PROTECTION OF CHILD RIGHTS IN INDIA

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“I strongly feel that this is a big honor to hundreds of millions of the children who have been deprived of their childhood and freedom and education.” – Mr. Kailash Satyarthi.

INTRODUCTION

A child means every human being below the age of eighteen years unless, under the law applicable to the child, the age of majority is attained earlier. A nation’s children are a “supremely important national asset”, and the future well-being of a nation depends upon how its children grow and develop. It is the duty of the state to look after a child to ensuring full development of its personality. To achieve this goal, a state must grant certain rights to the children. In India, rights of citizens including that of children have been directly or indirectly provided for by the Constitution of India.¹

A large number of children around the world are exploited, mishandled and oppressed. These children include child labourers, children sexually misused, children in struggle with the law or being taken care of by the state and as well as children living on the streets, adapting to handicaps or experiencing separation because of their religious or ethnic-minority status. They are deserted. They don’t get an opportunity to venture in a school. They are left to fight for themselves in the city. They suffer violence silently in the society. They don’t approach even essential human services. They suffer cruel and ill treatment every day. They are kids – honest, youthful and wonderful, innocent – who are denied of their rights.

In human rights history the rights of children are the most approved. The United Nations Convention on the Rights of the Child (UNCRC) characterizes Child Rights as the base qualifications and freedoms that ought to be afforded to every citizen below the age of 18 paying little heed to race, national source, colour, sexual orientation, language, religion, sentiments, origin, wealth, birth status, incapacity, or different attributes. These rights encompass chance of children and their social equality, family condition, fundamental medicinal services and welfare, instruction, unwinding and cultural activities and unique security measures. Children were beneficiaries of welfare measures. It was just amid the 20th century the idea of children’s rights emerged. The rights approach is principally concerned about issues of social justice, equity, non-discrimination and empowerment.

Nature has provided some inherent rights to every human being including children. These fundamental rights bestowed in human being from the very inception. Human being is endowed with rights since the stage of foetus. Foetus in the mother womb is the starting point since then human being is guaranteed certain basic rights. These rights are intrinsic in every one. State cannot give or nullify these rights, which are

¹Rebecca Furtado, All you need to know about child rights in India, IPEADERS (Apr. 1, 2018, 3:35 P.M.), https://blog.ipleaders.in/child-rights-in-india/
WHO IS A CHILD??
In India, the Census of India and the Constitution of India defines persons below the age of fourteen as children. The children Act defines child as a person who has not attained the age of 16 years if it is a boy or 18 years if it is a girl.  

According to UNCRC- A child means every human being below the age of 18 yrs, unless under the law applicable to the child, majority is attained earlier.

NEED FOR PROTECTION OF CHILD RIGHTS
Children are innocent, trusting and full of hope. Their childhood should be joyful and loving. Their lives should mature gradually, as they gain new experiences. But for many children, the reality of childhood is altogether different. Right through history, children have been abused and exploited. They suffer from hunger and homelessness; work in harmful conditions, high infant mortality, and deficient health care and limited opportunities for basic education. A child need not live such a life. Childhood can and must be preserved; children have the right to survive, develop, be protected and participate in decisions that impact their lives.

They are the future of our nation and they only are our future lawyers, doctors, engineers, teachers etc. The rights of children are also needed because even many children who are orphans have to spend a lot in their life. Such as sexual abuse, child trafficking, begging etc.

The need to have separate rights for children was felt after the Second World War when many children were orphaned or disabled due to the war and were in need of special protection. Those working with children felt that the existing system was not sufficient to deal comprehensively with the needs of the children. Thus, the UN Convention on the Rights of the Child brought all the rights of the children within one document for the very first time in history. The single most important principle, on which the rights of the children are based, is the ‘best interest principle’, which means any action taken with regard to a child must be in his/her best interest. The Convention on the Rights of the Child defines basic rights of children.

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2 Dinesh Kumar, Protection of Children Human Rights in India, LEGAL ARTICLES (Mar. 31, 2018, 8:32 A.M.)

