
LEGAL MECHANISM FOR PROTECTION OF CHILD RIGHTS IN INDIA

Priyanka. A, LLM, University Law College, Bengaluru

ABSTRACT

Children are the greatest asset of any society. The childhood of every human being is the basic foundation for educational, cultural, physical, emotional, intellectual and ethical growth and wellbeing. “*Children are the great promises of tomorrow, the dawn of humanity and buds of social development.*”¹

India is the signatory to many international conventions for the protection of rights of children such as *Abolition of Forced Labour Convention*, *Convention on the Rights of the Child, 1989 (CRC)*, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000 (OPAC)*, *International Labour Organization Worst Forms of Child Labour Convention, 1999 (ILO 182)*.

This paper is an attempt to provide brief information of the constitutional provisions and the legal mechanisms which are available to protect the rights of children in India such as right to equality, right to education, protection of juvenile and the provisions to protect children from exploitation such as prohibition of child labour, prohibition of female infanticide, prohibition of child marriage, prohibition of child trafficking and prohibition of child sexual abuse. This paper is limited to the problems of children and the legal framework available in India for the protection of Children.

¹ Gaurav Jain V. Union of India, AIR 1997 SC 3021 (India)

INTRODUCTION

Nature has given certain important inherent rights to every human being which includes children also. The Government cannot give or cannot take away these inherent rights but the Government has the duty to recognise and guarantee these inherent rights.

Every country is very much concerned about the protection of children because they are the real asset of the country. Taking care of children shows the signs of development and maturity of a society.

Legal mechanism towards the protection of children in India has undergone a significant change. Children are not only made free from exploitation but also they are enabled to develop their potential with a safe and dignified life, access to food, health and proper education.

MEANING OF CHILD:

As provided under Article 1 of Convention on the Rights of the Child, 1989 (CRC), “A child means every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier.”

Every human being below the age of eighteen years is defined as child under the following Indian Legislations:

- Protection of Children from sexual Offences Act (2012)
- National Policy for Children, 2013
- The Juvenile Justice (Care and Protection of Children) Act, 2015

CONSTITUTIONAL PROVISIONS AND LEGAL MECHANISMS FOR PROTECTION OF CHILD RIGHTS IN INDIA

Constitution is the supreme law of India. The framers of our Indian Constitution were well aware that children are the future of the country and they have made several provisions for the protection of rights of children along with that we have several legislations to uphold these constitutional provisions.

- **Right to Equality:**

As provided under *Article 14* of Indian Constitution, all citizen of India including children

must be treated equally before the law and must be given equal protection by law without any discrimination and *Article 15 (3)* imposes duty on the State to make any special provision for the welfare of women and children.

- **Right to Education:**

Education is one of the greatest gifts of mankind. It is very much necessary for the individual freedom and empowerment. Every human being has the right to access to knowledge at good quality. India's commitment to provide universal elementary education to all children up to the age of 14 has been reiterated time and again. The Kothari Commission, Acharya Ramamurthy Committee, Prof. Yashpal Committee, Saikia Committee are all stressed the necessity for free and compulsory education at good quality.

In the case of *Unni Krishnan V. State of Andhra Pradesh*² the Supreme Court of India declared that "the right to education up to the age of 14 years is a fundamental right within the meaning of Article 21 of the Constitution."

Article 21(A) has been inserted by the *Constitution (Eighty-Sixth Amendment) Act, 2002* by imposing duty on the State to provide free and compulsory education for all the children within the age group of 6 to 14 years. *Article 45* of the Constitution also imposes duty on the State to provide early childhood care and education for all the children until they complete six years of age.

The 86th *Constitutional Amendment Act, 2002* inserted *Article 51 A (k)* to the Constitution which imposed fundamental duty on every citizen of India who is a parent or guardian of a child to provide opportunities to provide education for their child between six to fourteen years of age.

- **Prohibition of Child Labour:**

The chronic poverty, ill health, illiteracy, exploitation are the major cause for child labour which is a severe violation of basic human rights. Many children work not entirely because of poverty but because of pressure from parents who themselves sit idle and demand extra income to satisfy their greediness. "*Child labour is economically unsound, psychologically*

² *Unni Krishnan V. State of Andhra Pradesh* (1993) 1 SCC 645 (India)

disastrous and physically as well as morally dangerous and harmful”³

As provided under Article 24 of the Constitution, “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

The Employment of Children Act, 1938 prohibits employment of child below the age of 15 years in certain occupations which are connected with transport of passengers, goods or mail by railways or a port Authority.⁴

The Factories Act, 1948 prohibits the employment of children below the age of 14 years in factories.⁵

The Mines Act, 1952 provides that no person who is below the age of 18 years shall be allowed to work in any mines⁶ and nor such person be allowed to be present in any part of a mine above ground where any operation connected with mining is being carried on.

