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PROTECTION OF CHILD RIGHTS- LEGAL PROVISIONS IN INDIA- Vidhi Chouradia¹**ABSTRACT**

The childhood of a human being serves as the fundamental basis for future success in terms of education, culture, physical development, mental health, and moral development. Any State's future depends on the normal development and progress of its citizens. India has created a wide range of legislations for children's safety and healthy development since gaining its independence. The Indian Constitution grants certain rights to children in Chapters III and IV. Apart from that, India is a signatory to the 1989 United Nations Convention on the Rights of the Child, which includes in its many provisions for the rights of children without any discrimination. This study explores the legislative, constitutional, and international dimension of India's legal system for protection of child rights. This research paper attempts to provide a concise overview of the constitutional provisions and legal safeguards for children's rights in India, including the rights to equality, education and protection of juvenile delinquents.

Keywords: Child Rights, Indian Constitution, POCSO Act, Juvenile Justice, Convention on Right of Child

INTRODUCTION

Children, being the most vulnerable individuals in society, require special attention and protection to guarantee their overall growth and welfare. The idea of child rights is crucial for creating a fair and equal society. It includes a range of entitlements and protections that are essential for children. The Indian Constitution does not provide a specific definition for the term "child". "According to Article 1 of the 1989 **United Nations Convention on the Rights**

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of the Child, a child is defined as any individual under the age of eighteen, unless the legal system applicable to the child establishes an earlier age of majority.”²The legal definition of a child is typically determined by its intended function or role. “A child is typically described as an individual who is under the age of eighteen years.”³

In the past, children were often seen as extensions of adults, but there has been a shift in perspective that recognizes them as individuals with their own autonomy. It is essential that every child is granted all the rights that are guaranteed to them by the constitution and the law. There has been a rise in international attention towards the rights of children, driven by a growing focus on human security and human development in our increasingly globalized world.

Numerous statutes, Acts, legislations, and judicial pronouncements exist at national level that address the protection of child rights. Many of these provisions aim to address the rehabilitation and protection of children who have been socially and economically abused and neglected. “While the Constitution of India does not define the term "child," the framers of the Constitution recognized the need for special consideration for children due to their physical and mental immaturity.”⁴ Further information regarding the different laws and legislations pertaining to the rights of children will be discussed.

CONSTITUTIONAL PROVISIONS IN RELATION TO PROTECTION OF CHILD RIGHTS

The children of India are guaranteed certain rights by the Constitution of India, which are outlined in Part III (FR's) & Part IV (DPSP).

- 1. Article 15(3) (Right to Equality):** Article 14 of the Indian Constitution states that all people, including children, must be treated fairly by the law. They ought to be treated equally and without discrimination by the law. The State must also make specific measures for the welfare of women and children, according to Article 15(3).

²Article 1, United Nations Convention on the Rights of the Child, 1989

³ Indian Majority Act, 1875

⁴Maheshwari, & Desai, Legislative measures for child rights and protection in India, Indian Journal of Research, 4(4), 2015.

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- 2. Article 21, Article 45, and Article 51A(k) (Right to Education):** Education is a valuable and essential tool for personal freedom and empowerment. India has consistently reaffirmed its dedication to ensuring that all children up to the age of 14 receive universal elementary education. “In the Unni Krishnan V. State of Andhra Pradesh⁵ case, the Supreme Court of India ruled that the right to education until the age of 14 is considered a fundamental right under Article 21 of the Constitution.” The 86th Amendment Act, 2002 introduced Article 21(A), which mandates that the “State is responsible for ensuring free and compulsory education for children aged 6 to 14 years.” According to Article 45 of the Constitution, “the State is obligated to ensure the provision of early childhood care and education for all children until they reach the age of six.” Article 51 A (k) was incorporated into the Indian Constitution through the 86th Constitutional Amendment Act of 2002. The amendment states that it is the responsibility of every Indian citizen who is a parent or guardian of a child aged six to fourteen to ensure that the child receives an education.⁶
- 3. Prohibition of Child labour:** Child labour is a grave violation of fundamental human rights, primarily caused by chronic poverty, ill health, illiteracy, and exploitation. Numerous children are engaged in work, not solely due to poverty, but rather because of parental pressure. The Indian Constitution safeguards children from child labour through Article 23 and Article 24. “Article 23 prohibits the trafficking of individuals for forced labour, including citizens and beggars. Article 24 prohibits the employment of children under the age of fourteen in hazardous occupations such as mills, mines, or any other dangerous work.”
- 4. Article 39(f):** It specifically states that Government policy should focus on ensuring that children have access to opportunities for healthy development and the chance to grow in a healthy way, while also experiencing freedom and dignity.

