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THE ROLE OF THE INDIAN CONSTITUTION IN PROTECTING CHILDREN'S RIGHTS: A STUDY OF ARTICLES 14, 15, 21A, AND 39(F)

~ *Sanjana Shrivastava*

ABSTRACT

Children play an important role in the progress of every country. The future development of a nation depends upon their growth and wellbeing. The makers of the Indian Constitution clearly understood the importance of protecting children, they built into the Constitution a set of provisions that are meant to protect children from harm, give them the chance to grow and make sure the State does not treat them unfairly. This research paper looks carefully at four such provisions, these are Article 14, which gives the right to equality before law. Article 15, which stops the State from making distinctions on grounds of religion, race, caste, sex, or place of birth, and which also allows the State to make special laws for women and children. Article 21A, which was added by an amendment and gives every child between six and fourteen years of age the right to free and compulsory education. Article 39(f), which is a directive principle that asks the State to make sure children are given opportunities to grow in a healthy way and are not used for work that is not good for their age or strength.

This paper studies these four constitutional provisions together and explains their role in protecting children in India. It also looks at important court decisions that have shaped the meaning of these articles over time. It discusses the laws that have been made under these articles, such as the Right of Children to Free and Compulsory Education Act of 2009, the Protection of Children from Sexual Offences Act of 2012, and other related legislation. The paper also points out where the law has been slow to act, where children still face problems, and what more needs to be done to make the constitutional promise a real one in everyday life.

1. INTRODUCTION

A child cannot choose to which family it belongs, in which city or village it grows up, or in what economic condition it finds itself. A child cannot vote, cannot sign a contract, and in most cases cannot go to court on its own because of all these limitations that come with being young, children need protection that is stronger and more careful than the protection given to adults. The Indian Constitution, which came into force on the twenty-sixth day of January in the year 1950, recognised this need. The men and women who sat in the Constituent Assembly and wrote the Constitution were aware that India had millions of children living in poverty, working in fields and factories, being denied education, and suffering because of deep social inequalities based on caste, religion, and gender.

The Constitution makers created laws and principles to ensure justice and protection for every citizen. It is also a set of promises made to the people of India, including the youngest among them. These protections are provided through fundamental rights and directive principles under the Constitution, which are found in Part III of the Constitution and directive principles of state policy, which are found in Part IV. Fundamental rights are enforceable in a court of law. Directive principles are not directly enforceable, but they guide the State in making laws and policies.

Among the provisions most relevant to children, four stand out. Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15 says that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, or place of birth, and it also allows the State to make special provisions for women and children. Article 21A, which was inserted into the Constitution by the Eighty-sixth Amendment Act of 2002, says that the State shall provide free and compulsory education to all children of the age of six to fourteen years. Article 39(f) is a directive principle that asks the State to make sure children are given opportunities and facilities to develop in a healthy way, in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and moral and material abandonment.

This research paper explains these four constitutional provisions in detail. It tries to understand what each provision means, how courts have read and applied each one, what laws Parliament and state legislatures have made in response to these provisions, and where the gap between the written law and actual life remains wide. The paper also discusses the impact of international laws and conventions on children's rights in India, such as the United Nations

Convention on the Rights of the Child have influenced the domestic understanding of children's rights.¹

2. HISTORICAL BACKGROUND AND THE CONSTITUENT ASSEMBLY

To understand the protection given to children under the Constitution, it is necessary to study the background of the Constituent Assembly debates. The Assembly met between the years 1946 and 1949. It had members from different parts of India, different political backgrounds, different professions, and different social concerns. Among them were lawyers, teachers, freedom fighters, doctors, and social reformers. Many members of the Constituent Assembly were aware of the poor condition of children during British rule.

During the colonial period, child labour was common. Children as young as five or six years worked in mines, cotton mills, and factories. The British administration passed some laws to regulate child labour, such as the Factories Act of 1881 and the Mines Act of 1901, but these laws were not properly implemented and did not reach out to the vast majority of working children in the agricultural and informal sectors.² Education was also out of reach for most children. The literacy rate at the time of independence was extremely low, and girls were even more disadvantaged than boys.

Caste discrimination meant that children from lower castes were often not allowed to attend the same schools as children from upper castes. In many villages, Dalit children sat outside the classroom or were not admitted at all. Poverty meant that families depended on the income that even small children could earn, which kept children away from school and pushed them into hazardous forms of work.

The members of the Constituent Assembly debated vigorously about how to address these problems through the Constitution. Dr. B.R. Ambedkar strongly supported equal rights and protection for weaker sections of society. Jawaharlal Nehru spoke about the importance of education for national development and the need to give every child, regardless of background, the tools to participate in a modern democratic society.³

¹ India ratified the United Nations Convention on the Rights of the Child on 11 December 1992. The Convention recognises the child as a subject of rights rather than merely an object of charity or protection.

² Satyajit Ray (ed.), *Child Labour in India: Historical and Contemporary Perspectives* (New Delhi: Sage Publications, 2003), p. 45.

³ Constituent Assembly Debates, Vol. VIII, p. 330, speech of Jawaharlal Nehru on 17 December 1948.

The debate on whether education should be a fundamental right or a directive principle was particularly intense. Some members argued that making education a fundamental right would be impractical given the financial condition of the country. Others argued that without education being a right, the promise of equality would be hollow. In the end, the Constituent Assembly placed education in Part IV as a directive principle under Article 45, asking the State to endeavour to provide free and compulsory education for all children until the age of fourteen within ten years from the commencement of the Constitution. However, this goal could not be achieved within the expected period.

It was only in the year 2002 that the Constitution was amended to make education a fundamental right. The Eighty-sixth Amendment added Article 21A to Part III. This amendment also changed Article 45, which now asks the State to provide early childhood care and education for all children below the age of six. And it added a new clause to Article 51A, making it a fundamental duty of every parent or guardian to provide opportunities for education to their child or ward between the ages of six and fourteen years.⁴

3. ARTICLE 14: EQUALITY BEFORE LAW AND ITS MEANING FOR CHILDREN

Article 14 of the Constitution of India says, the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This article draws from two different legal traditions. The phrase equality before the law comes from the English legal tradition and means that no person, however powerful, is above the law. The phrase equal protection of the laws comes from the Fourteenth Amendment of the Constitution of the United States of America and means that the law must treat similarly situated persons in the same way.

The term “person” used in Article 14 has wide importance because it includes children as well. It is not limited to citizens. It covers every person within the territory of India, which means it covers children as well, whether they are Indian citizens or not. This is significant because it means a child cannot be denied equal treatment by the State simply because of who that child is or where that child comes from.

3.1 The Doctrine of Reasonable Classification

Article 14 does not mean that all persons must be treated exactly same in every situation. The Supreme Court of India has consistently held that Article 14 permits reasonable classification. A law can treat different groups of people differently if the classification is based on a

⁴ The Constitution (Eighty-sixth Amendment) Act, 2002, which came into force on 12 December 2002.

reasonable distinction that has a rational connection to the purpose of the law.⁵ The test has two parts. First, the classification must be founded on an intelligible differentia, meaning a clear and understandable distinction. Second, the differentia must have a rational nexus to the object of the legislation.

This principle is very important for protecting the rights of children. It is the legal basis on which Parliament can make laws that treat children differently from adults, that treat certain categories of children differently from others, and that impose special obligations on the State and on private parties in relation to children. For example, a law that provides free midday meals only to children enrolled in government schools and not to children enrolled in private schools makes a classification. If this classification is reasonable and has a rational connection to the goal of improving nutrition among children who cannot afford to pay for food, then it does not violate Article 14.

