



PROTECTION OF RIGHTS OF CHILD IN INDIA: RESPONSE OF LAW

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*"I am the child.
All the world waits for my coming.
All the earth watches with interest to see what I shall become.
Civilization hangs in the balance,
For what I am, the world of tomorrow will be.
I am the child.
You hold in your hand my destiny.
You determine, largely, whether I shall succeed or fail,
Give me, I pray you, these things that make for happiness.
Train me, I beg you, that I may be a blessing to the world".*

- Hansaria, J. in *M.C.Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756¹

1. INTRODUCTION

The innocence of a child makes him unique and special. Innocence is so much more powerful than experience.² A child must be given facility and opportunity to develop in healthy manner which will ensure the healthy physical, emotional, intellectual and social development³. With the rise in crime rate in the society, the need to provide the children an environment to explore, develop, enjoy and protect the childhood has become an utmost requirement.

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¹ The poem quoted in the case is written by Mamie G Cole titled 'I am the Child of God'.

² Alejandro Gonzalez

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The protection of rights of child has been discussed at international and national level. The paper will cater three areas of child rights- juvenile justice, cyber laws, POCSO and labour laws.

2. INTERNATIONAL PERSPECTIVE

- Convention on the Rights of the Child

In 1989, Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly. A child means any person under the age of 18. The Convention provided that the signatory States should frame laws for these children and also take measures at administrative and social level⁴ and should protect children from coercion; exploitative use of children in prostitution or pornographic performances and materials⁵.

Article 32 provides about protection of children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. States Parties to provide about minimum age for admission to employment, appropriate regulation of the hours and conditions of employment and appropriate penalties.

- Guidelines for Action on Children in the Criminal Justice System

In 1997, Guidelines for Action on Children in the Criminal Justice System recommended by Economic and Social Council provided for fair and adequate compensation to these victims and adequate legal representation.⁶

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

This Convention discussed the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999). It worked upon having the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography. It also stressed the importance of closer cooperation and partnership between Governments and the Internet industry.

⁴ Article 19, CRC

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

⁵ Article 34, CRC

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
 (b) The exploitative use of children in prostitution or other unlawful sexual practices;
 (c) The exploitative use of children in pornographic performances and materials.

⁶ 48. Access should be allowed to fair and adequate compensation for all child victims of

violations of human rights, specifically torture and other cruel, inhuman or degrading treatment or punishment, including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice. Necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary, should be available.

- Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996.

3. CONSTITUTIONAL PROVISIONS

Part III and Part IV of the Constitution of India deals with “Fundamental Rights” and “Directive Principles of State Policy” respectively. These Parts contain special provisions with regard to care and protection of the children.

- Article 15(3): It allows the State to make special provisions for children and women.
- Article 21-A: The state shall provide free and compulsory education to all children of the age of six to fourteen years.
- Article 23: Prohibits the traffic in human beings and forced labour.
- Article 24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Article 39 - The State shall direct its policy towards securing
 - (e) the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
 - (f)- that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- Article 45: The State shall endeavour to provide for free and compulsory education for all children until they complete the age of fourteen years.
- Article 47: It is the duty of the state to raise level of nutrition and standard of living and to improve health.

4. NATIONAL PERSPECTIVE

4.1. Prevention of Child against Sexual Offences Act, 2012

This Act is based on Convention on the Rights of the Child (CRC), 1989. India ratified the Convention on CRC in 2012 and in the same year, Prevention of Child against Sexual Offences (POCSO) Act is enacted. The Act is gender neutral. It provides a procedure different from the traditional procedure in criminal cases, and the provisions of Indian Penal Code (IPC) are not applicable.

According to Section 2(d), POCSO Act, 2012 “Child” means any person below the age of eighteen years. It provides protection to the child from the offences of sexual assault, sexual harassment and pornography. The Act defines penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault and sexual harassment.⁷ The punishment for all the offences is prescribed. Where any offence under this Act is committed by a child, such child is to be dealt under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.⁸

⁷ Chapter II, Sections 3- 12, POCSO Act, 2012

⁸ Sec. 34(2), POCSO Act, 2012. After POCSO, 2019, the provisions of JJ Act, 2015 will be applicable.