LEGISLATIONS GOVERNING CHILD RIGHTS

⁵ Unni Krishnan V. State of Andhra Pradesh (1993), 1 SCC 645 (India)

⁶Shroff, S., Children’s Rights in India: A Study of Judicial Response, Child and Family Law Quarterly, 22, 2010

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1. THE INDIAN PENAL CODE, 1860

The IPC, 1860 contains provisions that pertain to the protection of children's rights. According to Sections 82 and 83, if a child is under the age of 7 and commits a crime, they are not held accountable for their actions.

Section 368A of the law addresses the criminalization of various acts involving minors. These acts include kidnapping minors with the intention of forcing them into begging, engaging in human trafficking of minors, and the sale or purchase of minor girls for the purpose of engaging in illicit sexual activities.

Section 372 of the law states that the act of selling minors for the purpose of prostitution or engaging in illicit intercourse with any individual is considered a punishable offense.

As per Section 376, any sexual intercourse with a girl under the age of 16 is classified as rape, irrespective of her consent. Engaging in the abduction of a girl with the intent of engaging in illegal sexual activities is considered a criminal offense under Section 367.

2. RIGHT TO FREE AND COMPULSORY EDUCATION ACT, 2009

“The Children's Right to Free and Compulsory Education Act of 2009 defines a "child" as someone between the ages of six and fourteen.⁷” According to the Act, compulsory education is the government's duty to offer free elementary education to all children aged six to fourteen. Additionally, it entails ensuring that every child within this age range is obligated to enroll, attend, and successfully complete their elementary education. The responsibility of the relevant government shall be to fulfill this duty.

3. PROTECTION OF CHILDREN AND SEXUAL OFFENSES ACT, 2012

The legislation implemented in 2012 aims to protect minors from sexual offenses, particularly addressing the issue of child sexual abuse. This law specifically focuses on cases where previous laws did not distinguish between adult and child offenders. At every stage of the legal process, different child protective programs are implemented. The Special Court has the obligation to finish the trial, to the best of its

⁷Section 2(c), The Right of Children to Free and Compulsory Education Act, 2009

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ability, within a one-year timeframe. Publishing the name of a child in a newspaper is considered a criminal offense, punishable by up to one year in prison.

4. JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

The JJ Act, 2015 was enacted with the aim of safeguarding and providing appropriate care, treatment, and rehabilitation for young offenders. This legislation guarantees that minors who have engaged in illegal activities and children who require care and protection are handled as distinct groups.

When a child is in conflict with the law, they are not presented before a magistrate, but rather before the Juvenile Welfare Board. Instead of being sent to jail, the individual is placed in a government-run juvenile home designed specifically for this purpose. The legislation prohibits the imposition of the death penalty or life imprisonment on a minor. The act ensures the privacy of a child involved in a legal conflict by stating that newspapers are not allowed to disclose his/her identity in any report.

JUDICIAL DECISIONS

The judiciary plays a crucial role in safeguarding the welfare and rights of children. Below are some of the significant judicial decisions:

1. **M.C Mehta v. State of Tamil Nadu**⁸: The Supreme Court has made a ruling stating that it is not permissible for children to be employed in match factories that are directly engaged in the manufacturing process. This is because such employment is deemed dangerous according to the Employment of Children Act, 1938.
2. **PUDR v. Union of India**⁹: In this case, the court ruled that construction work is a dangerous occupation. According to Article 24 of the Indian Constitution, it is prohibited to employ any child under the age of 14 in the construction industry. This provision is not explicitly mentioned in the Employment of Children Act, 1938.

⁸M.C Mehta v. State of Tamil Nadu, AIR1997 SC 699

⁹ PUDR v. Union of India, AIR 1983 SC 1473

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3. **Sheela Barse v. Union of India¹⁰**: In this case, the court has instructed that the Children's Act, which has been enacted by different states, should be enforced and its provisions should be implemented with great determination.
4. **Gourav Jain v. Union of India¹¹**: The court has instructed the government to establish separate hostels and schools for the children of prostitutes in the present case.

CONCLUSION

The overall well-being of the child has a significant impact on the entire community. The well-being of the child is crucial for the progress of the community, as they are the future leaders. There are numerous legal provisions for the protection of children's rights in various enactments. However, for these rules to be applied effectively, a sensitive and effective judicial system is essential. In conclusion, despite both legislative and constitutional requirements for the protection and prevention of sexual abuse of children, such acts of exploitation and abuse continue. On the other hand, the number of such cases is expanding at an alarming rate. The objectives of all of these laws will be met only if they are effectively, swiftly, and rigidly executed. However, it is crucial for parents and the general public to stay informed about these regulations and the initiatives implemented by the Government of India to create a conducive environment for children's growth and development.

¹⁰ Sheela Barse v. Union of India, 3 SCC 596

¹¹ Gourav Jain v. Union of India, AIR 1990 SC 292

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