3.2 Article 14 and Child Labour

One important area where Article 14 has been invoked in the context of children is child labour. When courts have examined laws that ban child labour in certain industries but allow it in others, Article 14 has been used both to challenge such laws and to defend them. In the landmark decision of *M.C. Mehta versus State of Tamil Nadu*, decided in the year 1996, the Supreme Court of India took a strong position against child labour and directed the State to take concrete steps to eliminate it.⁶ The court drew upon Article 14 to say that children who are compelled to work in hazardous conditions are denied equality in the most fundamental sense, because they are denied the same chances that other children have to go to school, to grow, and to develop as human beings.

3.3 Article 14 and Non-Discriminatory Access to Education

Another important application of Article 14 in the context of children is in the field of education. If a state grants admission to certain schools on the basis of factors that have nothing to do with merit or need, such as the religion, caste, or place of birth of a child, that would be a violation of Article 14. Courts have held that the state must not arbitrarily exclude children from educational opportunities. The arbitrary denial of admission to a child in a government

⁵ State of West Bengal versus Anwar Ali Sarkar, AIR 1952 SC 75. This is the foundational case on reasonable classification under Article 14.

⁶ *M.C. Mehta versus State of Tamil Nadu*, (1996) 6 SCC 756. The Supreme Court gave comprehensive directions to the State and Centre to eliminate child labour in hazardous industries and mainstream children into the educational system.

school, or the arbitrary expulsion of a child without following proper procedure, can be challenged as a violation of Article 14.⁷

4. ARTICLE 15: PROTECTION FROM DISCRIMINATION AND SPECIAL PROVISIONS FOR CHILDREN

Article 15 is an important constitutional provision dealing with equality and protection against discrimination. It says that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. It also says that no citizen shall be subjected to any disability, liability, restriction, or condition on grounds only of these factors with regard to access to shops, public restaurants, hotels, and places of public entertainment, or with regard to the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of state funds.

But Article 15 does not stop there. Clause 3 of Article 15 is particularly relevant to children. It says that nothing in Article 15 shall prevent the State from making any special provision for women and children. This clause gives power to the State to make special laws for women and children. It gives Parliament and state legislatures the power to treat children as a separate group and make laws that give them benefits, protections, or advantages that adults do not get.⁸

4.1 What Discrimination Means for Children

Children face discrimination in many forms in India. A girl child faces discrimination on the basis of sex, often from birth itself. The practice of female foeticide and female infanticide, which has been a serious problem in several states, is an extreme form of discrimination against the girl child. A child born into a Scheduled Caste family faces discrimination based on caste in schools, in temples, in public spaces, and in social interactions. A child born to parents who belong to a religious minority may face hostility, prejudice, and exclusion. A child born in a particular state or region may face discrimination if it moves to another part of the country.

Article 15 is the constitutional shield against all these forms of discrimination. When the State, through any of its arms, including government schools, hospitals, public welfare programmes, or state-funded institutions, practises or permits discrimination on any of the grounds mentioned in the article, it violates the Constitution. Courts have repeatedly held that children

⁷ D.K. Basu versus State of West Bengal, (1997) 1 SCC 416, where the court emphasised that procedural protections under Article 14 apply to all persons including children.

⁸ Article 15(3) of the Constitution of India. The clause has been held to be an exception to the general rule of non-discrimination, allowing the State to make beneficial provisions specifically for women and children.

from marginalised backgrounds are entitled to the same access to state services and benefits as children from privileged backgrounds.⁹

4.2 Special Provisions for Children Under Clause 3

The power given to the State by clause 3 of Article 15 has been used extensively by the Indian legislature to make laws that protect children. The Prohibition of Child Marriage Act of 2006, the Child Labour (Prohibition and Regulation) Act of 1986 and its amendment in 2016, the Protection of Children from Sexual Offences Act of 2012, the Juvenile Justice (Care and Protection of Children) Act of 2015, and the Right of Children to Free and Compulsory Education Act of 2009 are all examples of legislation made possible by the mandate in Article 15(3).¹⁰

These laws treat children differently from adults precisely because children are in a different situation from adults. They are more vulnerable, less able to protect themselves, less able to understand the consequences of their actions, and more likely to suffer lasting harm from exploitation, abuse, or neglect. Special provisions made for children under Article 15(3) support the idea of real equality in society, because true equality sometimes requires treating those who are differently situated in a different way.

4.3 The Girl Child and Double Discrimination

Girl children in India often face social and educational disadvantages. She faces discrimination on the basis of sex, which is one of the grounds prohibited by Article 15. But she also often faces the compounded effect of being female and being from a lower caste, a minority religion, or a poor family. This combination of disadvantages has been recognised by the courts and by the legislature.

The Supreme Court in *Vishaka versus State of Rajasthan*, decided in 1997, recognised that gender discrimination affects women and girl children in a deeply structural way.¹¹ In the context of education, studies have shown consistently that girls from lower castes and tribal

⁹ *Olga Tellis versus Bombay Municipal Corporation*, AIR 1986 SC 180, where the court held that the right to life includes the right to livelihood and applies to the most vulnerable sections of society including children.

¹⁰ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012); The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016); The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).

¹¹ *Vishaka versus State of Rajasthan*, AIR 1997 SC 3011. The court laid down guidelines to prevent sexual harassment at the workplace, recognising the structural nature of gender inequality.

communities have far lower rates of school enrolment and completion than any other group. The constitutional provisions of Article 15, read with Article 14 and Article 21A, create an obligation on the State to take active measures to bring such girls into the educational mainstream.

5. ARTICLE 21A: THE RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT

Article 21A is an important constitutional amendment related to the right to education. Inserted by the Eighty-sixth Amendment Act of 2002, it says that, The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. This one sentence converted what had for over five decades been merely a directive principle, a guideline for the State, into a legally enforceable fundamental right.

The inclusion of Article 21A came after many years of discussion and legal development, by activists, educators, and citizens who recognised that Article 45, which had asked the State to provide free and compulsory education within ten years of the Constitution coming into force, had remained a promise on paper. By the year 2002, more than fifty years after the Constitution was adopted, crores of children in India were still out of school. The Eighty-sixth Amendment was Parliament's recognition that a stronger legal guarantee was needed.¹²

5.1 The Right to Education Before 2002

Even before Article 21A was inserted, the Supreme Court had taken the position that the right to education flows from Article 21, which guarantees the right to life and personal liberty. In *Mohini Jain versus State of Karnataka*, decided in 1992, the court held that the right to education at all levels is a fundamental right under Article 21.¹³ However, this position was modified in *Unni Krishnan J.P. versus State of Andhra Pradesh*, decided in 1993, where the court held that the right to education is a fundamental right only up to the age of fourteen, beyond which it is not a fundamental right but a directive principle.¹⁴

These decisions created an important judicial foundation for the Eighty-sixth Amendment. When Parliament finally inserted Article 21A, it was building on a constitutional understanding

¹² The Eighty-sixth Amendment Act, 2002. The amendment was passed by Parliament and received the assent of the President on 12 December 2002.

¹³ *Mohini Jain versus State of Karnataka*, AIR 1992 SC 1858.

¹⁴ *Unni Krishnan J.P. versus State of Andhra Pradesh*, AIR 1993 SC 2178. The court held that every child has a fundamental right to free education until the age of fourteen, after which the obligation of the State is governed by Article 45.

that had already been developed by the courts. The amendment gave explicit constitutional recognition to what the courts had already implied from Article 21.