As per Section 29, POCSO, the burden of proof is on the accused to prove his innocence. The reason is greater vulnerability and innocence of child. It is in consonance with the best interests of child.

In case any question arises regarding the age of child, then it shall be determined by the Special Court and after satisfying itself about the age of such person and it shall record in writing its reasons for such determination⁹ Medical examination of the child is conducted in the presence of parent of the child or any other person in whom the child has trust or confidence.¹⁰ Where, in case the parent of the child or other person referred to cannot be present then medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.¹¹

In section 35, POCSO there is fixed time limits. The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence. If there is a delay in recording the evidence then the reasons for delay should be mentioned. Also, the Special Court shall complete the trial within a period of one year from the date of taking cognizance of the offence.

The Protection of Children from Sexual Offences (Amendment) Act, 2019 covers guidelines for effective and purposeful prosecution in cases that are not covered by the POCSO, 2012.

- The minimum punishment has been increased and includes death penalty.
- Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life i.e., imprisonment for remainder of natural life of that person, and shall also be liable to fine, or with death.¹²
- Assault resulting to death of child, assault committed during a natural calamity, or violence is included in aggravated penetrative sexual assault.
- ‘Child pornography’ is now defined as any visual depiction of sexually explicit conduct involving a child including photograph, video, digital or computer-generated image indistinguishable from an actual child.
- The Act mentions punishment for a person who stores or possesses pornographic material in any form involving a child.¹³

According to NCRB data, the conviction rates in POCSO cases in 2018 and 2019 are 36.7% and 35.2% respectively.¹⁴

POCSO E-box

POCSO E-box is an initiative of NCPCR to help child who is harassed or shown pornographic material. In case, child is unable to tell to any elder or family members, then complaint can be submitted online directly to NCPCR. The complainant has to provide information where he or she was harassed and by whom. The information is asked through pictorial representation which makes it easy to understand. The website address is

⁹ Sec. 34(2), POCSO Act, 2012

¹⁰ Sec. 27(3), POCSO Act, 2012

¹¹ Sec. 27(4), POCSO Act, 2012

¹² Sec. 6(!), POCSO, 2019

¹³ Sec. 15, POCSO, 2019

¹⁴ https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%204A.6_2.pdf retrieved on July 22, 2021

https://www.ncpcr.gov.in/user_complaints.php

The other contact details are 1800115455(Toll free), 9868235077 and 1098 (Childline).

Judicial pronouncements

In *State of M.P. v. Anoop Singh* case, the trial court has convicted accused under sec 376, IPC. The High Court overruled the trial court decision as there is age discrepancy in birth certificate and school record, so the Court relied on the medical opinion. The Supreme Court held when there is age discrepancy in birth certificate and school record then the medical opinion can't be taken as the test as it is to be resorted only when no other document is available. Also, the discrepancy in the age was of just two days. In the case of *Eera v. State*¹⁵ the question before the Court was when offence is committed against mentally challenged child.¹⁶ The Supreme Court held that POCSO is not allowed to victim of 38 years, even though her mental age is of 6 years. The author observes the Preamble of the Act protects the 'best interests of child' which needs to broaden its application in the case above mentioned.

In the case of *Satish Ragde vs State of Maharashtra*, Bombay High Court on 19th January 2020, held that touching a child's breasts while she was clothed would not amount of sexual assault under the POCSO.¹⁷ The Supreme Court passed an ordered a stay on the acquittal of this accused under the POCSO Act as the Honourable Court believe it will set a dangerous precedent. The court has further permitted the Attorney General to file a plea against the Bombay HC order

The implementation of law is another problem. In 2020, the case of Alarming Rise in the Number of Reported cases, *In re*¹⁸ the Supreme Court noted that in 20% cases, the investigation is not complete with in a year. Exclusive POCSO Courts are needed to deal with children who are sexually abused. These children are to be dealt with great sensitivity and empathy. They cannot be dealt with other litigants and victims in courts. But, some States have not established exclusive POCSO courts or have converted other courts to POCSO Courts.

