

Protection of Abandoned Children under Indian Constitution

Ms. Sumathi S*
Dr. Sanjaya Choudhury**

DECLARATION:: I AS AN AUTHOR OF THIS PAPER / ARTICLE, HEREBY DECLARE THAT THE PAPER SUBMITTED BY ME FOR PUBLICATION IN THIS JOURNAL IS COMPLETELY MY OWN PREPARED PAPER.. I HAVE CHECKED MY PAPER THROUGH MY GUIDE/SUPERVISOR/EXPERT AND IF ANY ISSUE REGARDING COPYRIGHT/PATENT/ PLAGIARISM/ OTHER REAL AUTHOR ARISE, THE PUBLISHER WILL NOT BE LEGALLY RESPONSIBLE. . IF ANY OF SUCH MATTERS OCCUR PUBLISHER MAY REMOVE MY CONTENT FROM THE JOURNAL..

Abstract

As per Constitution of India, Article 15 (3), the State is empowered to make special provisions for children. Article 39 of part IV of the Indian constitution makes the State to direct its policy towards securing the children not forced by economic requirement. Section 82 of the IPC, nothing is an offence if it is proven to be committed by a minor child under the age of seven years. It is also observed that Section 83 I.P.C. nothing can be considered as an offence done by a child above the age of seven and below has not attained sufficient understanding or maturity to judge the nature of the consequences of his conduct. Article 21, 22 and 23 of the Indian constitution which are the fundamental rights may be adopted for the benefit of the children.

Key words: *Abandoned children, Constitution, Protection, Human trafficking, violence*

I. Introduction

The role of abandoned Children plays a significant role in India in comparison to other advanced countries. The problems faced by the children and risks faced by them and their remedies available in law and policy applicable for the best interest of children.

As per the Constitution of India, Article 15 (3), State should take special provisions for children. Article 39 of part IV of the Indian constitution makes the State to direct its policy towards securing the children not forced by economic requirements but also to enter either by avocations which is inappropriate to their age or strength; but they are given suitable opportunity to develop in good physical shape manner and in

* Research Scholar, Bhagwant University, Sikar Road, Ajmer, Rajasthan -305004

** Professor of Law, Bhagwant University, Ajmer, Rajasthan -305004

circumstances of freedom and dignity and they are protected against moral and material abandonment. It is also further stated that UN Convention on the Rights of the Child (UNCRC), adopted by the UN General Assembly in 1989 to bring out universal gratitude of children's right to its member nations.

Justice Verma Committee¹ report look after the amendments pointing out to criminal law amendment on the verge of growing number of crimes against children about 60,000 children are being abandoned every year and most of these cases go unnoticed. The abandoned children have fallen fatalities to human trafficking and sexual violence as the number of non-governmental organizations and the social activists meaningful fingers to police action in dissimilar cases.

II. Significance of the study

The concept of abandoned child could be a socially constructed incidence—in other words, it does not simply a natural process, but also given exacting depends upon its social and historical backdrop. Throughout the world, a large numbers of abandoned children expression of challenges like injustice, poverty and abuse that strictly curb their human rights and their contribution to society. The Human Rights of all people, including abandoned children are protected within the Bill of Rights. While it is observed technically the declaration of the Universal Declaration of right is mostly measured under the usual law, and thus lawfully binding. The leading consequence is that abandoned children under special Articles of the UDHR states that everybody has the suitable to security and a 'standard of living for adequate health and well-being of himself and his family.

III. Indian legislation for child protection

- a) The Juvenile Justice (Care and Protection of Children) Act, 2015 by the UNCRC, is India's essential law for providing sufficient care and protection. Children are developed through care, protection, development, treatment, social reintegration for the most excellent interest of children.
- b) The Sexual Offences Act, (POCSO), 2012 helps to protect the children on the ground that Indian governments shall make a good number of progressive laws in order to combat sexual violence against children. POCSO qualifies

¹ . January 23, 2013

penetrative sexual assault on a child below the age of 12 which is punishable under the criminal procedure code with a fine and rigorous detention for 10 years, which can be extended to life imprisonment.