5.2 The Scope and Meaning of Article 21A

Article 21A covers children between the ages of six and fourteen. This also creates an important legal question regarding the meaning of free education, What about children below the age of six and children above the age of fourteen? The Eighty-sixth Amendment addressed the first part of this question by amending Article 45, which now says that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. However, this is a directive principle and not a fundamental right. Children above fourteen years of age do not have a constitutional fundamental right to free and compulsory education, although several states have extended the age of compulsory education beyond fourteen by their own legislation.

The term “free” under Article 21A means that children should not be burdened with educational expenses. The word compulsory means that the State has an obligation to ensure that children actually attend school. It means the State must not only make schools available but must also take steps to ensure enrolment and to prevent dropout. The Right of Children to Free and Compulsory Education Act of 2009, known as the RTE Act, is the legislation that gives concrete form to these obligations.¹⁵

5.3 The Right to Education and Children with Disabilities

One important dimension of Article 21A is its application to children with disabilities. The RTE Act of 2009 contains provisions that require neighbourhood schools to admit children with disabilities and to provide them with the support they need to participate in mainstream education. The Rights of Persons with Disabilities Act of 2016 reinforces this by requiring that children with benchmark disabilities receive inclusive education.

Courts have held that excluding a child from school on the ground of disability violates both Article 14 and Article 21A. In *Disabled Rights Group versus Union of India*, the court directed schools to make their premises accessible to children with disabilities and to provide teachers trained in inclusive education.¹⁶ Article 21A aims to ensure education for every child in the country, regardless of physical or intellectual ability, has the same right to be educated.

¹⁵ The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), commonly referred to as the RTE Act.

¹⁶ *Disabled Rights Group versus Union of India*, Writ Petition (Civil) No. 43 of 2005, Supreme Court of India.

5.4 Quality of Education as Part of the Right

Education without proper teaching standards cannot fully achieve the purpose of Article 21A. The Supreme Court has recognised that the right under Article 21A is not merely a right to be present in a school building. It is a right to receive education of a quality that allows a child to develop its full potential. This includes having trained teachers, adequate learning materials, proper infrastructure including separate toilets for boys and girls, and a learning environment that is safe and free from discrimination and violence.¹⁷

The RTE Act specifies norms and standards for schools. Schools that do not meet these norms are supposed to be brought up to standard within a certain period. Schools that consistently fail to meet the standards are liable to be de-recognised. The idea is that the right to education is a substantive right, not a formal one.

6. ARTICLE 39(F): THE DIRECTIVE PRINCIPLE ON CHILD DEVELOPMENT AND PROTECTION

Part IV of the Constitution of India contains what are called the directive principles of state policy. Article 37 says that although these principles are not enforceable by any court, they are fundamental to the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 39(f) is one of the important directive principles related to child welfare Article 39(f), which says that the State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39(f) was part of the original Constitution in 1950. At that time, it was Article 39(e) and (f) together that dealt with children. The current Article 39(f) is specifically about the welfare and protection of children as a policy goal for the Indian State.¹⁸

6.1 The Meaning of Healthy Development

The phrase healthy manner in Article 39(f) refers not just to physical health but to overall development including mental, emotional, social, and moral growth. A child who is malnourished does not develop in a healthy manner. A child who is kept in an abusive home environment does not develop in a healthy manner. A child who is made to work long hours in

¹⁷ Society for Un-Aided Private Schools of Rajasthan versus Union of India, (2012) 6 SCC 1, where the court upheld the constitutional validity of the RTE Act.

¹⁸ Article 39(f) of the Constitution of India. This provision was part of Article 39(e) and 39(f) in the original Constitution. The current numbering reflects subsequent amendments.

a factory does not develop in a healthy manner. A child who is denied affection, care, and stimulation in its early years does not develop in a healthy manner.

The State therefore has an obligation under Article 39(f) to put in place policies and programmes that address all these dimensions. This includes nutrition programmes such as the Integrated Child Development Services scheme, which provides supplementary nutrition, health care, and early childhood education to children below the age of six.

It includes child protection systems that identify children at risk and provide them with care and shelter. It includes programmes to prevent and respond to child abuse and it includes measures to ensure that children have safe, stimulating environments in which to play and learn.¹⁹

6.2 Conditions of Freedom and Dignity

The phrase conditions of freedom and dignity in Article 39(f) is a powerful one. The Constitution aims to provide children with proper growth, dignity, and opportunities. It wants children to live with dignity, with their self-respect intact, and in an environment where they can make choices appropriate to their age and stage of development. This is consistent with the modern understanding of children as rights holders rather than mere objects of charity or benevolence.

A child who is used as domestic labour in someone else's home is not living in conditions of freedom and dignity. A child who is forced into marriage before it is ready for adult responsibilities is not living in conditions of freedom and dignity. A child who is trafficked for commercial sexual exploitation is certainly not living in such conditions. Article 39(f) requires the State to actively work to eliminate all these conditions.

6.3 Protection Against Exploitation

The term exploitation under Article 39(f) includes different forms of abuse and unfair treatment of children. Economic exploitation means using a child's labour for profit without giving the child proper compensation or allowing the child to attend school and develop. Sexual exploitation means using a child for any form of sexual activity, including trafficking, pornography, and prostitution. Emotional exploitation means manipulating a child for the benefit of adults. All these forms of exploitation are what Article 39(f) seeks to prevent.

¹⁹ The Integrated Child Development Services (ICDS) scheme was launched in 1975. It is one of the world's largest integrated programmes for early childhood development.

Parliament has responded to this directive by passing several laws. The Child Labour (Prohibition and Regulation) Act of 1986, amended significantly in 2016, prohibits the employment of children below the age of fourteen in all occupations and processes, and prohibits the employment of children between fourteen and eighteen years in hazardous occupations and processes.²⁰ The Protection of Children from Sexual Offences Act of 2012 criminalises all forms of sexual abuse of children. The Immoral Traffic (Prevention) Act prohibits the trafficking of children for commercial sexual exploitation.

6.4 Moral and Material Abandonment

The phrase moral and material abandonment is one of the most thought-provoking in Article 39(f). Material abandonment means leaving a child without the basic necessities of life such as food, clothing, shelter, health care, and education. Moral abandonment means leaving a child without guidance, values, care, and affection. A child that is left to fend for itself on the streets, with no family, no shelter, no food, and no adult to look after it, suffers both forms of abandonment.

The Juvenile Justice Act of 2015 recognises the category of children in need of care and protection, which includes abandoned children, orphans, children whose parents are unable to care for them, children who are victims of abuse, and children who are found begging or living on the streets. The Act sets up a system of Child Welfare Committees and Juvenile Justice Boards to address the needs of such children.²¹

7. THE RELATIONSHIP BETWEEN THESE FOUR ARTICLES

Articles 14, 15, 21A, and 39(f) work together for the protection of children's rights. They form an interlocking framework that together creates a comprehensive constitutional guarantee for children's rights. Each article adds something that the others alone cannot provide, and together they cover the main dimensions of what a child needs in order to live a life of dignity, development, and protection.

Article 14 provides the foundational guarantee that every child has equal standing before the law and equal access to legal protection. It ensures that no child is treated arbitrarily or unfairly by any arm of the State. It also provides the basis for reasonable classification, which allows

²⁰ The Child Labour (Prohibition and Regulation) Amendment Act, 2016 (Act 35 of 2016), which amended the Child Labour (Prohibition and Regulation) Act, 1986.

²¹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016). The Act replaced the Juvenile Justice Act of 2000.

the legislature to make laws that treat children differently from adults and that treat particularly vulnerable children differently from others.

