



## CHILD RIGHTS AND PROTECTION: THE LEGAL PERSPECTIVE

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### Abstract

“Children account for nearly 40% of the population of India. It is imperative to note that these children constitute a significant part of the human resource base of our country and it is necessary that they are able to realise their full potential for the economic growth of our nation.

The twenty-first century has seen a number of legislations and laws being framed in order to protect the children and ensure that sufficient resources are available for them to prosper. The article discusses the legislations that are framed in order to protect children and their rights. The article also attempts to critically analyse some of these legal provisions and point out the gaps or grey areas in these laws.”

### Introduction

In the words of John Kennedy, “*Children are the world’s most valuable resource and its best hope for the future*”. With the advent of human rights, there has been a consciousness regarding rights and development of the children. Earlier, children were regarded as service takers from their fathers and no rights or power to make decisions were bestowed upon them. ‘It was a recognised principle that the father had absolute right over the children’<sup>1</sup>.

The world has seen a positive change in this regard and there has been a change in the status of children in the society. Children are now partners in the decision making process and there is an increase in the role of children and a growing need for protection and development of the future of the nation.

The United Nation Convention on the Rights of Child (UN CRC) is the primary human rights which embodies the rights of children. It was ratified by India in the year 1992 and thus India can make laws regarding child rights under the ambit of the CRC.

The laws regarding protection of children and their rights are enshrined in the Constitution of India which is the supreme law of the nation. Article 15(3) of the Indian Constitution<sup>2</sup> provides for positive discrimination of children by formulating some special provisions for them. Also, all the fundamental rights provided under Article 14 to Article 18 of the Indian Constitution extend to all citizens of India including children.

As the consciousness regarding the rights of children increased, there was a struggle among masses for the right to education to be accorded the status of fundamental right. After a prolonged struggle in this regard, right to education<sup>3</sup> was made a part of the fundamental rights and enshrined in the Constitution in 2002.

### Who is a child?

“*Child means every human being below the age of 18 years unless under the law*

<sup>1</sup> Bajpai, *Child Rights in India: Law, Policy and Practice* (Oxford University Press, 2003)

<sup>2</sup> “*Nothing in this article shall prevent the State from making any special provision for women and children*”

<sup>3</sup> The Constitution (Eighty-Sixth Amendment) Act 2002, s. 21A



*applicable to the child, majority is attained earlier*<sup>4</sup>. An insight into this definition reveals that the legislative authority has power to fix the age of majority as per the laws.

This was one of the major gap areas which led to a huge inconsistency regarding the definition of a child. In India, different legislations had different interpretations of the age of majority. For instance, the Criminal Procedure Code (CrPC) accords the age limit for being responsible for criminal acts to be 7 to 14 years. The Child Labour Prohibition and Regulation Act, 1986 provides that a child is the one below the age of 14 years while the juvenile justice Act, 2000 provides the age of majority to be 18 years. It was only after the amendment of the Child Labour Prohibition and Regulation Act in 2016 that people of the age from 14-18 years were included under the category of adolescents.

The age of majority hugely differed with respect to different legislations in India and this brought about huge inconsistency. This posed a serious problem for the judiciary especially where there was an overlapping of the provisions of two acts which can be applied. With different age of majority provided under different legislations, such cases led to conflicts while deciding upon the applicability of the provisions of minority.

The Indian Majority Act, 1875 was adopted in order to bring an end to the existing inconsistency and bring about uniformity with regards to the age of majority. *“Every person domiciled in India shall attain the age*

*of majority on his completing the age of eighteen years and not before*<sup>5</sup>. However, the age of majority was still not clear with regards to sexual intercourse. Therefore, the anomaly regarding the age of majority still exists in India as there is no single definition for the age of majority.

### **The Right to Education Act**

The mass protest and campaigns led to the right to education being accorded the status of fundamental rights. However, there was a need for a comprehensive and clear legislation with respect to the right to education for the children in India.

The right of children to free and compulsory education or the right to Education Act was enacted in 2009. It was made with an object to ensure right to education enshrined in the Indian Constitution as has been provided in the preamble to the Act.

*“An act to provide for free and compulsory education to all children of the age of six to fourteen years”*<sup>6</sup>

The RTE Act provides elementary education to all children irrespective of their economic or social background. Elementary education means education from class first to class eighth. It puts forward the obligation of the government to provide free and compulsory education to all children from 6 – 14 years of age<sup>7</sup>. It is the responsibility of the government to incur all expenses in relation to educating these children.

Even after so many years from the institution of the RTE Act, the government has not been able to fully achieve its goal of providing free

<sup>4</sup> UN CRC, Art. 1

<sup>5</sup> Indian Majority Act 1872, s. 3

<sup>6</sup> Right to Education Act 2009, Preamble

<sup>7</sup> Right to education Act 2009, s. 3(1)



and compulsory education to all children. There are certain grey areas in the operation of this Act which have been highlighted as follows.