3 Dinesh Kumar, Protection of Children Human Rights in India, LEGAL ARTICLES (Mar. 31, 2018, 8:32 A.M.)

4 Child Protection and Child rights, CHILD LINE 1098 (Mar. 31, 2018, 10:00 A.M.)
http://childlineindia.org.in/child-in-india.htm

5 Child Right’s Importance, CHILD RIGHTS AND YOU (Apr. 1, 2018, 9:00 A.M.)
http://uk.cry.org/knowus/importanceofchildrights.htm
covering multiple needs and issues, which India endorsed on December 11, 1992. The need to secure a few children is absolutely more prominent than others because of their particular financial and political conditions and geological area. These are the children who are more helpless in term of the damage/threat/hazard on their right side to survival/improvement/interest.

1. Destitute children (asphalt inhabitants, uprooted/expelled, and so forth.)
2. Refugee children
3. Orphaned children
4. Children whose guardians can't or are not ready to deal with them
5. Street vendors as children
6. Children who are beggars
7. Trafficked children
8. Child prostitutes
9. Offspring of detainees
10. Children affected by struggle/common strife
11. Children affected by disaster both characteristic and synthetic
12. Children influenced by substance mishandle, HIV/AIDS and other fatal infections
13. Handicapped children
14. Children having a place with ethnic, religious minorities and other underestimated gatherings
15. The girl child
16. The unborn child
17. Children in conflict with law

The UNCRC traces the principal human rights that ought to be afforded to children in four wide groupings that appropriately cover all civil, political, social, economic and social privileges of every child:

- **Right to Survival:**
  - Right to be born
  - Right to minimum standards of food, cloth and shelter.
  - Right to live with dignity
  - Right to health and care, to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy.

- **Right to Protection:**
  - Right to be protected from all sorts of violence
  - Right to be protected from neglect
  - Right to be protected from physical and sexual abuse
  - Right to be protected from dangerous drugs

- **Right to Participation:**
  - Right to freedom of opinion
  - Right to freedom of expression
  - Right to freedom of association
  - Right to information
  - Right to participate in any decision making that involves him/her directly or indirectly

- **Right to Development:**
  - Right to education
  - Right to learn
  - Right to relax and play
  - Right to emotional, mental and physical development.

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6 Dr. Preeti Bhardwaj & Dr. Rajwanti Sandhu, *Human Rights of Children in India*, Volume 1, UNICEF 34,35(2016)

Summary of UNCRC

- Article 1- Everyone under 18 years of age has all the rights in this Convention.
- Article 2- The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say, and whatever type of family they come from.
- Article 3- All organizations concerned with children should work towards what is best for each child.
- Article 4- Governments should make these rights available to children.
- Article 5- Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.
- Article 6- All children have the right to life. Governments should ensure that children survive and develop healthily.
- Article 7- All children have the right to a legally registered name, and nationality. They have the right to know and, as far as possible, to be cared for, by their parents.
- Article 8- Governments should respect children's right to a name, a nationality, and family ties.
- Article 9- Children should not be separated from their parents unless it is for their own good (for example if a parent is mistreating or neglecting a child.) Children whose parents have separated have the right to stay in contact with both parents, unless this might harm the child.
- Article 10- Families who live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.
- Article 11- Governments should take steps to stop children being taken out of their own country illegally.
- Article 12- Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.
- Article 13- Children have the right to get and to share information, as long as the information is not damaging to them or to others.
- Article 14- Children have the right to think and believe what they want, and to practice their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.
- Article 15- Children have the right to meet together and to join groups and organizations, as long as this does not stop other people from enjoying their rights.
- Article 16- Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.
- Article 17- Children have the right to reliable information from the mass media. Television, radio, and newspapers should provide information that children can understand, and should not promote materials that could harm children.
- Article 18- Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work outside the home.

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Article 19- Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

Article 20- Children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language.

Article 21- When children are adopted the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they were born, or if they are taken to live in another country.

Article 22- Children who come into a country as refugees should have the same rights as children born in that country.

Article 23- Children who have any kind of disability should have special care and support, so that they can lead full and independent lives.

Article 24- Children have the right to good quality health care, to clean water, nutritious food, and a clean environment, so that they will stay healthy. Rich countries should help poorer countries achieve this.

Article 25- Children, who are looked after by their local authority, rather than by their parents, should have someone review the situation regularly.

Article 26- The Government should provide extra money for the children of families in need.

Article 27- Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

Article 28- Children have a right to an education. Discipline in schools should respect children’s human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.

Article 29- Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

Article 30- Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.

Article 31- All children have a right to relax and play, and to join in a wide range of activities.

Article 32- The Government should protect children from work that is dangerous, or that might harm their health or their education.

Article 33- The Government should provide ways of protecting children from dangerous drugs.

