

PROTECTION OF CHILDREN'S RIGHTS IN INDIA

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"Every child deserves a chance at a life filled with love, food, education and care."

Child in ordinary sense means a person who is unable to understand the brains of others, or who is unable to maintain itself. they are synonymous with innocence, play, joy and full of hope. An international accepted definition laid down by the United Nations Conventions on the Rights of the Child as – "A child means every human being below the age of 18 years"

So precisely we can say that, what makes a person a "child" is the person's age. The future of every child depends on the care, facilities, love they get during their childhood. As children are dependent on the elders so their basic needs must be fulfilled by them as their right. If they don't get what they need they cannot grow up as worthy citizen of the country.

The milestone United Nations Convention on the Rights of the Child and our Indian Constitution determine rights that children must have. Child rights are specialized human rights that apply to all human beings below the age of 18 regardless of race, colour, gender, disability or any other characteristics.

India ratified the UN Convention on the Rights of the Child and lists the rights of the children as follows:

1. Right to survival-it includes right to life, standard of health, nutrition, name, nationality.
2. Right to Development-it includes the right to education, care, leisure, recreation and cultural activities.
3. Right to protection-it includes protection from all kinds of exploitation, abuse and neglect.
4. Right to participation-it includes right to freedom of expression, thought, information and religion.

The Constitution of India also guarantees certain rights for children as follows:

Article 21 A: Right to Free and Compulsory education for all children at 6 to 14 years of age group.

Article 24: Right to be protected from any hazardous employment till the age of 14 years.

Article 39(e); Right to be protected from being abused and forced by economic necessity to enter in to occupation unsuited to their age or strength.

Article 39(f): Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 14: Right to equality before law.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15(3): requires the state to make special provisions for children.

Article 21: Right to personal liberty and due process of law.

Article 23: Right to being protected from being trafficking and forced in to bonded labour.

Article 41; Right to work, to educate and to public assistance.

Article 45: provisions for early childhood care and education to children below the age of 6 years.

Article 46: Promotion of educational and economic interests of SC, ST and weaker section.

Article 47: state to raise the level of nutrition and standard of living and to improve of public health.

Article 51A: fundamental duties: it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child between the age of 6 and 14 years.

Indian penal code 1860 protect the interest of children for offence committed by them;

Section 82 of IPC states that nothing is an offence which is done by 7 years child.

Section 83 of IPC protects the child above 7 but under 12 years of age who has insufficient maturity of understanding.

Under criminal procedure code 1973

Sec 125 states for maintenance of children, wives and parents.

Sec 128 states for enforcement of order for maintenance.

Under Indian contract act 1872

Sec 11 clearly provides that a minor according to the law which he is subjected is incompetent to enter in to a contract. Whereas if agreements are for the benefit of minor than it won't be void and can be enforceable.

Sec 68 claims for necessities supplied to person or on his account.

Juvenile justice act 2000, sec 3 laid down certain principles: The principle of presumption of Innocence, where any child is presumed to be innocent of criminal intention up to the age of 18 years. The principle of dignity and worth. The principle of Participation, where every child shall have right to be heard and participate the process and decisions affecting his interests and his views to be taken into consideration. The principle of best interest, wherein all the decisions the primary consideration regarding the child must be the child's best interest. The principle of family responsibility where the primary responsibility of care, nurture and protection of child shall be that of parents either biological or foster as the case may be. The principle of safety, where all measures must be taken to ensure the safety of the child.

Positive measures: All resources are to be mobilized including those of family and community, for promoting the well-being, facilitating the development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act. The principle of non-

stigmatising semantics, where adversarial or accusatory words are not to be used in the processes pertaining to a child. The principle of non-waiver of rights, where no waiver of any of the right of the child is permissible or valid, by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to a waiver. The principle of equality and non-discrimination, where no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child. The principle of the right to privacy and confidentiality, where every child shall have a right to protection of his privacy and confidentiality, by all means, and throughout the judicial process. The principle of institutionalization as a measure of last resort where a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The principle of repatriation and restoration where every child in the juvenile justice system shall have the right to be reunited with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless it is not in his best interest. The principle of a fresh start, where all past records of any child under the Juvenile Justice system should be erased except in special circumstances. The principle of diversion, where measures for dealing with children in conflict with the law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole. Principles of natural justice where basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

The board may pass orders against children in conflict with law, such as, Giving the child a firm warning, letting the child go home while simultaneously counseling the parents; Order to attend group counseling sessions; Order to perform supervised community service; Order to parents or guardians to pay fine.

