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CONSTITUTIONAL PROTECTION AND LEGISLATIVE SAFEGUARDS FOR CHILD RIGHTS: INDIAN PERSPECTIVE

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TABLE OF ABBREVIATIONS

1. <i>CRC</i>	Convention on the Rights of the Child
2. <i>UNHRC</i>	United Nations Human Rights Commission
3. <i>UN</i>	United Nations
4. <i>CR</i>	Child Rights
5. <i>IPC</i>	Indian Penal Code
6. <i>CPC</i>	Civil Procedure Code
7. <i>NPC</i>	National Policy on Children
8. <i>UNICEF</i>	United Nations
9. <i>ILO</i>	International Labour Organisation
10. <i>NCPCR</i>	National Commission for Protection of Child Rights

11. ICCPR	International Covenant on Civil and Political Rights
12. NPE	National Policy on Education
13. WHO	World Health Organisation

“Children must be taught how to think not what to think- Margaret Mead”

1. INTRODUCTION

In India every person has basic fundamental rights including the children provided by the Indian Constitution. As we know that children on account of their sensitive age and immature mind needs special care and protection. And that is the reason from where the concept of child rights comes into light. In the whole world there are several rights which have been provided to children with concern to their age and maturity. But in the last few decades the society has changed a lot and these dynamics have resulted into a series of changes in the laws related to child rights. In India these changes have been very evident but we have to understand their implementation. There are many children who have been left abandoned, who are not getting chance to enter into school and gain education, who don't have access to basic healthcare facilities, they are malnourished they are deprived from basic needs and rights, and they need help, so how can we help them? Yes there is an answer to it and we will discuss all the problems and their solutions regarding the rights of a child in this paper. They have special rights and legal entitlements that are being recognised nationally and internationally. Globally an estimated 800 million children live in fragile and conflict affected areas. The problem of exploitation, poverty and violence are not inevitable. There are many things we have to keep in mind when we study about the problems and the reason behind it. The aim for today's time is to provide a protective environment where children's rights are respected, the world's most vulnerable children can flourish and reach their highest potential. Rights are for each child whether “black or white, small or big, rich or poor, born here or somewhere else”¹

1.1 WHAT ARE THE CHILD RIGHTS?

What are the child rights, it is the first question that comes into our mind. A Child can be defined as any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.² Child Rights includes their rights of basic needs and rights against discrimination as well as basic healthcare, education rights.

Sir William Blackstone recognised three parental duties towards a child that is maintenance, protection and education. In modern language, the child has a right to receive these from children.³

Due to the devastating aftermath of the world wars had an adverse impact on the children, the United Nations decided that the children required special attention and rights.

¹ *I Have the Right to Be a Child* by Alan Serres, Gorundwood Books, 2012

² 1989 Convention on the Rights of the Child CRC

³ www.wikipedia.org

The League of Nations (Later the UN) adopted the Geneva Declaration of the Rights of the Child (1924), which enunciated the child's right to receive the requirements for normal development, the right of hungry child to be fed, the right of the sick child to receive health care, the right of the backward child to be reclaimed, the right of the justice and peace.

The 1989 Convention

The CRC is the most widely ratified human rights treaty in history. There are 54 articles in it containing four core principles

2. INTERNATIONAL PERSPECTIVE

Child rights is not confined to only few areas or countries it is a much broader topic that is been discussed in the world for over few decades. UNCRC is the United Nations Convention on the Rights of Child, it is the first legally binding instrument that talks about all the child rights. But it is not a result of some sudden occurrences but there are series of events that laid the basis of the UNCRC. If we look through the events then the basis of this convention dates back to the Universal Declaration of the Rights of the Child 1924 or the Geneva Convention of the Rights of the Child It was drafted by Eglantyne Jebb⁴ in 1923, endorsed by the League of Nations on 1924. Further it got expanded in the 1946 and 1959 by the United Nations General Assembly.

2.1 GENEVA DECLARATION OF THE RIGHTS OF THE CHILD-

The Declaration of the Rights of the Child is an international document promoting child rights, drafted by Eglantyne Jebb and adopted by the League of the Nations in 1924.

