



A CRITICAL ANALYSIS ON THE VIOLENCE AND CRIMES AGAINST CHILDREN IN INDIA

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Abstract

A child is considered a large regal "treasure of a nation-state", since in any country, it depends on how the children are developing and improving in society, as the growth and development of children are very important because they are the future generations. Under the current set of circumstances, the protection of children from being harmed or mistreated in any way has emerged as the primary objective of the general population. There have been a variety of crimes against children, such as child abuse, including "sexual assault, child marriage, malnutrition, disgusting assault, child beating, child prostitution, child pornography, as well as child labor", all of which in our society's own negligence to secure the future generation. The government views ensuring the protection of children as one of its primary responsibilities, just as it does with the rest of the population. This is done while keeping in mind the difficulties and complexities that children must navigate. In this research paper, the many different sorts of atrocities that children in India are forced to endure, as well as the local laws and recommendations for child rights. Thus, the researcher will investigate the problems that children face and the solution to those problems.

Key Words: Child rights, Violence, Fundamental Rights, Atrocities

1. INTRODUCTION

In this present scenario, one of the most contentious topics to debate is the issue of children's rights, which has risen to the top of the list in recent years. When it comes to the recognition of human rights and the establishment of social worth, the fact of the matter is that children continue to be a part of the disturbed minority pack even in the modern era. The primary reason for this gap is that children are not yet considered a fully developed because of the political factor. They are unprotected not just physically but also psychologically and fiscally as well. In this rapidly evolving era of globalization, the legitimate management of child rights at each level has become an additional task. This has repercussions not only for the entire monetary value system, but also for their existing social and financial needs. However, by the end of the day, a fragmentary as well as parochial procedure has now been followed towards encouraging them on the criterion of the political and social plan. This is despite the fact that it is highly likely that the child will play a significant role in determining the unavoidable destiny of mortality.

This miscalculation takes a much more dramatic turn for the worse whether a youngster is destitute, child laborer, a home helper, a child on the road, a genuine child, or a child who is psychologically or physically handicapped. In these circumstances, they continue to exist in a state and have become extremely vulnerable against the criminal activity that is carried out against them. The violation of

the rights of children is considered to be morally reprehensible. The example such as “sincerity, ill-advised consideration, wrong introduction, lack of good direction, and non-presence of the good normalized saving framework are some of the reasons behind children who progress to weakness and abuse”. It starts with genuine bad behaviors and extends to ignorance by society as well as unsatisfactory child-raising in the society.

1.2 Legal Definition of a Child

According to the first paragraph of “Article 1 of the Convention on the Rights of the Child, which was ratified in 1989”,¹ the term “child refers to everyone who has not yet reached the age of eighteen, regardless of whether or not they have reached the age of majority under the laws that apply to them”. Consequently, under international law, those who are younger than the age of eighteen are considered to be in the legal status of a child.

According to the various Indian laws that are in place, the following are the various definitions of 'child' and 'minor':

According to The Child Labor (Protection and Regulation) Act, 1986,² “child refers to an individual who has not yet reached the age of fourteen years. This definition may be found in section 2(ii). This Act seeks to outlaw the practice of employing children in labor-intensive jobs. As a direct consequence of this, the Act includes protections for children who are less than fourteen years old”.

According to the Prohibitions of Child Marriage Act, 2006,³ the term “child refers to an individual who, in the case of a male, has not yet reached the age of twenty-one and, in the case of a female, has not yet reached the age of eighteen”. The major goal of this Act is to prevent people from getting married while they are still children, and Section 3 of the Act allows a person who was a minor at the time of the marriage to have the option of having the marriage declared invalid.

According to the Juvenile Justice Act,⁴ the term "child" refers to "an individual who hasn't even achieved the age of eighteen." The Juvenile Justice Act includes provisions that look out for the welfare of juveniles and help them fulfill their potential goals. In accordance with this act, a person is considered to be a child if they have not yet reached the age of eighteen, and as a result, they are included in its scope of application.

According to Section 2(d) of the POSCO Act,⁵ “child refers to "any individual who has not yet reached the age of eighteen years”. The primary purpose of this Act is to protect children from sexual assaults and other forms of harassment.

As a result, in order to explain the reasoning for the development of these laws, the term "child" has been defined in a specific manner so as to differentiate it from other uses of the term. The numerous interpretations of 'child' in Indian law, on the other hand, lead to confusion and disarray, which is why it is of the utmost importance to settle on a single interpretation that is consistent across the country's many legal systems.

The children have been universally recognized in terms of a “golden era” that is equivalent with prerogative, satisfaction, joyfulness, and other emotions of a similar nature. This recognition has taken place all across the world. However, it is also true that children when they are in the juvenile jail or is in the adolescent stage of their development sometimes the children become helpless this is due to the fact that the children are unable to defend themselves, it is imperative that they are protected from "the harshness of the outside world and around them." Moreover, the relationship between an adult and a child, and guardians in particular, is considered to be responsible for "supervision and conservation," which, in turn, serves the "ultimate advantages of the child" and satisfies the child's day-to-day "needs of existence and advancement."

