

# ENTITLEMENTS OF CHILDREN IN INDIA

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## ABSTRACT

Children are deprived and exploited in various forms. Child abuse threaten his precious childhood and integral development. There are a range of laws in India and policy measures to protect the interests of children. This article introduces and highlights, constitutional provisions, legislations, key judicial decisions and policy of the state prevailing in India for the enforcement of children's right, concluding that rights of children are robust in India.

**Key Words: Rights of child, Child Rights, Entitlements of Child.**

## 1. INTRODUCTION

Child is an important national asset for a country, and the future of every country depending on the maturity and growth of its children. Presently, the primary aim of our culture has been to shield children from all forms of neglect and violence. In the past, there have been a lot of cases of child exploitation, in the form of sexual abuse, marriage, underfeeding, verbal abuse, child batteries, child prostitution, child pornography and child labour. One of the most important topics for debate in this new millennium has arisen the topic of children's rights. The fact is that children today, as they live in human rights and social justice, belong to the disadvantaged minority group. The principal reason for this lack lays in the fact that children still are not, in fact, a whole political entity. In addition, they are typically defenceless physically, psychologically and economically. In this fast-changing era of globalization, childcare has taken a seat back at every point. It concerns not just the overall moral structure, but also the existing social and economic needs. Even though India has today been on the path of economic growth, and there have been several initiatives by the government for eradication of poverty, a major portion of the population continues to live in poverty. Economic inequalities are widespread and children are most affected. It is beyond question that the future of humanity depends to a large degree on children, and even at that time a very selective and parochial approach was taken to placing them on the social and political agenda. There are a range of laws in India and policy measures to protect the interests of children have been taken into account.

This article introduces and highlights, constitutional provisions, legislations, key judicial decisions and policy of the state prevailing in India for the enforcement of children's right.

## 2. CHILD : MEANING AND DEFINITION

In the Indian Constitution, the term "child" is not defined. Article 1 of the 1989 Convention on the Rights of the Child of the United Nations says that a child shall mean every person under the age of eighteen unless the majority is earlier, according to the law applicable to the child. The legal definition of the child is usually based on its purpose. In India there are a variety of laws defining the term "child" according to the intent. The Indian Majority Act of 1875 provides the age of a majority to be 18 years old and for a minor whose person / ownership is appointed a guardian or whose property, in the majority of 21 years, is under the supervision of the Court of Wards. Under the Child Labour Act of 1986, the child shall mean an individual who was not 14 years old. The Child Marriage Restraint Act of 1926 applies to a person who is not 21 years of age if a male, and not 18 years of age in case of a female. According to the JJ Act, 2000 that is juvenile Justice (Care and Protection), a juvenile or a child means a person not 18 years old.

## 3. ENTITLEMENTS OF CHILDREN

### 3.1 CONSTITUTIONAL VALUES

The supreme law of the land that is the "constitution of India" has provided various constitutional safeguards in order to protect the children's rights. The Constitution of Indian has determined the few provisions which as guarantees to each Citizen including children to be liberated from misuse, and ensure their privileges. It guarantee by state with under commitment of constitutional Norms to protect from the infringement of child Rights. Apart from this there are number of legislations in the form of Acts, policies, programmes and schemes have been formulated in order to protect the rights and interest of children's.

Article 21A provides that all children between the ages of six and 14 years are given free and compulsory education by the State in the manner as may be legally determined by the State. Article 24 states that no child under the age of 14 shall be employed or engaged in any other dangerous work in factories or mines. Article 39(f) stipulates in particular that the policy of the Commission should be directed towards ensuring that children are provided with healthy development possibilities and the opportunity to develop in a healthy manner and under conditions of freedom and dignity. Article 45 states that, before all children are

six years old, the State shall strive to provide early care and education for all children. The weaker sections of the population which can be inclusive of children are to be protected against social injustice and other kinds of exploitation, according to Article 46. Article 47 safeguards the right to have proper nutrition and a good standard of living.

In view of the above, we can find that the constitution of India has not expressly mentioned all children's right in one particular frame. But through various judicial decisions and interpretation all those rights can be enforced. For example article 21 talks about the right to life and personal liberty but the Supreme Court has stated through various judicial decisions that children's rights may be interpreted under the purview of article 21 as it contain the basic rights of every individual.

