



CONSTITUTIONAL AND JUDICIAL RESPONSE IN PROTECTION OF CHILDREN FROM SEXUAL ABUSE

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Introduction

Every person's childhood is a crucial period of life since the experiences that occur there could influence them for the rest of their lives. Every child should have a happy childhood, be safeguarded to live a healthy and satisfying life, and have a relationship that is steadfast and nurturing in order to provide behavioural and educational advantages for their physical and mental well-being that last a lifetime.³

Although the Indian Constitution does not define the term 'child,' its framers understood that children needed special care and treatment due to their mental and physical immaturity, which is reflected in several of its articles. For example, art. 15(3) (hereinafter referred as art.) gives the authority to make specific rules for children, and art. 24 forbids the employing of children under the age of fourteen in hazardous jobs or factories. This undoubtedly demonstrates the care for the safety and well-being of Indian youngsters.

Art. 39(e) of the Constitution states that "*the State shall direct that health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.*" This is because children are the nation's future and assets. Additionally, art. 39(f) addresses the protection of childhood and youth from various forms of exploitation as well as material and moral abandonment, as well as the provision of opportunity and facilities for children to grow in a healthy way and under conditions of dignity and liberty.

According to art. 45, the state must work to ensure that all children get free, obligatory education until they turn fourteen within ten years of the Constitution's adoption.

The welfare of children is seen as vital in all civilised societies, and the state cannot ignore the child, who is the most precious resource in the country. The state must take all essential measures to ensure children's healthy growth and development. As a result, the Indian Constitution and other laws that comply with international standards and laws include certain particulars for the protection, welfare, and general development of children in order to enable them to exercise their fundamental human rights and to shield them from exploitation and abuse.

Protection of Children as per Indian Constitution

It is anticipated that a nation's constitution will reflect its citizen's goals and address their issues. Together, the fundamental rights and the directional principles of state policy form the Constitution's conscience and stand for the fundamental rights of all people in our nation. They are equally pertinent to advancing the goals and purposes of the constitution, as stated in the

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³ National Scientific Council on the Developing Child, Young children develop in an environment of relationships. Cambridge, MA: National Scientific Council on the Developing Child; 2004. Working Paper No. 1, available at: http://developingchild.harvard.edu/library/reports_and_working_papers/wp1/ (visited on 10 January 2025).

preamble. Since it is supreme law of the country, it also includes certain special provisions for the protection and well-being of children.

Discrimination on the basis of race, sex, caste, religion, or place of birth is prohibited by art. 15 of the Indian Constitution. Preserving fundamental and inherent human rights entails refraining from discrimination based on the aforementioned criteria.

The POCSO Act of 2012 prohibits discrimination against children. One unique clause included in the art. 15 of the Constitution art. 15(3). “*Nothing in this article shall prevent the State from making any special provision for women and children,*”⁴ Therefore, the aforementioned clause gives the state, authority to provide specific arrangements regarding women and children. The JJ act⁵ and the POCSO Act of 2012 are two acts that specifically address the needs of children. In addition, everyone has human rights under the Protection of Human Rights Act of 1993. Children are included. As a result, the aforementioned act has a unique provision pertaining to human rights.

The Indian Constitution’s art. 19 addresses the defence of certain freedom of speech rights. The freedoms of expression, peaceful association formation, mobility, residency, and settlement in any area of India are all included, as is the freedom to engage in any trade, profession, or occupation that is allowed by law. These liberties are assurances given to Indian citizens. There are fair limitations on this freedom. It implies that these liberties are not unqualified. Reasonable limitations apply to them. The maintenance of democracy depends on these liberties. India’s population are able to take part in the political process thanks to these liberties. The right to silence is part of the freedom of speech. It encompasses the right to information. The youngsters have this independence thanks to the POCSO Act of 2012. Children participating in economic activities, for instance, the role of the press in raising awareness, protecting children’s identities, and giving the kids, their parents, and society the knowledge they need are all appropriately woven into the aforementioned legislation.