1.3 Constitutional Rights Available to Children

As a consequence of the children have been faced many violence. The following are the several fundamental rights that are protected under the Constitution of India. They are-

¹ Convention on the Rights of the Child, 1989, art.1.

² The Child labor (Prohibition and Regulation) Act, 1986 (Act 61 of 1986)

³ The Prevention of Child Marriage Act, 2006 (Act 6 of 2007).

⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016).

⁵ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012).

1. **Article 14⁶**: This Article says that “everyone is to be kept on an equal footing before the law, and possesses the same set of rights which each and every citizen of the country has”,
2. **Article 15⁷**: In Article 15, it is stated that a person is not allowed to be discriminated against on the basis of his or her "gender, race, caste, or place of birth."
3. **Article 19⁸**: This article says that everyone has right to freedom and ev
4. **Article 21⁹**: This Article says that a person's life and liberty cannot be taken away from them under any circumstances before and unless the required legal procedure has been followed. It is not possible to opt out of this clause. No one should be subjected to treatment that is inconsistent with the fundamental dignity that they are entitled to as a human being, and it is vital to place a high value on human life.
5. **Article 21¹⁰**: The “right to life” also include right to health under Indian Constitution. All the children have the right to avail the medical services whenever they are needed.
6. **Article 21-A¹¹**: This Article says that the education is mandatory. Every child has the right to get education especially to 6 to 14 years.
7. **Article 24¹²**: the children can avail the right under this in order to prohibit child labor. The people in the country should not allow the children to work below the age of fourteen years.
“In the case of *K.S. Puttuswamy v. Union of India*,¹³ the court acknowledged that Article 21 of the Indian Constitution from 1950 ensures an individual's right to privacy”.

1.4 DIRECTIVE PRINCIPLES OF STATE POLICY UNDER INDIAN CONSTITUTION

The DPSP constitute an addition to the Fundamental Rights and provide oversight to the administration, they are not justifiable in and of themselves, and the recognition of their existence requires the consent of authorized authorities. There are a few elements that are specifically geared towards the children and the education rights.

Article 39(a) of the Constitution¹⁴ states that “the State must ensure that the procedure of the legal system facilitates justice, based on an equal opportunity, and must, specifically, give free legal aid, by proper enactment or schemes or in some other way, to guarantee that justice is not denied to any citizen on the basis of the financial or social condition. This provision was included to ensure that justice is not denied to any citizen on the basis of financial as well as social condition”.

“The men, women, or children should not associate themselves with any financial necessity to enter occupations that are unsuitable to their age and strength, as it is stated in Article 39(e)¹⁵, and they also could not be forced to participate in any activities that fall under this category”.

According to “clause (f) of Article 39,”¹⁶ the children are provided with the possibility, as well as a variety of resources, to carry on with their lives in a way that is stable and fruitful. In addition to this, they are protected from being exploited or harassed during their years of adolescence and youth. This protection is being provided for them. This clause in the Indian Constitution says about the possibilities and facilities to be assessed out to them that ensures their freedom as well as pride in a manner that will be evaluated out to them. Other provisions included in the DPSP are “Article 47 and Article 51”, both of which cherish the growing of sustenance levels to fulfil the capacity of individuals and the fundamental to obey the international treaties taken into by India. Both of these articles can be found here.

1.5 Crimes Against Children

Children all over the world are considered to be among the most helpless and innocent victims of crime in the general public. This is true regardless of where in the world the children in question are located. The Indian Penal Code of 1860 classifies the many wrongdoings that can be perpetrated

⁶ The Constitution of India, 1950, art. 14

⁷ The Constitution of India, 1950, art. 15

⁸ The Constitution of India, 1950, s. 19

⁹ The Constitution of India, art. 21.

¹⁰ Id., art. 21.

¹¹ The Constitution of India, 1950, art. 21.

¹² The Constitution of India, 1950, art. 21-A.

¹³ (2017) 10 SCC 1.

¹⁴ The Constitution of India, 1950, art. 39(a).

¹⁵ The Constitution of India, 1950, art. 39(e).

¹⁶ The Constitution of India, 1950, art. 39 (f).

against children under their respective headings for the sake of assigning appropriate punishments. These transgressions, which are covered in this article, can include things like committing a crime, kidnapping someone, engaging in sexual actions, and so on.