### 3.2. LEGISLATIVE WISDOM ON CHILD RIGHTS

**3.2.1: Children's Act:** The 1920 Madras Children's Act, which became India's first Children's Act, was adopted in accordance with the recommendations of Indian Jails Committee from 1919 to 1920. It was a provincial legislation covering the province of Madras. Further it is followed by the Bengal Children's Act and the Mumbai Children's Act and a lot of others in future. In 1960, in the territories of the Union, the Government of India passed the Children's Act. All these legislations were repealed with the enactment of the Juvenile Justice Act, 1986.

**3.2.2: Child Labour (Prohibition & regulation) Act, 1986:** This Act is a result of a number of recommendations made by a number of committees. The parliament adopted the Prohibition and Regulation Act of 1986 (Child Labour Act), which was continuously seeking uniform substantive law to restrict the presence of children in many other occupations. The objectives of this act are, to ban the employment of children in specified occupations and procedures, i.e. those who have not completed their 14th year, establishing protocols to determine changes to the timetable of forbidden employment or in any hazardous processes, regulating the working conditions of children who are not prohibited from working in their employment in violation of this Act's provisions and other Acts that prohibit the employment of children, and the laying enhanced punishment for the violation of the provisions of the Act. The Act was amended in the year 2016 with Child Labour (Prohibition & regulation) Amendment Act, 2016 and now stated as e Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. It defined child u/s 2 as

‘(ii) “child” means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more”<sup>i</sup>.

**3.2.3: Juvenile Justice (Care and Protection of Children) Act, 2015:** Furthering the vision of the UNCRC, this law 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”<sup>ii</sup>.

**3.2.4: Right to education Act, 2009:** This Act aims to provide that all children in India from 6 to 14 years old have free and compulsory education. No child must be detained, expelled or required to pass the board exam until primary education is completed. If a child older than 6 years of age has not attended or has not been able to complete primary school, the child shall be accepted into a proper class according to the child's age. The Act targets to achieve, equitable and affordable education throughout the region, and made the abolition of "no detention rules" has given the primary education system transparency. Under this Act, over 3.3 million students were able to gain admission under an RTE quota of 25%,. The government has launched an integrated education system named Samagra Shiksha Abhiyan, which involves three school education schemes of Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA), Centrally Sponsored Scheme on Teacher Education (CSSTE).

**3.2.5: The Protection of Children from Sexual Offences (POCSO) Act, 2012:** Special law was adopted for the first time in India to deal with the issue of sexual crimes against children. The Government of India has adopted "The Protection of children against Sexual Offences (POCSO) Act 2012" in order to deal with child abuse cases. The Act came into effect in accordance with the standards laid down there on 14 November 2012. The Act identifies a child as a person under the age of 18 and protects all children from sexual assault, harassment and sexual entertainment. An offense is deemed to be "aggravated" when committed in a child's place of trust or authority, for example by an person from security services, public officials, government officials, etc. The Act provides for the creation and preservation of the child's well-being in each legal phasing process of the special courts for preliminary offenses pursuant to the Act. The Act provides for child-friendly legal policies to report, record evidence, examine and prosecute crimes.

### 3.3. EXECUTIVE POLICIES

The Indian government has taken a series of policies on the children taking into consideration of their physical, mental and social development. The government has also adopted several initiatives on children's welfare and education. Following are the some of the important policies.

**3.3.1. The National Policy for Children, 2013:** The 2013 National Children's Policy reaffirmed that every child is a national resource of a kind and is especially important. "In NPC 2013 overall reaffirmation sections sees a change in language with a special addition of every child is unique and a supremely important national asset"<sup>iii</sup>. "It is extremely heartening to see the change in language which is truly affirming state's commitment to rights based approach in addressing the continuing and emerging challenges in the situation of children"<sup>iv</sup>. "In order to reduce or dispose of conditions which cause discrimination, special measures and governmental policies on children in society should be adopted"<sup>v</sup>. In the context of happiness, love and understanding, all children have the right to develop in a familiar domain. In thinking about and supporting their children, families are to be strengthened by a robust social safety net.