4.2. Information Technology Act, 2000

Access to internet, mobiles and other electronic media forms offer children and young people with unimaginable access to information, culture and entertainment.¹⁹ This technology enables the sexual predators to exploit potential victims. This led to enactment of Information Technology Act, 2000. 'Child' in IT Act means a person who has not completed the age of 18 years. The Act in Section 67B provides punishment for publishing or transmitting of material depicting children in sexually explicit act in electronic form. Whoever (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct²⁰; or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

¹⁵ Criminal Appeal Nos.12171219 OF 2017

¹⁶ The prosecution relies upon South African case law of *Daniel Johannes Stephanus Van Der Bank v The State (2008)* involving the rape of 19-year-old woman who had a mental age of an 8.5 gains significance. The High Court held that the term 'age' also includes the mental age of the victim while granting her protection and justice. The Supreme Court of Appeal of South Africa upheld the finding as reported in 2016.

¹⁷ <https://pocso.poshatwork.com> retrieved on August 4, 2021

¹⁸ (2020) 7 SCC 112

¹⁹ <https://ncpcr.gov.in> retrieved on August 6, 2021

²⁰ Sec. 67 (B)(1)(a), ITAct, 2005

- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- (d) facilitates abusing children online, or
- (e) records in any electronic form child's own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may upto ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form-

- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bona fide heritage or religious purposes.

'Child pornography' is neither defined in Information Technology Act, 2000 nor Indian Penal Code, 1872. The term is now defined in POCSO Act, 2019. Sections 14²¹ and 15²², POCSO Act, 2019 provides punishment for using child for pornographic purposes, for storage of pornographic material involving child.

'Cyber bullying' is another form of bullying used to intimidate other person. Here, bullying or harassment is caused using electronic forms like mobile phones or computer with internet. 'Trolling', 'Rumor Spreading' and 'Happy Slapping' are other hybrid modes used for cyber bully. 'Cyber bullying' is not defined in any statute and therefore, Sec. 503, IPC, 1872 is referred. Intimidation means in sense is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.²³

The Act also provides about constitution of advisory committee in section 88.

²¹ Section 14- (1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment, for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent, conviction with imprisonment for a term which shall not be less than seven years and also he liable to fine.

(2) Whoever using a child or children for pornographic purposes under sub-section (7), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (i).

²² Section 15- (1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees, and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years or with fine, or with both.

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.

²³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

Judicial Pronouncements

In *Shreya Singhal v. Union of India*²⁴ Section 66A, Information Technology Act, 2000 is struck down in its entirety violates of Article 19(1) (a) and not saved under Article 19(2), Constitution. Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 are constitutionally valid.

In *Manaf v. State of Kerala*²⁵ the petitioner and other accused have created a website containing pornographic images of a child and ensured wide circulation. He was found guilty only in Section 13 and 14 POCSO Act for having a website hosting child pornography. The bail application was dismissed as it is a cognizable and non - bailable offence. It is punishable with imprisonment of upto three years or fine not exceeding two lakh, or with both in section 66E, IT Act, 2000.

In the case of *Monalisa Kosaria v. Ministry of Women and Child Development*²⁶, the petitioner seeks issuance of a writ of mandamus against the Delhi Police with regard to delay in registration of FIRs, the investigation into the crimes and collection of evidence. It was submitted that 1058 police personnel are currently in the employment of Delhi Police and are attached to its Cyber Crime Team. But, Cyber/Technical Experts with basic qualification of MCA or B. Tech only 5 B. Tech. qualified 2 MCA qualified officers are working in Delhi Police cyber cells of district. The Court held

“there is an urgent requirement of qualified personnel. Citizens need to be protected from such menace. It is therefore, in the interest of justice, and for the protection of the citizens that requisite qualified officers are inducted into the police force forthwith. Dealing with cyber crimes needs constant monitoring, quick response and alacrity. This can be done only by well-equipped, qualified and dedicated personnel. It is expected that 14 personnel having a minimum qualification of B. Tech and MCA will be inducted into the police force.”

In *A v. State of UP*²⁷ the Honourable Court held where offence of sexual exploitation is involved, confidentiality is utmost requirement.

4.3. Juvenile Justice (Care and Protection of Children) Act, 2015

This Act came into force from January 15, 2016 and repeals the Juvenile Justice (Care and Protection of Children) Act, 2000. It has 10 parts 112 Schedules. The Act consolidate and amend the law relating to children alleged and found to be “in conflict with law” and “children in need of care and protection” in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto. This is to cater basic needs through proper care, protection, development, treatment, social re-integration. The Act is a benevolent legislation.