- A. As defined in **Section 300 of IPC**,¹⁷ murder is a category of the offence that falls under the category of criminal crime. The demonstration that is exempted under this clause has been determined to be “culpable homicide but does not amount to murder. when the victim is an innocent youngster, any individual who commits an offence of murder is guilty under Section 302 with death or life imprisonment and fine; given that any individual who commits an offence of murder is guilty under Section 302 with death or life imprisonment and fine”.
- B. **Abetment of Suicide:** The Section 305 of the IPC¹⁸ states “that a person who abets suicide, committed by a child below the age of eighteen years will be punished with death/life detainment, or detainment for as long as 10 years and fine.” This provision states that the punishment for a person who “abets suicide, committed by a child below the age of eighteen years” is as follows: This provision is dependent on there being a reasonable open strategy rule in place in order to prevent others from including, affecting, or helping a child at the end of their life.
- C. **Kidnapping and Abduction:** Abducting a person in whatever configuration reduces the opportunities available to that person, which in turn infringes on their right to life as guaranteed by the “Article 21 of the Indian Constitution”.¹⁹

As a result of the case *Emperor v. Ayub Khan Mir Sultan*,²⁰ the Court has ruled that “the consent of a minor to marry the accused cannot be valid in any circumstance, even for the purpose of this section, and that doing so would constitute an offence in such circumstances”.

In another judgment *Thakorlal D Vadgama v. The State of Gujarat*,²¹ the court held that “if the accused had established a foundation by inducement/allurement/threat and on the off chance that this addition impacts the minor to leave her guardians custody, then it’s be prima facie challenging for him to plead guiltlessness on the ground that the minor voluntarily came to him”.

The Indian Penal Code, section 375(6)²², defines rape as “the commission of sexual intercourse in any of the forms referenced in clauses (a), (b), (c), and (d), with a minor girl younger than 18 years of age will add up to rape, regardless of her consent.” This provision states that “the commission of sexual intercourse in any of the forms referenced in clauses (a), (b), (c), and (d), with a minor girl younger than 18 years”. Also, the minor girl consent will be considered as irrelevant and insignificant on the assumption that she is unequipped for intuition objectively and offering any of the assent. The reason for this is given in the previous sentence. The legislative body probably works under the assumption that a child of that age can be effectively duped into participating in sexual activity without being aware of the implications of their actions. In addition, this subsection of the law, referred to as “Exception 2, protects married women who are younger than 15 years old from being subjected to any form of sexual conduct”.

*M.C. Mehta v. State of Tamil Nadu and others*²³, the Supreme Court observed that “Article 24 of the Indian Constitution provides free, mandatory education for children. The Court rules that children under 14 can't do harmful job and orders the government to create a child labor recovery fund. Employers that violated child labor rules would be obliged to pay a deposit; the government would be required to offer the parent of every kid in a dangerous job, or likely make a deposit”.

In *J.P Unnikrishnan vs. Andhra Pradesh*,²⁴ “the Article 21 of India's Constitution grants citizens the right to education, according to the Supreme Court. This right is limited. Every child in our country gets free schooling till age 14. His entitlement to education is a question of budgetary restrictions and state reform”.

In *Neeraja Chaudhary v. MP*,²⁵ “Justice P.N. Bhagwati: If a worker is forced to work for no pay or a little rate, he is assumed to be a bonded laborer unless the owner or state government proves otherwise. The court emphasized freeing bonded laborers”.

¹⁷ The Indian Penal Code, 1860 (Act 45 of 1860), s. 300.

¹⁸ The Indian Penal Code, 1860(Act 45 of 1860), s. 305.

¹⁹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 359.

²⁰ (1944) 46 BOMLR 203.

²¹ AIR 1973 SC.

²² The Indian Penal Code, 1860 (Act 45 of 1860), s. 376.

²³ AIR 1997 SC 699.

²⁴ AIR 1993 SC 217.

²⁵ 198 (2) Crimes 511 SC.

India suffers the same difficulties as other developing nations: infant mortality, child marriage, child widows, sex tourism, and child trafficking for prostitution, child abuse, and child labor. These issues must be resolved promptly. Above all, the general legal premise that approaches, arrangements, and acts be in the child's best interest should be observed. The child is a bird; let it flourish with rights, freedom, and care and attention from parents, the state, and society. Child rights will be a long-fought issue.

1.6 INSTITUTIONAL REGULATORY FRAMEWORK FOR THE WELFARE OF CHILD

1.6.1 National Commission for Protection of Child Rights Commission

It was founded as a legal entity under the “Ministry of Women and Child Development in 2007 and the NCPCR Act 2005 to ensure, support, and protect child rights in the nation”. The Commission main primary goal is to find out and survey all the necessary precautions for child rights and suggest the measures in order to have execution, assess the child proficiency, investigate the matters where there is violation of child rights, examine the juvenile homes and suggest the actions for it and also find out those children who don't have famil and try to identify their problems and resolve it.

