

Rights of Children – A bird’s eye-view on Indian Laws

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Abstract

The rights of a child must be protected as they are the future of a country. In this chapter, various acts and laws that deals with protecting a child from the offences done against them is described. This chapter gives an insight on the various sections in Indian Law that protects children from getting abused and how the persons committing those crimes are punished.

Keywords: Rights of children, acts related to children, Young Persons (Harmful Publication) Act, POSCO

Introduction

The Indian constitution confers the rights to children as citizens of the country, and in keeping with their special status the State has enacted special laws. The Constitution, endorsed in 1950, covers most rights included in the UN Convention on the Rights of the Child as Fundamental Rights and Directive Principles of State Policy. Over the years, many individuals and public interest groups have approached the Supreme Court of India for the reinstatement of fundamental rights, including child rights. The Directive Principles of State Policy articulate social and economic rights that have been declared to be “fundamental in the governance of the country and ... the duty of the state to apply ... in making laws” (HAQ: Centre for Child Rights, 2019).

Definition of Key Terms

Child Rights Law

Children's rights law is defined as "the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services; care and protection for children in state care; ensuring education for all children regardless of their race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics, and; health care and advocacy " (Ahearn & Holzer, 2007).

Rights of Children

According to Article 21 (A) of Indian Constitution, all children in the 6-14 year age group have the right to free and compulsory elementary education (HAQ: Centre for Child Rights, 2019).

According to Article 24 of Indian Constitution, all children have the right to be protected from any hazardous employment till the age of 14 years (HAQ: Centre for Child Rights, 2019).

According to Article 39(e) of Indian Constitution, all children have right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (HAQ: Centre for Child Rights, 2019).

According to Article 39(f) of Indian Constitution, all children have right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (HAQ: Centre for Child Rights, 2019).

According to Article 45 of Indian Constitution, all children have the right to early childhood care and education to all children until they complete the age of six years (HAQ: Centre for Child Rights, 2019).

Acts related to Children

The following are the acts that are related to children.

1. Commissions for Protection of Child Rights (Amendment) Act 2006

Minister in-charge of the Ministry of Human Resource Development", the words "Minister in-charge of the Ministry or the Department of Women and Child Development" shall be substituted (Government of India, 2006).

2. National Commission For Protection of Child Rights Rules, 2006

As per the Section 3 of the Act, "No person having any past record of violation of human rights or child rights shall be eligible for appointment as Chairperson or other Members of the Commission."

As per Section 17 (a) of the act, the commission shall analyze existing law, policy and practice to assess compliance with Convention on the Rights of the Child, undertake inquiries and produce reports on any aspect of policy or practice affecting children and comment on proposed new legislation from a child rights perspective.

According to Section 17 (d) of the Act, the commission shall ensure that the work of the commission is directly informed by the views of the children in order to reflect their priorities and perspectives.

According to Section 17 (e) of the Act, the commission shall promote, respect and consider seriously the views of children in its work and in that all of the government departments and organizations dealing with child.

According to Section 17 (f) and (g) of the Act, the commission shall produce and disseminate information about child rights and shall compile and analyse data on children respectively.

As per Section 17 (h) of the Act, the commission shall promote the incorporation of child rights into the school curriculum, teacher's training and training of personnel dealings with children (Government of India, 2006).

3. Commissions for Protection of Child Rights Act, 2005

According to 3 (2) of the Commissions for Protection of Child Rights Act (2005), a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children and 6 members, out of which at least two shall be women, to be appointed by the Central Government having experience in: education; child health, care, welfare or child development, juvenile justice or care of neglected or marginalized children or children with disabilities, elimination of child labor or children in distress, child psychology or sociology, and laws relating to children.

As per the rules cited in the Section 13 (1) of the above Act, the commission shall, examine and review the safeguards provided by or under any law for the protection of child rights and recommend measures for their effective implementation, present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards.

As per Section 13 (1) (c) of the Act, the commission shall) inquire into violation of child rights and recommend initiation of proceedings in such cases.

As per provisions mentioned in Section 13 (1) (d) of the Act the commission must examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV /AIDS, trafficking: maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures.