Article 34- The Government should protect children from sexual abuse.

Article 35- The Government should make sure that children are not abducted or sold.

Article 36- Children should be protected from any activities that could harm their development.

Article 37- Children who break the law should not be treated cruelly. They should not be put in prison with adults and should be able to keep in contact with their families.

Article 38- Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.

Article 39- Children who have been neglected or abused should receive special help to restore their self-respect.
Article 40- Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

Article 41- If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

Article 42- The Government should make the Convention known to all parents and children

**INDIAN CONSTITUTION AND CHILDREN RIGHTS**

The Constitution of India is the essential law of the country that incorporates the fundamental rights and directive principles for every citizen. The fundamental rights in the Constitution of India impose on the state an essential duty of guaranteeing that every one of the requirements of children is met and that their fundamental human rights are completely secured.

Fundamental rights if abused can be brought under the steady gaze of the courts. Directive Principles set out the rules the Government need to take after. On the off chance that they are violated they can't be taken under the watchful eye of the courts but since of judicial interpretation, many of the directive principles have now turned out to be enforceable through lawful activities brought under the watchful eye of courts.

- **Fundamental Rights in the Constitution that directly relates to children are:**

- Article 14- Shall not deny to any person equality before the law and equal protection of the law.
- Article 15(3)- Nothing in this article shall prevent the state from making any special provisions for women and children.
- Article 17- “Untouchability” is abolished and its practice in any form is forbidden.
- Article 19- (1) All citizens shall have the right – (a) to freedom of speech and expression; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India.
- Article 21- No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21 A- State shall provide free and compulsory education to all children of the age of six to fourteen years.
- Article 23- Traffic in human beings and beggar and other similar forms of forced labour are prohibited.
- 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.

- **Directive Principles of state policy that directly relates to children are:**

- Article 39 (e)- The tender age of children and to ensure that they 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.

9 DR. SAVITHA BHAKHRY, CHILDREN IN INDIA AND THEIR RIGHTS, 19-20 (National Human Rights Commission 2006)

10 DR. SAVITHA BHAKHRY, CHILDREN IN INDIA AND THEIR RIGHTS, 19-20 (National Human Rights Commission 2006)
against exploitation and against moral and material abandonment.

- Article 45- Provision for early childhood care and education to children below the age of six years.
- Article 46- Shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes.
- Article 47- Rising of the level of nutrition and the standard of living of its people and the improvement of public health.
- Article 51- The State shall Endeavour to (c) foster respect for international law and treaty obligations.
- Article 51A- (k) parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

- **Eighty-sixth Amendment Act, 2002-** The amendment added a new Article 21-A after Art. 21 which made the right to education of children of the age of 6 to 14 years a fundamental right. It also sustained Article 45 as follows: “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

**The Right to Education**

Education is a fundamental human right, essential for the empowerment and development of an individual and the society as a whole. According to the UNESCO’s 'Education for All Global Monitoring Report 2010', about 135 countries have constitutional provision for free and non-discriminatory education for all. In 1950, India made a Constitutional commitment to provide free and compulsory education to all children up to the age of 14, by adding this provision in article 45 of the directive principles of state policy. With the 86th Constitutional amendment on 12th December 2002, Article 21 was amended by the Constitution in order to introduce Right to Education as a fundamental right. The **Right of Children to Free and Compulsory Education Act** finally came into force on 1st April 2010. The Act provides for free and compulsory education to all children from the age of six to fourteen years. It is now a legally enforceable duty of the Centre and the states to provide free and compulsory education.

The act has the following major provisions:

- Every child between the ages of six to fourteen years might have the privilege to free and compulsory education in an area school, till completion of his/her basic education.
- For this reason, no child should be obliged to pay any kind of expense or charges or costs which may keep him or her from seeking and completing education.
- Where a child is over six years old or has not been admitted to any school or however conceded, couldn’t finish his or her elementary education, at that point, he or she might be admitted in a class suitable to his or her age.

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11 DR. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 822 (Central Law Agency 2017)


www.supremoamicus.org
For completing the arrangements of this Act, the appropriate government and nearby specialist should set up a school, on the off chance that it isn’t established, inside the given area, within a term of three years, from the commencement of this Act.

The Central and the State Governments should have simultaneous obligation regarding giving assets to completing the provisions of this Act.

