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A critical Analysis on existing laws on Child Rights in India

“But when adults speak up for the vulnerable and weak, working and demanding that safety and prevail, God’s little lambs are protected and nourished. They know they not abandoned; they are loved. And the world becomes a little more like heaven as a result.”

- Wess Stafford¹

Introduction

A child is considered as tremendous award by almighty for the humans. Through this article the author is trying to explain about the rights and laws enumerated in different statues for the wellbeing of children. Also the author has tried to compare the rights of a child in India in the light of international moves and discussed the landmark decisions which have changed the status of these rights and in the last part of the article the author has tried to give suggestion with time which is need to implemented in order to secure children for the future prospects as the development and welfare of any community largely depends on the health and well being of its children. Today protection of children from all kinds of illegal activities has become the major objective of our society. It was rightly said by **Justice V.R Krishna Iyer** “**It is our obligation to the genesis by aperture up all opportunities for every child to unfold its personality and rise to its full stature physical, moral, mental and spiritual and it is the birth right of every adolescent that cries for justice from the world as whole.**”

Definition of a child

¹ As retrieved from: (<https://www.goodreads.com/quotes/738846-but-when-adults-speak-up-for-the-vulnerable-and-the>)

As soon as the article started, the first which question strikes the mind is, who is a child? There is no particular definition of a child given in the constitution of India. But a child can be defined as a brood human being below the age of adolescence or below the legitimate age of majority. Different acts give different definitions of child like *Juvenile Justice (JJ)*² act defines child, as a person who has not completed the his/her 18 years of age whereas according to *World health organization*³ (WHO) A person who is younger than 19 years is a child, unless it is defined by national law to be an adult at an earlier age. However, if he/she falls into the 10 to 19 age category will be considered as adolescent. And according to the *Factory act*⁴ a person who has not completed the age of 15 years is called as a child.

Child Rights are the most ratified in the history of Human Rights. UNCRC⁵ which stands for The United Nation Convention on Rights of Child defines Child Rights as the minimum freedoms entitled to every citizen below the age of 18 regardless of which race, color, national origin, wealth, gender, opinions, language, religion, origin, disability birth status, or other characteristics they are of.

These rights enumerated in UNCRC encompass freedom of civil rights, necessary healthcare and welfare, education, family environment, leisure and cultural activities and special protection measures to children. There are basically 4 fundamental human rights which includes all civil, political, social, economic and cultural rights outlined by United Nation Convention on Rights of Child are *Right to Survival, Right to Protection, Right to Participation and Right to development*.

There are different rights for welfare of child but the question is from where the rights of children is being adopted to answer this question, the author would like to notify that After the end of First World War the Children Rights were identified and adopted through the Geneva Declaration in the year 1924, later on the new evolution of Child Rights arise in the year 1959 when United Nation accepted the Declaration of Children Rights. The fundamental rights of the child are accepted through The International Convention on the Rights of the Child in the year

² Juvenile Justice (JJ) Act, 2000

³ World Health Organization (WHO), 1948

⁴ Factory Act, Section 2(c), 1948

⁵ United Nation Convention on Rights of Child, 1989

1989. Child Rights are considered as a subdivision of human rights⁶, as child is also a human being, few of the Human Rights guaranteed as a fundamental rights for a children likethe protection of physical mental integrity through the right to life, the non-discrimination the right to dignity. Alsoas Right to nationality and right to identify is fundamental right. Therefore Child Rights are also considered as a civil as well as the political right. And As the right to education, right to decent standard of living and right to health are also covered in the said law. That's why Child Right is regarded as economic social and cultural right.It also includes live with parents and right to benefit from a protection etc.

Noble laureates

Person who is involved in the protection of the rights of the child can be called a Child activist, People from across the world has worked for the rights of Child like **Princess Diana** who was involve in charitable work on the behalf of children.While discussing about child rights one cannot forget to discuss about the youngest Nobel laureate in history **Ms. Malala Yousafzai**, who defied the Taliban in Pakistan and demanded that girls should be allow receiving education. These famous child right activists have put commendable efforts in improving the lives of the youngest citizens.

