



Cover Page



CHILD RIGHT AND STRUGGLING ABUSE AND VIOLATIONS: INDIAN CONSTITUTIONAL LAW

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“A nation’s children are its supremely important asset and nation’s future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow.”

- Rabindra Nath Tagore

Abstract

Children, despite their fragile state, are the foundation of a nation's future. While the Indian Constitution recognizes their rights, maintaining their well-being requires constant efforts. The present study analyses the concept of child rights in India, emphasizing legislative safeguards and current challenges. It investigates how the definition of Article 21, which guarantees life and liberty, has been enlarged to include rights necessary for a dignified upbringing. The study investigates significant court decisions and contemporary legislation, emphasizing the campaign against child abuse, neglect, and exploitation. It wraps up by emphasizing the importance of international grants and continued efforts towards offering caring and secure surroundings for all children in India.

Key Words: Child, Rights, Abuse, Violence

INTRODUCTION

Children are God's gift; they are innocent and gentle. They enjoy life via enjoyment, laughing, and play. Childhood innocence creates powerful emotional experiences that can astonish others. Childhood provides the foundation for imagination, optimism, and exciting experiences. Childhood is unique and distinct from other stages of life. ¹Mahatma Gandhi once observed that society should be judged based on how they treat its most vulnerable people. When it comes to resources, children are both valuable and vulnerable. The goal of raising happy, healthy, and responsible children is consistent across cultures.

Childhood is a broad phrase that encompasses various stages of human development. The United Nations Convention on the Rights of the Child specifies a child as someone under the age of 18, unless they reach the age of majority earlier under national law.

Children are the backbone and the future national builder so their wellbeing is one of the important and necessary factors. The Constitution's founders prioritized protecting the rights of marginalized groups, particularly children, to promote equality. Preventing child exploitation is crucial for national development. Hon'ble Justice Krishna Iyer emphasizes the importance of children and society's commitment to their development. The Indian constitution ensures children's well-

¹ https://shodhganga.inflibnet.ac.in/bitstream/10603/387360/6/06_chapter%201.pdf



being and medical care, and prevents citizens from being compelled. Children have the right to be prevented from maltreatment and given chances to foster physical, mental, moral, and psychological growth. The Indian constitution protects children's health and strength, and prevents citizens from being coerced into unsuitable occupations due to economic need. Children are given opportunities for healthy development in a dignified and free environment.²

Children make up one-fourth of the global population and are the most vulnerable, relying heavily on parents for survival. They lack self-defence and face challenges within their family and society. Despite efforts from academics, professionals, government legislation, and non-governmental groups, children continue to face abuse, neglect, and exploitation due to adults' inadequate treatment. Many civilizations, including our own, have historically dismissed child abuse as a private family affair or a means of teaching children discipline. Child abuse is a prevalent social and psychological issue worldwide. Emancipating children from abuse and neglect presents complicated and multidimensional challenges. Preventive intervention programs have grown more common in industrialized countries as the severity of the problem has been recognized. International groups are raising awareness about the harmful effects of child maltreatment on children's development.

THE GOALS AND INTENTIONS OF THE STUDY

The fundamental objective of this study is to determine the justifications behind India's recent child abuse and neglect legislation. The focus of this research is to draw attention to legal and human rights worries related to child maltreatment. The goal of the investigation is to assess the timely execution of contemporary international regulations and norms in the Indian legal landscape. Identify the prevalence and forms of child abuse and violence.

- Identify risk factors for child abuse and violence.
- Evaluate the impact and consequences on Children's healthcare.
- The development of effective preventative and intervention strategies.
- Extend resources for afflicted kids and their caregivers.
- Help shape policy and legislation.
- The promotion of children's rights and protection.

MEANING AND IMPORTANCE OF CHILD RIGHTS

Children's rights pertain to the entitlements and protections that are offered to individuals under the age of 18. These rights include the right to life, development, protection from injury, being included in decisions affecting them, non-discrimination, and prioritizing the child's best interests in any behaviour involving them. These principles strive to ensure that children are treated with dignity, specified chances to foster advancement, and secured from abuse, exploitation, and discrimination.

