

A Study on National and International Perspectives for the Protection of Child Rights

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Abstract

Every child is born with the same human rights. These rights are inalienable and play a very crucial role in safeguarding the childhood of children by providing them better education through which they can achieve prosperous adulthood. But still there are millions of children who have been denied their basic rights. Children are considered as the future of any Nation. Hence, both at national and international level there are various rights that are granted to the children and also every Nation has strict rules and regulations to safeguard the child rights. Even though protection of child rights is priority of all the nations but still the child labour, child trafficking and child abuse are increasing every day. The abuse of child rights creates various impacts on the children, specifically the psychological impact, as they will feel lonely and have chances to turn into criminals. The problem of child trafficking is affecting a wide range of population due to which many children are affected.

The main objective of this research is to study child abuse, child trafficking, child labour and other forms of crimes against children. The reasons for its growth and impacts along with the case study for protection of child rights in India. Further to bring out legal provisions of Bhartiya Nyaya Samhita for protection of child rights in India. Through this research a depth study will be done on the protection of child rights at international level and how these efforts have played a key role in safeguarding the Child rights at an international level.

Keywords: *Child Trafficking, Child Rights, Bharatiya Nyaya Samhita, Child Labour*

Maria Montessori is one of the prominent child rights activists who highlighted in her various works the need for protection of child rights. Child rights have been recognised universally. The Universal Declaration of Human Rights has stipulated under Para 2 of Article 25 that childhood is entitled to special care and assistance. Many such principles recognising the protection of child rights were incorporated in the Declaration of the Rights of the Child adopted by the General Assembly on November 20, 1959. The International Covenant on Civil and Political Rights under Article 23 and 24 and the International Covenant on Economic, Social and Cultural Rights under Article 10 made provisions for the care of the Child. The Convention on the Rights of the Child was adopted by the General Assembly on November 20, 1989 and came into force on September 2, 1990. This Act defines a child as a person below the age of 18 years unless the relevant laws recognize an earlier age of majority.

The Convention on the Rights of the Child (1989) contains various provisions relating to children who are victims of crime and children who have witnessed crime. The two Optional Protocols to the

Convention (2000) deal mainly with child victims and witnesses of crime. These protocols offer a framework for the protection of the rights of children involved in sale, prostitution and pornography as well as in armed conflicts. The subsequent adoption by the United Nations Economic and Social Council of resolution 2005/20 of 22 July 2005, which contains the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, was the crucial next step. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (hereinafter referred to as “the Guidelines”) specifically deal with the rights of children who are victims of crime and the rights of children who have witnessed crime. A new normative instrument that also addresses the specific needs of child victims and witnesses of crime will be the “Model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice”, which were approved by the Commission on Crime Prevention and Criminal Justice at its 23rd Session and recommended to the Economic and Social Council for approval with a view to their adoption by the General Assembly of the United Nations.

Various Government and Non-Government Organizations play crucial roles in safeguarding child rights and protecting the childhood of children. As we know children’s voices are often unheard so public interest litigation has been used as an effective weapon by them so that child rights can be protected. In India many child rights activists have filed public interest litigation to safeguard the child rights. Many such litigation will be part of this research. This research mainly focuses on the Child rights and how by child abuse, child trafficking, child labour and child pornography children who are victims to these crimes are suffering. The national and international safeguards for the protection of child rights.

Rights of the Children in the Convention on the Rights of the Child

A number of rights are guaranteed to the children in the Convention on the Rights of the Child. These are:

1. Right to life (Article 6, Para 1);
2. Right to acquire nationality (Article 7);
3. Right to Freedom of Expression (Article 13, Para 1);
4. Right to Freedom of thought, conscience and Religion (Article 14, Para 1);
5. Right to Freedom of Association and to Freedom of peaceful assembly (Article 15, Para 1);
6. Right to privacy (Article 16);
7. Right to family environment (Article 20);
8. Right to Education (Article 28, Para 1);
9. Right to benefit from social security (Article 26, Para 1);
10. Right to a standard of living adequate for the child's physical, mental, spiritual and social development (Article 27, Para 1);
11. Right to enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Article 24, Para 1);
12. Right to the protection of the law against arbitrary or unlawful interferences with his or her privacy, family, home or correspondence (Article 16, Para 1);
13. Right against exploitation of child labour (Article 32);
14. Right against sexual exploitation (Article 34);
15. Right against abduction, sale or traffic (Article 35);
16. Right against other forms of exploitation prejudicial to any of the child's welfare.