The 2014 Nobel Peace Prize awardees—Ms. Malala Yousafzai and Mr. Kailas Satyarthi⁷ have reminded all of us the need to keep on advancing in providing opportunities that have an important effect on all children.

Children are rarely in the situation to stand up for their own rights so it's the duty of government and society to protect the rights of children. In the next part of the article the author has notified the rights of children enumerated in different statues.

Statutes in which rights of children are enumerated

Rights are made to live life with full dignity as Rights protect the group of people who differ racially or politically from the oppression of the larger group. Rights are essential part of human life. So there are some rights enumerated in different statues are given as follows:

⁶ Human Rights, 1948

⁷ Nobleprize.org

Constitution of India⁸

Article 21A

Free and mandatory education for the child from the age of 6 to 14 years, notified in the Constitution amendment Act⁹ shall be provided by the state.

Article 24

Employment of a child below the specified age of 14 years shall not be employed in a factory, a mine or engaged in any other dangerous employment.

Article 39(e) and (f)

State shall, in particular for the protection of the child that they are not abused" and "the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" and against exploitation moral and material abandonment childhood and youth are to be protected.

Article 45

Childhood care and education for all children until their age of six years, is provided by the state.

Children are guaranteed with equal rights as any other citizen of India.

Article 14-Equality before law or the equal protection of the laws within the territory of India which implies anybody within the territory of India which includes children as well, **Article 15**-No discrimination shall be done on the basis of race, caste, sex, place of birth and religion,

⁸ Constitution of India, 1950

⁹ Constitution (86th) Amendment Act, 2002

Article 21-Right to life and personal liberty, **Article 23**- Right to being protected from being trafficked and forced into bonded labor, **Article 29** - Right of minorities for protection of their interests, **Article 46**- Weaker sections of the people Rights to be protected from social injustice and any other kind of exploitation, **Article 47** -Right to standard of living and nutritious improved public health.

The Child Labor (Prohibition and Regulation) Act¹⁰

This act was made to restrict the employment of a child in some of the specified fields, This act clearly stated that any employment of a human under the age bar of 14 years will be considered as an offence and is prohibited by laws.

The criminal procedure code¹¹

Section 27 of the code specifically deals with the juvenile which reads as “any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years, may be tried by the court of a chief judicial magistrate, or by any court specially empowered under the children act¹² or any other law for the time being in force providing for the treatment training and rehabilitation of youthful offenders.

The Employment of Children Act, 1938¹³

The employment of children act states that the child who is below the age of 15 years can not be employed in any occupation transport of passengers, goods or mail by railways.

The Juvenile Justice (Care and Protection of Children) Act¹⁴

Juvenile Justice acts deals with the law relating to juveniles under this act providing better environment and special approach towards the prevention and treatment of children.

The Apprentices Act¹⁵,

¹⁰The Child Labor(Prohibition and Regulation) Act 1986

¹¹The Criminal Procedure Code (Section 27), 1973

¹² The Children Act ,1960

¹³The Employment of Children Act, 1938

¹⁴The Juvenile Justice(Care and protection of Children)Act, 2000

No person is allowed to go under any type of training unless he or she has not attend the age of 14 years and satisfies the others standards of physical fitness and education as may be prescribed.

The Children (Pledging of labor) Act¹⁶

The Children Pledging act was enacted to prohibit the making of agreements of pledge the labor of children and the employment of children whose labor has been pledged.

The Factory Act¹⁷

The main objectives of Factory Act 1948 is to control the working conditions in factories, to maintain the rate of speed of health, safety welfare, and annual leave and make special provision in respect of young persons, women and children who work in the factory.

The Mines Act¹⁸

Employment of children in underground or open cast mine is prohibited under Section 40 of Mines Act.

Person who is below the age of eighteen years is prohibited under section 45 of Mines act to present in any part of a mine above ground, where any operation connected with or incidental to any mining operation is being carried out.