The RTE Act 2009, recognises four layers of education system i.e. the government schools, aided private schools, special category schools and non-aided private schools. However, this system leaves out some of the schools from its purview and children studying in these unrecognised schools face various problems including recognition of their education.

The RTE Act provides education to children between 7 to 14 years of age instead of operating according to the age of majority i.e. 18 years provided under the Indian Majority Act, 1875. Also, though the act provides for free education to the children, the goal has not been realised to its full extent. This is because the act does not keep into consideration the transportation fees and other charges which have to be borne besides the regular tuition fee.

#### **The National Commission for Protection of child rights (NCPCR)**

The NCPCR is a statutory body set up by the government of India in March 2007 to protect child rights. The commission comprises of seven members of which at least two are women. It ensures speedy trial of offences that violate child rights. The State government is empowered to declare a court in the state as a children's court and appoint a public prosecutor for these courts. The National Commission issues regular guidelines for protection of child rights and regularly reviews the different legislations

enacted. The Commission is regarded as the premier institution of protection of child rights in India.

#### **Child abuse and crimes against children**

Over the last decade, India has seen a significant rise in the number of crimes committed against children. There has been nearly a 20 percent increase in child related crimes in the year 2019-20<sup>8</sup>. These crimes may be emotional, sexual or physical. While physical abuse deals with acts including assaults, domestic violence and corporal punishment vested upon the children by the school, emotional abuse includes all mental sufferings of the children. Sexual abuse of children can be defined as a situation where a child is used for sexual gratification by someone.

While the provisions of the Indian Penal Code (IPC) deals with some of the crimes against children and provide stringent punishment in this regard, they are limited in their scope and use. Hence, there was a need for a new set of laws dealing with child abuse and child protection.

#### **Juvenile Justice Act**

The Juvenile Justice (Care and Protection) Act, 2000 is the primary law which deals with child rights and protection of children. It was amended in 2015. The Act divides children in two categories i.e. children in conflict with the law and children in need of care and protection. While children in conflict of law deals with the children who have been charged with some or the other offence, children in need of care and protection are children who are victims rather than

<sup>8</sup> 'How vulnerable are children in India to crime'(CRY Rep. 2019-20)



offenders. However, our scope of study is limited to the children in need of care and protection.

Children in need of care and protection<sup>9</sup> includes victimised children, children who have no means of sustenance, child labourers or children who are mentally ill. These children are recognised as those who are in need for special assistance due to their prevailing circumstances. The act provides that the children under the ambit of this act be provided rehabilitation.

For this purpose, there are many institutions recognised under the Juvenile Justice Act in order to provide sufficient support and facilities to the children in need of care and protection. These include shelter homes, children's homes, After Care Organisations and Child Welfare Committees.

The amendment of the act in 2015 empowers the court to transfer the pending adoption cases to a district magistrate having jurisdiction so as to ensure that there is a speedy delivery of justice.

#### **Sexual abuse of children and allied laws**

The crimes relating to child sexual abuse has seen a significant upsurge over the past few years. There are regular reports of sexual abuse of children seen in the media reports. It accounts for nearly 50 percent of the child related crimes registered in India.

Child Sexual Abuse or CSA can be referred to as the involvement of a child in order to provide sexual gratification by some person. It includes child harassment, child pornography and child marriage.

There are multiple legislative enactments dealing with the laws regarding the prevention of sexual abuse.

The Indian Penal Code, being limited with regards to child protection does not take into its purview, the laws relating to child sexual abuse. The Indian Penal Code only deals with the cases of rape<sup>10</sup> and provides stringent punishment for the same while the other crimes are put under the bracket of outraging the modesty of the victim<sup>11</sup> and thus not specifically dealt with. Also, the provision with regards to rape is also too limited in its scope and does not include similar sexual offences against boys.

In a view to provide a more comprehensive set of laws for child sexual abuse, the Protection of children against Sexual Offences Act was enacted in 2012. The above law has made sexual abuse of children a criminal offence and has set up specialised courts dealing with the matter of sexual abuse of children. The law provides stringent punishment to the offenders which is decided upon by the special courts according to the merits of the case. Also, unlike IPC, the law is not gender specific and hence takes into account sexual abuse of both boys and girls.

However, there are some shortcomings in the way this act is being implemented due to which the situation still prevails in our country. Ranging from administrative failures of not being able to set up the special courts to the lack of expertise to try the matter and the huge upsurge in pending cases, India is way behind to implement the law effectively.