Public Interest Litigations for Protecting the Rights of Children

Indian Constitution under Article 24 provides that no child below the age of fourteen years shall be employed in any hazardous factory or mine or engaged in any other hazardous employment. This provision aims to protect children from exploitation and to provide them education so that they can achieve their dreams. Despite the above protection still child labour is at a wide level in India. Children because of their age and innocence face a number of problems such as exploitation in different ways and at various places. The three popular forms are child labor, bonded labor and child trafficking. These issues are brought to the Court through public interest litigation. Many social workers have filed public interest litigation on behalf of children to safeguard their rights. Public interest litigation has helped various children who have been homeless, abandoned, abused, bonded, trafficked, illegally employed and displaced.

In the case of **Lakshmi Kant Pandey v. Union of India**, With the object of ensuring the welfare of the child, the Supreme Court laid down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents. The Court directed the Government and various agencies dealing with the matters to follow these norms and ensure the welfare of children. In another case the Court ordered that children cannot be employed in match factories which are directly connected with the manufacturing process as it is hazardous employment within the meaning of the Employment of Children Act, 1938.

In **M.C. Mehta v. State of Tamil Nadu**, the Supreme Court held that children below 14 years cannot be employed in any hazardous factories which are directly connected with the manufacturing process, mines or other works as it is a hazardous employment within the meaning of the Employment of Children's Act, 1938. Every child must be insured for a sum of Rs. 5000/- and premium to be paid by the employer as a condition of service. This PIL has played a very crucial role in the protection of the rights of millions of children. Further, in the case of **Sheela Barse v. Union of India**, the Court stressed on implementation of various Children's Acts passed by different States and the strict implementation of the provisions mentioned in the Act. The Court directed the Central Government to pay to the petitioner, a social worker, Rs. 10,000/- for the expenses and to extend all necessary assistance who visited different jails across the country to verify the data provided by the States on the situation of children below 18 years detained in the various prisons of the country. The Court further directed to pass Central legislation on the subject.

The case of **R.D. Upadhyay v. State of Andhra Pradesh** was one of the very crucial public interest litigation for those children who were living with their mother in jail as in this case the Supreme Court laid down guidelines for safeguarding the welfare of these children regarding their food, shelter, medical care, clothing, education and recreation facilities which are declared to be child's right. The Court also issued directions regarding their diet. The Court held that before sending to jail a pregnant woman, the concerned authorities must ensure that the jail in question has basic minimum child delivery facility as well as place for providing prenatal care for both the mother and child. Birth of the child is not to be recorded as prison in the Birth Certificate. It shall be registered in a local birth registration office. Children above six years are not to be kept with female prisoners. The Court directed that the Jail Manual must be amended suitably to incorporate these changes.

In another PIL of *Unni Krishnan v.State of A.P.*, the Supreme Court held that the right to education for the children of the age of 6 to 14 years is their fundamental right. After 14 years of the age of the children the obligation of the State depends on economic capacity and development. The obligations created by Articles 41, 45 and 46 can be discharged by the State either establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions. In *T.M.A. Pai Foundation v. State of Karnataka*, Supreme Court held that the State could not make reservation of seats in admission in privately run educational institutions. There, the admission could be done on the basis of a common admission test conducted by the State or these institutions and on the basis of merit. This decision has partly overruled Unni Krishnan's decision. Public interest litigation is very crucial for social transformation of Indian society as it guarantees the right to education as a fundamental right for all the children.