After the First World War reformers and delegates like Jebb were worried about the impact of the war over the children and it has raised serious issues and concerns for the same. Jebb drafted the text about the child rights that later on became the Declaration. The text in the document⁵ was endorsed by the League of Nations General Assembly on 26 November 1924. The text consisted child's right to receive the requirements for normal development, the right of hungry child to be fed, the right of the sick child to receive health care, the right of the backward child to be reclaimed, the right of the justice and peace.

United Nations adopted a much expanded version in 1948 with 7 principles and on 20 November 1959 United Nations General Assembly adopted the Declaration of the Rights of the Child with based on the original Declaration of 1924 with ten principles. 20 November is now celebrated as Universal Children's Day.

2.2 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS-

It was adopted in 1966. The ICCPR is an international covenant that has been ratified to almost all the nations of the world. The ICCPR, its two protocols, the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights are collectively known as the International Bill of Rights.

It was adopted because it recognises the dignity of each individual and to promote conditions within states to allow the enjoyment of civil and political rights. There are currently 74 signatories and 168 parties to the ICCPR. The Covenant is universal and it applies to all without exception including children.

EXCEPTION- The Right to Marry and Right to Vote is applicable to only major and not children unless they reach a majority age.

⁴ British social reformer who found the Save the Children organisation at the end of the First World War and drafted the Declaration of the Rights of the Child

⁵ Published by International Save The Children Union in Geneva on 23 February 1923

GENERAL RIGHTS TO CHILDREN INCLUDE-

- Article 6-The right to life
- Article 7-The right to freedom from torture
- Article 9-The right to security of person
- Article 8-The right to freedom from cruel, inhuman or degrading treatment or punishment
- The right to be separated from adults when charged with a crime, the right to speedy adjudication, and the right to be accorded treatment appropriate to their age.⁶
- Article 24 codifies the right of the child to special protection due to his minority, the right to a name, and the right to nationality.
- Article 27- Minority protection

2.3 UNCRC-

The United Nations Convention on the Rights Of Child is a human rights treaty⁷. The UN General Assembly adopted the convention and opened it for signature on 20 November 1989. It came into force on 2 September 1990, after it was ratified by the required number of nations.

According to this Convention Child can be defined as any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier⁸.

It is the first legally binding instrument to incorporate the full range of human rights- civil, cultural, economic, political and social rights. Its implementation is monitored by the Committee on the Rights of the Child. Committee on the Rights of Child is a body of experts that monitor and report on the implementation of the United Nations Convention on the Rights of the Child.

Contained in this treaty is a profound idea: that children are not just objects they are the humans who have very rights just like other people The convention is the most ratified convention with 196 countries ratifying it except the United States.

The UNCRC consists of 54 articles that set out children's rights and how governments should work together to make them available to all children.

The CRC is based on four core principles:

- the principle of non-discrimination (Article 2);
- the best interests of the child(Article 3);
- the right to life, survival and development (Article 6) ;
- and considering the views of the child in decisions that affect them, according to their age and maturity (Article 12).

OPTIONAL PROTOCOL-

At first there were two optional protocols which were adopted on 25 May 2000. The first optional protocol restricts the involvement of children in military conflicts, and the Second Optional Protocol prohibits the sale of children, child prostitution and child pornography, Both protocols have been ratified by more than 170 countries.

The third protocol relating to communication of complaints was adopted in December 2011 and opened for signature on 28 February 2012. It came into effect on 14 April 2014.

3.CHILD RIGHTS: INDIAN PERSPECTIVE-

⁶ www.wikipedia.org

⁷ Commonly abbreviated as CRC or UNCRC

⁸ Article 1 of the CRC

But it is very evident that these scheme has made some glorious changes but it is still needed to improve. By the February 2020 more than 12 crore E-cards have been generated and over 86 lakhs people have taken benefit from this scheme⁹

3.1.2 Education-

Education is are our basic Fundamental Right¹⁰. Every child between the age of 6 to 14 years has right to free and fair education. In **Unnikrishnan vs. State of Andhra Pradesh**¹¹ it was held that The Supreme Court held that the right to basic education is implied by the fundamental right to life (Article 21) when read in combination with the directive principle on education (Article 41). The Court held that the guidelines of the right must be understood in the context of the Directive Principles of State Policy, which includes Article 45 that the state is to endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education to all the children under the age of 14. This act came into force from 1st April 2010.