- c) The Criminal Law (Amendment) Act, 2013 defines under the Indian Penal Code like Section 376 (2) (i) for several new sexual offences which punishes rape of a female under 16 years is considered an aggravated form of rape punishable with a fine and a minimum term of rigorous imprisonment for 10 years, which can be extended to life imprisonment.

(a) Other provisions regarding child offenders

According to Section 82 of the IPC, nothing is an offence if it is proven to be committed by a minor child under the age of seven years. It is also observed that Section 83 States that nothing can be measured as an offence done by a child above the age of seven and below has not attained enough sympathetic or adulthood to judge the type of the consequences of his conduct.

It is also reported that not anything which is done in good declaration for the benefit of a person under twelve years of age or of in poor condition mind or by permission either expressed or implied, of the custodian or other person having lawful charge of that person is an offence.

Section 369 of the IPC also states that who can keep kidnaps or abduct a child under the age of 10 years with a purpose to take any movable property from the person of such child shall be punished with custody of either sketch for a term which may extend upto seven years in addition to fine.

(b) Sexual exploitation

According to 366A of IPC whoever by any means whatsoever induces any minor girl under the age of 18 years to go from any place or to do any act with the purpose that such girl may be or expressive that it is likely that she will be forced or seduced to illegal intercourse with another person shall be punished with imprisonment of either for a term of ten years and shall also be liable to fine.

(c) Highlights of the Indian Constitution

In accomplishing the milestones, both at the worldwide level, the non-governmental organizations and civil society organizations have played important position along with the Government in almost every aspect about children. Different

types of social media has played an unsafe role in decisive public attitude and creating growth awareness. The Government of India and UNICEF are playing crucial role in the two-way of initiative over the years have listening vigilantly on pleasing to the eye on various capacities of the electronic and print media workers in the Ministry of Information and propagation so as to place together and locate for issue involving two children and their rights proficiently. As a consequence, the media is progressively focusing on children's issues in a qualitative method. This is surely hopeful sign for the outlook and it is hoped that the media will add to its responsibility to comprise on monitoring of child rights violations in a significant and inexorable way.

Article 21 of the Constitution of India, on the right to life and liberty states that no person shall be deprived of life or personal liberty except according to process established by law.

Article 22, on the protection against arrest and confinement in confident cases, states

(1) No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest nor shall he denied the right to consult, and to be defended by, a legal practitioner of his option. Every person who is arrested and detained in keeping shall be twisted before the nearest magistrate within a period of twenty-four hours of such arrest.

(2) Article 23, on the prohibition of traffic in human beings and forced labour, states Traffic in human beings, beggar and other similar forms of forced labour are forbidden and any infringement of this provision shall be an offence liable to be punished by in accordance with law.

(3) Article 24, on the proscription of employment of children in factories, etc. states:

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any dangerous employment.

(4) Article 39, certain principles of policy to be followed by the State, states (a) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by financially viable necessity to enter avocations not right to their age or strength. (b) that children are given opportunities and facilities to expand in a healthy manner and in

conditions of freedom and dignity and that childhood and youth are protected against development and against moral and material abandonment.

(d) Care and Protection of Children

The National Commission for Protection of Child Rights (NCPCR), launched the Standard Operating Procedure (SOP) for care and protection of children in Street situations. The SOP lays down on the stress of actions to be taken for refurbishment and treatment of street children.

The SOP lays downward a series of proceedings to be taken for reinstatement and treatment of street children. Aadhaar cards, health insurance, bank accounts and other financial funding for families to assist the medical and dietary necessities of a child were also included under this method.

Preventing cases of child marriage, child trafficking, child abuse and it navigates map out of school children, street children and abandoned child labour to schools through enrolment drives.