The Merchant Shipping Act, 1958 provides that no person under the age of 16 years shall be engaged or carried to sea to work in any capacity in any ship.⁷

The Apprentices Act, 1961 provides no person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he has attained 14 years of age and satisfied such standards of education and physical fitness as may be prescribed.⁸

The Motor Transport Workers Act, 1961 provides that no child who is below the age of 15 years shall be allowed to work in any capacity in any motor transport undertaking.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 prohibits employment of children below the age of 14 years in any industrial premises.⁹

³ Committee on Child Labour 1979, headed by Sri M.S. Gurupadaswamy)

⁴ Employment of Children Act, 1938 § 3

⁵ Factories Act, 1948 § 67

⁶ Mines Act, 1952 § 40 ⁷ Mines Act, 1952 § 45

⁷ Merchant Shipping Act, 1958 § 109

⁸ Apprentices Act, 1961 § 3

⁹ Beedi and Cigar Workers (Conditions of Employment) Act, 1966 § 24

The *Child Labour (Regulation and Prohibition) Act, 1986* is the uniform comprehensive law which clearly classifies occupations into 'hazardous' and 'non-hazardous' to prohibit and regulate child labour. This Act prohibits employment of children below the age of 14 years in certain occupations and processes.¹⁰

The *M.C. Mehta V. State of Tamil Nadu and Others*¹¹ is the landmark case which gives directions to curb child labour in India. In this case the Hon'ble Supreme Court of India directed that children should not be employed in hazardous jobs and in manufacturing of fireworks or matchboxes and where there is a risk to their life

- **Prohibition of Female Infanticide**

Female infanticide is the murder of new-born female babies and abortion of female foetus. It shows that the tragedy of discrimination between the boy and girl begins even before their birth. *The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994* prevents misuse of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic or chromosomal abnormalities leading to female foeticide.

In the case of *CEHAT and Others V. Union of India and Others*¹², the Hon'ble Supreme Court has considered the issue of female infanticide very seriously and directed the Central Government and Central Supervisory Board (CSB) to create public awareness against the practice of pre-natal determination of sex and criminalised the practice of sex determination at a prenatal state itself to eradicate female infanticide.

- **Prohibition of Child Marriage**

Since ancient time, child marriage has been a traditional, cultural and religious practice in India which is the main cause for many issues such as widowhood. Child marriage is a marriage where both or either of boy or girl are married before they attain physical and mental maturity. The main reasons for child marriage are dowry, illiteracy, economic necessity. Whatever the reason may be, but the child marriage has negative impact on health, nutrition, confidence, emotions, education, economic stability and overall growth of a child. In India, the *Prohibition of Child Marriage Act, 2006* prohibits the marriage in

¹⁰ Child Labour (Regulation and Prohibition) Act, 1986 § 3

¹¹ *M.C. Mehta V. State of Tamil Nadu and Others* AIR 1997 SC 699 (India)

¹² *CEHAT and Others V. Union of India and Others* (2003) 8 SCC 412 (India)

which a boy has not completed 21 years or a girl has not completed 18 years of age. This Act also declared that the child marriage is cognizable and non-bailable offence the parents shall also be punished for permitting such child marriage.

- **Protection of Juveniles**

In India, Juvenile is a person below the age of 18 years who has committed an offence. The main aim of juvenile justice system is to protect and rehabilitate children who have conflicted law. In India a child below the age of 7 years cannot be convicted of any offence based on the doctrine of *Doli Incapax* which means the child is totally incapable of understand the right and wrong or the consequences.¹³

In *Sheela Bares V. The Secretary Children's Aid Society & Ors*,¹⁴ a petition is filled by a social worker challenging the improper functioning of childcare institution in Mumbai and prayed that the children to be released from the jail. The Supreme Court directed that no child should be put in jail but in the reformatory centre.