POLICY-

NATIONAL POLICY FOR EDUCATION-

National Policy for Education is national education programme of the Government of India. The purpose of it is to promote education. The first NPE was formulated in 1968. It is a policy for the making of rules and regulations for the improvement and betterment of the Education System of the country. It covers the system from elementary education system to colleges.¹²

Summary of Index Categories and Domains¹³

Category	Domain	Number of indicators	Total weight
1. Outcomes	1.1 Learning Outcomes	3	360
	1.2 Access Outcomes	3	100
	1.3 Infrastructure & Facilities for Outcomes	3	25
	1.4 Equity Outcomes	7	200

⁹ Data by www.wikipedia.org

¹⁰ Article 21A , 86th Amendment Act (2002)

¹¹ [1993 (1) SC 645]

¹² A new committee appointed under K. Kasturirangan to make a draft for new education policy

¹³ <https://niti.gov.in/content/school-education-quality-index>

2. Governance Processes Aiding Outcomes	Covering student and teacher attendance, teacher availability, administrative adequacy, training, accountability and transparency	14	280
Total		30	965

3.1.3 Sexual Offences Against Children-

Child sexual abuse is one of the biggest problems in not only India but the whole world. This problem has lead a child to be traumatised for the whole life. It not only impacts the child physically but also psychologically. In India a child has been a victim to all kind of abuse, whether its physical or mental. As we know that if proper attention and treatment is not given to a child then the child suffers a lot.

India has a large child population that is vulnerable to child sexual abuse. India is a home to the largest sexually abused children in the world. The National Crime Records Bureau report of 2017 shows a steady rise in the incidents of such kind. According to a report released by the Home Ministry in 2016, 106,958 cases were recorded against children in 2016.

According to a 2018 study conducted by India’s Ministry of Women and the Child development 53% of children surveyed said that they had been subjected to some form of sexual abuse.

Children who fails to disclose may be between 30%-40%.

According to Iravani’s (2011) Examination of studies of CSA in India based on lengthy interviews with adults, approximately 30% of men and 40% of women remember having been sexually molested.

Laws related to this problem can be classified into two categories first is before 2012 POCSO Act and second is the POCSO Act itself.

POCSO ACT-

In order to effectively address the crime of sexual abuse, assault and pornography.

The POCSO Act, 2012 was enacted to provide for the protection of children from sexual offences.

This act is a neutral gender based act that means it applies on both male and female for both children and for the accused.

The new act provides for a variety of offences under which an accused can be punished.

Offences against child include:

- Penetration : Insertion of penis/object/another body part in child's vagina/urethra/anus/mouth, or asking the child to do so with them or some other person.
- Sexual Assault: When a person touches a child, or makes the child touch them or someone else
- Child Pornography¹⁴
- Aggravated Penetrative Sexual Assault/Aggravated Sexual Assault
- Sexual Harassment: passing sexually coloured remark, sexual gesture/noise, repeatedly following, flashing etc.

This Act has criminalised any sexual act within a child below 18 years of age. This act however has been criticised as the provision criminalises any sexual act between two adolescent but overall this act has been considered as a prospective step towards any sexual offence.

3.1.4 Child Labour-

Child labour is a term we hear very frequently. The term child labour is defined as a “work that deprives children of their potential and their dignity, and that is harmful to physical and mental development. Interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work”¹⁵

The Constitution of India has prohibited child labour. The Constitution of India under Article 23 and Article 24 prohibits trafficking in human which is a fundamental right.

India has the highest number of child labourers in the world¹⁶. This is where our attempts seems to go in vain. As per the CLPR Act, amended in 2016 a ‘child’ is defined as any person below the age of 14, and the CLPR Act prohibits employment of a Child in any employment including as a domestic help. But if we go through the present scenario situation is awful. The UNICEF data makes it clear that the condition needs immediate concern. The problem again comes for Former CJI of India P.N. Bhagwati said in the landmark judgment of M.C. Mehta vs Union of India¹⁷ -

“The Child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.”

4. LAWS IN INDIA-

In India there are laws that makes the Child rights as binding. **National Commission for Protection of Child Rights (NCPCR)**. It was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, an Act of Parliament (December 2005). NCPCR is a statutory body under the CPCR under the administrative control of the Ministry of Women and Child. The aim of this commission is to ensure that all laws which are made are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of Child.