It seeks to address challenges in the existing Act such as delays in adoption processes, high pendency of cases, accountability of institutions, etc.²⁸ The Act provides about Juvenile Justice Board, Children in Conflict with Law,

²⁴ (2015) 5 SCC 1

²⁵ 2016 SCC OnLine Ker 7926.

²⁶ 2018 SCC OnLine Del 8619

²⁷ (2020) 10 SCC 505

²⁸ <https://www.vikaspedia.in>

Child Welfare Committee, Rehabilitation and Social Re-Integration, Adoption and other offences against children. Juvenile Justice Boards and Child Welfare Committees must have at least one woman member each.

Features of 2015 Act-

- New definitions such as orphaned, abandoned and surrendered children; and petty, serious and heinous offences committed by children are included in Section 2.
- Section 3 has general principles of care and protection of children that guides the Central Government, the State Governments, the Board, and other agencies to be referred while implementing the provisions of this Act- Principle of presumption of innocence, Principle of dignity and worth, Principle of participation, Principle of best interest, Principle of family responsibility, Principle of safety, Positive measures, Principle of non-stigmatising semantics, Principle of non-waiver of rights, Principle of equality and non-discrimination, Principle of right to privacy and confidentiality, Principle of institutionalisation, Principle of repatriation and restoration, Principle of fresh start, Principle of diversion and Principles of natural justice
- The Act provides detailed explanation on three categories of offences: petty offences, serious offences and heinous offences. “Petty offences” includes the offences for which the maximum punishment under the Indian Penal Code, 1860 or any other law for the time being in force is imprisonment up to three years.²⁹ “Serious offences” includes the offences for which the punishment under the Indian Penal Code, 1860 or any other law for the time being in force, is imprisonment between three to seven years.³⁰ “Heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code, 1860 or any other law for the time being in force is imprisonment for seven years or more.³¹
- Inquiry by Board regarding child in conflict with law is mentioned in Section 14.
 - S. 14 (d) - in cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973.
 - S. 14 (e) - inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973.
 - S. 14 (f) - inquiry of heinous offences — (i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e); (ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.
- Mandatory registration of all child care institutions whether run by State Government or by voluntary or non-governmental organizations within 6 months from the date of commencement of the Act.³²
- Chapter VIII provides detailed provisions regarding adoption for orphan, abandoned and surrendered children³³. Central Adoption Resource Authority (CARA) is a statutory body to perform its function more effectively. In cases of non-compliance, punishments are also laid down in the procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption. As per the provisions, a single or divorced person can also adopt, but a single male cannot adopt a girl child.
- Central Government and every State Government shall take necessary measures to ensure awareness about general provisions to general public, children and their parents or guardians through media including

²⁹ Sec. 2 (45), JJAct, 2015

³⁰ Sec. 2 (54), JJAct, 2015

³¹ Sec. 2 (33), JJAct, 2015

³² Section 41, JJAct, 2015

³³ Section 56, JJAct, 2015

television, radio and print media at regular intervals so as to make the general public, children and their parents or guardians aware of such provisions.³⁴

- Chapter IX is on other offences against children.

The Constitution Bench in *Pratap Singh v. State of Jharkhand*³⁵ has held that reckoning date for determining the age of a juvenile is the date of the commission of the offence and not the date when he is produced before the competent authority or in the court and, therefore, the provisions of Section 6 of the Act should be construed in the same light, and the age of the accused for applying Section 6 of the Act has to be the date on which the offence was committed. In the case of *Essa @ Anjum Abdul Razak Memon vs. The State of Maharashtra*³⁶ shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

4.4. CHILD LABOUR

International Labour Organisation defines “child labour” as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.³⁷ The worst forms of child labour are³⁸:

- Slavery- all forms of slavery such as the sale and, debt bondage and forced or compulsory labour including forced or compulsory recruitment of children for use in armed conflict.
- Pornography- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
- Illicit activities- production and trafficking of drugs.
- Harmful work - work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children.

According to ILO and UNICEF report of Global Estimates of 2020 the number of children in child labour has risen to 160 million worldwide — an increase of 8.4 million children in the last four years. The number was 94 million between 2000 and 2016.³⁹ The theme of 2021 is “Act Now: End Child Labour”.