1.6.2 Integrated Child Development Scheme (ICDS)

It's a government-supported programme for child development. The program primary goal is to establish a regulatory framework for the betterment of the child in “emotional, physical, and social development”, improve the health and nutrition of children under six, reduce newborn child mortality, illness, and school dropouts, and enact strong policies to advance child development and improve the mother's ability to care for her child health, nutrition, education, and other needs.

1.6.3 Right of Children to Free and Compulsory Education

This Act guarantees children “free, compulsory education”. It came into effect in 2010 and grants children free and required education in a local institute to be built within the time period of 3 years. The strategy aimed to have all children in school by 2010 and to close all gender as well as societal gaps by 2007 and 2010 at the basic schooling level.

1.6.4 Street children programme

It aims to prevent exploitation and abuse of children without homes and families. The programme restores children and fosters urban drawing.

1.7 Conclusion

Children are a valuable resource. The country's future success depends on its youngsters. Milton said “Child Shows Man as Sunrise Shows Day”. The public must care for every child to ensure full personality development. Children are the Society's future leaders. They convey our intuition, social inheritance, beliefs, and reasoning. Children are future educators, researchers, judges, kings, doctors, etc., on whom humanity depends. Millions of children are deprived of their childhood and education, exposing them to mistreatment and abuse.

Today in the present world many youngsters can now live a dignified existence thanks to societal initiatives. Save the Children has made children's rights a 'movement' through connecting with government, national, and international groups. While government may only establish tactics, child maltreatment and malnourishment should also be tackled on an individual level. Give attention and support this cause wherever possible. Thus, if there is an urgent need to implement the laws so that violation against children will be reduce in order to establish a good future for the children.

1.8 Recommendations

The Children are a valuable resource. The children are future educators, researchers, judges, kings, doctors, etc., on whom humanity depends today in the present scenario, the children are deprived of their childhood and education, exposing them to mistreatment and abuse. They have their right to live a dignified existence in the society. Save the Children has made children's rights a 'movement' through connecting with “Government, national, and international groups”. The few of the suggestions are-

1. It is necessary to make investments and improve facilities across the board in order to create protective conditions for young women, young men, and adolescents. Policies should be

implemented to combat violence and progress facility development. A facility like this would provide a variety of services, such as a secure method for reporting violence in person and over the internet; sensitive remedy of child victims by the law implementation as well as justice systems; and physiological and psychosocial assistance as from wellbeing and welfare system. Among these services are: A great number of countries need to strengthen their social service systems and educate their social workers so that they can provide assistance to children who have been victims of violence. In the event that there is an emergency, there needs to be an increase in the level of fortification of both the structures and the facilities that house children.

2. Developing your awareness is the first step toward establishing individual wellbeing as well as self-defense. Before attempting to implement any techniques, methods, or systems for one's own personal protection or self-defense, one must first have awareness. There is no foolproof method or piece of security technology that can guarantee an individual's safety and wellness. Because we live in a world that is always evolving, it is impossible to fully characterize or guarantee that safe conditions will prevail. It is impossible to give someone else responsibility for your personal safety; this is your responsibility. To be truly effective, individual security has to be fluid or dynamic, meaning that one's awareness of potential threats must be continuously assessed.
3. Activities must be driven by intelligent and the all facilitated national plans in order to combat violence against children. Supporting coordinated national plans and measures taken to address violence against children. The most promising techniques involve comprehensive, multi-faceted activities that involve both the government and common people. These activities are also dependent on a proof of the what steps are being made to anticipate and respond to violence.
4. Enhance existing legal and regulatory frameworks: Changes to existing laws and policies can assist in the protection of children from harm, the provision of justice to victims, and the modification of perspectives towards the appropriate treatment of children. The laws and tactics that protect children from violence, exploitation, or abuse need to be strengthened in a number of different countries, and these efforts need to be backed up by rigorous monitoring and enforcement.
5. Change the norms and behaviors that contribute to the spread of violence: Strategies at the national level should address cultural beliefs that contribute to the spread of violence against children in all contexts. Child-rearing programmes have the potential to change social norms regarding the resilience of cruelty, contribute to the formation of healthy parent-child relationships, and reduce the use of abusive parenting techniques. Children can learn how to deal with conflicts in a peaceful manner, how to regulate their feelings, how to interact socially, and how to safely manage harmful situations through the participation in projects that take place in schools.
6. Children and adolescents have the ability to be influential not just in their lives but also among their friends, families, and communities. This means that it is important to educate and empower them to make use of their rights, manage risks, and seek help. Presentation efforts that are rooted in communities and schools can empower boys and girls to comprehend as well as confidentially report any and all forms of violence, as well as look for assistance when they are in need of it. There is a need to teach the programs that teenager life skills and ways to make a living can facilitate their preparation for the economic responsibilities of adulthood, allowing them to defer childbearing and marriage till they are ready to become parents. The shifting gender norms can assist the children to create relationships that are more balanced with the people in the society.