

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 1

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2023

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# Is Constitution Able to Protect Children Rights in India: A Critical Analysis

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## ABSTRACT

*“Children are the soul of a nation, and Constitution has to be the supreme guard of their rights.”*

*Constitution has laid down various provisions for the protection of children, but several instances and cases have been highlighted over period of time which proves that constitution sometimes lacks to safeguard the rights of the children. In this research article the author has discussed various provisions for the protection of children and also the other legislations for welfare of the children. Also, the loopholes pertaining to it along with various judgements and policies. The international overview over children rights has also been provided in this research article. The author has also given the glimpse of the current scenario on children rights and suggestions considering the evolution of time and technology.*

## I. INTRODUCTION

We do not find the concept of child rights in the middle ages, the conditions of children were pathetic. They worked in hazardous conditions with adults along with their education. After that when the Renaissance came into place and everything started to change the concept of child rights evolved. Children started to live according to their parents and they do have an independent will. A revolution took place during the twentieth century, especially in the 1970s and early 1980s. Children do have their rights and should be treated differently from adults.

The history of child rights dates back to 1919 when the League of Nations created a committee for child protection. Then about five years later JanuszKorczak, the profounder of child rights, was inspired to adopt the Geneva Declaration on child rights. In 1948 the UDHR recognized special protection of motherhood and childhood. BICE was inaugurated at the same time. In 1959 to recognize the rights of children the *“United Nations adopted the declaration of the rights of the child.”*

*“After that from 1979-1989, BICE with several NGOs and the defense for children contributed to framing the “convention that is related to children rights.” Then “the United Nations”*

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approved the “Convention on the rights of children” in 1989.”

The most important asset of our society is children. If any society is taking care of its young generation then the growth of that society is ensured. In the modern era rather than creating a safe environment for children, they are in crisis making the situation more critical for them. Children are one of the most vulnerable groups in our society. They have “*exploited sexual molestation, child battering, child prostitution, child marriage, pornography, and child labour despite having so many rules and regulations in our country*”.<sup>2</sup>

## II. CHILD RIGHTS: DEFINITION

### Introduction

In general, the term rights connotes an agreement or contract between the person who holds the right from now on the right holder and the person who must realize that right from now on duty bearers. Child rights mean the rights of any individual whose age is below eighteen years.

### Definition of child rights given by “United Nations Convention on the Rights of the Child”

The Person, aged below 18 years irrespective of their “*race, color, gender, language, religion, origins, birth status, etc*” is entitled to enjoy the freedom and all human rights that are indispensable for everyone.

### Child protection: UNICEF

Every child is entitled to protection against abuse, exploitation, violence, and negligence. Protection includes everything like commercial, sexual exploitation, trafficking, child labour, etc.<sup>3</sup>

## III. PROTECTION OF CHILDREN UNDER THE INDIAN CONSTITUTION

**Article 14:** Every person who is within the territory of India is “*equal before the law*”. They are supposed to be given “*equal protection under the law*”.

**“Article 15”:** State shall make special provisions for children and women. Nothing in this Article put a bar on the state to make any distinctive provisions to uplift the “*socially and educationally backward classes*”.

**Article 17:** Any form of *untouchability* is abolished. No one should be treated as untouchables

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<sup>2</sup>Venkatesh, *Laws and policies for protection of Interest of Children*, LEGAL SERVICES INDIA <https://www.legalserviceindia.com/legal/article-346-laws-and-policies-for-protection-of-interest-of-children-a-critical-analysis.html/>

<sup>3</sup> *What is child rights*, CENTRE OF PROTECTION FOR CHILD RIGHTS <https://centreforchildprotection.org/child-rights>

as each and everyone is equal.

**Article 19:** Every citizen has the equal right to freely express their thoughts and build an association or union, etc.

**Article 21:** Every citizen is entitled to live with dignity.

**Article 23:** Any form of modern-day slavery *and enslavement* is prohibited.

**Article 24:** Employment of any child aged below 14 years in any hazardous conditions is strictly prohibited.

**Article 39:** it is prohibited to enforce any economic necessity upon any child.

**Article 45:** Every child is entitled to get early child care till the time they have completed six years of their life.