The Constitution of India consists of the laws made specifically for children-

¹⁴In this act child pornography involves even the collection or watching of pornographic content involving children

¹⁵ Definition given by International Labour Organisation (ILO)

¹⁶ Data presented by the UNICEF

¹⁷[JT 1990 SC 263]

FUNDAMENTAL RIGHTS-

1. Article 21A- Right to Education - Right to free and compulsory education for all children in the 6-14 years of age group¹⁸.
2. Article 24- Right Against Exploitation- Right to be protected from any hazardous employment till the age of 14 years.

DIRECTIVE PRINCIPLES OF STATE POLICY-

Article 39A The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 39(e)- Right to be protected from being abused and forced by economic necessity to enter occupations 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 guaranteed protection of childhood and youth against exploitation and against moral and material abandonment.

Article 45- The state shall endeavour to provide, within period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years. This has now changed

Article 46- Right of weaker section of the people to be protected from social injustice and all forms of exploitation.

Article 47- Right to nutrition and standard living and improved public health

FUNDAMENTAL DUTIES-

Article 51 A (k)¹⁹- who is a 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.

POLICIES SPECIFIC FOR CHILD-

1890- Protection of Wards Act

1948- Factories Act²⁰

1956- Immoral Traffic (Prevention) Act²¹

1956- Probation of Offenders Act

1960- Orphanages and Other Charitable Homes (Supervision and Control) Act

1974- National Policy for Children

1976- Bonded Labour System (Abolition) Act

¹⁸ 86th Amendment Act, 2002

¹⁹ Added by 86th Amendment Act, 2002

²⁰ Amended in 1949, 1950 and 1954

²¹ Amendment in 1986

1986- Child Labour (Prohibition and Regulation) Act
1987- Prevention of Illicit Traffic in Narcotic
1989- Schedule Caste and Schedule Tribes (Prevention and Atrocities) Act
1992- Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act
1994- Transplantation of Human Organ Act
1996- Persons with Disabilities (Equal Protection of Right and Full Articulation) Act
2002- Information Technology Act
2000- Juvenile Justice (Care and Protection of Children) Act
2000- The Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act
2002- The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act
2006- Prohibition of Child Marriage Act
2006- Juvenile Justice (Care and Protection of Children) Act (Amendment, 2006)
2009- The Right of Children to Free and Compulsory Education Act, 2009
2012- Protection of Children from Sexual Offences Act- 2012
2012- Protection of Children from Sexual Offences Notified Rules- 2012
2012- The Child Labour (Prohibition and Regulation) Amendment Bill, 2012
2016- Juvenile Justice Rules 2016
2016- The Child Labour (Prohibition and Regulation) Amendment Act, 2016
2017- The Child Labour (Prohibition and Regulation) Amendment Rules, 2017
2017- Legal and Policy Framework for Children
2017- Standard Operating Procedure for Enforcement of The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

5. CASE LAWS-

1.M.C. Mehta v. State of Tamil Nadu²²-

In the matter of child labour, the court held that the Article 24, 39(e) and 9(f), 41 and 47 obligated the state to abolish child labour while ensuring the healthy development of child. Also it is mentioned that under Article 32 the Government of India is required to take legislative, administrative, social and educational measures to ensure the protection of child from hazardous exploitation and their healthy development.

2.Mohini Jain v. State of Karnataka²³

In this case, a resident of Uttar Pradesh state has challenged a notification issued by the Karnataka government that basically permitted private medical colleges to charge higher fees to students who were not assigned 'government seats'. The Supreme Court of India held that the charging of a 'capitation fee' by the private educational institutions violates the right to education, as implicit from the right to life and human dignity, and the right to equal protection of the law. In the absence of an express constitutional right, the Court observed a right to education is a necessary condition for fulfilment of the right to life under Article 21 of the Indian Constitution. In

²²[JT 1990 SC 263]

²³(1992)AIR 1858

addition to this, the Court also held that the private institutions, acting as agents of the State, have a duty to ensure equal access, and non-discrimination in the delivery of higher education.

3. **Unni Krishnan vs. State of Andhra Pradesh**²⁴ on Education of Children:

The Supreme Court held that the right to basic education is implied by the fundamental right to life (Article 21) when read in combination with the directive principle on education (Article 41). The Court held that the guidelines of the right must be understood in the context of the Directive Principles of State Policy, which includes Article 45 that the state is to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education to all the children under the age of 14.

