

CHILD PROTECTION AND LAWS

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I. Introduction

The future of country depends upon the welfare and well being of its children. That is why the nation is under a duty to protect and develop these valuable assets to their fullest extent. Every child in the earth is not so fortunate. When we see a children begging on the road side this a really heart throbbing scene.

In vedic period, besides certain practices such as child marriage, seem to have been unknown in the society. In post vedic period there was no polyandry and child marriage. During epic period the concept of sonship was affiliated to theory of *pind dan*, and for offering the pind to the deceased the presence of the son was essential.

The first day of school of her child is the very beautiful day of mother. But unfortunately many of them were not able to feel the beauty.²

The first and foremost objective to pen down on this topic is to discuss about very huge crime scene on children and to understand the various laws pertaining to protection of child and role of legal professionals thereof. India is yet to treat children with great care and compassion. There are many laws by parliament on such issue but the major thing is to implement the existing laws instead of making new one. The final objective of this paper is to build capacity of students and scholars to provide their best.

Children according to their sensitive nature need more nourishment and protection. Every child has a right to nutrition, recreation, health, education etc. If children are better equipped with a broader and human outlook the whole world will feel happy with them.³ India is a country where disparity is at large. Violation starts from the birth in the form of sex selective abortion then after birth it converts into malnutrition then child labor, human trafficking etc. Child abuse is more than bruises and broken bones. The Honorable Supreme Court in **Sheela Barse and another V/s.**

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² High Court Justice Govind Mathur on one day seminar at Mohanlal Sukhadia University, Udaipur 27/09/2014.

³ Extracts from the speech of Ex-president of India, New Delhi, March 1, 1994.

Union of India⁴ has clearly declared that a child is a national asset. In Indian Scenario a child requires proper care, love, affection and nourishment but experience shows that the children are subjected to maltreatment in some situations. A child is treated with cruelty when a rejected rather abandoned child by the parents takes a job in a factory, hotel, small scale industry and other roadside commercial establishment only for his own maintenance.

I.I Child defined

According to Section 27 of Criminal Procedure Code, 1973 “juvenile” means a person who is under the age of sixteen years.⁵ According to section 2 (a) of the Immoral Traffic Prevention Act, 1956 a child is a person who has not completed 16 years of age.⁶ According to the Factories Act, 1948 child means a person who has not completed the age of 15 years.⁷ According to Convention on the Right of Child, child means a person male or female who is below 18 years of age.

I.II Child Abuse defined

According to Wikipedia Child abuse is the physical, Sexual or emotional maltreatment or neglect of a children. In the United States, the Centers for Disease Control and prevention (CDC) and the Department for Children & Families define child maltreatment as any act or series of acts of commission or omission by a parent or other caregiver that results in harm, potential for harm, or threat of harm to a child.⁸ Child abuse can occur in a child’s home, or in organizations, school or communities the child interacts with.

II. Types of Child abuse

(i) Child Labor

The problem of child labor is always undeveloped and quite high and very abnormal. They are deprived of education, proper health, and basic enmities of life. The problem of child labor started right from the starting age. Child labor is as much the cause as consequence of adult unemployment and under employment. Compelled by the exigencies of situations children accept the role which run them into both victims and involuntarily accomplices of unjust situations. And if one does not work he

⁴ AIR 1986 SC 1873

⁵ Criminal Procedure Code, 1973

⁶ Immoral Traffic Prevention Act, 1956

⁷ Factories act, 1948

⁸ www.wikipedia.org

has no option without starving himself. So this is the condition literally we are facing today. It is well said that children are the future of the great nation. Now where is the future? They simply started the work from their homes helping their parents in their household works and in their agriculture streams too. Parents from a economically vulnerable group even not interested to give the better education to the children because they simply thought that “we can’t wait till the education of the child completes” and simply more “*kamaenge nahi to ghar kaise chalega*”. So this shows the bleak picture of our emerging developing nation.