**“Article 46”:** The state must ensure to amplify nutrition and well-being.

**Article 51:** States should respect the International treaty and obligations.

**Article 51A:** Every guardian should provide the opportunity to educate their child aged between six to fourteen years.<sup>4</sup>

#### **IV. CHILDREN'S RIGHTS UNDER OTHER LEGISLATION, POLICIES, AND WELFARE SCHEME**

##### **Various Legislation- Indian Penal code, 1860**

**Section 361:** If a person is involved in alluring a child aged below 18 years of age from their legal guardian without their permission then that person will be punished under this section.

**Section 366 A:** If a minor girl has been persuaded to travel from one place to another without her intention then the accused shall be punishable with imprisonment of 10 years.

**“Section 369:** *If a person kidnaps a child below 10 years of age shall be punishable with imprisonment of 7 years.*<sup>5</sup>”

##### **CrPC, 1973**

CrPC ensures through its Section 27, that if any person who is not less than sixteen years of age commits an offense, but that do not comes under any heinous offence like capital

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<sup>4</sup>Dr. Savita Bhakhry, *Children in India and their Rights*, NATIONAL HUMAN RIGHTS COMMISSION

<sup>5</sup>AstivaVatsa, Offences against children under IPC, Available at: <https://www.legalservice.com/legal/article-5676-offences-against-children-under-ipc.html>.

punishment or life imprisonment, should be tried before the court of chief judicial magistrate.<sup>6</sup>

### **Child marriage restraint Act, 1926**

The age for marriage of a woman is set to 18 years and for men, it is 21 years. Now the age for marriage a woman is 21 years.

### ***“Juvenile Justice Act (Care and protection) Act, 2000”***

Children whose age is below 18 years are considered to be juveniles under this Act. This act is majorly for the purpose of the welfare of children so that sufficient care can be given to them.

### ***“The employment of children Act, 1938”***

Children aged below 15 years are not entitled to associate with any professional transport of travelers, products or mail by railroads, etc. As children who are below the age of fifteen are the one whose brain has not properly developed and making them work in the industries whose environment would affect their health and development

### **Right to Education Act, 2009**

Every child aged between six to fourteen years is entitled to get free and compulsory education.

### **Prohibition of the Child Labor Act, 1986**

*“The prohibition of child labour Act ensures to prevent of the work of a child who has not completed 14 years. The Act also set down punishment for the work of a child disregarding the arrangement of the Act.”*<sup>7</sup> This act makes sure that no children is forced to work and especially in the industries whose environment would affect their health and development.

## **V. POLICIES BY INDIAN GOVERNMENT**

### ***The national policies for children***

Indian Government approved the national policies for every child in 2004 to secure the inherent rights of every child, and to secure their healthy and happy childhood.

### ***National Policy on education***

The national policy on education adopted by the Indian government to ensure early childhood care and elementary education with a child centric approach. Education is very important component for the development of an individual hence it is necessary that each and every children ids getting sufficient education facilities which they deserve.

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<sup>6</sup>MarukhAdenwalla, Child Rights and law, ChildLine India Foundation

<sup>7</sup> Ishan Tandon, *A critical note on child laws in India*, IPEADERS <https://blog.ipleaders.in/a-critical-note-on-child-laws-in-india/>

### **National policy on child labour**

This policy ensures rehabilitation of child who works in hazardous conditions. It ensures to run a special school for child labor. Children get vocational and non vocational training with a monthly stipend of 100 rupees from this school.

### **WELFARE SCHEMES FOR CHILDREN**

#### **Beti Bachao Beti padhao**

Initiated by the Central Government of India Beti Bachao Beti Padhao scheme helps to prevent gender abortion, ensure child education, ensure well-being of child and provide safe atmosphere for girl child.

#### **Rajiv Gandhi National crèche scheme**

This scheme has been launched by the union government for “*working mothers*” along with food and shelter. This scheme assistance to the non-governmental organization running crèche for infants.

#### **Mid-day meal scheme**

This scheme was initiated by Madras state to reduce the school dropout among economically backward classes. It provides free meals for elementary school students. From early 2002 onwards as per the direction of the honorable Supreme Court all states have introduced the schemes.