In this case, the Supreme Court realised that the private educational institutions are necessary because the government is not able to meet out the demand, particularly in the field of medical and technical education. There was a question in front of the court that how to encourage the private educational institutions without giving them a chance to commercialise the education. The court further held that it would be an injudicious act to discourage the private initiative in providing educational facilities. The court held that the private institutions should be encouraged in the field of education. A good institution should be encouraged and protected while terminating the unwanted elements in the field of education. The court also observed that the state must try to prevent commercialisation of education and racketeering should be prevented. The court directed the state and educational institutions that, the admission process should be transparent and on the merit basis only, and the foremost aim should not be to earn profit. Government should encourage only those private educational institutions, which entered in the field of education for the purpose of social work and not for earning money.

4. **Vishal Jeet vs. Union of India**²⁵ on Problem of Child Prostitution :

This petition comes out with the fact that poor parents on account of acute poverty were selling their children and young girls hoping that their children would be engaged only in household activities or manual labour. However, pimps – brokers – keepers either purchase or kidnap them by untruthful means and unjustly and forcibly investigate them into ‘flesh trade’.

²⁴[1993 (1) SC 645]

²⁵[1990 (3) SCC 318]

6. CONCLUSION-

In this paper we have made an analytic study about the child rights in India. We discussed about many problems like healthcare issues, education and offences like sexual assaults, and their probable solutions. But most important aim of these rights is to make children comfortable and protected so that they can enjoy their childhood to the fullest. We have analysed that the laws made, have their impact but that cannot be said as sufficient as there are several regions in which the condition is appalling and needs immediate concern, mostly the regions are rural. So it can be said that the legislative safeguards are not the only thing but the legal provisions made should be properly im-

plemented. The problem of proper implementation is not recent, India has been a subject to improper implementation for the many legal provisions. All the policies that are made there is a need to focus on children and also to find other ways to implement the existing laws or the new one. And mostly it should be focussed on the areas needed like rural areas or the areas which are deprived of basic facilities and rights. All the laws and acts especially on education has to give special concern. Although the Indian Education System has changed a lot and improved over the years The National Policy of Education in India has led to many changes and somewhere changed the perspective of the whole education system. But these changes are not enough policies like Sarva Shiksha Abhiyaan and it would be beneficial if more policies would be launched. And in the healthcare also the country has developed a lot more, Ayushman Bharat Yojna is one of the biggest recent examples and its for everyone. But the National Health Policy should have clear focus on children and it should be according to the situation of that region. The problem with the child labour and sexual abuse is getting bigger and bigger but the yes the Constitution of India and acts like POCSO have made a striking difference but it hasn't come to an end.

Each child has a potential to become Doctor, Engineer, Artist or whatever he or she wants only if that potential is recognised. The change is to be made by people. If a child's right is affected then it not only affect his future but also the disturbs the child mentally and physically. But if the proper awareness is there and proper implementation is there then it will be the most proliferating thing for a child's future.

7. RESEARCHER'S INFERENCES

7.1 OBJECTIVES-

The objectives are mentioned below-

- To analyse the concept of the Child's right
- To understand the India's condition on the subject of child's right
- To find out the account of the the basic facilities that should be accessible to the children.
- To understand the problems related to the Indian system.
- To study about the Indian as well as International perspective

7.2 METHODOLOGY-

- Hypothetic Deductive method is used to analyse the research topic
- The research topic is primarily analytical and is library based. It is Based on the study of books, journals, reports, legislative and treaties.
- The purpose of the study is to analyse the Indian perspective of the child's right and the legislation safeguards made for it.

7.3 HYPOTHESIS-

In India the changes in the child's right have been very evident but we have to understand their implementation. There are many children who have been left abandoned, who are not getting chance to enter into school and gain education, who don't have access to basic healthcare facilities, they are malnourished they are deprived from basic needs and rights, even after developing at such a fast pace there is an imminent need to find more solution to it and the proper implementation of legal provision. So the question is- WHAT ARE CONSTITUTIONAL PROTECTION AND LEGISLATIVE SAFEGUARDS FOR CHILD RIGHTS IN INDIA, WHAT ARE THE PROBLEMS RELATED TO CHILDREN RIGHTS AND SOLUTIONS TO IT ?

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