Case laws displaying Child Rights:

In *M.C. Mehta v. State of Tamil Nadu and ors.*¹⁹ Indian activist plaintiff M.C. Mehta sued the state of Tamil Nadu to improve the working conditions for children and to rescue children from the hazardous labor with an education. The Hon'ble Supreme Court issued a landmark ruling that the Article 24 of the Indian Constitution states that the children below the age of 14 years can not be engaged in any type of employment. It was found in this case that children who are below the age of 14 cannot be engaged in any type of hazardous employment and government was ordered to maintain and establish a rehabilitation welfare fund for child labor. And it was also said that employers who will violate child

¹⁵The Apprentice Act,1961

¹⁶The Children (Pledging of labor) Act,1933

¹⁷The Factory Act,1948

¹⁸The Mines Act,1952

¹⁹1993 SCC(1)645

labor have to deposit fund. Government was also asked to provide jobs to the parents of children who are engaged in hazardous work or else deposit the fund for them.

In the case of *J.P.Unnikrishnan & Others v. State of Andhra Pradesh & Others*²⁰ It was held in this case, that Fundamental right Right to education is provided to every individual of this country. Until every child/ citizen of country has not completed the age of 14 years is entitled to have free education. As according to article 21 A state shall provide the free education to the children from the age of 6 to 14 Thereafter the economic capacity and development of the State is limited by his Right to education.

In the case of *Vishal jeet v. Union of India*²¹ the hon'ble Supreme court was issued by the State government for children for setting up rehabilitate homes who found begging in streets and also the minor girls who are pushed into 'flesh trade' to protective homes."

In *Gaurav Jain v. Union of India*²² the apex Court held to reintegrate the children and child prostitutes after conducting in depth study of matter Further more juvenile homes should be used for rehabilitating child prostitutes.

In *People's Union for civil liberties v.State of Tamil Nadu*²³ It was held that the child employed in work who are under the age of 14 years is against article 24 and local authorities was ordered to ensure that the children are receiving proper education from standards 1 to 8 under the Rights of Children to free and compulsory education act²⁴.

In the case of *Laborers working on Salal Hydro Project v. State of Jammu and Kashmir*²⁵ Justice Bhagwati said that that Construction work is hazardous. So the children who are below the 14 years is employed in these works is the violation of Article 24 of Constitution of India.

²⁰1993,SCR(1) 594

²¹1990 SCR (2) 861

²²1997,SC 3021

²³(2013)1 SCC(L and S)215

²⁴ The Right to Education Act, 2009

²⁵1984 AIR 177

It was held that in the case of *Bachapan Bachao v. UOI*²⁶ that though Right to education is pertinent as fundamental right under article 21 A of the constitution of India but from Now it is compulsory for every child of the age of 6 to 14 years has right to have free education in neighborhood school till elementary education

In the case of *Shiela Barse v. Union of India*²⁷ Direction regarding various mental and physical retarded children as also deserted or penniless children who are being complaint in various jails in the country for 'safe custody was issued in this case and it was held that if a child is accused for any crime then he will not be imprisoned more then of 7 years concerned, a period of 3 months from the date of filing of the complaint or lodging of the First Information Report(FIR) is the maximum time permissible for investigation and a period of 6 months from the filing of the charge sheet as a reasonable period within which the trial of the child must be completed. If the same is done then prosecution against the child would be liable to quash the same.

Gita Hariharan vs. Reserve Bank of India ²⁸

In this case Supreme Court deemed both the parents that is mother and father of a child a as natural guardians. The apex court also stated that 'after' cannot be given a literal interpretation, and the welfare of a child has precedence in determining the guardian of a child.

It was held in the case of *Sampurna Behrua v.UOI*²⁹that the optimal performance of the MWCD in the central and state governments would ensure that the National Commission for Protection of Child Rights (NCPCR) and the State Commission for Protection of Child Rights (SCPCR) was expected by the court. The court also stated that the constitution of State Child Protection Society and District Child Protection Units needs to include the police and members of civil societies. Also the court hoped that audits would be carried out every six months to supervise the implementation of the JJ Act across the country

²⁶Writ petition no.906,2014

²⁷1987 SCR (1) 870

²⁸AIR 1999,2 SCC 228

²⁹WP(civil) no. 473 of 2005

Rights of Children- A comparison with Other countries

Rights and welfare of child according to African Charter³⁰The Preamble states that “**the child occupies a unique and privileged position in the African society**” and requirement of legal protection as well as “**particular care with regard to health, physical, mental, moral and social development.**”

The European Convention³¹ provides Rights to the ChildrenEspecially in family proceedings which affects them; relevant information should be provided to them and “due weight” should be given to their views; and, these rights should be protected by the state as well as the parents of the children.