(ii) Child Prostitution

Child Prostitution is also an emerging issue of worldwide we can say. This heinous crime is obviously also done for making money. In *Gaurav Jain V/s. Union of India and others*⁹ wherein a public interest litigation was filed before the Apex court for suggesting measures for rehabilitation for children of prostitutes and to prohibit child prostitution. But by orders dated 2-5-1990, the Apex court had set up an Advisory Committee to make suggestions upon which various recommendations were made by the committee. It was held that the child prostitutions, and children of prostitutes, are required to be removed from red light area and they are to be kept in juvenile homes, as place of safety. The Department of human and child development also directed to devise suitable scheme and minister of welfare also asked to constitute a committee to finalize the report.

(iii) Sexual abuse of children

The rise in the crime and the growing menace of sexual abuse of child, the Supreme Court in *Sakshi V/s Union of India and others*¹⁰ considered it appropriate to once again request the law commission to examine the illness submitted by the petitioners and examine the feasibility of making recommendations for amendment of the Indian Penal Code or deal with the same in any other manner so as to plug the loopholes. In the present case the Supreme Court observed that the 156th report of the Law Commission, is not dealing with the precise illness such as sexual abuse of children and therefore, Law Commission is requested to examine the feasibility of making recommendation for amendment of the Indian penal Code or deal with the same in any other manner. As the illness of sexual abuse of the children involved was of great importance and keeping in view the increase in crime, it is necessary to request the law commission to suggest appropriate measures.

⁹ 1997 (6) Supreme 395: 1007 (6) JT 305

¹⁰ 1999 (5) 376: SCC 591

(iv) Child Marriage

Child marriage is also a very perilous menace to our society. On the one hand we are talking about Live-in-Relationships where we are following only western culture for our comfort in which two persons live together in a shared household without marriage, apart from this way on the other hand we are still in the complexities of child marriages. Social reformers like Raja ram Mohan Rai tried to curb this social menace of child marriage, even now we have an Act too to restraint it properly but none of the attempts were tried to satisfy the approach. In this generation even small town people use to do marriages of their children before even their teenage.

(v) Child Trafficking

India is one of the leading countries in child trafficking. Trafficking in human beings, more so in children for the flesh trade has emerged as one of the most profitable trades in the world today. It is one of the fastest growing forms of criminal activity, run by the criminal syndicate, next only to drugs and weapons trade. Each year, an estimated seven million people, mostly children (girls), are trafficked throughout the world and more than one million children are trafficked into local and international sex industries.¹¹

III. Laws Relating to Children

➤ National Efforts

(i) Constitution of India in favour of Children

The Fundamental Rights and Directive principles of state policy as provided by Indian Constitution, to gather constitute the conscience of the constitution and represent the basic rights inherent in human being in this country. Being the law of the land, it therefore contains some specific provisions for the welfare of children also.

Article 15 (3) of the constitution enables the state to make special provisions for women and children which indicates that it seeks to protect the interest of women and children and nothing else.

‘Right to life’, under Article 21, as interpreted by the Supreme Court, says that, “right to life means something more than just physical survival, not merely the right to the continuance of a person’s animal

¹¹ Chakrabarty, Dr. Manik: “International Law on Trafficking in Child for Prostitution: The Indian Experience”; Published in the book ‘Law and Child’ edited by chakrabarti, Dr. Nirmal Kanti et al., 2004. Pg; 150

existence”.¹² It would include the right to live with human dignity.¹³ It would also include the right of a person not to be subjected to bonded labor, or to any other unfair conditions of labor.¹⁴

Further the “Right against Exploitation” as provided under Article 23 and 24 has much more importance which aims at recognition of restoration of dignity of a person and crystallizes the philosophy of child welfare. Particularly, Article 24 provides the most relevant provisions which are directly connected with child labor.

(ii) Factories Act, 1948 in favour of Children

Section 67 of the Act prohibits the employment of young children and categorically speaks that, “no child who has not completed his fourteenth year of age shall be required or allowed to work in any factory. Further Section 71 says that “no child shall be employed or permitted to work in any factory for more than four and a half hours in any day and during night”. This Act provides Penalty with imprisonment maximum for two months or with fine up to one thousand rupees or with both false certificate of fitness granted to him under Section 70. Further, a fine, which may extend to one thousand rupees, may also be imposed on parent or guardian for permitting double employment of a child.

(iii) Shops and Commercial Establishments Acts

In India, each state has its own Shops, and Commercial Establishment Act which mainly applies to shops, commercial establishments, hotels and restaurants and places of amusement area and notified urban areas, to which factories Act does not apply. Provisions prohibiting the employment of children can also be seen in these Acts. The concerned State Governments are empowered enough to extend the coverage of the Act to any establishment.