Child labor is a major problem of today's society. Child Labor (Prohibition and Regulation) Act, 1986 has laid various provisions for prohibition of child labor. In the landmark case of *Bachpan Bachao Andolan v. Union of India*, which is very important for the protection of child rights from child labor. The public interest litigation was filed for the serious violations and abuse of children forcefully detained in circus without access their families under extreme inhuman conditions, sexual, physical and emotional abuse and deprived of basic human needs like food and water, sanitation, sleeping times, high risk factor etc. issued these directions:

1. For implementing fundamental rights under Article 21-A, the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months;
2. The respondents would conduct simultaneous raids in all circuses to liberate the children and check the violation of their fundamental rights and the rescued children would be kept in the Care and Protective Homes till attainment of 18 years;
3. The respondents would frame proper scheme for rehabilitation of rescued children from circuses and
4. The Secretary of Ministry of Human Resources Development, Development of Women and Children Development would file a comprehensive affidavit within 10 weeks.

Vishal Jeet v Union of India was a landmark case to prevent children from child abuse. It was filed by a social worker to check sexual exploitation of child, girls and women in flesh trade and prostitution. The Supreme Court issued directions against child abuse and prevented the children from exploitation. Law enforcement authorities were directed to take immediate action against child prostitution. Establish a committee to give recommendations on eradicating child prostitution from India. Provide rehabilitation to inmates of forced prostitution with protective homes. The children of victims, prostitutes and other children found begging on the streets were to be provided with protective homes and rehabilitation. The Supreme Court in *Labor's Working on Salal Hydel Project v State of Jammu and Kashmir* reiterated that the construction work is a hazardous employment and children below the age of 14 years cannot be employed therein.

International Perspectives for the Protection of Child Rights

The International Children's Emergency Fund (ICEF) was created by the United Nations Relief Rehabilitation Administration to help affected children. It came into existence on 11 December 1946. UNICEF has launched various programs to help the children and also supported newly

independent Nations. This organization has received the Nobel Peace Prize “for the Promotion of brotherhood among nations.” Today it works in more than 190 countries to reach the most vulnerable and excluded children. The State of the World's Children (SOWC) is an annual report published by the United Nations Children's Fund, it closely examines a key issue affecting children. The latest edition, titled “The State of the World's Children 2023: For Every Child, Vaccination, evaluates the urgent measures required to uphold the rights of all children to the protection offered by vaccines.

The Declaration on the Children’s rights served as an important foundational document in the development of international law related to Children's rights. It has influenced various national legislation and policies around the world, guiding efforts to protect and promote the rights of children at diverse levels. It is considered as a precursor to the Convention on the Rights of the Child. In 1989, world leaders made a historic commitment to the World's Children by adopting the United Nations Convention on the Rights of the Child. This Convention explains the responsibilities of governments towards the Rights of children. The General Assembly in 2000 adopted two Optional Protocols to the Convention: the first optional protocol on the involvement of children in Armed Conflict prohibits the recruitment of children under 18 years of age into armed forces or their participation in hostilities and the second optional protocol on the sale of children, child prostitution and child pornography. It strengthens prohibition and penalties concerning the sale of children, child prostitution and child pornography. Further a third Optional Protocol to the Rights of the Child on a Communication Procedure was adopted by the General Assembly on December 19, 2011 which entered into force on April 14, 2014. It provides a communication procedure that allows individual children to submit complaints regarding violations of their rights under the Convention and the first two Protocols.

The International Labour Organization since its inception has been committed to the protection of the Rights of children as an essential prerequisite for social justice. In 1990 this organization has established International Programme on the Elimination of Child Labour (IPEC). This Programme provides technical advisory services focusing on the worst abuse, hazardous works, forced labour, street children, girls and the employment of children who are below 13 years of age. The Worst Forms of Child Labour Convention was adopted on June 17, 1999 and came into force on November 19, 2000. This Convention was most effective step to protect children from child labour. This Convention requires countries to provide support for removing children from dangerous Labour and ensure access to education or vocational training. These are some efforts that are made at the International level to protect the rights of children.