The Non-governmental Organisation plays a key role for the protection of children on different aspects such as child labour, children facing abuse in the community, trafficked on children, children also affected by a calamity or emergency situations. It rescues them from children facing various kinds of harms such as abuse, neglect, exploitation, physical danger and violence.

Year-wise number of adoptions within and outside the country²

Year	In-country adoption	Inter-country adoption
2013-14	3924	430
2014-15	3988	374
2015-16	3011	666
2016-17	3210	578
2017-18	2595	516

Source : Central Adoption Resource Authority (CARA)*

IV. Methodology

The present study is a combination of both doctrinal and non-doctrinal method of research. Accordingly the data relevant to the present research work will be gathered

² . Ministry of Women and Child Development, Government of India

both from primary and secondary sources. The data will be collected from the records, registers, case files etc. maintained by various agencies. Secondary sources of data will be gathered from books, journals, periodicals, law reports of the Commission and Committees relevant to the subject and theoretical and conceptual framework to the subject under study.

Collection of relevant and reliable data on different aspects is the most important part of the entire research. Data is collected both from (a) Primary Sources and (b) Secondary sources.

(a) **Primary sources:** The present study is based on both primary as well as secondary sources. Primary sources are collected from substantive as well as procedural pieces of legislation such as Indian Penal Code, 1860, The Criminal Law (Amendment) Act, 2013. General public, legal advisors, officers of the judiciary constitute the primary sources of information.

(b) **Secondary sources:** The data collected from primary sources was supplemented by the information from the secondary sources. The secondary sources of data consisted of learned articles, seminars, proceedings, legal journals, periodicals, published and unpublished reports and some research books relating to the topic. Relevant case laws also formed part of the secondary sources. Here the researcher made a critical analysis of the developing case laws and evaluates the same to point out how far they have influenced the legal trend of the research.

V. Child protection under Indian Penal Code

Unlike types of exposure and abandonment of child under twelve years, by parents or person having care of it whoever being the father or mother of a child under the age of twelve years, or having the be bothered of such child, shall representation or go away such child in any place with the purpose of completely abandoning such child, shall be punished with detention of either explanation for a term which may extend to seven years, or with fine, or with both. This segment is not proposed to stop the trial of the offender for murder or blameworthy murder, as the case may be, if the young person dies in effect of the disclosure.

Child Protection Systems (including Justice and Police, child and family social services, health and education and communities) offer better quality of life and superior right of entry to services for the prevention of and comeback to violence, abuse and growth of children at all times. Parents, caregivers, and children show skills, information and behaviour enable children to produce in thoughtful homes and communities, including schools that are without charge of charge from viciousness, abuse and development.

Child Protection is about safekeeping children secure from a risk or apparent risk to their life or childhood. It is about recognizing that children are vulnerable and hence dropping their vulnerability by protecting them from harm and dangerous situations. Child protection is about ensuring that children have a protection measures not to depend on, and if they come about to get thoughtful in the ill practises of the social order or fall as losses of crimes the system has the blame to provide the child with the essential care and conduct to bring them back into the safety net and also to take enough preventive measures. It is the collective accountability to protect children from ill-treatment or ignore, prevent defacement of their health and increase, and to make certain their development in circumstances dependable with the requirement of safe and valuable care that enables children to have best potential life probability and enter adulthood successfully. Preventing and responding to violence, exploitation and abuse is key to ensuring children's rights to continued survival, development and well-being. The growth, care and safety of children requirements to be ensured by facilitating right of entry to learning, nutrition, institutional and lawmaking grasp up for enabling them to grow and expand to their full likely into well-nurtured family with full chance for enlargement and development in a safe and protecting environment. The children form a very varied group with detailed requirements for their prime of life and growth, especially the girls, children from disadvantaged groups, marginalised communities, street children, children with disability, children punch by any kind of crime, children who committed the crime, etc., so everyone's obligation needs to be assessed and due deliberation in agreement with their age, maturity and developing capacities is compulsory.