This Act is a fundamental step towards enhancing every child's openness to secondary and higher education. The Act likewise contains particular arrangements for disadvantaged groups, for example, child labourers, migrant children, children with special needs, or those who have a disadvantage owing to social, cultural, economic, geographical, linguistic, gender or any such factor. With the execution of this Act, it is likewise expected that issues of school dropouts, out-of-school kids, nature of education and accessibility of trained teachers would be addressed in the short to medium term plans.

The implementation of the Right to Education Act conveys the nation nearness in accomplishing the targets and mission of the Millennium Development Goals (MDGs) and Education for All (EFA) and consequently is a remarkable step taken by the Government of India.

RIGHT TO CONSTITUTIONAL REMEDIES AVAILABLE TO CHILDREN

If the fundamental rights mentioned above are infringed, the appropriate courts may be approached. The constitution has provisions for constitutional remedies in article 32 and article 226.

- **Article 32**: A man has ideal to move to the Supreme Court to ensure his basic rights. It is additionally a basic right.

- **Article 226**: A man my approach High Court by righteousness of this article to get his rights ensured, not really basic rights.

The courts, to protect the rights they are approved to, may issue writs:

- **Habeas Corpus**: Truly meaning "you may have the body", a person, regardless of whether a tyke, who is kept, whether in jail or secretly, is directed to be produced before the court. On the off chance that found that such detainment was illegal, he is discharged.

- **Mandamus**: Signifying 'we command', mandamus issued by Supreme Court or High Court orders the lower courts/councils/open experts to play out an open or statutory obligation which they are obliged to perform yet have neglected to do as such.

- **Prohibition**: It is issued by the Supreme Court or the High Courts, to restrict interior courts under them from transgressing the cut-off points or powers vested in them.

- **Certiorari**: It empowers a superior court than subdue a request as of now go by the inferior court/council/quasi-judicial expert.

- **Quo warranto**: It truly implies by what right. It is issued to limit a man from holding a public office he isn't qualified for hold.
The writs might be stretched out to the lower courts by the parliament. Since children are unable to access the legal system by themselves, a Public Interest Litigation may be filed in the Supreme Court or the High Courts by a public spirited individual or a non-governmental organization against the Central Government or State Government or any of their respective agencies by the virtue of A.32 and A.226 for protection of the rights of the Children.  

**RIGHTS AVAILABLE UNDER INDIAN PENAL CODE (IPC)**

Indian Penal Code, 1860: Under IPC by its various sections it protects children and their rights:

- **S.83**: Nothing is an offense which is done by a child over seven years old and under twelve, who has not achieved adequate development of comprehension to judge of the nature and outcomes of his direct on that event.
- **S.292 and 293**: Selling, conveyance, distributing, open show or flow of indecent material, for example, books, magazines, illustrations, compositions, and so forth is denied under Section 292. Whoever sells, hire, distributes, shows or flows to any individual younger than twenty years any such obscene object as is referred to in Section 292, or offers or endeavours so to do, shall be punished more severely.
- **S.305**: Abetment of the commission of suicide of a person beneath the age of 18 years is culpable under this section.
- **S.317**: Abandonment or presentation of a child with the purpose of relinquishment by any of the guardians or a man having the care of such child is a punishable offense.
- **S.361**: This section deals with punishment of kidnapping (male if underneath 16 years old and female if beneath 18 years old).
- **S.363A**: Kidnapping or mutilating children to beg has been expressed to be a punishable offense under this section.
- **S.366A**: Inducing of a minor girl younger than 18 years to do any demonstration that may constrain or lure her to unlawful intercourse with someone else is punishable under S.366A.
- **S.366B**: It is a punishable offense to import a girl under 21 years old into India from a nation outside India or from Jammu and Kashmir proposing that she might be constrained or seduced to illegal intercourse with someone else.
- **S.369**: Kidnapping a child younger than 10 years with the expectation to steal from such child is an offense.
- **S.372 and 373**: Selling, purchasing or contracting a person under 18 years old with the end goal of prostitution or illegal intercourse with any individual or for any

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unlawful or corrupt intention is a punishable offense.
- **S.375:** A man is said to commit "rape" if has sexual intercourse with a lady with or without her assent when she is younger than 16 years.
- **S.376:** The section accommodates stringent punishment if: rape is committed by administration or staff of Remand Home or some other place of care set up by law or kids' foundation, rape is conferred upon a girl lady under 12 years old, gang rape is committed.
- **S.376C:** When the Superintendent or supervisor of a remand home or some other place of authority set up under the law of children's foundation prompts or tempts a lady into sexual intercourse by exploiting his official position, he is entitled to stringent punishment under this section.