Article 15 takes the principle of equality a step further by prohibiting specific forms of discrimination that are deeply entrenched in Indian society. It gives children the right not to be discriminated against on grounds of religion, caste, race, sex, or place of birth. And its third clause empowers the State to make special laws and policies specifically for children, allowing the law to give children advantages and protections that adults do not receive.

Article 21A converts the aspiration of universal education into a legally enforceable right. It says that every child between six and fourteen must receive free and compulsory education. This transforms the relationship between the child and the State in the domain of education. A child can no longer be told by the State that there is no school available, that there are no teachers, or that the child does not qualify for admission. The child has a right, and the State has a corresponding duty.

Article 39(f), though not directly enforceable as a fundamental right, sets the broader policy framework within which all child-related laws and programmes must operate. It asks the State to go beyond merely preventing harm and to actively promote the welfare, development, and dignity of children.

It connects the legal world to the world of policy and governance, reminding the State that the constitutional vision for children is not just about stopping bad things from happening to them but about creating the conditions for them to flourish.²²

Together, these constitutional provisions provide legal protection and welfare measures for children. Equality and non-discrimination at the base, the right to education on one side, and the broader welfare and development mandate on another side. A child who has all three has a genuine chance. A child who lacks any one of these faces a serious disadvantage that the Constitution says the State must address.

8. JUDICIAL INTERPRETATION OF CHILDREN'S RIGHTS IN INDIA

²² *Bandhua Mukti Morcha versus Union of India*, AIR 1984 SC 802. The Supreme Court held that Article 39(f) read with Articles 21 and 45 creates a constitutional obligation on the State to ensure that children are not exploited and are given the chance to develop.

The Supreme Court and High Courts have made important contributions in protecting children's rights through judicial decisions and giving concrete meaning to the constitutional provisions that protect children. Through a long line of decisions stretching from the 1950s to the present day, Indian courts have built up a rich body of jurisprudence on children's rights. This section looks at some of the most important of these decisions.

8.1 The Expanding Scope of Article 21

The starting point for understanding how courts have interpreted children's rights is Article 21, which guarantees the right to life and personal liberty. Over the years, the Supreme Court has expanded the meaning of the right to life far beyond its literal text. In *Francis Coralie Mullin versus the Administrator, Union Territory of Delhi*, decided in 1981, the court held that the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing, and shelter.²³

Building on this foundation, the court later held in *Unni Krishnan J.P. versus State of Andhra Pradesh* that the right to education up to the age of fourteen is part of the right to life under Article 21. The reasoning was that without education a person cannot develop as a full human being. Education is necessary for the proper development and future of every child. A child denied education is denied a part of its right to life.

8.2 The M.C. Mehta Case and Child Labour

The decision of the Supreme Court in *M.C. Mehta versus State of Tamil Nadu* in 1996 is one of the most important in the history of children's rights in India. The court was dealing with a petition that sought the elimination of child labour in the matchstick and firecracker industries in Sivakasi. The court held that child labour is a serious violation of the constitutional rights of children, including their rights under Articles 14, 15, 21, 21A, 39(f), and 45.²⁴

The court gave detailed directions to the State. It said that employers of child labour must pay a fine that goes into a Child Labour Rehabilitation cum Welfare Fund. The interest from this fund must be used to pay a monthly payment to the family of each child who is removed from work. The child must be given free education in a school, the State government must survey all hazardous workplaces and identify every child working there. This decision was a landmark

²³ *Francis Coralie Mullin versus the Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

²⁴ *M.C. Mehta versus State of Tamil Nadu*, (1996) 6 SCC 756.

because it showed how the court could use constitutional provisions creatively to address a complex social problem.

8.3 Bachpan Bachao Andolan and Child Trafficking

In *Bachpan Bachao Andolan versus Union of India*, decided in 2011, the Supreme Court addressed the serious problem of children being trafficked and forced into circuses and other exploitative conditions. The court held that the State has a constitutional obligation under Articles 21, 23, 24, and 39(f) to protect children from trafficking and forced labour. The court gave comprehensive directions to the State to regulate circuses and other establishments that used children, to rescue children from exploitative conditions, and to rehabilitate them.²⁵

8.4 The POCSO Cases and Child Sexual Abuse

After the Protection of Children from Sexual Offences Act of 2012 came into force, courts began to develop a body of case law on child sexual abuse. The Supreme Court in *Alakh Alok Srivastava versus Union of India*, decided in 2018, expressed deep concern about the high number of pending cases under the POCSO Act and directed that special courts be set up to handle these cases on a priority basis. The court held that the constitutional rights of child victims of sexual abuse include the right to speedy justice, the right to be protected during the trial process, and the right to rehabilitation.²⁶

8.5 The Right to Education Cases

After the RTE Act was passed in 2009, its constitutional validity was challenged in *Society for Un-Aided Private Schools of Rajasthan versus Union of India*, decided in 2012. The court upheld the Act and held that the obligation to provide free and compulsory education extends to private unaided schools, which must reserve twenty-five percent of their seats for children from economically weaker sections and disadvantaged groups. This decision was significant because it brought private schools within the ambit of the fundamental right to education.²⁷

9. LEGISLATION MADE UNDER THESE CONSTITUTIONAL PROVISIONS

The constitutional provisions discussed in this paper have generated a large body of legislation at both the central and state levels. This section explains some important laws related to

²⁵ *Bachpan Bachao Andolan versus Union of India*, (2011) 5 SCC 1.

²⁶ *Alakh Alok Srivastava versus Union of India*, (2018) 7 SCC 454.

²⁷ *Society for Un-Aided Private Schools of Rajasthan versus Union of India*, (2012) 6 SCC 1.

children's rights in India and explains how they connect to the constitutional provisions that support them.

9.1 The Right of Children to Free and Compulsory Education Act, 2009

The RTE Act is the direct legislative implementation of Article 21A. It lays down in detail what the right to free and compulsory education means in practice. The Act says that every child between the ages of six and fourteen has the right to full-time elementary education in a neighbourhood school that conforms to certain norms and standards. The Act specifies the norms and standards that schools must meet, including the pupil-teacher ratio, the qualifications of teachers, the availability of drinking water, toilets, and playgrounds, and the quality of the curriculum.

The Act also says that no child shall be required to pass any board examination until the completion of elementary education. No child shall be held back, expelled, or required to pass a board examination in class five or eight. The idea is that children should be allowed to learn at their own pace without the fear of being failed and left behind.²⁸ However, this no-detention policy has been controversial, and Parliament amended the Act in 2019 to allow states to hold examinations in class five and class eight.

9.2 The Prohibition of Child Marriage Act, 2006

Child marriage is one of the most harmful practices affecting children in India, particularly girl children. The Prohibition of Child Marriage Act of 2006 defines a child as a male below the age of twenty-one years and a female below the age of eighteen years. It makes child marriage voidable at the option of the child who was underage at the time of the marriage. It also makes certain persons involved in arranging or conducting child marriages liable to punishment.²⁹

The Law Commission of India in its report number 205, published in 2008, recommended that child marriages be made void rather than merely voidable, which would give stronger protection to girl children. This recommendation has not yet been fully implemented. The Prohibition of Child Marriage (Amendment) Bill proposed in 2021 seeks to raise the age of marriage for women to twenty-one years and to make all child marriages void, but as of the time of writing this paper the Bill had not been passed by Parliament.

9.3 The Juvenile Justice Act, 2015

²⁸ Section 16 of the Right of Children to Free and Compulsory Education Act, 2009, which originally prohibited holding back and expelling children

²⁹ The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007).

