegration, through its child-friendly approach by addressing matters in the best interest of children.

b. The Protection of Children from Sexual Offences Act (POCSO), 2012: is one of the Indian government's most progressive laws, to combat sexual violence against children. POCSO qualifies penetrative sexual assault on a child below the age of 12 as aggravated penetrative sexual assault, a crime punishable with a fine and a minimum term of rigorous imprisonment for 10 years, which can be extended to life imprisonment.

c. The Criminal Law (Amendment) Act, 2013: is introduction of several new sexual offences under the Indian Penal Act, such as Section 376(2)(f), IPC, which punishes rape of a female under 12 years is considered an aggravated form of rape punishable with a fine and a minimum term of rigorous imprisonment for 10 years, which can be extended to life imprisonment.

d. Right of Children to Free and Compulsory Education Act, 2009: Right to education was only the provision in the Directive Principles of State Policy which had a period of ten years within which the State had to fulfil the mandate to provide free and compulsory education.

e. Prohibition of Child Marriage Act, 2006: This Act follows the basic premise (a) to make a child go through marriage is an offence, and (b) child or minor is a person up to 18 years of age in the case of girls and 21 years in the case of boys.

f. Child Labour (Prohibition and Regulation) Act 1986 This Act prohibits children's engagement in certain kinds of employment and regulates the conditions of work of children in certain other employments.

g. Children Pledging of Labour Act, 1933: This Act prohibits the pledging of the labour of children. It provides for and also prevents-

- Displacement of a person from one community to another.
- Exploitation of the trafficked person.
- Commercialization of the exploitation and commodification of the victim.

¹³ Article 39 (f) of the Constitution of India, 1950

¹⁴ Article 45 of the Constitution of India, 1950

7.The National Commission for Protection of Child Rights (NCPCR)

It is an Indian statutory body established by an Act of Parliament,¹⁵ the Commission works under the aegis of Ministry of Women and Child Development, Government of India. The Commission began operational on 5 March 2007. The Commission is mandated under section 13 of CPCRA Act, 2005 to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child.

8.Child Education in India

“Our Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding... They meant that real education should be given to our children between the ages of 6 and 14”¹⁶ The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21- A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the Act came into force on 1 April 2010.¹⁷

The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats to children (to be reimbursed by the state as part of the public-private partnership plan). Kids are admitted in to private schools based on economic status or caste-based reservations. It also prohibits all unrecognised schools from practice, and makes provisions for no donation or capitation fees and no interview of the child or parent for admission.

9.Conclusion

Historically we have witnessed a sea change in laws, policies and the recognition of human rights and child rights. We have moved from common law doctrines, which unfortunately favoured the powerful, to a rights-based approach. Whatever welfare happened to vulnerable communities, including their children, depending on the dominant sections of society’s generosity and mercy. Children constitute the nation’s valuable human resources. The future wellbeing of the nation depends on how its children grow and develop. The great poet Milton said Child Shows the man as morning shows the day. So, it is the duty of the society to look after every child with a view to assuring full development of its personality.

¹⁵ The Commission for Protection of Child Rights (CPCRA) Act, 2005.

¹⁶ Former Education Minister, MC Chagla, 1964

¹⁷ righttoeducation.in, Right to Education Platform, 2013