The Indian Constitution’s art. 20 offers protection for those found guilty of crimes. It provides protection from ‘*double jeopardy*’, freedom from ‘*ex post facto*’ laws, and freedom from self-incrimination. All of the liberties listed in art. 20 are granted to minors by the POCSO Act. However, the overriding impact listed in the POCSO Act of 2012 does not comply with the HR.⁶

The Indian Constitution’s art. 21 guarantees both individual liberty and life protection. The State may take away an individual’s life and personal freedom by following the legal process. The ‘*law*’ refers to the legislation that the State has passed. In this article, the “*procedure established by law*” is given top priority. Regarding the legal element, the legislature acknowledges the human rights of children. Section 2(d)⁷ is applied in accordance with the legal process wherever such a breach occurs.

Right to education has also been inculcated as fundamental right under art. 21A, Because it develops their critical thinking abilities, encourages their imagination and creativity, introduces children to new ideas, and prepares them for the adult vocation they wish to pursue, education is essential for children. was added to the Indian Constitution to guarantee all children between the ages of six and fourteen compulsory and free schooling as a basic right. Because it guarantees education to all children regardless of their gender, caste, religion, or socioeconomic

⁴ Constitution of India, art.15(3).

⁵ Juvenile Justice Act, 2015.

⁶ Protection of Human Rights Act, 1993.

⁷ *Ibid.*

situation, it is the most significant article. The provision ensures that all children should get primary education and that no child ought to be denied access to it.⁸

Education, a dynamic process that begins at birth, is the cornerstone of socioeconomic progress and a reflection of any country's society. Children are transformed from ignorance to awareness by schooling. A well-educated child has the capacity to grow as a person and advance the country and society. It is also the fundamental component of an effective democratic system and administration that has the power to transform the world.⁹

The landmark "**Right to Education Act of 2009**" established institutional training to ensure that all children aged 6 to 14 have access to education as an essential right. Every kid in an official educational institution that meets certain fundamental norms and requirements will receive full-time elementary education under the Act.¹⁰

Therefore, it may be argued that the most important investment in a child's development is education. Additionally, the government has taken a number of actions to uphold and advance the right to education.¹¹

Art. 23 of offers protection by outlawing forced work and human trafficking. The aforementioned provision forbids the trafficking of people, beggars, and other forms of compelled labour. Aside from child trafficking, the POCSO Act of 2012 stipulates several forms of criminal penalties for anyone found guilty of sexual acts against minors.

It would cover the right to a dignified life. It would also cover a person's right to be free from "*bonded labour*," and other unjust employment practices. Therefore, it is the responsibility of the state to ensure that no one's fundamental rights adult or child are violated.

Directive principles of State Policy

The Directive Principles of State Policy (hereinafter referred as DPSP) are contained in Part IV of the Indian Constitution. The father of the Indian Constitution, Dr. B.R. Ambedkar, recognised that India would confront numerous difficulties following independence due to the nation's history of extreme poverty, entrenched socioeconomic disparities, the caste system, and famine. The founders of the Constitution believed that in order to address these issues, specific rules, policy directives, or instructions for government were needed. Therefore, it was expected that the legislative, executive branch, & administration of Independent India would use their authority in keeping with the directives or principles outlined in this section of the Constitution.¹²

⁸ Rachita garg, Legal framework for the protection of child rights, available at:

<https://blog.ipleaders.in/legal-framework-protection-child-rights/> (visited on 5 February,2021). 70 Madan, Amman, "Education as Vision for Social Change", Economic and Political Weekly May 31, 2003 pp.2135-2136

⁹ Madan, Amman, "Education as Vision for Social Change", Economic and Political Weekly May 31, 2003 pp.2135-2136.

¹⁰ Dr. Sanjay Sindhu, "Fundamental Right to Education in India: An Overview", Vol.3(5), G.J.I.S.S pp.2319-8834 (2014).

¹¹ Gursharan Singh Kainth, Right to Education 29 (Bharti publications, Delhi ,2014).