The Juvenile Justice Act of 2015 replaced the earlier Juvenile Justice Act of 2000. It deals with two categories of children. The first category is children in need of care and protection, which includes abandoned children, orphans, children who are victims of abuse or trafficking, and children living on the streets. The second category is children in conflict with the law, meaning children who have been accused of committing offences.

For children in need of care and protection, the Act sets up a system of Child Welfare Committees. These committees have the power to place children in foster families, shelter homes, or other appropriate placements. For children in conflict with the law, the Act sets up Juvenile Justice Boards. These boards deal with children accused of offences in a manner that is meant to focus on rehabilitation rather than punishment.³⁰

The 2015 Act introduced a controversial provision that allows children between the ages of sixteen and eighteen who are accused of heinous offences to be tried as adults if the Juvenile Justice Board after preliminary assessment decides that the child should be transferred to the sessions court. This provision was challenged in court and has been the subject of much debate among legal scholars and child rights activists.

10. CHILD LABOUR AND THE CONSTITUTIONAL RESPONSE

Child labour remains a serious problem affecting children in many parts of India. Constituent Assembly was aware of the problem and addressed it through both fundamental rights and directive principles. Article 24 of the Constitution, which is a fundamental right, says that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 39(e) says that the State shall direct its policy towards ensuring 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 economic necessity to enter vocations unsuited to their age or strength.

Despite these provisions, child labour has continued in India on a massive scale. According to the Census of 2011, there were around ten million child workers in the country, though non-governmental organisations estimate the actual number to be much higher.³¹ Children work in agriculture, brick kilns, stone quarries, embroidery and carpet factories, hotels and Dhaba's, and as domestic workers. Many of these occupations are not technically hazardous within the

³⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016). The Act came into force on 15 January 2016.

³¹ Census of India, 2011, Data on Child Workers.

narrow definition of the Child Labour Act, which has allowed employers to claim that they are not violating the law.

10.1 The Child Labour (Prohibition and Regulation) Act, 1986 and Its Amendment

The Child Labour (Prohibition and Regulation) Act of 1986 originally prohibited the employment of children below fourteen years of age in a list of scheduled hazardous occupations and processes, while allowing children to work in other occupations. This partial prohibition was criticised as inconsistent with the constitutional vision of protecting all children from exploitation. The amendment of 2016 brought about a significant change. It prohibits the employment of children below fourteen years in all occupations and processes, without exception. It also prohibits the employment of adolescents between fourteen and eighteen years in hazardous occupations and processes.

However, the amendment contains a significant exception. Children can work in family enterprises and can be permitted to be a part of the entertainment industry, provided this does not affect their education. Critics argue that this exception is too broad and can be misused to continue child labour under the guise of helping family businesses.³² The exception for family enterprises is particularly problematic in agricultural settings where children are routinely taken out of school to work on the family farm.

10.2 The Constitutional Basis for Eliminating Child Labour

The Constitution provides legal support for removing child labour from society. Article 24 prohibits child labour in factories, mines, and hazardous employment. Article 39(f) requires the State to protect children from exploitation. Article 21A guarantees the right to education, which is incompatible with full-time or even part-time labour that interferes with schooling. Article 21, read broadly, includes the right of every child to develop to its full potential, which cannot happen if the child is working instead of going to school.

Courts have used this constitutional basis to issue strong directions to governments to eliminate child labour. The National Child Labour Policy adopted in 1987 and the National Action Plan for Children adopted subsequently both draw their mandate from these constitutional provisions. The National Commission for Protection of Child Rights, established under the

³² Manish Sabharwal, *Child Labour in India: Law and Policy* (New Delhi: Universal Law Publishing, 2017), p. 112.

Commissions for Protection of Child Rights Act of 2005, is mandated to monitor and review the safeguards provided for children under the Constitution and existing laws.³³

11. THE RIGHT TO EDUCATION ACT OF 2009: A DEEP STUDY

The Right of Children to Free and Compulsory Education Act of 2009, commonly called the RTE Act, is the single most important piece of legislation enacted to give effect to Article 21A. It is one of the major education laws passed in India after independence. This section discusses the important provisions of the Act and the problems faced in its implementation

11.1 Key Provisions of the RTE Act

The Act makes it the duty of every government, local authority, and school to ensure that every child in its area is enrolled in a school and receives free and compulsory elementary education. It says that no child shall be required to pay any fee, charge, or expense. No school shall conduct any screening procedure for admission of a child or its parent or guardian. No child shall be denied admission on the ground that it does not possess a birth certificate.

The Act requires every private unaided school to reserve not less than twenty-five percent of its seats in class one for children from economically weaker sections and disadvantaged groups. These children are to be admitted through a lottery or similar process, and the government is required to reimburse the school for each such child at a per-child expenditure calculated by the government. This provision, known as the twenty-five percent reservation, has been one of the most debated aspects of the Act.³⁴

The Act also sets out detailed norms and standards for schools, covering the pupil-teacher ratio, the minimum number of working days per year, the minimum number of working hours per week, the qualifications of teachers, the minimum facilities that a school must have including classrooms, furniture, drinking water, toilets separate for boys and girls, a library, a playground, and a boundary wall. Schools that do not meet these standards within a prescribed period are liable to be de-recognised.

11.2 Teacher Qualifications and Teacher Shortage

One major problem in implementing the RTE Act is the shortage of trained teachers. The Act requires all teachers in elementary schools to have a minimum qualification as prescribed by

³³ The Commissions for Protection of Child Rights Act, 2005 (Act 4 of 2006), which established the National Commission for Protection of Child Rights.

³⁴ Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009.

an academic authority authorised by the central government. Teachers who are in service at the time of the Act coming into force and who do not have the required qualification are required to acquire it within five years.

In practice, many schools, especially in rural areas, struggle to find teachers with the prescribed qualifications. States have had to run large-scale teacher training programmes to bring serving teachers up to the required standard. The National Council for Teacher Education has been given the responsibility of setting and maintaining standards for teacher education, but the quality of teacher education in many institutions remains a concern.³⁵

11.3 The Twenty-Five Percent Reservation and Social Integration

The provision requiring private unaided schools to reserve twenty-five percent of their seats for children from economically weaker sections and disadvantaged groups was intended to promote social integration and ensure that the benefits of quality private schooling reach children from disadvantaged backgrounds. In reality, this provision has not been implemented properly in all states. Some states have implemented the provision effectively, while others have struggled with issues of reimbursement, verification of eligibility, and resistance from private schools.

The Supreme Court upheld the constitutional validity of this provision in *Society for Un-Aided Private Schools of Rajasthan versus Union of India in 2012*. However, the court held that the provision does not apply to minority educational institutions established and administered by minorities under Article 30 of the Constitution, because that would interfere with the fundamental right of minorities to establish and administer educational institutions of their choice.³⁶

12. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

Child sexual abuse harms the physical and mental wellbeing of children and violates their legal rights. It violates the right to life and dignity under Article 21, the right to equality under Article 14, and the constitutional mandate under Article 39(f) to protect children from exploitation. For many years, India did not have a comprehensive law specifically dealing with child sexual abuse. The Indian Penal Code contained provisions on rape and molestation, but these were

³⁵ National Council for Teacher Education Act, 1993 (Act 73 of 1993). The National Council for Teacher Education is the statutory authority for regulation and proper planning and coordinated development of the teacher education system throughout India

³⁶ *Society for Un-Aided Private Schools of Rajasthan versus Union of India*, (2012) 6 SCC 1. The court held by a majority that minority institutions are exempted from the twenty-five percent reservation requirement.

not designed with children specifically in mind and were inadequate to deal with the many forms of sexual abuse that children face.