The causes of child labour are⁴⁰ : (1) poverty; (2) low wages of the adult; (3) unemployment; (4) absence of schemes for family allowance; (5) migration to urban areas; (6) large families; (7) children being cheaply available; (8) non-existence of provisions for compulsory education; (9) illiteracy and ignorance of parents; and (10) traditional attitudes.

Protection of child from child labour is an important concern for the Indian legislators also. India can achieve its vision only when the children are given love, care and education. The Constitution Article 24, 39 (e) and (f) and 45 support this manifestation.

³⁴ Section 108, JJAct, 2015

³⁵ 2005 (1) SCALE 763

³⁶ (2013) 3 SCALE 1

³⁷ <https://www.ilo.org/ipec/facts/lang--en/index.htm>

³⁸ Article 3, ILO Convention No. 182

³⁹ Child labour rises to 160 million – first increase in two decades, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_800090/lang--en/index.htm as on June 10, 2021

⁴⁰ J.C. Kulshreshtha, Indian Child Labour

In 2009, Right of Child to Free and Compulsory Education Act was enacted to provide better opportunities to the children. These articles are further included in several legislations.

The definition of 'child' as mentioned in Factories Act, 1948 means a person, who has not completed his fifteenth year of age.⁴¹ Further, sec. 67 provides that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. This provision implies that neither the employer is allowed to take employment of child, nor a child is required to work in a factory. Other legislations mentioning age of child are-

Section 40, Mines Act, 1952- After the commencement of the Mines (Amendment) Act, 1983, no person below 18 years of age shall be allowed to work in any mine or part thereof.

Section 21, Motor Transport Workers Act, 1961- No child shall be required or allowed to work in any capacity in any motor transport undertaking.

Section 24 of Plantation Labour Act, 1951- No child who has not completed his twelfth year shall be required or allowed to work in any plantation.

Section 109 of Merchant Shipping Act, 1951:- No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except-

- (a) in a school ship, or training ship, in accordance with the prescribed conditions; or
- (b) in a ship in which all persons employed are members of one family; or
- (c) in a home-trade ship of less than two hundred tons gross; or
- (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.

But, there was no procedure for deciding in which employments, occupations or processes the employment of children should or should not be banned. Also, there was no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions.⁴² In 1986, Child Labour (Prohibition and Regulation) Act was enacted which is amended in 2016.

Child Labour (Prohibition and Regulation) Amendment Act, 2016 is enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.

Section 3 prohibits the employment of children in any occupations and process. It provides that no child shall be employed or permitted to work in any occupation or process. But, this will not apply where the child- (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations; (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed. Provided that no such work under this clause shall effect the school education of the child.

⁴¹ Section 2(c), Factories Act, 1948

⁴² <https://clc.gov.in/clc/acts-rules/child-labour-prohibition-and-regulation-act-1986#3.%20Prohibition%20of%20employment%20of%20children%20in%20certain%20occupations%20and%20processes>

The violation of Section 3 makes the employer liable for a penalty as mentioned under Section 14, Child Labour (Amendment) Act, 2016 as –

(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both

(2) Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

(2A) Notwithstanding anything contained in sub-section (2), the parents or guardian having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

The duty lies on the employer to ascertain the age of the child whom he has allowed to work in his factory. The employer cannot depend on the statement of the applicant only so as to forego his liability.

Now, a child may help his family without affecting school education⁴³ and may be allowed to work as an artist⁴⁴.

Procedure

The complaint of commission of an offence can be filed by any person, police officer or Inspector under this Act in any court of competent jurisdiction. The Court of competent jurisdiction will be no court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class. Also, every certificate as to the age of a child which has been granted by a prescribed medical authority shall be regarded as conclusive evidence as to the age of the child to whom it relates.⁴⁵

Judicial pronouncements

In 1985, in the case of *M.C.Mehta v. State of Tamil Nadu*⁴⁶ the facts were that there were 221 registered match factories employing 27,338 workmen of whom 2941 were children in Sivakasi, a place in Kamraj district of Tamil

⁴³ Sec. 2B, Child Labour (Prohibition and Regulation) Amendment Rules, 2017

Child to help his family without affecting education.- (1) Subject to the provisions of section 3, a child may, without affecting his school education, in any manner, –