1. **Human Dignity:** Child rights embrace each child's inherent worth and dignity, regardless of their background, identity, or circumstances. They ensure that children are treated with dignity and that their basic needs are provided for in order to foster their physical, emotional, and psychological development.

² Article 39, of the Constitution of India.



Cover Page



2. **Protection and Safety:** Children's rights include protection from abuse, exploitation, neglect, and violence. They provide secure conditions in which children can grow, learn, and play without fear, thereby maintaining both their mental and physical well-being.
3. **Education and Development:** Children's rights guarantee access to excellent education, healthcare, nutrition, and opportunities for social and cognitive development. Investing in children's education and well-being helps countries lay the groundwork for a thriving and sustainable future.
4. **Equality and Justice:** Defending children's rights ensures equality by ensuring that all children have equal chances for growth and development, regardless of gender, race, ethnicity, disability, or financial status. It helps tackle systemic inequities and barriers that prevent children from acquiring necessary services and opportunities.
5. **Empowerment and Participation:** Children's rights give them the ability to make life-changing decisions, express their opinions, and have their voices heard. This generates a sense of agency, self-esteem, and civic responsibility, transforming them into active and engaged citizens.
6. **International Commitments:** Countries which observe and defend children's rights adhere with international treaties such as the United Nations Convention on the Rights of the Child (UNCRC). Compliance with these aligns supports international cooperation and solidarity in promoting.

TYPES OF VIOLENCE AND ABUSE AGAISNT THE CHILDREN

Violence and abuse against children are the most common internationally, which is a violation of fundamental rights.

1. Physical Abuse

Physical abuse can be described as the infliction of physical injury on a kid. It can comprise a variety of actions such as punching, shaking, kicking, burning, beating, smacking, or other acts that damage a child.³ There may not be a purpose to injure by the parents or caretaker, but it may come from harsh discipline or physical punishment that is improper for the child's age.⁴

Indications signs and symptoms.

- Accidental injuries include scratches, fractures, and disfigurement.
- Injuries that are different from with the provided justification.
- Delayed healthcare and oral health problems.

2. Sexual Abuse

Sexual abuse can be characterized as unlawful sexual conduct towards a child.

Sexual abuse can take many different shapes, including fondling a child's genitals and intercourse. Forcing children to touch an adult's genitals, encompassing rape, sodomy, incest, sexual exploitation, and exhibitionism.

Indications and symptoms.

- The child develops inappropriate sexual behaviour or knowledge for their age. Pregnancy or infections transmitted through sexual activity.
- Blood on the child's underwear.

³ https://shodhganga.inflibnet.ac.in/bitstream/10603/387360/6/06_chapter%201.pdf

⁴ <https://www.government.nl/topics/child-abuse/what-is-child-abuse>



Cover Page



- Disclosure of sexual abuse.
- Have difficulty walking or sitting, or have genital pain.⁵

3. Emotional Abuse

It can also be referred to as verbal, mental, or psychological maltreatment. It encompasses both actions and inactions by parents or caregivers. It can lead to major behavioural, emotional, cognitive, or traumatic consequences. Emotional abuse can be just as damaging as physical abuse but is often harder to detect. It includes verbal abuse, humiliation, rejection, intimidation, or any other behaviour that undermines a child's self-worth and emotional well-being.

Indications and symptoms.

- Limited or delayed emotional development.
- decrease self-esteem and confidence.
- Symptoms may include feeling isolated in society, despair, sudden headaches or stomach-aches, avoidance of certain situations, and a craving for intimacy. Symptoms may include reduced academic performance or interest, as well as the loss of previously acquired skills.

4. Neglect

Neglect transpires when a caregiver fails to meet a child's fundamental needs such as food, shelter, clothing, medical treatment, education, and emotional support. It can be deliberate or inevitable, and it may have major long-term effects on the development and health of a child.⁶

Indications and symptoms.

- Diminished growth or weight gain.
- Poor hygiene.
- Inadequate clothing and supplies for daily necessities.
- unauthenticated access to food and money.
- Excessive eating or hiding food.
- Poor school attendance.
- Inadequate attention or follow-up care for medical, dental, or psychiatric issues.
- Unsuitable emotional responses to the circumstance.
- Disinterest.