The main objective of ***The United Nations Children’s Fundorganization***³²is to provide humanitarian and developmental aid to children all around the world. It is one of the most largely spread and recognized social welfare organizations in the world, present in 192 countries, UNICEF' immunize and prevent disease administers the treatment for children and mothers suffering with HIV, enhances childhood and maternal nutrition, improves sanitation, promotes education, and provides emergency relief in response to disasters.

The main objective of ***Child fund, Australia***³³(non religious organization) is to reduce poverty for children in developing communities. This organization works for more than 13 million children and their families over 60 countries.

Child Fund believes, ***Every Child should be able to say, I have a future.***

Canada's Convention³⁴ ***ratified*** it two of the three available protocols:

³⁰Rights and Welfare of Child According to African Charter,1981

³¹European Convention, art 24,1950

³² UNICEF,1946

³³Child fund , Australia ,2005

³⁴Canada’s Convention,1969

According to first Optional Protocol of Canada's Convention The compulsory recruitment of human under the age bar of 18 is declared void and accepted the direct participation in hostilities by the forces of a State and **Thesecond Optional Protocol of Canada's Convention** talks about Criminalize the Sale of Children, Child Prostitution and Child Pornography Whereas Canada has not ratified the third protocol, which sets out an international complaints procedure for child rights violations.

According to **United Nation Charter of America**³⁵ given rights are the basic rights for the children and should be followed across the globe: Right to survival means to have life, health, nutrition, name and nationality The second one is right to development which means to be educated and have care, leisure, recreation The third one is right to protection from exploitation, abuse, neglects and the last one is The right to participation to expression, information, thought and religion.

According to **Brazilian Constitution**³⁶ health is determined as the social right and it is also said that ensuring the children and adolescents, with absolute priority, health, the right to life, nourishment, leisure, education, professional etc. is the duty of family, society members and the State.

Children rights in China says that Person who is above the age bar of 18 years is regarded as major and under is regarded as minor in china, but also provides full civil conduct capacity to those who are in the mid of 16 to 18 years age bar. On the other hand china states that any citizen from the age bar of 10 to 18 has a limited capacity of civil conduct, and such people/human citizens are supposed to engage only with such acts which are in accordance with their age bar. Where as people under the age bar of 10 years lacks complete civil conduct capacity, summing up children under the age bar of 18 are termed as minors and children in China.

³⁵United Nation Charter of America, 1945

³⁶ Brazilian Constitution , Act 277, 1988

Children's rights and welfare of the children is protected by both constitutional provisions as well as the other legal enactments in Bangladesh.

The Child Right Declaration, 1924 was approved and enacted under the Fifth Assembly of the League of Nations in which the Children Rights was mentioned for the first time in an international document. The 1924 Declaration was followed by the Declaration of the Rights of the Child in 1959, providing children a series of protections, benefits and priorities. The rights were also affirmed in the International Covenant on Economic, Social and Cultural Rights adopted by the United Nation General Assembly in the year 1964.

*Constitution of South Africa*³⁷ is concerned to children and their entitled rights. This does not state that other rights in the South Africa's constitution are not to them, section 82 is specifically for the South Africa citizen children.

This section also gives the definition of child according to which a person below the age of 18 would be call as a child. Some basic rights are also provided to children under this act like have a name and nationality, to have education and family care etc.

International standards

Over the years advancement in International standards is recorded:

In the developing countries of the early twentieth century, Child protection standards were almost zero. Working with adults in unsanitary and unsafe condition was a common practice among them. Rising acceptance of the abuse of their bearings, propelled by greater understanding of the evolution needs of children, led to the actions for protecting them. Child rights have advanced adequately over the past century on International standards.