The Law Commission³ is likely to suggest an amendment to the law to safeguard the future of children abandoned by apparent fathers, following DNA paternity tests, and where mothers cannot take care of them.

The panel has gathered relevant literature and has benefitted from a host of judgments of the Supreme Court to find a definitive and holistic solution to the issue. The current Law also doesn't provide for mothers who do not have the financial resource to bear the responsibility of their children.

VI. Legal provisions under different Act

Juvenile Justice (Care and Protection), Act 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with different law. Some of the key provisions include:

- Orphaned, abandoned and surrendered children and petty, serious and heinous offences committed by children under new definitions.
- Children above the age of sixteen are make provisions for heinous offences.
- On the basis of adoption to streamline adoption of orphan, abandoned and surrendered children
- Inclusion of new offences against committed by children under the Juvenile Justice Act, 2015.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 under this law, people who use children for drug trafficking can be booked as abettors or conspirators to the act

The abandoned children have been challenged on the ground that in relation to poverty, disease, exploitation and abuse rife across the globe. Children are subject to a set of rules and regulation based on the social categories. It is also observed that freedom and opportunity are two sides of coins that affect confinement and limitation by which children are wholly subservient and dependent. Childhood is neither short of a world of isolation, sadness but nor exploitation, oppression, cruelty and abuse. Today, of course, we view abandonment of children in fairly tales and in legends, as if it were all fantasy.

³ . Report No. 259 of August 2015

VII. Geneva declaration for Child

Abandoned Child must be given the means desirable for its normal growth, both materially and spiritually.

Children should be given by different forms for its normal development, both significantly and morally. Starving children should be fed; ill child should be helped; erring child should be domesticated; and the orphan and the on the streets child should be protected and succored. Child must be primary to receive release in times of suffering. Children must be put in a place to make a livelihood and must be sheltered against each form of operation. Child must be brought up in the awareness that its most excellent character are to be used in the repair of its beneficiary men.

Both Central and State Governments over different matters have been showed in the Indian constitution over the Seventh Schedule under the Union, State and Concurrent Lists. The 73rd and 74th of the constitutional amendments have recognized a third tier below that of the State Government on the basis of Panchati Raj Institutions (PRIs), given them financial and administrative powers on different area of activities which have a direct bearing on children.

VIII. UN Declaration of the Rights of the Child

The United Nation Declaration has suggested the following points on different grounds such as:

- Non-discrimination: Special protection, opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.
- The right to a name and nationality.
- The right to social security, adequate nutrition, housing, recreation and medical services.
- The differently-abled child to be given special treatment, education and care.
- The need for love and understanding so that the child grows in the care and responsibility of his/her parents, and in an atmosphere of affection and moral and material security entitlement to education, which should be free and compulsory, at least in the elementary stages.
- The child should be among the first to receive protection and relief in all circumstances.

- Protection against all forms of neglect, cruelty and exploitation, including that associated with employment. This protection in the form of different practices may be adopted that may foster racial, religious and other forms of discrimination.

Article 43 provides different forms of criteria for the establishment of the United Nations Committee on the Rights of the Child, which receives and reviews information prepared by States Parties about their development in implementation on the Convention as required by Article 44.

The Supreme Court of India rules out for the 1984, as there is no uniform system of acceptance practices and the child's wellbeing are unnoticed when adoptions are promoted. NGOs play a significant role in creation communal welfare programs occupation. However their hard work is of incomplete help with no government hold up and legislation. There is a deficient in of good legislation which is external the control of supporting and religious interests; e.g., Hindu law only permits implementation of one child of each sex. Misconduct exists since of the short of consistent legislation and accomplishment, and restraining and delay in strategy are just as injurious to the child. Trafficking in children to foreigners is still gainful. Recommendations are made to include consistent and suitable legislation, joint efforts of NGOs and government-endorsed completion, endorsement of pioneering and precautionary actions to diminish leaving behind, and growth of an widespread program to give safeguards against the management of women.

