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Law relating to children's rights in India: An analytical study

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Abstract

As per Law, minors cannot make independent judgments. Parents, carers, social workers, teachers, youth workers, and others make these decisions. The State grants minimal control over their lives, making them vulnerable. Children's rights emphasize protection and caring for minors. Many government regulations cover how adults mistreat and exploit children, leading to child poverty and lack or denial of education. According to this opinion, society should re-examine how it treats children as a minority group. Children received aid. Children's rights evolved in the 20th century, so this paper studied the essential provision of the right of the child in India in brief.

Keywords: Children's rights, child labour, juvenile rights, child labour act

1. Introduction

Technically, rights replace welfare. It was a bold move. Rights have purposes and responsibilities. Social justice, non-discrimination, protection, equity, and empowerment are central. "The United Nations Conventions on the Rights of the Child 1989 embody the rights approach" ^[1].

In most cultures, younger children are more psychologically and physically vulnerable. Most of a child's activities are governed by age: when they leave school, when they can marry, when they are considered adults by the criminal justice system, when they can work, when they can join the military, etc. Activity and country-specific age limits vary. A 'child' is defined as someone under 14 in the Indian Constitution and Child Labor (Prohibition and Regulation) Act 1986. Under the recently modified Juvenile Justice Act 2015, 16-18-year-olds may be treated as adults for grave offenses like rape, acid assault, murder, etc.

The Constitution's authors knew that children were India's future. They worried about the children's safety. Protection means mind, body, dignity, rights, etc. The Constitution had various child-related provisions. Many laws, programs, and schemes have been introduced to improve the Constitution.

2. Constitutional Provisions for the Right of Child

2.1 Fundamental Rights

Article 14: Equal legal protection there would be no discrimination or denial of equal protection of the Law everywhere in India. Discrimination against people based on their birthplace, ethnicity, caste, religion, or gender is forbidden.

Article 15: It states that no citizen shall be subject to discrimination. Without violating the spirit of this article, the State may enact measures tailored to the needs of women and children. There will be no bar to the State's aiding the economically, socially, and educationally disadvantaged among its residents, including the Scheduled Castes and the Scheduled Tribes ^[2].

- **Article 17:** "Untouchability" is outlawed, and any form of its practice is prohibited.
- **Article 19:** It states that everyone has the following rights: (a) freedom of speech and expression; c) to organize groups or unions; d) to travel freely within India's territory; and e) to live and establish one's self anywhere on the Indian subcontinent.
- **Article 21:** A person's life or personal freedom cannot be taken away unless a legal procedure is followed.
- **Article 21:** A states that from 6 to 14, all children have the right to free and mandatory education.
- **Article 23:** It is forbidden to traffic in human persons and to subject anyone to forced labour, including beggar work.

- **Article 24:** restricts the use of children under 14 as workers in dangerous environments like mines and factories.

3. Directive Principles of State Policy

- **Section 39:** (e) that children are given the opportunity and resources to grow up healthy, free, and dignified, and (f) that childhood is safeguarded against exploitation and moral and material abandonment; (g) that children are not coerced by financial necessity into occupations that are not suited to their age or strength.
- **Article 45:** All children shall receive early childhood care and education until six.
- **Article 46:** "Should promote with great care the economic and educational interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes,"^[3]
- **Article 47:** "Boosting the level of nutrition, raising the standard of living of its people, and improving the general health of its people."
- **Article 51:** The State shall make every effort to. (c) promote adherence to treaty obligations and international Law.
- **Section 51A:** (k) A parent or guardian must give their child or ward six to fourteen education opportunities.

4. Indian legislation for child protection

4.1 Indian Penal Code 1860

According to Section 82 a child under the age of seven commits no crime under the Indian Penal Code, while a child between the ages of seven and twelve commits no crime under Section 83^[4]. Children at this age cannot yet tell the difference between good and wrong. A child's lack of experience with the real world means he or she won't understand the consequences of their actions.

- "Under Section 305 of the Indian Penal Code, if a person under eighteen commits suicide, anyone who aids or abets them will be punished in accordance with the act's provisions.
- Section 315 of the Indian Penal Code pertains to infanticide, which falls under crimes against minors. The punishments for infanticide are laid forth in this provision of the Indian Penal Code. A violation of Section 316 of the Indian Penal Code defines foeticide as "the unlawful killing of an unborn child."
- Section "317 addresses the exposure and abandonment of a child under twelve by a parent or caretaker. A parent's exposure and abandonment of a child under 12 shall be punished similarly.
- Section 369 of the Indian penal code specifies the punishment for kidnapping a child younger than 10 to steal from its person.
- In Section 366A of the Indian Penal Code, the penalty for the procreation of minor girls is specified (for inducement to force or seduce or to illicit intercourse). This section outlines the measures to be taken against the crime mentioned above to ensure the protection of girl children in India.
- Sections 372 and 373 outline the penalties for purchasing, selling, or acquiring the possession of a person under eighteen hired or exploited for prostitution, illicit intercourse with any person, or any other unlawful" purpose.