¹² Directive Principles of State Policy, available at:

<https://nios.ac.in/media/documents/SrSec33>

8New/338_Introduction_To_Law_Eng/338_Introduction_To_Law_Eng_L20.pdf (visited on 1 Jnauary, 2025).

The Indian courts do not enforce the DPSP. They are constructive in nature and give the government guidance on how to attain socioeconomic progress. These ideas give the state more authority. Because they represent the people's will, DPSP also serve as a mirror of public opinion. DPSP serves as a benchmark for evaluate the performance of the government. These are essential to the nation's government since they embodied the dreams and ambitions of the Indian populace. These guidelines must be adhered to by the state for the nation to advance.

Since every child's youth should be shielded from exploitation and both material and moral abandonment, the Directive Principles under art. 39(f) made it clear that young children should not be harmed.¹³ Additionally, the clause safeguards children and offers them the chance to develop in a safe environment.¹⁴

According to art. 47 of the Indian Constitution, "*public health, standard of living, and nutrition.*" According to the article, the state will also investigate ways to improve the standard of live and nutrition of its citizens while monitoring advancements in public health.

It further states that, with the exception of medicinal uses, the state will work to outlaw the use of narcotics and alcohol that are harmful to one's health. Numerous social development initiatives, such the National Health Mission and the Midday Meal Scheme, focus on women and children who are marginalised in society.

Role of Judiciary

The saying "*today's children are tomorrow's leaders*" is widely accepted throughout society. They will shape their nation's destiny by their acts and expertise. For this reason, every attempt is made to guarantee that they receive the right education and nourishment. On the other hand, the law of the land contributes equally to the protection and preservation of children's rights, enabling the development of a protective ecosystem around them to produce the qualities of the ideal person.

In the case of *Rahul @ Raosaheb v. State of Maharashtra*¹⁵ the Supreme Court of India has ruled that the age of the perpetrator should be considered when determining the appropriate sentence in a case involving the murder and rape of a minor girl. The death penalty should only be applied in cases where there is proof that the offender will pose a future threat to society.

In another case of *Tattu Lodhi @ Pancham Lodhi v. State of Madhya Pradesh*¹⁶ the Hon'ble Supreme Court has ruled that the appellant may be sentenced to life in prison with the additional directive that he not be released until he has served the full 25 years of his sentence, even in cases where a deceased, defenceless child was victimised by acts of lust at the hands of the appellant. Further in *Bantu v. State of UP*¹⁷ the court determined that the death penalty was justified due to the heinous and heinous act of murdering and raping a 5-year-old child, which required inserting a 33-cm-long wooden object into her vagina to hide the crime as a freak incident. The case in question, according to the Supreme Court, is among the rarest of rare case. Due to the accused's heinous actions, only a death sentence is appropriate.

¹³ Article 39, Clause (f) was inserted by the Constitution (42nd Amendment) Act, 1976.

¹⁴ Rachita Garg, Legal framework for the protection of child rights, available at: <https://blog.ipleaders.in/legal-framework-protection-child-rights/> (visited on 23 December, 2024).

¹⁵ (2005) Supreme Court cases (CRi) 1516.

¹⁶ 2016 (2) SCCrR. 1315.

¹⁷ (2008) 11 SCC 113.

In *Sheela Barse and Anr. v. Union of India*¹⁸, the Hon'ble Supreme Court ruled that a kid is a 'national asset' and that the government should support the full development of his individuality. The court went on to state that even within the confines of their safe havens, children in our nation come into contact with predators. The Constitution includes clauses to safeguard children's rights by taking a comprehensive approach to their lives.

In the case of *Ghanashyam Misra v. The State*¹⁹ this historic case, the defendant who also happened to be the girl's teacher raped a 10-year-old girl. After dragging her into her room, her defendant sexually assaulted her. The Supreme Court raised the defendant's punishment to seven years in prison and a Rs. 200 fine since the offender exploited the teacher-student bond. According to the Court, which took a strict stance in the case, everything about it is irritating. The culprit is a 39-year-old guy, and his victim is a 10-year-old girl. He took use of her position to entice her into the classroom, and by doing so, he committed a horrible deed that might very probably be the last time the girl lives. Because it centres on the victim's age, the case is regarded as historic. The victim's consent is irrelevant if the victim is a minor, and the kid cannot be regarded as a co-conspirator.