IX. Section 317 in the Indian Penal Code

To make certain development of children, particularly those belonging to the disadvantaged and depressed groups, paying attention on the concentration is being given on one occasion again on three core sectors, viz. health, nutrition and education. All out hard work are being completed to get better the reporting levels in admiration of the six vaccine avoidable diseases. Individual efforts are being made to get better the exposure levels through the Universal Immunisation Programme which is being implemented.

The executive, the legislature and the judiciary in India have taken different measures to put in place an exhaustive lawful and policy structure for conservation on the rights of children in order to make sure good development, protection and contribution. Several new plans, schemes and programmes have been taken in order to

address forthcoming issues concerning children. However, the plight of children across the country has not got better and continues to be precarious. The burning issues relating to children are the adverse child sex ratio, persistently high infant and child mortality ratios, Besides, the existent loopholes in the laws concerning the child as well as those laws that try to protect their vulnerabilities are areas that cannot be ignored if at all the best interests of children are to be protected and promoted. The real confront lies in implement the necessities of these laws, schemes and programmes. In India, the judiciary along with the police and various Government agencies, autonomous bodies, public enterprises, PRIs and NGOs are involved in the implementation of different laws, schemes and programmes for children. The need of the hour for all of them is to ensure that laws, schemes and programmes for protection and promotion of children's rights are implemented by them at the field level in the 'right' perspective. Children being our supreme asset, nothing concerning their survival, development, protection and participation should be ignored or sidelined. However, in a country like India with a large number of floating populations, vast disparities, social conflict and turmoil, the challenge to attend to all their rights is even greater.

Supreme Court cases

In the case of *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*⁴, the court issued a directive that North-Eastern States and relevant Central Government ministries needed to “ensure that schools, hospitals and children's home complexes currently occupied by armed/security forces are vacated” and that school buildings and hostels are not allowed to be occupied by the armed or security forces in the future for whatsoever purpose.”

In the case of *Nandini Sundar and others v. State of Chhattisgarh*⁵, the court stated that it “had to intercede and order the Government of Chhattisgarh to get the security forces to vacate the schools and hostels that they had occupied; and even after such orders, many schools and hostels still remain in the possession and occupancy of the security forces

⁴ . AIR 1983 SC 130

⁵ . 1993 (3) Scale 417

In *Sheela Barse v. Union of India*⁶, Ms. Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally under arrest in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District Judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody. The Court observed that children in jail are entitled to special treatment. Children are national assets and they should be treated with special care. The Court urged the setting up of remand and juvenile homes for children in jails. In *Sheela Barse V. Secretary*⁷ Children Aid Society the Supreme Court came forward to protect the rights of the children in the observation homes.

In *Gaurav Jain v. Union of India*⁸, the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and treatment so as to be part of the normal of social life without any prestigma attached on them. The Court going to the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry. *Sakshi v. Union of India*⁹ in this Public Interest Litigation matter, the Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 IPC.

IX. Findings of the Study

It is observed that the following findings are to be made.

- (i) The Government's should make necessary arrangement for the smooth functioning of legislative, administrative, social and educational measures to prevent and protect children from maltreatment.
- (ii) India accepted the obligations of the UN Convention on the Rights of the Child. Various acts like Juvenile Justice (Care and Protection) Act, 2000 (amended in 2006), Prohibition of Child Marriage Act (2006), the formation of the National Commission for protection of Child Rights (2005), a National Plan of Action for Children (2005), Right to Information (RTI), 2005, the Child Labour (prohibition and regulation) Act, 1986 expanded in the list of banned and hazardous areas and occupation, Integrated Child Protection Scheme (2009)