As per Section 13 (1) (j) of the Act, the commission is bound to inquire into complaints of matters relating to deprivation and violation of child rights, non-implementation of laws providing for protection and development of children, non-compliance of policy decisions aimed at ensuring welfare to children.

As per section 14 (1) of the Act, the Commission shall, while inquiring into any matter referred to in Section 13 (1) (j) of the Commissions for Protection of Child

Rights Act (2005), have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908(Government of India, 2006).

4. Right of Children to Free and Compulsory Education Rules , 2010

As per section 5 (1) of the Right of Children to Free and Compulsory Education Rules (2010), The School Management Committee of a school owned and managed by the appropriate Government or Local Authority shall identify children requiring special training and organize such training in the following manner, namely:

- the special training shall be based on specially designed, age appropriate learning material, approved by National Advisory Council,
- the special training shall be provided, in the classes held on the premises of the school, by the teachers working in the school or by the teachers specially appointed for the purpose.

According to section 5 (2) of the Act, the child shall, after special training continue to receive special attention by the teacher to enable him to successfully integrate with the rest of the class, academically and emotionally. (Ministry of Human Resource Development, Government of India, 2010).

5. Right of Children to Free and Compulsory Education Act ,2009

As per Section 13 (1) of the Right of Children to Free and Compulsory Education Act (2009), “No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian or any screening procedure.”

As per Section 13 (2) of the Act “Any school or person, if in contravention of the provisions of subsection (1) (a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged.”

If a child is subjected to screening procedure the school/person shall be booked under Section 13 (2) (1) (b) which indicates that the school or person

“shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.” (Government of India, 2009).

6. Protection of Children From Sexual Offences Rules, 2012 (POSCO)

As per Section 14 (1) of the POSCO Act (2012), “whoever uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.”

As per Section 14 (2) of the Act, if a person conducts penetrative sexual assault on a child, he shall be punished either for not less than 10 year imprisonment or for a term of description.

As per Section 14 (3) of the Act, if a person uses a child for pornographic purposes and conducts penetrative sexual assault on a child by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to a fine.

As per Section 14 (4) of the Act, if a person uses a child for pornographic purposes and conducts an act with sexual intent involving physical contact without penetration, he shall be punished with imprisonment for a term not less than six years which may extend to 8 years and shall also be liable to a fine.

As per Section 14 (5) of the Act, if a police officer or personnel from, armed forces or security forces or public servant or jail staff or protection home or management or staff of a hospital or educational or religious institution or gang sexual assault, uses a child for pornographic purposes, he shall be punished with imprisonment for a term not less than 8 years which may extend to 10 years and shall also be liable to a fine.

As per Section 15 of the Act, any person who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or fine or both (Government of India, 2012).

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

According to Section 54 (5) of the Act, any offence under the Act is committed by a Child Care Institution including a Specialised Adoption Agency, the Committee or the Board as the case may be, may pass appropriate orders for placing the children already placed with the Child Care Institution or the Specialised Adoption Agency in any other Child Care Institution or Specialised Adoption Agency and recommending the cancellation of the registration and withdrawal of recognition of such institution or agency (Government of India, 2015).

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

According to Section 74 (1) of the Act, no report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published.

According to Section 75 of the Act, whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to

three years or with fine of one lakh rupees or with both (Government of India, 2015)

9. Protection of Children From Sexual Offences Act, 2012

According to Section 4 of the Act, whoever commits penetrative sexual assault shall be punished with imprisonment of either description of a term which shall not be less than 7 years but may extend to life imprisonment and shall also be liable to fine.

According to Section 6 of the Act, whoever commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine.

As per Section 7 of the Act, sexual assault is defined as “whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such a person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”.

According to Section 8 of the Act “ whoever commits sexual assault, shall be punished with imprisonment of either a description for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine” (Government of India, 2012).

10. Juvenile Justice (Care and Protection of Children) Amendment Rules, 2011

According to Section 45(p) of the Amendment Rules, “every institution shall refer such children who are addicted to alcohol or other drugs which lead to behavioral changes in a person to an Integrated Rehabilitated Center for Addicts or similar centers maintained by the state government for mentally ill persons (including the persons addicted to any narcotic drug or psychotropic substance) for the period required for in-patient treatment of such juvenile or child” (Government of India, 2011).