Provisions of Bhartiya Nyaya Samhita safeguarding Rights of Children

The Bharatiya Nyaya Samhita mentions various crimes against children by which their rights are violated and also the punishments for these crimes. Further this Act briefly mentions trafficking in which even children are major sufferers. The forceful means adopted for making children as beggars. This practice has deeply affected the childhood of children who are victims to such illegal practices. In Bhartiya Nyaya Samhita Section 139(4) Definition of Begging (under Kidnapping/Maiming for Begging): “begging” means— (i) soliciting or receiving alms in a public

place, whether under the pretense of singing, dancing, fortune telling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using such a child as an exhibit for the purpose of soliciting or receiving alms.

According to the Bhartiya Nyaya Samhitathere are following legal provisions for safeguarding the children rights:

- Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.
- Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavour to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.
- Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.
- Whoever kidnaps or abducts any child under the age of ten years with the intention of dishonestly taking any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- Whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine.
- Whoever kidnaps any child or, not being the lawful guardian of such child, obtains the custody of the child, in order that such child may be employed or used for the purposes of begging shall

be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

- Whoever maims any child in order that such child may be employed or used for the purposes of begging shall be punishable with imprisonment which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.
- Where any person, not being the lawful guardian of a child, employs or uses such a child for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of such child in order that such child might be employed or used for the purposes of begging.
- Whoever, knowingly or having reason to believe that a child has been trafficked, engages such child for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine. Whoever, knowingly or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Challenges Faced by Child Victims

The child labour, child trafficking and other forms of violence against children create a fear among the victims due to which they suffer from mental stress. They are generally illiterate due to which they don't have proper job opportunities in the society as a result of earning money they commit various crimes. Different types of complexities emerge in these children due to which they cannot properly relate with other peoples of the society. Child trafficking is another major challenge faced by Nations as they are forced to do begging work. Some of them were made handicapped in this process which is another inhuman treatment against these children. They were kept in most horrifying conditions and due to which they are socially, physically and psychologically affected. Lack of knowledge on their legal rights further affects them in society. They are always marginalized in society and this results in hindering their rights. Due to lack of financial support they had to face various hardships in their life. They don't even have enough money to purchase food. As a result, the majority of them suffer from malnutrition. Moreover, due to lack of financial assistance and malnutrition they also suffer from numerous diseases. Many such children die as they don't get treatment from the Doctors on time. Lack of knowledge about emerging technologies also affects the chances for them to improve their living conditions. Due to which they had to suffer from poverty.

Policy Recommendations

Seeing the situation of child victims and the challenges they face in their daily life I would like to give following suggestions:

- These children who are victims of child abuse should be protected from those places where they are forcefully kept. Moreover, proper education system should be provided to such students so that they can seek a better future.
- The child victims should be provided with better financial assistance so that they can fulfil their basic needs. They should be provided other basic amenities so that they can completely focus on their study.

- Both Government and non-government organizations should collaborate together to take strict action for protecting the Rights of children. Further, secret investigating groups should be formed to investigate the people who are involved in child abuse and child trafficking.
- Children should be given training related to self-defense by which they can protect themselves and also speedy legal procedure should be undertaken so that timely justice can be done to the children and culprits can be punished. Local level team should be formed to take affective steps against those people who are involved in child abuse, child labour and child trafficking.
- International level steps should be planned so that child trafficking done at the International level can be identified and the such people who are involved in child abuse and child trafficking can be punished. The technology should be used to identify the culprits who are involved in abusing of child rights, child labour, child trafficking, child pornography and other forms of crimes against children. So that these people can be strictly punished.
- Laws which are already existing should be strictly implemented so that these abusers can be punished. Proper counselling should be provided so that the fear suffered by them because of the inhuman treatment done against them can be totally eliminated and they can be related with the other children.

Conclusion

From the above analysis on the abuse of child rights, child trafficking and other forms of violence against children we can conclude that now it's the time take strict action against those people who are involved in child abuse and other forms of crimes against children. Only by punishing them the problem of child rights violations cannot stop. The strict legal regulations should be implemented so that in future such actions can be totally controlled. Further all the efforts should be made so that victims of such child rights violations can be protected and basic help can be provided to them so that they can be joined with the other students of the societies. Only the collective efforts of everyone can protect the child victims. So we all should take all the efforts so that child rights can be totally protected and the challenges faced by these children can be reduced and even these children can improve their social and economic conditions.

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