(iv) The Immoral Traffic (Prevention) Act, 1956

In 1986, the Suppression of Immoral Traffic in Women and Girls, 1956 was amended and renamed as the Immoral Traffic (Prevention) Act, 1956 to widen the scope of the law to cover both the sexes abused/exploited sexually for commercial purposes and to provide enhanced penalties for offences involving children and minors.

¹² In re Sant Ram, AIR 1960, 932

¹³ Francis Coralie Mullin V/s. The Nominstrator, Union Territory of Delhi & others, AIR 1981 SC 746

¹⁴ Peoples union V/s. Union of India, AIR 1982 Sc 1473

(v) The Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (care and protection of Children) Act, 2000 replaced the previous Act of 1986 and now requires that such children will be produced before the child Welfare Committees as there are no more Juvenile Welfare boards under the Act of 2000. But, practically it appears that the actual functioning of the earlier boards and the present committees remain almost the same. This Act is a comprehensive legislation that provides for proper care, protection and treatment of children in conflict with law, and children in need of care and protection by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the enactment.

IV. International Efforts

To curb the problem of child labor, at the International Level, the roles played by United Nations (UN) and international labor organization (ILO) are notable here. Although in the pre UN era in 1924, the league of Nations adopted the Geneva Declaration on the 'Rights of the Child' in the context of measures to be taken against child labor, slavery, traffic, and prostitution of minors, but the declaration on the 'Rights of the Child' by United Nations in 1959¹⁵ was a fundamental text in the field, a milestone in itself. According to this declaration, the child shall enjoy special protections to enable him/her to develop physical mentality, morally, spiritually and socially in a healthy and normal manner as well as in conditions of freedom and dignity.¹⁶ All the rights set forth in this Declaration should be enjoyed by every child without any exception, distinction or discrimination on account of race, colour, sex, language, religion, politics or other opinion, natural or social origin, property, birth or other status.¹⁷

The "Rights of the child" as declared by the United Nations were later on ratified in the International Covenant in 'Economic, social and cultural Rights' adopted by the General Assembly in 1966 which gave much attention to the need for special measures of protection and assistance on behalf of all children and young persons.

¹⁵ Declaration on the 'Rights of the Child', Proclaimed by the UN General Assembly on November 20, 1959 (Resolution No. 1386 (xiv)).

¹⁶ Declaration on the 'Rights of the Child', Proclaimed by the UN General Assembly on November 20, 1959, Principle 2.

¹⁷ Declaration on the 'Rights of the Child', Proclaimed by the UN General Assembly on November 20, 1959, Principle 1.

V. Conclusions & Suggestions

We have enormous problems relating to children and also various laws too to deal with the problems. There are no issues in front of us for which law does not decide any criteria thereof. In National and International level various enactments, conventions, recommendations, declarations, policies etc. are there for the welfare of children. Judiciary has also been playing a pivotal role to protect the children still, for centuries, children have been neglected, abused and exploited to a great extent and they are being victims of various offences. Actually proper awareness is necessary for everyone about their rights and clinical legal education in my view will prove the better affect to bring awareness. Every child in this earth is not so fortunate. When we see a child begging on road side this is literally a heart throbbing scene for us. India is a country where disparity is at large, efforts made be done for removing this disparity. Law has done a lot of for removing disparities now its our time to implement the laws. Issue relating to children is so sensitive that can be handled over by us personally. At our home children are working as domestic servants that are not hazardous but not even correct. In fact we have to take responsibility of at least one child (not belongs to our family) to educate him. We know about the work of Anand (Super Thirty Free Coaching for I.I.T's) is really appreciable though not provided in law. Social Networking is the other biggest factor that is destroying tenderness of child. It should be barred from parents and schools should prohibit Wi-Fi Systems so that their career will not suffer. The other effort for the welfare of children that Sports should be made as an essential subject in schools, even we can see the situation that sports in these days counted as secondary matter or subject everywhere but it is essential for the wholesome development of a child. These are some of the suggestions provided here to improve the situation of children moreover the upbringing is the necessary factor too.