According to Section 46(10) of the Amendment Rules, “No juvenile or child shall be administered medication for psychiatric problems without a psychological evaluation and diagnosis by a trained medical health professional” (Government of India, 2011).

According to Section 61 (1) of the Amendment Rules, “When a juvenile or a child placed under the care of a fit person or a fit institution under the provisions of the Act, is found to be suffering from a disease or physical or psychiatric problems requiring prolonged medical treatment, or is found addicted to alcohol or other drugs which lead to behavioral changes in a person, the juvenile or the child may be sent by an order of the competent authority to an appropriate place for such period as may be certified by medical officer to be necessary for proper treatment of the juvenile or the child or for the remainder of the term for which he has to stay.” (Government of India, 2011).

According to Section 61 (2) of the Amendment Rules, “When the juvenile or the child is cured of the disease or physical or psychiatric problems, the competent authority may, if the juvenile or child is still liable to stay, order the juvenile or the child to be placed back in the care of fit person or institution from where the juvenile or child was removed for treatment and if the juvenile or the child is no longer liable to be kept under the care of fit person or institution, the competent authority may order him to be discharged.” (Government of India, 2011).

The Section 61(3) of the Juvenile Justice (Care and Protection of Children), stating that “The order of restoration of a juvenile or a child suffering from an infectious or contagious disease to his parents or guardian shall be based on the principle of best interest of the juvenile or child, keeping in mind the risk of stigmatization and discrimination and discontinuation of treatment” is omitted by this amendment (Government of India, 2011).

According to Section 61(4) of the Amendment Rules, “Where there is no organization either within the jurisdiction of the competent authority, or nearby District or State for care and protection of juveniles or children suffering from serious psychiatric or physical disorder, as required under section 58 of the Act, necessary organization shall be set up by the State Government at such places, as it may deem fit to cater to the special needs of such juveniles or children.” (Government of India, 2011).

11. Juvenile Justice (Care and Protection of Children) Rules, 2007

According to Section 3 (2) I (iii) of the Act, “Juveniles in conflict with law have a right to be informed about the accusations against them and a right to be legally represented. Provisions must be made for guardian ad litem, legal aid and other such assistance through legal services at State expense. This shall also include such juveniles’ right to present his case before the competent authority on his own” (Government of India, 2007).

As per Section 3 (2) II (b) of the Act “The juvenile’s or child’s right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with the child.” (Government of India, 2007).

According to Section 3 (2) III of the Act “Every child’s right to express his views freely in all matters affecting his interest shall be fully respected through

every stage in the process of juvenile justice. Children's right to be heard shall include creation of developmentally appropriate tools and processes of interacting with the child, promoting children's active involvement in decisions regarding their own lives and providing opportunities for discussion and debate" (Government of India, 2007).

12. Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

The Section 41 (6) of the Act states that "the court may allow a child to be given in adoption (a) to a person irrespective of marital status or (b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters or (c) to childless couples" (Government of India, 2006).

13. Juvenile Justice (Care and Protection of Children) Act, 2000

The Section 10 (1) of the Act states that "As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board." The Section 23 of the Act states that "Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both." (Government of India, 2000).

14. Child Labour (Prohibition and Regulation) Rules, 1988

As per Section 16 of the Child Labour (Prohibition and Regulation) Rules, 1988, “Every occupier of an establishment shall maintain a register in respect of children employed or permitted to work, in Form A”. As per section 17 (1) of the rules, “All young persons in employment in any of the occupations .. or in any workshop .., shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector” (Government of India, 1988).

15. Child Labour (Prohibition and Regulation) Act, 1986

As per Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986, “No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on”. (Government of India, 1986).

16. Children (Pledging of Labour) Act, 1933

As per Section 4 of the Children (Pledging of Labour) Act , 1933, “Whoever, being the parent or guardian of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extend to fifty rupees.” As per Section 5 of the Act “Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledges the labour of the child shall be punished with fine which may extend to two hundred rupees.” (Government of India, 1933).