⁶. (1988) 4 SCC 226

⁷. (1999) 8 SCC 591

⁸. (1997) 8 SCC 114; AIR 1997 SC 3021

⁹. (1999) 6 SCC 591

and advancing various legislations such as Right to Education Bill (2009) and Prevention of children from sexual offences (POCSO Act, 2012) to protect, promote and preserve child right in the country. Further there is a wide gap between policy and implementation / practice and outcomes for the millions of children fall through gap.¹⁰

- (iii) Abandoned children to make a social a public health impact, the government should direct its social welfare policies and child protection scheme in order to ensure their proper implementation and effective convergence at the grassroot levels. The children also subjected to maltreatment should be quickly assessed and provided various treatments like secure placement in order to avoid damage in situation where it is unsafe for children to remain at home.
- (iv) Early child health care, nutrition, education, development and child protection are most important for child rights. Illiterate parents are ignorant of their children rights. They must be made consciousness about their child rights must demand and fight to obtain them. Multidisciplinary child professionals should work together and monitor the efforts for the protection of child rights.

X. Conclusion and Suggestions

Although the Supreme Court made laudable directions and suggestions in many instances to protect basic rights of abandoned poor children, unfortunately these directions and suggestions are not followed and implemented efficiently. For successful implementation now judiciary creating awareness camp through District Legal Services Authority with help of NGOs and general public.

Different new plans, schemes and programmes have been initiated to speak to issues relating to children. Yet, the dilemma of children across the country has not got better and continues to be unstable. The very strong issues relating to children are the disagreeable abandoned child sex ratio, tirelessly high infant and child humanity ratios, wide sex gaps in literacy, escalating violence against children especially against the girl child and the rising incidents of female foeticide, female infanticide and child marriage. This apart, the existent loopholes in the laws relating to the child as well as those laws

¹⁰. Srivastava RN. Child health & welfare, *panchayats* & rural development CANCL News. 2008;8(1):3-4.

that try to protect their vulnerabilities are areas that cannot be unnoticed if at all the best interests of children are to be protected and promoted. There are certain other issues moving children, in which the Government along with the civil society is preparation to bring about a new legislation. It would not be out of place to mention that our country has overabundance of laws, schemes and programmes for children. The real confront lies in implementing the provisions of these laws, schemes and programmes. In India, the judiciary plays a significant role along with the police and various Government agencies, autonomous bodies, public enterprises, PRIs and NGOs are involved in the completion of different laws, schemes and programmes for children. The need of the hour for all of them is to make sure that laws, schemes and programmes for protection and promotion of children's rights are implemented by them at the field level in the 'right' perspective. Children being our highest asset, not anything regarding their continued existence, development, fortification and contribution should be ignored or sidelined. However, in a country with a large number of floating populations, vast disparity, social disagreement and confusion, the confront to attend to all their rights is even greater.

After going thoroughly from the above study it is observed that the abandoned children must be taken the following steps in order to find out the constitutional safeguard of the children.

- As per the Constitution of India, Article 15 (3), State should take special provisions for children.
- UN Convention on the Rights of the Child (UNCRC), adopted by the UN General Assembly in 1989 to deliver universal recognition of children's right to its member nations.
- The Juvenile Justice (Care and Protection of Children) Act, 2015 by the UNCRC, is India's fundamental law for providing adequate care and protection
- Children are also protected under Sexual Offences Act, (POCSO), 2012
- Article 21 of the Constitution of India, on the right to life and liberty states No person shall be deprived of life or personal liberty except according to procedure established by law.
- Article 22, on the protection against arrest and detention may observed.

- The National Commission for Protection of Child Rights (NCPCR), launched the Standard Operating Procedure (SOP) for care and protection of children in Street situations adopted.
- Child Protection Systems (including Justice and Police, child and family social services, health and education and communities) offer better quality of life and superior right are also make in order to safety of the children.
- Child must be brought up in the consciousness that its best qualities are to be used in the service.
- The abandoned children have been challenged on the ground that in relation to poverty, disease, exploitation and abuse rife across the globe.