4.2 The Guardian and Wards Act, 1890

This act applies to children of all faiths and addresses how

the court determines who is fit to act as a guardian, appoints guardians, and removes guardians. There is uncertainty about whom the child should stay within the event of a divorce. The child's wishes are the first thing the court considers because the child may be subject to influences because of their age. As a result, after hearing arguments from both sides, the court decides to protect the child.

4.3 The Hindu Adoption and Maintenance Act, 1956

In a broad sense, this legislation addressed the requirements of Hindu law involving maintenance payments to spouses, parents, and children, as well as the rules required for a Hindu adult to adopt a child.

4.4 Probation of offender act 1958

This Law restricts the imprisonment of criminals under 21. This act prevents juvenile criminals from becoming hardened since they can change in jail with criminals.

4.5 The Orphanages and other Charitable Homes (Supervision and Control) Act, 1960

This act regulates orphans and abandoned women's institutions.

4.6 Apprentices Act, 1961

This act prohibits apprenticeship or training for children under 14 and requires a contract between the employer and guardian for other minors. Apprentices must be 14 years old and meet education and fitness standards.

4.7 The Child Labour (Prohibition and Regulation) Act, 1986

This forbids youngsters from working dangerous jobs that can harm them psychologically and physically. It controls children's employment circumstances.

4.8 Prohibition of Child Marriage Act, 2006

India's Prohibition of Child Marriage Act was enacted in 2006 after the Child Marriage Restraint Act. Legal unions between minors are outlawed by this Law. Child marriage is criminalized under this Law. A girl under the age of 18 and a man under the age of 21 qualify as children.

4.9 The Protection of Children from Sexual Offences Act (POCSO), 2012, is a cutting-edge statute passed by the Indian Government to protect children from sexual abuse.

Punishable by a fine and a minimum of 10 years in prison, which may be escalated to life, sexual assault on a child under the age of 12 is considered a Class A felony under POCSO.

4.10 The Criminal Law (Amendment) Act 2013, a

number of new sexual offenses were added to the Indian Penal Code, such as Section 376(2) (i), IPC, which mandates a minimum sentence of 10 years in jail for the rape of a girl under the age of 16 (which may be enhanced to life in prison).

4.11 Juvenile Justice Act, 2015

The Juvenile Justice Act of 1986 has been replaced by this Law because it violated the Child Rights Convention. Two further amendments to this Law were passed in 2006 and 2010. In 2015, lawmakers once again voted to do away with the Children's Act, a landmark piece of legislation that

details how children should be safeguarded no matter where they find themselves in a family, on the streets, begging, etc. Section 15 of this act addresses juvenile offenders (16-18 years old) who pose a particular threat to society and details the steps that must be taken to ensure the safety of a kid from any and all dangers.

5. Policies and action plans which aim for the protection of rights of children

The laws in place to safeguard children are intended to do just that: preserve the rights of children. In order to foster the child's development, action plans are put into place. The Government of India has launched a wide variety of programs, plans, and strategies. The following are a few examples of crucial policies and plans:

5.1 National Policy for Children 1974

Children were called the country's "supremely crucial asset" in the 1974 document titled National Policy for Children. The Indian Government's commitment to protecting children's rights is shown in its ratification of many international treaties. This strategy recognized the need of include children in national programs for the development of human resources so that they may grow up to be productive members of society who are healthy in body and mind.

5.2 National Policy for children 2013

This Law, enacted in April 2013, safeguards children's identity and equality. Children should be safeguarded and given a secure environment in which to develop. These rules also ensure that no child is subjected to prejudice because of their gender, caste, birth location, means of support, or any impairment. The policy holds that a child's overall development is influenced by their pleasant familial environment.

5.3 National Plan for SAARC Decade of Girl Child 1991-2001

The Indian Government recognized the necessity to protect girls in 1992. From 1991 to 2000, the Government created a unique national plan just for girls. Three main aims were specified in this plan.

- The overall protection of the girl child, including her survival, protection, and the safety of her pregnancy.
- Special protections for young girls who are at risk and in need of care.

Similarly, other policies and action plans focus on ensuring children's well-being, including the "National Population Policy of 2000, the National Health Policy of 2001, the National Policy on Child Labor of 2016, and the National Policy on Education of 2019" [3].