17. Bonded Labour System (Abolition) Act, 1976

As per Section 16 of the Act “Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term, which may extend to three years and also with fine, which may extend to two thousand rupees.” As per Section 18 of the Act, “Whoever enforces, after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependant of such person is required to render any service under the bonded labour system shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him.” (Government of India, 1976)

18. Factories Act, 1948

As per Section 67 of the Factories Act (1948), “No child who has not completed his fourteenth year shall be required or allowed to work in any factory”. As per Section 71 (1) (a) of the Act, “No child shall be employed or permitted to work, in any factory for more than four and a half hours in any day.” As per Section 71 (2) of the Act “The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each”. As per Section 71 (4) of the Act “No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.” As per 71 3*[(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.] (Government of India, 1948).

19. Guardians and Wards Act 1890

As per Section 24 of the Guardians and Wards Act 1890, “A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.” According to Section 39 of the Act, “The court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :- For abuse of his trust for continued failure to perform the duties of his trust, for incapacity to perform the duties of his trust, for ill-treatment, or neglect to take proper care, of his ward, for contumacious disregard of any provision of this Act or of any order of the Court, for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward.” (Government of India, 1890).

20. Hindu Minority and Guardians Act 1956

According to Section 11 of the Act, “After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.” As per Section 8 (2) of the Act, “The natural guardian shall not, without the previous permission of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.” (Government of India, 1956).

21. Immoral Traffic (Prevention) Act, 1956

According to Section 4 (1) of the Act, “Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years ” (Government of India, 1956). According to Section 6 (2) of the Act, “Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence of detaining a person in premises where prostitution is carried on. The punishment consists of imprisonment of either description for a term which shall not be less than 7 years” (Legal Services India.com, 2018).

22. Medical Termination of Pregnancy Act, 1971

According to Section 3 (2) (ii) of the Act, “Pregnancies may be terminated by registered medical practitioners” if “there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.” As per Section 4 of the Act, “No termination of pregnancy shall be made in accordance with this Act at any place other than (a) a hospital established or maintained by Government, or (b) a place for the time being approved for the purpose of this Act by Government ” (Government of India, 1971).

23. Mines Act, 1952

According to Section 40 (1) of the Act, “After the commencement of the Mine (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof.” According to Section 45 of the Act, “no person below eighteen years of age shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on”. According to Section 68 of the Act, “If a person below 18 years is employed in a mine in contravention of section 40, the owner, the agent, or manager of such mine shall be punishable with fine which may extend to five hundred rupees” (Government of India, 1952).

24. National Food Security Act, 2013

According to Section 5 (1) of the Act “every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:—
(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards”

According to Section 5 (1) (b) of the Act “in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards specified in Schedule II”.

According to Section 6 of the Act, “The State Government shall, through the local anganwadi, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II ” (Government of India, 2013).

25. Prohibition of Child Marriage Act 2006

According to Section 3 (1) of the Act, “Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage” (Government of India, 2006).

According to Section 9 of the Act, “Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both” (Government of India, 2006).

According to Section 10 of the Act, “Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage” (Government of India, 2006).

26. Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

According to Section 4 (2) of the Act, “no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely: — (i) chromosomal abnormalities; (ii) genetic metabolic diseases; (iii) haemoglobinopathies; (iv) sex-linked genetic diseases; (v) congenital anomalies; (vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board” (Government of India, 1994).

According to Section 4 (4) of the Act, “no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2)” (Government of India, 1994).

According to Section 5 (2) of the Act, “No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.” (Government of India, 1994).

27. Young Persons (Harmful Publication) Act, 1956

According to Section 2 (a) of the Act ““harmful publication "means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly- (i) the commission of offences; or (ii) acts of violence or cruelty; or (iii) incidents of a repulsive or horrible nature; in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever;” (Government of India, 1956).

According to Sections 3 of the Act, “If a person sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, any harmful publication, or for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.” (Government of India, 1956).

Conclusion

In this chapter various laws that deal with offences against children are introduced. The effective implementation of laws rests with the level of awareness the public have in it and the acts of harassment to children is no exception to it.

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