12.1 The Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act of 2012, known as the POCSO Act, it introduced detailed legal protection for children against sexual offences.. The Act defines a child as any person below the age of eighteen years. It defines and criminalises penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and the use of children for pornography. The punishment is stricter when the offence is committed by persons like teachers, police officers, doctors, or relatives.³⁷

The POCSO Act also contains important procedural protections for child victims. It requires that the statement of a child victim be recorded by a woman police officer. It requires that the medical examination of a child victim be conducted by a woman doctor in the presence of a woman. The Act also says that POCSO cases should be handled in a child-friendly manner, with the child not required to face the accused directly during testimony. It requires that cases be disposed of within one year of the recording of the offence and it mandates the establishment of special courts to try POCSO cases.

12.2 The 2019 Amendment to POCSO

In the year 2019, Parliament amended the POCSO Act to enhance the punishment for sexual offences against children. The amendment introduced the death penalty for aggravated penetrative sexual assault of children. This amendment was introduced after public concern increased due to some serious cases of child sexual abuse. Many experts supported the amendment, while others criticised it, with some experts arguing that the death penalty is not an effective deterrent and may in fact make things worse for child victims by encouraging perpetrators to eliminate witnesses.³⁸

12.3 The Constitutional Dimensions of POCSO

The POCSO Act draws its constitutional legitimacy from multiple provisions. Article 15(3) allows the State to make special provisions for children. Article 39(f) mandates that childhood be protected against exploitation. Article 21 guarantees the right to life with dignity, which

³⁷ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012). The Act came into force on 14 November 2012, which is Children's Day in India.

³⁸ The Protection of Children from Sexual Offences (Amendment) Act, 2019 (Act 25 of 2019).

certainly encompasses freedom from sexual abuse. And Article 14 ensures that child victims of sexual abuse have equal access to justice.

Courts have held that the obligations of the State under POCSO are not merely procedural. The government must also protect children after abuse is reported and provide proper support services, that they receive the medical and psychological help they need to recover. The failure of the State to provide these services can in appropriate cases be challenged as a violation of the child's constitutional rights.³⁹

13. CHILDREN IN CONFLICT WITH THE LAW

When a child commits an offence or is accused of committing an offence, the constitutional framework has specific implications for how that child should be treated. The Constitution does not explicitly say that children who break the law must be treated differently from adult offenders, but the principles embedded in Articles 14, 15, 21, and 39(f) create a clear framework that points in this direction.

The juvenile justice system recognises that children should be treated differently from adult offenders. A child's brain is still developing, child's understanding of right and wrong consequences and the impact of its actions on others is still developing. A child who commits an offence may be doing so because of circumstances beyond its control, including poverty, abuse, neglect, or the influence of adults. Because of these reasons, many countries now focus more on rehabilitation of children instead of punishment, reflected in instruments such as the Beijing Rules and the Convention on the Rights of the Child, is that children who come into conflict with the law should be dealt with through a system that focuses on rehabilitation and reintegration rather than punishment and retribution.⁴⁰

13.1 The Juvenile Justice System in India

India has had a juvenile justice system since the colonial period. The Reformatory Schools Act of 1897 and the Children Act of 1960 were among the earlier legislative efforts. The Juvenile Justice Act of 1986 and then the Juvenile Justice Act of 2000 built on this foundation. The current law is the Juvenile Justice (Care and Protection of Children) Act of 2015.

³⁹ Nipun Saxena versus Union of India, (2019) 2 SCC 703. The court issued detailed guidelines for the implementation of the POCSO Act and for the protection of child victims.

⁴⁰ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the Beijing Rules, adopted in 1985.

Under the 2015 Act, a child in conflict with the law is a person below the age of eighteen who is alleged to have committed an offence. Such a child is dealt with by a Juvenile Justice Board, which consists of a first-class magistrate and two social workers, at least one of whom must be a woman. The Juvenile Justice Board must consider the welfare and future of the child while deciding the case, taking into account the nature of the offence, the age and background of the child, and the circumstances of the commission of the offence.

13.2 The Controversial Provision on Adult Trial

One debated provision of the 2015 Act allows certain juveniles to be tried as adults in serious offences, which means children between sixteen and eighteen years of age who are accused of heinous offences, meaning offences punishable with imprisonment of seven years or more, to be tried as adults if the Juvenile Justice Board determines after a preliminary assessment that the child should be sent to the sessions court. This provision was introduced in response to the Nirbhaya case of 2012, in which one of the accused was a juvenile who was just a few months short of eighteen years of age at the time of the offence.⁴¹

Some people believe that trying juveniles as adults goes against the idea of child protection and rehabilitation, including the right to be treated as a child rather than an adult, the right to rehabilitation rather than punishment, and the right to equal protection under Article 14. They argue that the severity of an offence alone is not a constitutionally sound basis for stripping a child of its special status as a juvenile. On the other hand, supporters believe that serious offences should be punished strictly even if committed by older juveniles and should not escape appropriate consequences simply because they are a few months or years below the age of eighteen.

14. CHILDREN FROM MARGINALISED COMMUNITIES AND THE CONSTITUTION

The Constitution also aims to protect children belonging to weaker and disadvantaged sections of society. The Constitution makers were aware of the social and educational difficulties faced by weaker sections. They also knew that girls from these communities faced compounded

⁴¹ The Nirbhaya case, formally known as Mukesh and Another versus State (NCT of Delhi) and Others, resulted in the execution of four adult convicts in March 2020. The juvenile convict in the case served three years in a reformation home and was released in December 2015.

disadvantages and they knew that children from religious minorities faced the risk of discrimination and exclusion.

14.1 Scheduled Caste and Scheduled Tribe Children

Children from Scheduled Castes and Scheduled Tribes have been historically denied access to education, excluded from public spaces, and made to suffer discrimination in every aspect of life. These constitutional provisions were introduced to reduce discrimination and improve opportunities for such children. Articles 15(4) and 16(4) allow the State to make special provisions for the advancement of any socially and educationally backward class of citizens or for the Scheduled Castes and Scheduled Tribes.

In the context of children, this means the State can and must make special provisions to ensure that Dalit and tribal children have real access to education, health care, and other opportunities. Scholarship schemes, residential schools, free textbooks, and midday meal programmes are all examples of such special provisions. But studies show that despite these measures, children from Scheduled Castes and Scheduled Tribes still have significantly lower literacy rates, higher dropout rates, and less access to quality schooling than children from other communities.⁴²

14.2 Muslim and Other Minority Children

Children from Muslim and other minority communities face a different set of challenges. Article 30 of the Constitution gives minorities the right to establish and administer educational institutions of their choice. But many Muslim children, especially girls, face pressure to attend only religious institutions and are denied access to mainstream education.

The Sachar Committee Report showed that Muslim children face difficulties in access to education, school attendance and higher rates of dropout than the national average.⁴³

The RTE Act applies to all children regardless of their religion. Muslim children have the same right to free and compulsory elementary education as children of any other community. State governments have a constitutional obligation to ensure that neighbourhood schools are available for Muslim children and that barriers to their enrolment and attendance are removed.

14.3 Children with Disabilities

⁴² Annual Status of Education Report (ASER), published annually by Pratham Education Foundation. The reports consistently show significant gaps in learning outcomes between children from different social backgrounds.

⁴³ Social, Economic and Educational Status of the Muslim Community of India, Report of the Prime Minister's High-Level Committee, commonly known as the Sachar Committee Report, 2006.