These forms of violence and abuse might take place alone or in groups, and they frequently have several impacts on children's physical, emotional, and psychological well-being. It makes sense to tackle all forms of violence. It is imperative that we handle all forms of violence and abuse entirely in order to Ensure that the security and good health of youngsters.

CONSTITUTIONAL PROVISIONS FOR PROTECTION OF CHILD RIGHTS

The founders of our Constitution understood the importance of children's rights and included various safeguards to protect them. There is a legislative structure in place to assure their execution. The Constitution preserves the right to life and personal liberty, as well as the rights to equality, free speech and expression, religious freedom, cultural preservation,

⁵ Sadhana Gupta and Pankaj Kumar, —Child sexual abuse: A Socio-Legal Problem, Vol.20, No.6, (2006) Legal News and Views, p-15.

⁶ <https://www.ncbi.nlm.nih.gov/books/NBK459146/>



Cover Page



and constitutional remedies for protecting fundamental rights. The Directive Principles of State Policy compel the state to provide all children with safe and secure conditions for development.

1. FUNDAMENTAL RIGHTS

Article 45 of the Indian Constitution enables the state to offer free and compulsory education to all children up to the age of fourteen. According to Article 46 of the Constitution, the state is responsible for providing educational and economic opportunities to society's most vulnerable groups, such as Scheduled Castes and Tribes, as well as securing them against social injustice and exploitation. The Indian Constitution encourages the state in safeguarding minors against exploitation and discrimination in undesirable work. It also provides equal opportunities and optimal circumstances for development. Children and adolescents need to be reared in a safe, healthy, and dignified environment devoid of exploitation and abandonment.

Education is a crucial human right that can help to avoid crimes against children. The Act providing children the right to free and compulsory education took effect on April 1, 2010. This is a watershed moment for India, as the right to education now has the same legal standing as the right to life under Article 21 A of the Constitution. Children aged six to fourteen will get eight years of elementary education in age-appropriate classrooms in their area.⁷

Human trafficking and forced labour are outlawed by constitutional law. Human trafficking and forced labour are forbidden under Article 23 of the Indian Constitution. Any breach of this provision is penalized by law. The state may impose obligatory service for public reasons without discrimination on religion, race, caste, or class.

2. DIRECTIVE PRINCIPLE OF STATE POLICY (DPSP)

Article 45 of the Indian Constitution empowers the state to render free and compulsory education to all children up to the age of fourteen. According to Article 46 of the Constitution, the state is responsible for providing educational and economic opportunities to society's most vulnerable groups, such as Scheduled Castes and Tribes, as well as protecting them from social injustice and exploitation. The Indian Constitution encourages the state safeguard minors from exploitation and harassment into unsuitable employment. It also provides equal opportunities and favourable circumstances for development. Children and adolescents must be raised in a safe, healthy, and dignified environment free from exploitation and abandonment.

3. INTERNATIONAL CONVENTIONS AND DECLARATIONS

India has signed an abundance of international instruments and declarations emphasizing children's rights to safety, safeguarding, and dignity. It ratified the UN Convention on the Rights of the Child in 1992, highlighting its prior backing for the 1959 United Nations Declaration on the Rights of the Child, and is fully committed to upholding the Convention's provisions. The Indian government ratified the Convention's two Optional Protocols in 2005, which address children's participation in conflicts involving arms, the sale of minors, child prostitution, and child pornography. India has ratified the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination

⁷ Article 21 A The Constitution (86th Amendment) Act 2002



Cover Page



Against Women, and the SAARC Convention on the Prevention and Combating the Trafficking of Women and Children into Prostitution.

4. NATIONAL POLICIES AND LEGISLATION ADDRESSING CHILD RIGHTS

Many countries have enacted legislation, statutes, and policies for protection and upliftment of rights of children.

a. National policies

The country's principal legislation and programs targeted at strengthening child rights include the 1974 National Policy for Children, the 1986 National Policy on Education, and the National Policy on Children. The following policies were implemented: Labour 1987, National Nutrition Policy 1993, Committee on Prostitution, Child Prostitutes, and Children of Prostitutes Report 1998, National Health Policy 2002, National Charter for Children 2004, and National Plan of Action for Children 2005.

b. National Statutes

The national laws protecting children's rights in the country include the Guardian and Wards Act 1890, Factories Act 1954, Hindu Adoption and Maintenance Act 1956, Probation of Offenders Act 1958, and Bombay Prevention of Begging Act 1959.