(a) help his family in his family enterprise, subject to the condition that such help, -- (i) shall not be in any hazardous occupation or process listed in Part A and Part B of the Schedule to the Act; (ii) shall not include work or occupation or process at any stage of the manufacturing, production, supply or retail chain that is remunerative for the child or his family or the family enterprise; (iii) shall only be allowed to help in his family, or in a family enterprise, where his family is the occupier; (iv) shall not perform any tasks during school hours and between 7 p.m. and 8 a.m.; (v) shall not be engaged in such tasks of helping which hinders or interferes with the right to education of the child, or his attendance in the school, or which may adversely affect his education including activities which are inseparably associated to complete education such as homework or any extracurricular activity assigned to him by the school; (vi) shall not be engaged in any task continuously without rest which may make him tired and shall be allowed to take rest to refresh his health and mind, and a child shall not help for more than three hours excluding the period of rest in a day; (vii) shall not include in anyway substitution of the child for an adult or adolescent while helping his family or family enterprise; and (viii) shall not be in contravention to any other law for the time being in force;

(b) aid or assist his family in such manner which is not incidental to any occupation, work, profession, manufacture or business, or for any payment or benefit to the child or any other person exercising control over the child, and which is not detrimental to the growth, education and overall development of the child

⁴⁴ Section 2C, Child Labour (Prohibition and Regulation) Amendment Rules, 2017.

⁴⁵ Section 16, Child Labour Act, 1986

⁴⁶ AIR 1991 SC 417

Nadu in December 1985. Shri M.C.Mehta, public spirited lawyer, invoked this court's power under Article 32 as fundamental right of the children guaranteed by Article 24 was being grossly violated. The Court noted that the manufacturing process of matches and fireworks is hazardous giving rise to accidents including fatal cases. Article 39 (f) and 45 of the Constitution are violated. The Court gave certain directions as to how the quality of life of children employed in the factories could be improved. Compulsory insurance scheme should be provided for both adult and children employees. The State Government shall ensure that every employee of match factories is insured for sum of Rs. 50,000/-.

In 1996, in *M.C.Mehta v. State of Tamil Nadu*⁴⁷ the Court suo motto took the cognizance when news about an "unfortunate accident", in one of the Sivakasi cracker factories was published. Now, Sivakasi has ceased to be the only centre employing child labour. The malady is no longer confined to that place. In October 1996, a news in Indian Express described Bhavnagar as another Sivaskasi in making, as out of 4 lakh population it has 13,000 children employed in 300 different industries. A committee was constituted which made the recommendations⁴⁸. The Court held that each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000 /- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund.

In 2011, in *Bachpan Bachao Andolan v. Union of India* a petition is filed in public interest under Article 32, Constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses. The petitioner has complained about living and working conditions of the children and has enumerated the following broad categories which are - insufficient space, meals, sleep timings, poor sanitation, no health care personnel, high risk factor, remuneration, bound by contract and daily routine hindering their all-round development. The Court directed to implement the fundamental right of children under Art. 21A and the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today. The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and keep in Care and Protective Homes till they attain the age of 18 years. In case the parents are willing to take their children back to their homes, they may be directed to do so after proper verification. Also, to frame proper scheme of rehabilitation of rescued children from circuses.

⁴⁷ (1996) 6 SCC 756

⁴⁸ (a) State of Tamilnadu should be directed to ensure that children are not employed in fire works factories.

(b) The children employed in the match factories for packing purposes must work in a separate premises for packing.

(c) Employers should not be permitted to take work from the children for more than six hours a day.

(d) Proper transport facilities should be provided by the employers and State Govt. for travelling of the children from their homes to their work places and back.

(e) Facilities for recreation, socialisation and education should be provided either in the factory or close to the factory.

(f) Employers should make arrangements for providing basic diets for the children and in case they fail to do so, the Government may be directed to provide for basic diet - one meal a day programme of the State of Tamilnadu for school children may be extended to the child worker.

(g) Piece-rate wages should be abolished and payment should be made on monthly basis. Wages should be commensurate to the work done by the children.

(h) All the workers working in the industry, whether in registered factories or in unregistered factories, whether in cottage industry or on contract basis, should be brought under the Insurance Scheme.