Children with disabilities often face difficulties in accessing proper education and opportunities. For many years, children with severe disabilities were excluded from mainstream schools and either sent to special schools or kept at home. Articles 14 and 21A of the Constitution support equal educational opportunities for children with disabilities. The RTE Act specifically addresses children with disabilities. The Rights of Persons with Disabilities Act of 2016 goes further and requires that the appropriate government must ensure that every child with a benchmark disability receives inclusive and quality elementary education and promotion to higher classes.⁴⁴

15. THE ROLE OF INTERNATIONAL LAW IN SHAPING INDIAN CHILDREN'S RIGHTS

India has accepted many international agreements related to children's rights. The most important of these is the United Nations Convention on the Rights of the Child, which India ratified in 1992. The Convention recognises that children also have independent legal rights. It covers civil and political rights such as the right to a name and nationality, the right to be heard in judicial and administrative proceedings, and the right to freedom of expression. It also covers economic, social, and cultural rights such as the right to education, the right to health, and the right to an adequate standard of living. And it covers special protection rights such as the right to be protected from abuse, exploitation, and armed conflict.⁴⁵

15.1 The Four Core Principles of the Convention

The Convention is based on four main principles related to children's welfare and protection. The first is non-discrimination, which mirrors Articles 14 and 15 of the Indian Constitution. The second is the best interests of the child, which requires that in all actions concerning children, the best interests of the child shall be a primary consideration. The third is the right to life, survival, and development, which mirrors Article 21 and 21A of the Indian Constitution. The fourth is the right to be heard, which requires that children be given the opportunity to express their views in matters that affect them, and that those views be given appropriate weight.

Indian courts have also referred to the Convention while interpreting constitutional rights relating to children. The Supreme Court has held that international conventions to which India

⁴⁴ Section 16 of the Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).

⁴⁵ United Nations Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989. India ratified the Convention on 11 December 1992

is a party can be used as an aid to interpretation of the constitutional provisions and statutes, particularly when the domestic law is unclear or insufficient. This means the Convention can and does influence how courts read Articles 14, 15, 21A, and 39(f) in cases involving children.⁴⁶

15.2 Optional Protocols and India's Obligations

India has also ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which supplements the Convention on the Rights of the Child. This protocol requires India to make strict laws against child prostitution, trafficking, and pornography and to establish jurisdiction over offences committed against its nationals. The POCSO Act is in large part India's legislative response to the obligations under this optional protocol.

India has not ratified the Optional Protocol on Children in Armed Conflict, though it has signed it. This optional protocol raises the minimum age for direct participation in hostilities and for compulsory recruitment into armed forces to eighteen years. India's domestic law on this subject is contained in the Juvenile Justice Act, which prohibits the recruitment of children into any armed force or group and the use of children for any purpose by armed forces or groups.⁴⁷

15.3 Periodic Review and India's Report

As a party to the Convention, India is required to submit periodic reports to the UN Committee on the Rights of the Child, which reviews the reports and issues recommendations. India has submitted several periodic reports, the most recent of which was submitted in 2021. The Committee has repeatedly expressed concern regarding child labour, malnutrition, and lack of proper education, the situation of girl children, the situation of children from marginalised communities, and the implementation of the right to education.⁴⁸

16. GAPS BETWEEN LAW AND REALITY

⁴⁶ Vishaka versus State of Rajasthan, AIR 1997 SC 3011. The court held that international conventions can be used to supplement domestic law in the absence of specific legislation.

⁴⁷ Section 2(14) and Section 83 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which deal with the use of children by armed forces and armed groups.

⁴⁸ UN Committee on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of India, CRC/C/IND/CO/3-4, 2014.

The Constitution and child welfare laws provide several safeguards for children in India, but there is a significant gap between what the law says and what actually happens to children in India. This section looks at some of the most important of these gaps.

16.1 The Education Gap

Despite Article 21A and the RTE Act, millions of children in India are still out of school. According to data from the government's own surveys and from independent organisations such as Pratham, the Annual Status of Education Reports show that even children who are enrolled in school often do not learn basic reading and arithmetic skills at the level expected for their grade. A large proportion of children in class five cannot read a class two level text. This shows that although school enrolment has increased, the quality of education is still poor in many places.⁴⁹

Children from disadvantaged backgrounds, including children from Scheduled Castes, Scheduled Tribes, girls in certain states, and children with disabilities, have significantly higher dropout rates. The transition from elementary to secondary education is a particularly vulnerable point, where many children, especially girls, leave school. The constitutional guarantee of free and compulsory education currently extends only to class eight. After that, there is no fundamental right to free education, and the cost of secondary and higher education often pushes children from poor families out of the educational system.

16.2 The Child Labour Gap

Despite laws prohibiting child labour, millions of children continue to work in India. Many work in agriculture, which is not covered by the main prohibition in the Child Labour Act, except during school hours. Many work as domestic workers in private households, where inspection and enforcement are extremely difficult. Many work in small workshops and family enterprises, where the exception in the Child Labour Act is often misused.⁵⁰

The enforcement of child labour laws is weak. Labour inspectors are few in number relative to the scale of the problem. Penalties for violations of the law are often too low to deter employers. And many families, driven by poverty, have no choice but to send their children to work. The problem of child labour cannot be fully controlled without reducing poverty and unemployment.

⁴⁹ Annual Status of Education Report (Rural) 2022, published by Pratham Education Foundation.

⁵⁰ International Labour Organization, Child Labour: Global Estimates 2020, Trends and the Road Forward (Geneva: ILO, 2021).

16.3 The Child Marriage Gap

Despite the Prohibition of Child Marriage Act, child marriage remains a serious problem in India. National Family Health Survey data shows that a substantial proportion of women between the ages of twenty and twenty-four were married before the age of eighteen. The rates are particularly high in states like Rajasthan, Bihar, and West Bengal, and among girls from rural areas and lower socioeconomic groups. Child marriage violates the constitutional rights of girls in multiple ways. It denies them the chance to complete their education. It exposes them to health risks associated with early pregnancy. It limits their agency and autonomy and it also increases poverty and social problems for future generations.⁵¹

16.4 The Child Abuse and Trafficking Gap

Despite the POCSO Act and anti-trafficking laws, child sexual abuse and trafficking remain widespread. The National Crime Records Bureau data shows high numbers of cases reported under POCSO, and experts believe that reporting rates are still far below the actual incidence of abuse because of shame, stigma, and fear. Cases under POCSO take years to be disposed of in court, contrary to the one-year timeline mandated by the Act. Many victims do not receive the rehabilitation and support services they need after abuse.

17. SUGGESTIONS FOR IMPROVEMENT

The issues discussed above show the need for better implementation of child protection laws, to bring the reality of children's lives closer to the constitutional promise. This section offers a set of suggestions based on the analysis in this paper.

17.1 Extending the Right to Education

The right to free and compulsory education should be extended from class eight to class twelve, covering children up to the age of eighteen. Several state governments have already taken steps in this direction, but a constitutional amendment or comprehensive central legislation would give the right a stronger guarantee. The extension of the right to secondary education is particularly important for girls, who are most likely to drop out after completing elementary school.

17.2 Strengthening Child Labour Enforcement

⁵¹ National Family Health Survey (NFHS-5), 2019-21, published by the Ministry of Health and Family Welfare, Government of India.

The government should improve the enforcement of child labour laws. This requires more labour inspectors with the authority and resources to inspect all workplaces including private homes and family enterprises. It requires higher penalties for employers who violate the law. Most importantly, it requires poverty alleviation programmes that reduce the economic pressure on families to send their children to work. The conditional cash transfer programmes that several states have tried, where families receive payments contingent on their children attending school, are one approach that has shown promise.⁵²

17.3 Making Child Marriage Void

The Prohibition of Child Marriage Act should be amended to make all child marriages void rather than merely voidable. This would give stronger protection to girl children and would make it harder for families and community leaders to pressure girls into accepting marriages they do not want. The proposed amendment to raise the minimum age of marriage for women to twenty-one years, if passed, would further strengthen this protection.