The following laws are applicable: Orphanages and Charitable Homes Supervision and Control Act 1960, Bonded Labor System (Abolition) Act 1976, Immoral Traffic Prevention Act 1986, Child Labor (Prohibition and Regulation) Act 1986, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1987, Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, Persons with Disabilities (Equal Protection of Children) Act 2000, Commission for Child Marriage Prohibition Act of 2006, etc. The purpose is to regard children as important assets with human rights and to prevent discrimination based on gender, class, caste, color, religion, or legal status, so promoting equality. All policy and program interventions prioritize the most disadvantaged, poorest, and underserved children. This entails addressing the many phases and settings of childhood and giving all children with entitlements that reflect their rights and needs in each scenario.

JUDICIAL APPROACH TO CASES OF CHILD ABUSE

Throughout the years, the Indian judiciary has delivered a number of decisions aimed at defending children's rights. Historically, representatives and courts have shown little concern for children's problems. When a deadline approaches or a major report is due to an international authority, legislators frequently approve legislation that affects children. However, the courts have issued landmark decisions that defend children's rights. We commend the new court's readiness to protect children's rights in certain cases. In *Bhola Bhagat v. State of Bihar*. If there is reasonable doubt regarding a defence attorney's claim that their client is a juvenile, the court must investigate. Disregard for children's rights is prevalent in Indian culture. In the matter of *Bachpan Bachao Andolan against Union of India* The Supreme Court of India upheld children's fundamental rights. Articles 14, 21, 23, and 39 of the Indian Constitution provide comparable safeguards for minors.⁸

⁸ https://shodhganga.inflibnet.ac.in/bitstream/10603/538205/4/04_abstract.pdf



Cover Page



FACTORS CONTRIBUTE TO CHILD ABUSE AND VIOLENCE

1.Family Dynamics: Dysfunctional family environments, including substance abuse, domestic violence, parental stress, and intergenerational transmission of abuse, can increase the likelihood of child maltreatment.

2.Societal Factors: Socioeconomic inequalities, Hunger and limited opportunities for learning and support services, Intercultural boundaries. condoning violence, and social isolation can create environments where children are more vulnerable to abuse.

3.Individual Characteristics: Mental health issues, such as substance abuse, untreated trauma, and unresolved emotional issues, in caregivers or perpetrators can contribute to abusive behaviours.

4.Interpersonal Relationships: Power imbalances, conflicts, and breakdowns in relationships between caregivers and children or within families can lead to abuse and violence.

5.Community and Environmental Factors: Lack of community support, inadequate social services, and unsafe neighbourhoods can exacerbate stressors on families and increase the risk of abuse.

6.Institutional Failures: Weak child protection systems, weak legislation, a lack of enforcement, and gaps in resources for vulnerable families can all impede initiatives to prevent and cater to child abuse.

CONCLUSION AND RECOMMENDATION

The campaign for child rights in India has made great headway, with the legal framework growing to include the right to a life of dignity. Landmark decisions and international conventions have played critical roles in advancing child protection. However, issues remain. Poverty, societal inequality, and poor infrastructure continue to prevent all children from fully realizing their rights.

- **Strengthening Enforcement:** Effective execution of current laws and policies is critical. This demands proper funding for law enforcement, child welfare services, and the judiciary.
- **Empowering Children:** Giving children age-appropriate information about their rights and self-protection measures enables them to speak out against abuse.
- **Data-Driven Approach:** Comprehensive information on the prevalence and nature of child abuse serves as crucial for developing effective interventions and monitoring success.
- **Parental Education:** Programs that encourage positive parenting skills and healthy relationships can greatly reduce child maltreatment.
- **Community Mobilization:** Public awareness initiatives can break the silence on child abuse and enhance reporting. Educating communities about children's rights and available support systems is crucial.
- **Investing in Social Services:** Investing in social services can address the core causes of child abuse and neglect, notably in vulnerable communities.



Cover Page



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