These areas particularly secure the rights of children. Different sections relevant to punish offenders for a crime can likewise are conjured to secure the children against such guilty parties

**OTHER LEGISLATIONS POLICIES IN INDIA**
- Guardians and wards Act, 1890
- Child Marriage Restraint Act, 1929 (Amended in 1979)
- Immoral Traffic (Prevention) Act (Amended in 1986), 1956
- The Women’s and Children’s (Licensing) Act, 1956
- Probation of Offenders Act, 1958
- National policy for children, 1974
- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition and Regulation) Act, 1986
- National Policy on Education, 1986
- National Policy on Child Labour, 1987
- Juvenile Justice (Care and Protection of Children) Act, 2000
- The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2000
- National Health Policy, 2002
- Protection of Children from Sexual Offences Act, 2012
- Hindu Adoption and Maintenance Act, 1956
- Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960

**CHILDREN IN NEED OF CARE AND PROTECTION**
A child in need of care and protection is to be produced before the Child Welfare Committee within 24 hours. The Act provides for mandatory reporting of a child found separated from his/her guardian. Non-reporting has been treated as a punishable offence. The Child Welfare Committee is to send the child in need of care and protection to the appropriate Child Care Institution and direct a Social Worker, Case Worker or the Child Welfare Officer to conduct the social investigation within 15 days. The Child Welfare Committees shall meet at least 20
days in a month and the District Magistrate shall conduct a quarterly review of the functioning of the Child Welfare Committee. A child in need of care and protection will be placed in a Children's Home for care, treatment, education, training, development and rehabilitation. The Act provides for Open Shelters for Children in need of community support on short term basis for protecting them from abuse or keeping them away from a life on the streets. The Child Welfare Committee could recognize a facility to be a Fit Facility to temporarily take the responsibility of a child. The Specialized Adoption Agency is to take care of the rehabilitation of orphans, abandoned or surrendered children.14

Impact of the Convention of the Child Rights

A breakthrough in the universal human rights enactment, the 'Convention on the Rights of the Child' has been instrumental in putting every one of the issues relating to children issues on the worldwide and additionally on national agenda. Moreover, it has widely prepared activities for the acknowledgment of the rights and development of children around the world. It was not an overnight activity that brought about the adoption of the Child Rights. It took quite a long while of developments and activism on forming ideal, positive and productive states of mind toward children, and furthermore prompting activities to enhance their prosperity. The colossal endeavours required toward the usage of the Convention, the critical measure of assets focused on this reason, and the general adequacy of the frameworks set up for the execution procedure have an orientation on the achievement of child well-being outcome.

Throughout the last 20 or so years, execution of the Convention and its impact on children well-being changed from nation to nation and from one area of the world to the next. In light of investigation, there has been extraordinary advancement at a worldwide level in tending to the issues identified with youngsters. These incorporate advance in access to administrations, achieving their fullest potential through training, institution of laws that maintains the rule of the best advantages of children, and child survival.

♦ CONCLUSION

Children, owing to their developing mind are vulnerable to the environment they are in. It is of utmost importance that such environment is made suitable for their growth and development, regardless of whether such child is in conflict with law or not and be given adequate care and protection of the law. No nation can flourish if children of such nation suffer; therefore India with the help of various international, national and state mechanisms tries to secure the rights of the children as has been discussed above.15

In spite of the fact that an imperative advancement has been accomplished, yet in developing countries, especially in India,

14Juvenile Justice (Care and Protection of Children) Act, 2015, VIKASPEDIA (Apr. 2, 2018, 5:05)

15Rebecca Furtado, All you need to know about child rights in India, IPEADERS (Apr. 1, 2018, 3:35 P.M.), https://blog.ipleaders.in/child-rights-in-india/
there is as yet far tooin understand the rights of kids. In spite of the fact that all the important tenets and strategies are set up, there is a need in requirement activities. As boundaries, there are a few factors that restrict compelling usage of the laws. Because of moderately low achievement in accomplishing concrete child development results in India, the state of underprivileged children and underprivileged youth is brutal and needs critical consideration. There is a need to escalate endeavours for children welfare at all levels to execute the guidelines and arrangements of the Convention and add to make a world suitable for children.