³⁷South Africa constitution, section 28,1994

Timeline of child rights' International recognition

In the year 1924 Rights of Child declared by League of Nation articulates that all people owe children the right to: means for their economic freedom and protection from exploitation; development; priority for relief; special help in times of need; and an upbringing that instills social consciousness and duty.

The United Nations General Assembly established UNICEF³⁸, the International Children's Emergency Fund, with an aim to help children all around the globe.

United Nations General Assembly in the year 1948 adopted the Universal Declaration of Human Rights, according to its Article 25, mothers and children are entitled to 'special care and assistance' and 'social protection'.

The Declaration of the Rights of the Child was adopted by United Nations General Assembly in the year 1959 in which it was recognized that children have:

Right to education, play, a supportive environment and health care among other rights.

United Nations Member States In the year 1966 promised to uphold equal rights for all children. Including education and protection.

The International Labor Organization³⁹ in the year 1973 adopted Convention 138, and clearly stated (18 years as) the minimum age for undertaking hazardous work that might be dangerous to a person's health, safety or morals.

The General Assembly in 1974 calls on Member States while concerning about the vulnerability of women and children in situation of emergency and conflict and also to observe the condition

³⁸The United Nation Children Fund,1946

³⁹The International Labor Organization,1919

of women's in war and emergency. And it was decided that the attacks imprisonment against civilian women and children will be stopped and the sanctity of the rights of women and children was uphold during armed conflict.

The drafts of a convention on rights of child was put forward by the Commission on Human Rights in the year 1978 for consideration by a working group of Member States, agencies and intergovernmental and non-governmental organizations.

Declaration of the Rights of the Child to mark its 20th anniversary in the year 1959, the United Nations General Assembly announced 1979 as the International Year of the Child, in which UNICEF plays a major role.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice detail the principles of a justice system in 1985 which Advocates and bolster the child's best interest in which education, proportional treatment and social services for child is included.

The United Nations General Assembly in 1989 adopted the convention on child right and it was widely acclaimed as a landmark achievement on human rights and it was recognized that the children play role as social, economic, political, civil and cultural actors. Some minimum standards for protecting the rights of children in all capacities is guaranteed by the convention. The document was named as the source of expertise by UNICEF which helped in drafting of convention.

It was held by the World Summit for Children in New York that the strategies for protecting young people at high social risk and preventing criminality is guide lined for the prevention of Juvenile Delinquency

In 1991 Experts from different organization like, Save the Children, The United Children's fund, Defense for Children International and a lot like organizations came together and discussed on children's right according to the gathered data from reporting process of the convention and finally this meet up lead to the establishment of the Child Rights International Network (CRIN) in the year 1995.

Worst Forms of Child labor convention was adopted in 1999 by The International Labor Organization (ILO) ⁴⁰ and immediately all type of work which produces any time of harm was prohibited and eliminated for the moral and safety of children. Since 1996 ILO and United nation children's fund are working together to stop the child labor.

To the 1989 Convention The United Nations General Assembly adopts 2 protocols on Child rights which obligates the State Parties to take key actions to prevent juvenile/children was avert from taking part in animosity, hostilities or antipathy during armed combat and to end the sale, sexual profiteering and abuse of adolescent.

For the first time in 2002 General Assembly delegates the special session on Child rights at the United Nations .The World Fit for Children agenda was adopted outlining specific goals for improving the prospects of children over the next decade.

Manual for the Measurement of Juvenile Justice was published by UNICEF in 2006 for Indicating with the Office of (UNDC) United Nations on Drugs and Crime. Also The governments enabled manually, to approach the circumstances of their juvenile justice conformity and amend was made necessary.

On Child Rights the United Nations Secretary-General issues the Status of the Convention in 2010

⁴⁰International Labor Organization, 1919

The 1989 Convention on the Rights of the Child was adopted in 2011 According to this Optional Protocol on a communications procedure; complaints can be filed for violence faced by children by the committees which are collectively responsible for Child Rights.