These initiatives are driven by a desire to eliminate societal problems. As stated in the Indian Constitution, this Law ensures that every child has the right to a free and compulsory public education. Furthermore, these rules evaluate and implement health-related aims, limit children's work hours and prohibit their employment in potentially dangerous settings.

6. Landmark decision on the rights of children

Children must rely on their parents' Patria position in the State because they are, by definition, unable to petition the

court independently. The court addressed the needs of the children through public interest litigation "in areas where there has been a significant improvement, such as in institutions, prisons, unlawful detention, the care of mentally disabled and disabled children, child labour, child marriage, adoption, juvenile justice, preventing the trafficking of young girls, the welfare of children of prostitutes, banning corporal punishment in schools, and sex-selection" [4]. The court has already decided on almost every situation involving a child. The court has viewed the issues from the perspective that every choice was made with children across the nation.

6.1 M.C Mehta v. State of Tamil Nadu [5]

The petitioner's main issue was the prevalence of hazardous child labor at the Savakis Match plant in the Kamraj region of Tamil Nadu, and the resulting ruling conveys the direction to outlaw such work. The ruling outlined the constitutional principles and connected child labour and poverty. It also declared that the State had not effectively eliminated child labour.

6.2 Sanjay Suri v. Delhi administration [6]

The court issued transfers for some guilty officers and established guidelines to safeguard kids in detention. Sanjay Suri's petition dealt with a juvenile under trial. Despite the children's act's restrictions, several youngsters were imprisoned. The juveniles were housed with habitual and other adults, where they were brutalized and forced to perform unwanted chores.

6.3 Gaurav Jain v. Union of India [7]

The Supreme Court decided that reuniting families broken by prostitution would not be in the children's best interests. The Supreme Court declared that the offspring of prostitutes are entitled to rehabilitative services that would help them lead productive lives free of stigma.

6.4 Vishal Jeet v. Union of India [8]

So that we can put an end to the sexual exploitation of children, the state government was ordered by the court to provide shelters for young females who had been forced into the "meat trade" and homes for rehabilitating youngsters who had been discovered begging on the streets."

6.5 Sheela Barse v. the Secretary Children's Aid Society & Ors [9]

In the public's interest, a petition was filed regarding the inadequate operation of a Mumbai childcare facility. The Supreme Court mandated that a child should never be held in custody and that a single statute must be passed to bring consistency to the juvenile justice system.

6.7 Kishan Pattnayak v. the State of Orissa [10]

People in desperation were forced to sell their children to pay for food. The Government of Orissa was pressured into enacting a slew of social programs. The petitioner wrote to India's highest court to draw attention to the dire poverty in Kalahandi, Orissa, where hundreds of people were starving to death and parents were selling their children to buy food. The issues of poverty and hunger have been included in this illustration. With this decision, the Supreme Court did a lot to ensure that farmers could get their irrigation systems up and running and charge reasonable rates, therefore reducing

the severity of the drought.

6.8 Sarita Sharma v, Sushil Sharma ^[11]

The court determined that the well-being of the children should come first in any decision involving child custody.

6.9 Unnikrishnan J.P &Ors v. State of Andhra Pradesh ^[12]

This court has ruled that access to education is a fundamental human right. The ruling, in this case, affirmed the right to life while simultaneously expanding the scope of the right to education. In 2002, the 86th Amendment to the Constitution positioned the right to education as a coequal to the right to life.

7. The National Human Rights Commission's Function in Upholding and Promoting the Rights of Children

The Commission's priority was to reduce the employment of children in hazardous occupations. The Government conducted research on the conditions in which children worked in the glass and carpet industries in Uttar Pradesh, the beedi, matchstick, and fireworks sectors in Tamil Nadu, and the slate-pencil business in Madhya Pradesh. Fifty thousand young people in the city of Ferozabad, Uttar Pradesh, work in the glass industry, which was the center of the documentary. To do so, it devised a comprehensive plan that brought together several federal agencies, the State of Uttar Pradesh, nongovernmental organizations, and other interested parties. Supporting families whose children left to work in the glass industry, providing educational opportunities for these children (including the construction of new facilities), and strictly enforcing the Child Labour (Prohibition and Regulation) Act of 1986 were the three pillars upon which this program rested. The Commission's approach was complimentary to the Government's but distinct from it. This strategy put a focus on providing children up to the age of 14 with free and mandatory education and provided sufficient funding to make this a reality.