#### **Shishugreh scheme**

This scheme promotes care and protection to orphan or abandoned infants and children up to six years.<sup>8</sup> “*In India, the Shishu Greh Scheme promotes child adoption. The programme is part of the Ministry of Women and Child Development's Integrated Child Protection Scheme (ICPS). Previously, the scheme was managed by the ministry, but in order to gain control of the children's situation in the country, the government established the ICPS.*”

## **VI. INTERNATIONAL POSITION OF CHILD RIGHTS- UNICEF, INTERNATIONAL CONVENTION& OTHER**

### **Countries**

#### **UNICEF**

“*The United Nations Children's emergency fund, in short UNICEF, is a distinct body of the*

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<sup>8</sup> *Policies and programmes for children in India*, <https://egyanghosh.ac.in/bitstream/123456789/58/906/1/Unit2.pdf>

*United Nations which promotes assistance to improve the health, education, and nutrition of the children. It was established in 1946 and now it is “a permanent body of the United Nations” from 1953. The program advocates the protection of children’s rights and aims to meet their basic needs.<sup>9</sup>”*

### ***Convention that is made on child rights***

UNCRC defines children in Article 1, as persons aged below eighteen years. But if “*under the law applicable to the child majority is attained earlier then the age would be before eighteen years.*” This convention aims to protect children against discrimination, neglect, and exploitation. Children in their early age should not face any neglect from the society so for their protection this convention has been made.

### ***“Convention on the rights of the child on the sale of children, child prostitution”***

This Convention mandates state have to make sure that sale of children, prostitution is against children. Such activities are the obligation of the state to prosecute or extradite offenders within their jurisdiction.

### ***International Labor Organization: Child Labor***

This convention sets the “*minimum age for employment*” of a child is 15 years, but in hazardous conditions, the age for employment is 18 years.

### ***Children in armed conflict: Geneva Convention***

According to Article 77 of the Geneva Convention Protocol 1 no children aged between 15 to 17 years of age are allowed to recruit in international armed conflict.<sup>10</sup>

### **Other countries**

Now, about “*168 million children in the world are engaged in child labour.*” The convention on child rights is ratified by 74 countries and it does not allow children to work in hazardous conditions. Free and compulsory education was mandated by the convention on child rights but around 24 percent of countries ratified the convention, but tuition fees are charged to them before secondary education ends. It creates a barrier for poor and marginalized children to avail of education. 49 percent are only protecting girl children from their early marriage while 88

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<sup>9</sup> *Important Institutions* UNICEF, DRISHTI IAS <https://www.drishtiiias.com/important-institutions/drishti-specials-important-institutions-international-institution/unicef-1>

<sup>10</sup> *Children’s right*, INTERNATIONAL JUSTICE RESOURCE CENTER <https://ijrcentre.org/thematic-research-guides/children-rights/>

percent of countries have ratified the convention.<sup>11</sup>

According to a 2020 report Iceland scored highest among 182 United Nations listed for the child rights environment. Switzerland is the second topper; just next to Iceland in the protection category. Finland has the best education system.<sup>12</sup>

*“According to the KidsRight Indicator, India ranks 117th out of 181 countries. It is a global annual index that ranks how well nations adhere to and implement children's rights.”*

## VII. CHALLENGES AND LOOPHOLES

According to October 21, of 2022 India is standing at 1,649,266,229,078 population as per the “worldometer”, extension of the elaboration of latest United Nations data.

Child population is around 356,733454. According to the global hunger index 2022, India is much behind than its neighboring countries. The country scored the lowest, 29.7.<sup>13</sup> Between April 2021 and May 2022 the Delhi commission of child rights recorded 12,375 cases, among them 5,118 cases were disposed of. Cases are regarding education, health and nutrition grievances, child labour, child marriage, and sexual offenses<sup>14</sup>.

The problem lies in the poverty. Poverty is one of the main reasons for any crime. After Covid-19 hunger and poverty have increased a lot. It put a question mark that the mid-day meal scheme has been implemented properly. Or does everyone get access to all opportunities provided by the Government? If not, then why? Why people are still unaware of such schemes and policies?

The problem also lies in the administration, where they do not follow a proper system, and along with that corruption is also a very big issue. Also, the implementation of the various policies are weak which contributes as a major factor where people are still not aware about the compulsory education and schemes that the government have made for the welfare of the children.

The other possible reason is illiteracy where people do not understand the importance of education and due to which there are major drop-outs of girls after class five or six as there is no sensitization on girls education and also due to gender disparity there major difference in girls and boys education ratio.