The *Juvenile Justice (Care and Protection of Children) Act, 2015* has enacted by repealing the Juvenile Act 2000 making the juvenile justice system more responsive according to the changing circumstances with the main intention of protection of right of children with conflict with law. On March 2021 the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021 has passed in Lok Sabha to alter the JJ Act, 2015 to provide more strength to the provisions of protection and adoption of children.

- **Prohibition of Sexual Abuse of Child**

*"That our heads bow in shame when it is learnt that a girl (child) has been raped (Sexually abused) by a close relative of her own. She becomes the victim of her own trust on the relative (saviour)"*¹⁵

Child sexual abuse is an act of sexual contact with or sexual exploitation of a child. Studies have proved that many times children are sexually abused by family members. It may be boy or girl, rich or poor, urban or rural the truth is half of the children sexually abused by

¹³ Indian Penal Code, 1860 § 82

¹⁴ *Sheela Bares V. The Secretary Children's Aid Society & Ors* AIR 1987 SC 656 (India)

¹⁵ Statement of objects and reasons to the Indian Penal Code (Amendment) Bill, 1992

their close relatives, servants, neighbours and sometimes from their teachers also. The victim child, even though if he/she has the courage to tell the truth, that will not be believed or asked to hide the fact.

The *Protection of Children from Sexual Offences (POSCO) Act 2012* is a gender-neutral statute which prohibits sexual assault on child below the age of 18 years. It includes complete provisions regarding recording of statement of victim child, medical examination, designation of special child friendly courts.

- **Prohibition of Child Trafficking**

Child trafficking is one of the worst realities in the world including India. It is an illicit and clandestine movement of children across the world in which the children are forced into sexually or economically oppressive and exploitative salutations for various profits. The Constitution of India has prohibited human trafficking and forced labour under Article 23. The *Indian Penal Code, 1860* have certain provisions to prohibit child trafficking such as punishment for kidnapping, selling or buying of a child for prostitution. The most important law to prohibit child trafficking in India is the *Immoral Traffic (Prevention) Act, 1956* with the main objective to abolish traffic in women and girls for the purpose of prostitution.

Conclusion

In view of all the above mentioned constitutional provisions, legal mechanisms and the remarkable judgments of judiciary one could conclude that there are variety of constitutional, regulatory and administrative steps to protect child rights.

The objectives of all these provisions will be satisfied only when those provisions are effectively, promptly and strictly implemented. On the other hand it is the duty of the parents and the general public to be aware of these provisions and the programmes of Government of India to provide a good environment for the development of children such as Mid-Day Meal Scheme, Shishu Greh Scheme, Integrated Child Development Services, Sarva Shiksha Abhiyana, Community Based Production of Nutrition Food, Pilot Project to Combat the Trafficking of Women and Children for Commercial Sexual Exploitation, CHILDLINE 1098 and so on.

References:

I. Books and Journals

1. Freeman M., “The Future of Children Rights, Children and Society”, pp 277-293, 2000
2. Bajpal Asha, “Children Rights in India: Law, Policy and Practice”, pp10 to 30, New Delhi, 2nd Edition 2006

II. Statutes

1. Indian Penal Code, 1860
2. Employment of Children Act, 1938
3. Factories Act, 1948
4. Constitution of India, 1950
5. Mines Act, 1952
6. Immoral Traffic (Prevention) Act, 1956
7. Merchant Shipping Act, 1958
8. Apprentice Act, 1961
9. Motor Transport Workers Act, 1961
10. Beedi and Cigar Workers (Conditions of Employment) Act, 1966
11. Child Labour (Regulation and Prohibition) Act, 1986
12. Indian Penal Code (Amendment) Bill, 1992
13. Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994
14. Constitution (Eighty-Sixth Amendment) Act, 2002
15. Prohibition of Child Marriage Act, 2006
16. Protection of Children from Sexual Offences Act, 2012
17. Protection of Children from Sexual Offences (POSCO) Act 2012
18. National Policy for Children, 2013
19. Juvenile Justice (Care and Protection of Children) Act, 2015
20. Juvenile Justice (Care and Protection of Children) Act, 2015

III. Case Laws

1. Sheela Bares V. The Secretary Children's Aid Society & Ors AIR 1987 SC 656 (India)
2. Unni Krishnan V. State of Andhra Pradesh (1993) 1 SCC 645 (India)
3. M.C. Mehta V. State of Tamil Nadu and Others AIR 1997 SC 699 (India)
4. CEHAT and Others V. Union of India and Others (2003) 8 SCC 412 (India)