Releasing the child on probation, where the parents or guardians will have to execute a bond (up to 3 years) which may include surety and be responsible for the child's behavior. The responsibility can also be handed over to a 'fit person' or 'fit facility' which is a recognized person or government organization or NGO which is prepared to accept the child's responsibility. Sending the child to a Special Home for up to three years. Order to attend school or vocational training center or therapeutic center. Order to prohibit the child from visiting, frequenting or appearing at a specified place or undergo de-addiction programme.

With the intent to effectively address the evil of sexual exploitation and sexual abuse of children, Protection of Children from Sexual Offences Act (POCSO) was passed by the parliament in the year 2012.

"Children" according to the Act are individuals aged below 18 years. The Act is gender neutral. Different forms of sexual abuse including but not limited to sexual harassment, pornography, penetrative & non-penetrative assault are defined in the Act. Sexual assault is deemed to be "aggravated" under certain circumstances such as, when the child is mentally ill. Also when the abuse is committed by the person in a position of trust such as doctor, teacher, policeman, family member. Adequate provisions are made to avoid re-victimization of the Child at the hands of judicial system. The Act assigns a policeman in the role of child protector during the investigation process.

The Act stipulates that such steps must be taken which makes the investigation process as child-friendly as possible and the case is disposed off within one year from the date of reporting of the offence. The Act provides for establishment of Special Courts for trial of such offences and matters related to it. Under section 45 of the Act, the power to make rules lies with the central government. To monitor the implementation of the Act, the National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority. Both being statutory bodies. Section 42 A of the Act provides that in case of inconsistency with provisions of any other law, POCSO Act shall override such provisions. The Act calls for mandatory reporting of sexual offences. A false complaint with intent to defame a person is punishable under the Act. An online complaint management system, POCSO e-box was launched in New Delhi by the Union Ministry of Women and Child development in order to facilitate easy and direct reporting of sexual offences against children and timely disposal of the cases under POCSO Act 2012.

Child protection is integrally linked to every other right of the child. The failure to ensure children's right to protection adversely affects all other rights of the child and the development of the full potential of the child. Child protection is about protecting every right of every child. It must also relate to children's capacity for self-reliance, self defense, and to the roles and responsibilities of family, community, society and state. The need to protect some children is certainly greater than others due to their specific socio-economic and political circumstances and geographical location. These are the children who are more vulnerable in term of the harm, to their right to survival, development and participation- Homeless children, Refugee and migrant children, Orphaned or abandoned and destitute children, Children whose parents cannot or are not able to take care of them, Street and working children, Child beggars, Victims of child marriage, Trafficked children, Child prostitutes, Children of prisoners.

The Government's commitment and priority to child protection is critical to the creation of a protective environment for its children. The Government needs to demonstrate this commitment through the acceptance and recognition of problems, formulation of appropriate policy, strong legal frameworks and programming, and allocation of adequate resources to programs. It needs to ensure that mechanisms for child protection are child

friendly, functional and in a position to reach children in needs of protection. Some such initiatives taken by the Indian Government towards creating a protective environment for children as per the law are the:-

1. *Juvenile Justice (Care and Protection) Act, 2000.*
2. *The CHILDLINE 1098 service in partnership with Integrated Program for street children, signing and ratification of the United Nations Convention on the rights of the child (UNCRC), and*
3. *Ratification of the Optional Protocols*
4. *The National Plan of Action, 2005*
5. *The National Policy for Children, 1974*
6. *Study on Child Abuse 2007.*

It is the government's duty to protect their citizens, specially children's. One third of India's population is comprises of children, then also their interest were ignored always and never been given priority. Even they are sexually, physically, emotionally abused. As our country is developing, the welfare of community depends on the health and well being of its children only. They are exploited, humiliated and faces lots of discriminations inspite of having huge list of legal provision. Today childhood is no longer a joyful experience in fact their lives are full of stress, tension due to the competition of numbers in exams ,job, parents expectations from their children and such many other problems. Parents should spend quality time with their children's so that they can share their problems with them. So only legal provisions alone cannot bring justice to the child. The most effective tool is awareness of rights among the children, parents, teachers etc. when the lives and rights of children are at stake, there must be no silent witnesses. Its up to each of us to help create a better world for our children. In addition to many legislation, government has also started number of programmes to bring children to school educate parents. As Jawaharlal Nehru quoted "Today's child is tomorrow's future "so they must be nourished with care and protection not only from parents but also from society and nation

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