Various laws have been passed and enacted but still there is no major response on this legislation

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<sup>11</sup> *Comprehensive analysis of children's rights in 190 countries*, UNIVERSITY OF CALIFORNIA <https://phys.org/news/2014-11-comprehensive-analysis-children-rights-countries.html/>

<sup>12</sup> *Which countries are the best at protecting children's rights?*, CHILDREN IDENTITY <https://www.childrenidentity.org/2020/06/01/which-countries-are-the-best-at-protecting-childrens-rights/>

<sup>13</sup> *Global Hunger Index exaggerates measure*, The ECONOMIC TIMES,PTI, Oct 18,2022

<sup>14</sup> *Delhi Child Rights body resolves over 5000 cases*, THE INDIAN EXPRESS, June 24,2022

by the law-makers. But there is no strong-hold of the entire society and various customs, traditions and culture is not able to make the implementation of this legislation smooth and effective.

## VIII. SUGGESTIONS

*The government* should immediately conduct research on the grass root level to identify the problems and conduct an awareness program regarding the violation of child rights. Every child should be provided with the opportunity to access their rights. They should have the right to exercise their rights to share, contribute, mobilize and participate in discussions.

Every child should acquire basic education, after covid-19 there is a terrific change in the education system that affects children from economically backward classes. Every school should take care of it. Government should conduct research to find out the problem in acquiring education. It must be a duty of *the state government* to frame rules with *special provisions* under *the Right to Education Act* with proper implementation. Children who were involved in crime during covid-19 should have a special reformation system so that they can come back into their mainstream.

*The Government of India* should mandate every NGO that works for children to eliminate child labor by providing a budget and conducting an investigation that whether the funds which are given are utilized properly or not. Judiciary must take more sensitive steps to deal with child labor cases.” *Benefits of doubt*” cannot be applied to the accused. Accused must be punishable with rigorous imprisonment. Children who work in agriculture or other sectors must make it “*cognizable offense*”, “*non-bailable*” and “*non-compoundable*”.<sup>15</sup>

We, being a *citizen of India* also have a responsibility to protect children. If we see any *child in distress* must report to “*childline*.” It is a helpline number inaugurated by the “*childline India Foundation*”. It is very simple, just need to dial 1098 and it is available for 24/7 to lodge a complaint about the child to help him.

There is Child welfare Committees in every district for the protection of a child. The committee has the rehabilitation center for the “*children who are in the need of care and protection*.” The committee established the provisions given in “*Juvenile justice (care and protection of Children) Act, 2000, amended in 2006*.”

Sometimes it is required to contact a police first. The “*Juvenile Justice Act*” clearly stated that it is mandatory “*for the state government*” to create *special juvenile justice unit in every district*

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<sup>15</sup>Venkatesh, supra

of every state. “The police officers must have the special training to deal with the child in need of care and protection in a friendly manner.” As a responsible citizen of India we must aware of all existing laws to “ensure the protection of child in need of care and protection” across India.<sup>16</sup>

## IX. CONCLUSION

Childhood is the best part of a human being. It should be nurtured and nourished with love and affection. All of us must ensure a safe environment for a child so that they can be the future of our society. How society is growing and develops depends upon how a child is surviving. The childhood of a person shows the nature of the person. There are pathfinders like the US President John F. Kennedy in society who accepts the importance of children in the world. He stated “Children are the world’s most valuable resources and its best hope for the future” Society has experienced various vulnerabilities against children. Developing countries like India are on the way to progressing the legal regime for protecting the child. We all want to create a safe environment for their growth of a child and also have legislation to protect the child but failed to actively implement them.<sup>17</sup> Children are the future of our country hence it is very important to make sure that they are developed physically and mentally. Various opportunities and schemes are just made for the growth of children but now comes the work of the receiving the benefits of the schemes that have been made which is important but the policy implementation is not effective so the authorities should focus on how the policy has to be implemented also the weak implementation has to be checked by the policy evaluators team who will analyze the policy considering its international stand and how it has been implemented and weather it is able to reach the required target group. Then on the basis of that report the amendments must be made so that loopholes in the current policy can be rectified.

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<sup>16</sup> What needs to be done to help a child in distress? SAVE THE CHILDREN

<sup>17</sup> Ishan, Supra