The Convention was most widely ratified with 196 states and was ratified by the Somalia and Sudan in 2015.

For advocating, conserving and accomplishing children's rights, understanding or compassionating this framework is very important as the Convention on the Rights of the Child – and the rights and duties encompass in it – are part of it.

Advent of strict laws and their Efficiency:

Strict laws are needed to be frame for the wellbeing of children as the future well being of the nation depends on how its children grow and develop. The great poet Milton said “*Child shows the man as morning shows the day*”.

So it is the duty of the society to ensure and protect the each and every law of children.

Here are some strict laws made for child's welfare:

India adopted the Child Rights act⁴¹ which discussed about the punishment for the one who disrespects and practices the prohibited act.

In accordance with *The prohibition of Child Marriage act* the Punishment for male adult is that if a male adult failing to accept the law and conducts the child marriage, will be subjected to a rigorous imprisonment for 2 years or with fine which may extend to one lakh rupees or both whereas Punishment for solemnizing marriage is if child marriage is conducted , abetted, or

⁴¹ Child Right Act,2007

performed by any person then he shall be punishable with imprisonment for 2 years or with fine which may extend to one lakh rupees or both and Punishment for promoting / permitting solemnization of marriage is Any person who is promoting or permitting solemnization of marriage no matter whether he is mother, father or any organization will be punished under this act.

Offence under this Act is cognizable and non billable.

In ***POCSO (Protection of Children from Sexual Offences) act***⁴² the punishment was made more stringent for the one who commits sexual crimes against children, includes death penalty in cases involving aggravated assault. Death penalty has also been introduced under some sections and strict action to be taken against anyone pushing child pornography

Conclusion and suggestion:

“I am the child. All the world waits for my coming. All the earth watches with interest to see what I shall become. Civilization hangs in the balance. For what I am, the world of tomorrow will be. I am the child. You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail. Give me, I beg you, that I may be a blessing to the world”.

- Mamie Gene Cole

Children are the valuable resource of any nation. Children can be also considered as future custodians and torch bearers of any Society: they showcase the exact cultural heritage, ideologies and philosophies. Unfortunately millions of children are deprived of their childhood and fundamental rights guaranteed under the constitution and differentlike right to education and thereby they are subjected to exploitation and abuse. Major Child issues in India are: ***Girl child, Malnutrition, Poverty, Illiteracy, Child Marriage, Child trafficking and very importantly Childlabor.***

⁴²Protection of Children from Sexual Offence Act,2012

These are the major child issues which are being seen in our day to day life. Through this article the author has tried to put some light in respect to child rights. There are many rights enumerated in different statues like constitution of India, in different acts like **JJ** and **POCSO**. The question is why rights are made? Rights are made for the welfare of an individual but it's the duty of an individual to take the benefit of there right. Children are not mature enough who can take advantage of these rights so it's the duty of government and society to protect the rights of children. It is clearly seen that the notable progress has been taken place, even in developing countries, especially India, there is much remains to be done in realizing the rights of children. Though all the relevant rules and policies are in place, but what is the use of these policies till they are not utilized by the children. The condition of under privileged kids and underprivileged youth is cruel and it needs more attention. It was rightly said by the *Nelson Mandela* ***History will judge us by the difference we make in the everyday lives of children.***

So here are some suggestions for increasing the condition of child.

- The victimization for nonobservance of Child Labor (Prohibition and Regulation) Act⁴³, shall be boosted to three months incarceration or fine which may broaden to fifty thousand rupees or with both.
- The Employment of children in any other employment including Agricultural Farm Sector should be made a cognizable offence, non- billable and non-compoundable.
- It is put forward for the consideration that the laws which are made for child labor and education of child should be enforced in a supportive way.
- The Judiciary can be more sensitive in dealing with child labor cases.
- It is also suggested to the government to provide jobs to people whose child are employed in hazardous work.
- It is suggested that Government should ensure that children are growing up with the provision of safe and effective care.
- It is suggested that the implementation and enforcement of child labor laws and others which are made for the protection of child need to be more focused.

⁴³ Child labor (prohibition and regulation Act) section14(3),1986