The then-Chairman of the Commission felt so strongly about this issue that in January 1996 he wrote to the heads of India's main political parties. He pointed out that India still has a higher illiteracy rate than it had when it gained independence, notwithstanding Article 45 of the Constitution. All aspects of American society, including civil society, politics, the economy, society, and culture, are weakened by this sad fact. As a result, it violates the human rights of a large number of Indians and causes emotional distress to those affected. Our juvenile population is massive, and tens of millions of them are forced to work in hazardous or humiliating circumstances as a child or bonded labour. The chairperson pushed for measures to give the Directive Principle of Article 45 a strong legal basis.

The Commission has also made efforts to eradicate child labour by raising awareness and sensitivity within the District Administration and Labour Departments of concerned States. Knowing your rights is the subject of one of the books in the Know Your Rights series. It has also given clear instructions to the relevant state governments on how to identify and remove children from potentially dangerous jobs or processes, enroll them in schools (especially those set up as part of the National Child Labour Project), provide them with economic assistance, and bring those responsible to justice.

The Commission's Core Group of Lawyers reviewed the V.V. Giri National Institute's (a Ministry of Labour body) Child Labour Prohibition Bill. To end child labour, the Commission is collaborating with the Government of India. The Commission thinks the issue of child labour will be resolved if all State Governments guarantee 100% enrolment and retention of school-going children since free and mandatory primary education is now a basic right of every child up to the age of 14.

The "National Child Labour Project" in the carpet weaving regions and glass bangles area of Ferozabad, Uttar Pradesh, examined the effects, community reaction, and acceptability of non-formal education. Information on the research is available on the NHRC's website (www.nhrc.nic.in).

Many positive changes have already taken place, and more are on the way, including the elimination of trafficking as well as the prohibition of child marriage, child labour, and bonded labour. Both the government and nongovernmental organizations aim to enact new regulations regarding a wider range of concerns pertaining to children. We have several policies, initiatives, and plans in place to protect and support young people in our nation. It's not easy to put these regulations, procedures and plans into action. Judiciary, police, government agencies, autonomous organizations, public corporations, public interest research organizations, and nongovernmental organizations (NGOs) all have a role in the implementation of child-related legislation, initiatives, and programs in India. The 'correct' method to safeguard and promote children's rights is for governments to enact laws, regulations, and programs.

Children's "survival, development, protection, and involvement should not be disregarded or sidelined as our greatest asset. The challenge is considerably higher in a country with a significant floating population, massive inequality, social unrest, and volatility. The Indian Government's 2005 National Plan of Action for Children identifies 12 priority areas for outreach, interventions, and budget distribution. It is:

- Bringing down the rate of infant mortality.
- Bringing down the rate of maternal mortality.
- Reducing the prevalence of malnutrition in children
- Obtaining complete and total civil registration of all births.
- The provision of high-quality educational opportunities and comprehensive early childhood care and development for all children.
- The total elimination of all forms of female homicide, including female foeticide, female infanticide, and child marriage, and the promotion of healthy growth and protection for young women and girls.
- Expanding access to potable water and sanitary facilities in urban and rural settings.
- Addressing and upholding the rights of children despite the challenging conditions they are living in.
- Providing comprehensive legal and social protection against all forms of child abuse, exploitation, and neglect for every child worldwide.
- Complete prohibition of all forms of economic exploitation of minors, including but not limited to the employment of children in labor-intensive industries.
- The monitoring, review, and possible change of various policies, programs, and legislation to guarantee the protection of the rights and interests of children.
- Ensuring that children are allowed to participate in and

have a say in matters and decisions that influence their" life.

8. Conclusion

Despite all of these components of the legal framework, a dearth is still prevalent, and there are still difficulties to be conquered in both the here and now and in the future. There are numerous situations in which justice has been withheld from the children. There is still a prevalence of social ills in today's culture, such as child marriage and underage labour. It should be no surprise that poverty is the driving force behind child labour; nonetheless, the provisions of the Indian Penal Code are ineffective in several situations. There are instances in which a child is kidnapped in which he or she is killed and in which the child is subjected to physical, mental, or sexual abuse. All of these instances are still occurring, and it should also be considered that all the laws mentioned above are intended to eradicate these crimes from society. There is still a relatively high rate of criminal activity in society. The Law ought to become even more stringent, and every one of its punishments ought to strike fear into the hearts and minds of the people. In India, we adhere to the reformatory theory of punishment, which is centred on the idea that criminals can be reformed. As a result of the fact that all of these efforts to change turned out to be dangerous rather than beneficial, It is a theory of punishment known as the deterrent theory if it prevents criminals from breaking the Law by making them afraid of the consequences of their actions and encouraging them to stay within the bounds of the Law. This approach to meting out punishment ought to be used in India. There have been cases in which the judge's decision has disregarded the wishes of the audience, so denying the victims any possibility of receiving justice.

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