**3.3.2. National health policy 2002:** The first health reform, 1983, was introduced to ensure everyone's wellbeing in 2000. The second health policy of 2002 sets out to give priority to health problems in schools aimed at health education and regular school health checks. The policy recognised the vulnerability of children. It states "(paragraph) 2.2.2 Access to, and benefits from, the public health system have been very uneven between the better-endowed and the more vulnerable sections of society. This is particularly true for women, children and the socially disadvantaged sections of society"<sup>vi</sup>. The main feature of this policy was the prevention of transmissible diseases such as HIV / AIDS and the universal vaccination against all the major diseases that could be prevented.

**3.3.3. Pradhan Mantri Matru Vandana Yojana:** The program was introduced in 2017 to include cash rewards with partial compensation so women can take ample rest for both the preliminary and final delivery phases. The method of the cash incentives will lead to the promotion of health and well-being amongst women in pregnancy and lactation.

**3.3.4. Integrated Child Development Scheme (ICDS):** The targets of the Scheme are to add to the improvement in the prosperity of children in troublesome conditions, to decrease the vulnerabilities circumstance and activities that prompts misuse, disregard, abuse, relinquishment and division of children from parent. The Khoya-Paya portal was integrated into the Monitor Child application as a citizen corner, in the hope of creating a citizen-centred forum to allow people to report on missing children, as well as to browse the sites without losing much time. Discovered young people should also be held accountable. Any citizen can enrol with a Mobile Number from KhoyaPaya. “The Kishori Shakti Yojana is an adolescent girl’s scheme implemented through Anganwadi Centres under ICDS Projects. The objective of the scheme is to increase self-confidence, boost morale and give dignity to the adolescent girls. The scheme includes two schemes such as Girl to Girl Approach and Balika Mandal Scheme”<sup>vii</sup>.

**3.3.5. Schemes for Health and Nutrition of Children:** “The Nutrition component of Prime Minister Gramodya Yojana and Nutrition Programme for Adolescent Girls is implemented with additional central assistance from Planning commission to promote nutrition of children”<sup>viii</sup>. “A National Nutrition Mission has also been set up to enable policy direction to the concerned Departments of the Government for addressing the problem of malnutrition of children”<sup>ix</sup>.

**3.3.6. BetiBachaoBetiPadhao:** BetiBachao, BetiPadhao, is an awareness-raising and know-how-enhancing platform for a girl's wellness. The scheme deals with the deteriorating CSR and related problems of women's empowerment over a real life cycle. The Ministries of Women's and Child Development, Health, and Family Welfare and Human Resources Development are three-ministerial efforts. The key components of the plan incorporate Nation-wide awareness and backing effort; Enforcement of PC&PNDT (Pre-Conception and Pre-Natal Diagnostic Techniques) Act; Enabling young lady kid instruction; and multi-sectoral activity in chose areas of BBBP. There is a solid accentuation on mentality change through preparing, sharpening, and mindfulness raising and network preparation on ground.

### 3.4 JUDICIAL WISDOM

The judiciary plays a significant role in the protection of the interests of children, as well as a to promote the rights of children. In **M.C Mehta v. State of Tamil Nadu**<sup>x</sup> Supreme Court held that the children cannot be employed in match factories which are directly connected with the manufacturing process as it is

a hazardous employment within the meaning of Employment of Children Act, 1938. In **PUDR v. Union of India**<sup>xi</sup> the court held that construction work is a hazardous employment and therefore U/A 24 of the constitution of India no child below the age of 14 years can be employed in construction industry even if it is not reflected in the scheduled to the Employment of Children Act, 1938. The court in **Sheela Barse v. Union of India**<sup>xii</sup> directed that the Children's Act enacted by various states must be brought into force and there provisions should be implemented vigorously. In **Gourav Jain v. Union of India**<sup>xiii</sup> case the court directed the government to make provisions for the separate hostels and schools for the children of prostitutes.

#### 4. CONCLUSION

Child said, the great poet Milton shows the man as the day shows in the morning. The nation's future well-being depends on its growth and development. The future custodians and bearers of torches in the Society are children. They are the future teachers, scholarly workers, judges, administrators, doctors, planners, engineers, leaders, and fundamental components of the society. Considering the laws and policies in place it can be rightly concluded that the laws regarding the protection of children are robust in India.

#### ACKNOWLEDGEMENT

None

#### CONFLICT OF INTEREST

There is no conflict of interest in this paper

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<sup>x</sup> AIR1997 SC 699

<sup>xi</sup> AIR 1983 SC 1473

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<sup>xiii</sup> AIR 1990 SC 292