In another case of *Hiranath Misra v. Rajendra Medical College*²⁰ the case fact that the important witnesses were not granted the chance to be examined did not render the decision void. In one instance, an assortment of male students behaved improperly with the girls after breaking into their room late at night. The committee assigned to look into the matter recorded the girls' statements in camera and utilised them against the plaintiffs (on the issue of the identity of the miscreants) on the grounds that the doing so would reveal the girl's identities as well as liable them to further humiliation, in addition to the fact that the investigation was conducted by a committee of responsible people.

In order to prevent the victim of the crime from being publicly humiliated and from experiencing the same anguish repeatedly, the camera trail procedures were followed.

In *Unni Krishnan v. State of Andhra Pradesh*²¹, in 2002, the Indian Parliament granted its citizens the right to education through a constitutional amendment, & the Right to Education Act became subsequently passed. The Supreme Court of India has attempted to establish the right to education as a component of the right to life.

In the case of *Laxmikant Pandey v. Union of India*²² a letter suggesting that different social organisations & voluntary agencies are giving Indian children to foreign parents in order to engage them in malpractices served as the basis for the case's inception. The Indian Supreme Court established a number of doctrines that regulate the guidelines for international adoption.

In *Sanjay Suri v. Delhi administration* since Sanjay Suri's appeal concerned juvenile undertrials, the court in this instance issued orders to transfer certain guilty officers and established guidelines to safeguard youngsters in detention. In spite of the Children's Act's ban, several of the kids ended up in jail. The juveniles were abused, forced to perform unpleasant jobs, and sexually exploited while housed with habitual and additional adults.

In *Bandhua Mukti Morcha v. Union of India and others*²³ many guiding principles on the identification, discharge, and rehabilitation of child labour were provided. Among other things, the Court ordered the national government of India to meet with the State Governments to develop policies and principles for gradually banning the employment of children under the

¹⁸ 1986 SCALE (2) 230.

¹⁹ AIR 1957 Ori 78, 1957 CriLJ 469

²⁰ AIR 1973 SC 1260.

²¹ AIR 1993 SC 2178.

²² AIR (1986) SC 276.

²³ AIR 1997 SC 2218.

age of 14 in all jobs that are in line with the design. The Court issued these rules addressing the employment of minors in the State's carpet industries of Uttar Pradesh.

Conclusion

Children's rights are the basic rights of children that specifically highlight the extra care and protection given to minors. Numerous government measures have been implemented to conceal the manner in which adults mistreat and exploit children, which has weakened children's integrity and contributed to their poverty, lack of education, or even denial of it. According to this perspective, children are a minority population, and society should re-evaluate how it approaches them.

The creators of the Constitution understood that children represent a country's bright future. Making provisions for the children's protection, their physical and mental well-being, their rights, and their dignity were among their top priorities. Numerous issues pertaining to children's life were outlined in the Constitution. Numerous laws, policies, programmes, etc. have been introduced in an effort to reinforce the provisions of the constitution.

Children need extra care and protection since they are delicate and sensitive. As a result, the constitution acknowledges children's rights and establishes several clauses to safeguard them. It is important to point out that the judicial system has significantly advanced and influenced the laws by streamlining and eliminating the substantive & procedural complexities, as demonstrated by the aforementioned historic rulings in the case of child sexual abuse. The judiciary has done its utmost to eliminate sociocultural taboos or erroneous axioms related to concepts of consent, character, etc., from the Mathura rape legislation case to maintaining a severe stance in the case of child sexual abuse. Without making cases difficult on technical grounds, the supreme court has consistently upheld the legislative intent when interpreting the legislation pertaining to sexual assault. The recent ruling regarding "*skin-to-skin*" contact is one instance where the court interpreted the lawmaker's actual intent.