

RIGHT TO CHILD: A JUDICIAL OVERVIEW IN INDIA

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Abstract

The rights of children are fundamental to the development of any society. Recognizing children as a vulnerable group, Indian laws and the judiciary have played a pivotal role in securing their rights. This research paper explores the evolution and enforcement of child rights in India through a judicial lens. It discusses constitutional provisions, statutory protections, international conventions, and key judicial pronouncements that have shaped the landscape of child welfare and justice in India.

Keywords: Child Rights, Constitution of India, Judicial Review, Juvenile Justice, Education, Protection from Abuse, Right to Life, Supreme Court.

1. Introduction

Children are the future of a nation, and their holistic development is not just a social imperative but also a constitutional mandate. India has taken several legislative and policy steps to protect children's rights. However, it is the judiciary that has ensured effective interpretation, implementation, and expansion of these rights. This paper focuses on the **judicial recognition and enforcement** of child rights, covering aspects like education, protection from abuse, health, and justice.

2. Constitutional Framework of Child Rights

Several constitutional provisions cater directly or indirectly to the rights of children:

- **Article 15(3):** Allows the state to make special provisions for children.
- **Article 21A:** Guarantees free and compulsory education for children aged 6 to 14 years.
- **Article 24:** Prohibits employment of children below 14 years in factories, mines, or any hazardous employment.
- **Directive Principles (Articles 39(e) and 39(f)):** Direct the State to ensure that children are not abused and that childhood is protected against exploitation and moral and material abandonment.

These provisions, though originally aspirational, have been given concrete meaning through judicial interpretation.

3. International Instruments Recognized by India

India is a signatory to several international instruments, which play a significant role in shaping domestic policies on child rights:

- **United Nations Convention on the Rights of the Child (UNCRC), 1989:** Recognizes the civil, political, economic, social, and cultural rights of children.
- **ILO Conventions:** Relating to child labor and minimum working age.

- **Universal Declaration of Human Rights (UDHR), 1948:** Promotes dignity, education, and welfare for all children.
- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** Includes special protection for girl children.

4. Legislative Safeguards for Children in India

Several national legislations have been enacted to safeguard the rights and welfare of children:

- **The Juvenile Justice (Care and Protection of Children) Act, 2015**
- **The Right of Children to Free and Compulsory Education Act, 2009**
- **The Child Labour (Prohibition and Regulation) Act, 1986 (Amended in 2016)**
- **The Protection of Children from Sexual Offences (POCSO) Act, 2012**
- **The Prohibition of Child Marriage Act, 2006**
- **The National Commission for Protection of Child Rights (NCPCR) Act, 2005**

These laws aim to provide education, protect against abuse and exploitation, and ensure juvenile justice and social integration.

5. Judicial Overview: Landmark Judgments

a) **M.C. Mehta v. State of Tamil Nadu (1996)**

The Supreme Court prohibited child labor in hazardous industries and directed the establishment of a Child Labour Rehabilitation Welfare Fund.

b) **Unnikrishnan J.P. v. State of Andhra Pradesh (1993)**

The Court recognized the **right to education** as a fundamental right under Article 21. This laid the foundation for the inclusion of Article 21A.

c) **Bachpan Bachao Andolan v. Union of India (2011 & 2014)**

The Supreme Court issued guidelines for preventing child trafficking, ensuring rehabilitation, and monitoring schools under the Right to Education Act.

d) **Gaurav Jain v. Union of India (1997)**

The Court stressed the need for state and society to integrate children of sex workers into mainstream society and educational systems.

e) **Sampurna Behura v. Union of India (2018)**

Directed effective implementation of the Juvenile Justice Act, highlighting gaps in the child protection system across states.

f) **Court on Its Own Motion v. State of NCT of Delhi (2012)**

Stressed the importance of child-friendly procedures for victims under the POCSO Act and fast-track courts for justice delivery.

6. Role of Judiciary in Expanding Child Rights

The Indian judiciary has actively:

- **Expanded the scope of Article 21 (Right to Life)** to include right to education, health, dignity, and protection from abuse.
- Ensured **implementation of welfare schemes** like mid-day meals and Beti Bachao Beti Padhao.

- Recognized the rights of **street children**, orphans, and victims of trafficking.
- Encouraged **PILs** as a tool to advance the interests of children.
- Interpreted laws **in harmony with international conventions**, especially the UNCRC.

7. Challenges in Enforcement of Child Rights

Despite legal and judicial mechanisms, several challenges remain:

- **Lack of implementation** of judicial directions.
- **Overburdened juvenile justice boards** and insufficient infrastructure.
- Inadequate **awareness among parents and guardians**.
- Increase in **cybercrimes and online abuse** against children.
- **Underreporting of offences** due to social stigma and fear.

8. Suggestions

- Establish **dedicated children's courts** in all districts.
- Conduct regular **judicial training** on child rights and sensitivity.
- Promote **legal literacy** on child rights at grassroots level.
- Strengthen coordination among **police, judiciary, child welfare committees, and NGOs**.
- Introduce **monitoring cells** to follow up on the execution of court orders and rehabilitation.

9. Conclusion

The judiciary has played a proactive role in ensuring the protection, promotion, and realization of child rights in India. Through landmark judgments and suo motu actions, the courts have filled legislative and executive gaps, championing the cause of children as vulnerable members of society. However, to translate these rights into real change, **effective implementation, institutional strengthening, and social awareness** are essential.

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