<sup>9</sup> Juvenile Justice Act 2000, s. 2(14)

<sup>10</sup> IPC, s. 375

<sup>11</sup> IPC, s. 354



### **Prohibition of Child Marriage Act, 2006**

Prohibition of Child Marriage Act was enacted in the year 2006 and further amended in the year 2016 and supersedes the Child Marriage Restraint Act, 1929. The Act provides that the child marriages are punishable under the law and voidable at the option of the child who is getting married after he attains the age of majority. It also appoints special child marriage prevention officers to prevent child marriages and provide stringent punishment to the offenders.

However, there are certain failures of the Act due to which its intended goal and objective have not been achieved in its entirety. These faults and gaps have been mentioned as under First, the traditional marriage communities are not provided with any directives or incentives to ensure that they do not indulge in the practice of child marriage. This is the reason why despite the appropriate law in place, there has not been a significant decrease in the child marriage cases being accepted by these communities.

Also, child marriage cases are voidable at the option of the parties. However, the child getting married is often coerced by their families and communities into accepting their marriages. It is often argued that child marriage should be void rather than being voidable at the option of the child. However, according to the act, child marriage is considered to be void only when there is some compulsion or trafficking.

### **Child Labour Prohibition and Regulation Act**

The last few years have seen an increase in the number of child labour cases registered. However, the scenario is much worse than what is registered as most of the child labour cases go unreported. Child labour majorly occurs in the unorganised sectors where children are forced to work for long hours with very little wages in a bid to improve the financial condition of the family.

Child Labour Prohibition and Regulation Act (CLPRA) was enacted in the year 1986 with an object to reduce child labour and ensuring stringent punishment to the offenders and employers of child labourers. The Act provides that no child below the age of 14 years can work in hazardous industries or workshops like fire-crackers or bidi making industries<sup>12</sup>. It also provides the regulations for the children working in the industries apart from those mentioned in the Act. Special committees called the Child Labour Technical Advisory Committee<sup>13</sup> has been set up under this Act. Section 17 of the Act provides that the inspector in charge should make sure that the employer of the child labourer pays Rs. 20,000 to the Rehabilitation-cum-welfare fund.

However, there are certain shortcomings in the Act due to which the intended goal of the act has not yet been reached. The major problem lies with the implementation and enforcement of these laws. Also, the law does not take into its purview the unorganised sector which accounts for the majority of the child labour cases. Children working in the agricultural sector are also not taken into account. The meaning of hazardous industries has not been defined clearly and

<sup>12</sup> CLPRA, s. 3 read along Part A and Part B of the Schedule

<sup>13</sup> CLPRA, s. 5



many of the hazardous industries are excluded from the Act.

Due to the above listed shortcomings, the Act was amended in 2016. Both children and adolescents were included under the Act and the meaning of hazardous substances<sup>14</sup> was given some clarity to include mines, inflammable substances or explosives and hazardous processes.

### Conclusion

It is often said that children are a vital human resource of our country whose development up to their potential is necessary to realise the planned economic growth of India. In order to ensure that the children are equipped with resources and opportunities for their growth and they are not victimised due to their dependency on the adults, there have been multiple legislations formulated with an object to ensure that the rights of the children are protected. In order to protect the children from being victimised, child protection laws have been formulated providing stringent punishment for the offenders.

Over the past few decades, India has seen an upsurge in the children related crimes taking place. The statistics in this regard tells a gruesome story. There has been nearly a 20 percent increase in child related crimes in the year 2019-20. What is the most disturbing is that such situations continue to exist even after so many years of the enactment of the child protection laws. While such laws have been successful to a great extent, the numbers indicate that these laws have not been able to fully achieve its intended goal and there is a need to bring about another set of laws in this

regard or ensure effective implementation of the existing laws for “*there is no greater inhumanity in the world than hurting or belittling a child*”.

### References

- Bajpai A, *Child Rights in India: Law, Policy and Practice* (Oxford University Press, 2003)
- Bajpai A, ‘*The Legislative and Institutional Framework for Protection of Children in India*’, (UNICEF, 2010)
- Child Labour Prohibition and Regulation Amendment Act 2016*, Ministry of Law and Justice, GOI
- Child Labour Prohibition and Regulation Act 1986*, Ministry of Law and Justice, GOI
- ‘*Child Rights: A gist*’, (Smile Foundation)
- ‘*How vulnerable are children in India to crime*’ (CRY Rep. 2019-20)
- Indian Majority Act 1875* (Act 9 of 1875), Ministry of Law and Justice, GOI
- Juvenile Justice (Care and Protection of children) Amendment Act 2015*, Ministry of Law and Justice, GOI
- Juvenile Justice (Care and Protection of children) Act 2000*, Ministry of Law and Justice, GOI
- Right to Education Act 2009* (No. 35 of 2009), Ministry of Law and Justice, GOI
- United Nation Convention on child rights*, Resolution 44/25 (1990)

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<sup>14</sup> CLPRA amendment act, (No. 35 of 2016), *The Schedule*