17.4 Fast-Tracking POCSO Cases

The government must make good on the POCSO Act's promise of speedy justice for child victims of sexual abuse. This requires establishing and fully staffing special courts for POCSO cases in every district, providing adequate training to judges, prosecutors, and support personnel on how to handle child victims sensitively, and setting up one-stop centres where child victims can receive medical care, legal assistance, and psychological support under one roof. The government must also invest in awareness campaigns to encourage reporting of abuse and reduce the stigma associated with it.

17.5 Developing a Comprehensive Child Protection System

India should develop a stronger child protection system at both state and district levels that can identify children at risk, provide them with preventive support, and respond quickly and effectively when harm occurs. The current system, with Child Welfare Committees and Juvenile Justice Boards, is a good foundation but needs to be strengthened with more trained personnel, better infrastructure, stronger inter-agency coordination, and a functioning case

⁵² Saksham Verma, *Conditional Cash Transfers and Child Education in India: Evidence from Rajasthan* (New Delhi: Institute for Human Development, 2018), p. 78.

management system. Every district should have a District Child Protection Unit as mandated under the Integrated Child Protection Scheme.⁵³

17.6 Making Children's Rights Education Part of the School Curriculum

Children should also be educated about their legal and constitutional rights from an early stage. Education should be a mandatory part of the school curriculum from an early age, using age-appropriate methods and materials. When children are aware of their rights, they can report abuse and discrimination more confidently and are less likely to accept abuse as normal, and grow up to be citizens who respect the rights of others.

18. CONCLUSION

The Indian Constitution provides wide legal protection for children through various rights and welfare provisions. Articles 14, 15, 21A, and 39(f), read together and in the context of Article 21 and other related provisions, create a powerful set of guarantees. They say that every child in India, regardless of who that child is, where it was born, what family it comes from, or what community it belongs to, has the right to be treated equally before the law, to be free from discrimination, to receive free and compulsory education, and to grow up in conditions that allow it to develop to its full potential, free from exploitation and abandonment.

The courts of India, led by the Supreme Court, have given these provisions life and meaning through a long line of decisions. They have held that child labour violates the constitutional rights of children. They have held that child victims of sexual abuse are entitled to speedy justice and rehabilitation. They have held that the right to education is not just a right to be present in a school building but a right to meaningful, quality education. They have drawn on international law to enrich the domestic understanding of children's rights. And they have issued detailed directions to governments at all levels to take concrete steps to honour the constitutional promise to children.

Parliament and state legislatures have responded to the constitutional mandate by passing important legislation, including the RTE Act, the POCSO Act, the Juvenile Justice Act, and the Prohibition of Child Marriage Act. These laws give concrete form to the constitutional rights and provide mechanisms for their enforcement.

⁵³ The Integrated Child Protection Scheme, launched in 2009, is a centrally sponsored scheme that aims to create a protective environment for children through government and civil society partnership.

But there is still a large gap between the law and the reality. Millions of children in India are still out of school, still working in conditions that damage their health and deny them their future, still vulnerable to abuse and trafficking, still affected by child marriage, and still suffering from malnutrition and preventable disease. Closing this gap requires not just law but political will, adequate resources, effective governance, and a genuine commitment from society as a whole to treat children as full human beings with rights that must be respected.

The constitutional provisions discussed in this paper are not abstract philosophical statements. They are promises made to every child in India. The measure of India's success as a democracy will in large part be determined by how well it keeps these promises. A nation that allows its children to be exploited, denied education, and left without care and protection is a nation that is failing its future. The Constitution gives India a roadmap and the task now is to follow it.

19. REFERENCES

Constitutional Provisions

Constitution of India, 1950: Articles 14, 15, 21, 21A, 23, 24, 37, 39(e), 39(f), 45, 51A(k).

Legislation

The Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986).

The Child Labour (Prohibition and Regulation) Amendment Act, 2016 (Act 35 of 2016).

The Commissions for Protection of Child Rights Act, 2005 (Act 4 of 2006).

The Constitution (Eighty-sixth Amendment) Act, 2002.

The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016).

The National Council for Teacher Education Act, 1993 (Act 73 of 1993).

The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007).

The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012).

The Protection of Children from Sexual Offences (Amendment) Act, 2019 (Act 25 of 2019).

The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).

The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).

Case Law

- Alakh Alok Srivastava versus Union of India, (2018) 7 SCC 454.
- Bachpan Bachao Andolan versus Union of India, (2011) 5 SCC 1.
- Bandhua Mukti Morcha versus Union of India, AIR 1984 SC 802.
- D.K. Basu versus State of West Bengal, (1997) 1 SCC 416.
- Disabled Rights Group versus Union of India, Writ Petition (Civil) No. 43 of 2005.
- Francis Coralie Mullin versus Administrator, Union Territory of Delhi, AIR 1981 SC 746.
- M.C. Mehta versus State of Tamil Nadu, (1996) 6 SCC 756.
- Mohini Jain versus State of Karnataka, AIR 1992 SC 1858.
- Mukesh and Another versus State (NCT of Delhi) and Others, (2017) 6 SCC 1.
- Nipun Saxena versus Union of India, (2019) 2 SCC 703.
- Olga Tellis versus Bombay Municipal Corporation, AIR 1986 SC 180.
- Society for Un-Aided Private Schools of Rajasthan versus Union of India, (2012) 6 SCC 1.
- State of West Bengal versus Anwar Ali Sarkar, AIR 1952 SC 75.
- Unni Krishnan J.P. versus State of Andhra Pradesh, AIR 1993 SC 2178.
- Vishaka versus State of Rajasthan, AIR 1997 SC 3011.

Books and Articles

- Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Oxford: Clarendon Press, 1966.
- Baxi, Upendra. *The Future of Human Rights*. New Delhi: Oxford University Press, 2002.
- Bhatia, Gaurav. *The Transformative Constitution: A Radical Biography in Nine Acts*. New Delhi: HarperCollins India, 2019.
- Dhagamwar, Vasudha. *Law, Power and Justice: The Protection of Personal Rights in the Indian Penal Code*. New Delhi: Sage Publications, 1992.
- Sabharwal, Manish. *Child Labour in India: Law and Policy*. New Delhi: Universal Law Publishing, 2017.
- Verma, Saksham. *Conditional Cash Transfers and Child Education in India: Evidence from Rajasthan*. New Delhi: Institute for Human Development, 2018.

Reports and Other Sources

Annual Status of Education Report (Rural) 2022. Pratham Education Foundation.

Census of India, 2011. Office of the Registrar General and Census Commissioner, India.

Constituent Assembly Debates, Vol. VIII. Lok Sabha Secretariat, New Delhi.

International Labour Organization. Child Labour: Global Estimates 2020, Trends and the Road Forward. Geneva: ILO, 2021.

National Family Health Survey (NFHS-5), 2019-21. Ministry of Health and Family Welfare, Government of India.

Social, Economic and Educational Status of the Muslim Community of India. Report of the Prime Minister's High Level Committee (Sachar Committee Report), 2006.

UN Committee on the Rights of the Child. Concluding Observations on the Combined Third and Fourth Periodic Reports of India. CRC/C/IND/CO/3-4, 2014.

United Nations Convention on the Rights of the Child, 1989.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985.