(i) Welfare Fund - For Sivakasi area, instead of present committee, a committee should be headed by a retired High Court Judge or a person of equal status with two social workers, who should be answerable either to this Hon'ble Court or to the High Court as may be directed by this Hon'ble Court. Employers should be directed to deposit Rs.2/- per month per worker towards welfare fund and the State should be directed to give the matching contribution. The employers of all the industries, whether it is registered or unregistered, whether it is cottage industry or on contract basis, have to deposit Rs.2/- per month per worker.

(j) A National Commission for children's welfare should be set up to prepare a scheme for child labour abolition in a phased manner. Such a Commission should be answerable to this Hon'ble Court directly and should report to this Hon'ble Court at periodical intervals about the progress.

In 2015, *Bachpan Bachao Andolan v. Union of India*⁴⁹ there is no - compliance of directions given in 2011. The Court issued directions to Central and State governments – i) Constant monitoring of circuses to ensure that child labour is not used in these circuses. ii) When law enforcement machinery is made aware of any instance of use of employment of child labour or any other violation of law by the circuses, prompt action should be taken to stop the violation of law and take necessary follow-up action. iii) The Central Government and the State Governments should monitor the activities of the circuses. iv) Liberty is granted to the petitioner or any other person to approach the appropriate court of law or authority in the event any specific instance of child labour or child abuse is found in any circus.

Child labour still continues despite claims of it having been abolished. Accidents are merely a symptom of a larger malaise and trying to avoid accidents is not a viable solution. The focus of policymakers must be on fixing these gaps by introducing new technologies and insisting on workers' safety.⁵⁰

National Child Labour Project (NCLP) for rehabilitation of child labourers: Under the Scheme, project societies at the district level are fully funded for opening up of Special Schools/Rehabilitation centres provide non-formal education, vocational training, supplementary nutrition, stipends, etc. to children withdrawn from employment.

4.5. Commissions for Protection of Child Rights (CPCR) Act, 2005

The objective of this Act is to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights. The Act provides functions and powers of Commission.⁵¹

Children's Courts with the purpose of providing speedy trial of offences against children or of violation of child rights⁵², the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences: Provided that nothing in this section shall apply if— (a) a Court of Session is already specified as a special court; or (b) a special court is already constituted, for such offences under any other law for the time being in force.

Section 26 mentions Special Public Prosecutor for every Children's Court. The State Government shall by notification specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years as a Special Public Prosecutor for the purpose of conducting cases in that Court.

"Let the child of twenty-first century find himself into that heaven of freedom" - Rabindranath Tagore's Gitanjali.

6. COVID TIMES

The present pandemic times of COVID-19 has made it more necessary to take steps to have short, medium and long term solutions⁵³ for children who are in need care and protection. Meal supplementation through anganwadis and schools and growth monitoring of young children are some of the steps taken. It is needed to protect children from sexual offences in these testing times.

⁴⁹ (2015) 17 SCC 186.

⁵⁰ The larger tragedy of Sivakasi, Indian Express updated on 1st March, 2021 04:21 AM retrieved on 7th July, 2021 <https://www.newindianexpress.com/opinions/editorials/2021/mar/01/the-larger-tragedy-of-sivakasi-2270363.html>

⁵¹ Sections 13 – 16, Commissions for Protection of Child Rights (CPCR) Act, 2005.

⁵² Section 25, CPCR Act, 2005

⁵³ <https://indianexpress.com/article/opinion/columns/modi-government-support-children-coronavirus-pandemic-7338599/> retrieved on June 1, 2021

7. CONCLUSION AND SUGGESTIONS

The enactment of the legislations for protection of child in lines of international conventions is a welcome step. The need is to improve the implementation and avoid delay in the process.

- A time limit for filing POCSO cases should be incorporated.
- Awareness among children about their rights.
- In Child Labour (Prohibition and Regulation) Act, 2016 the word “Regulation” should be removed from its title so that child labour abolition becomes non-negotiable. Also, employment of child labour must be deemed as a cognizable offence. Enforcement machinery should be strengthened.
- Investment should be made in child protection schemes.
- Steps should be taken to provide education at grass root level.
- Adequate social protection of child is needed.

