



## SILENT CRIES, STRONG LAWS: UPLIFTING EVERY CHILD LEFT BEHIND

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### ABSTRACT

*“When laws fail to protect, silence becomes the loudest scream”*

*Children are the future citizens of India, so we must protect them in a careful and strong manner. They need to be educated, healthy, and have the most important freedom: the right to express themselves. Every child must be treated equally, and there should not be any discrimination based on colour, gender, or caste. It is a right given to them under Articles 14, 15, and 17 of the Indian Constitution. Let children dream, not suffer. Enforce strict laws against all forms of child exploitation. The punishment in the POCSO Act needs to be made tougher to show zero tolerance for these offences. This paper also highlights the struggles faced by orphaned children during the COVID-19 pandemic. I focused my research on key legal protections that are available for children. I hope my perspective will help people who think critically understand better. Let's all work together to create social change! The government must step up with clear, powerful laws and ensure they're enforced effectively.*

**Keywords:** Discrimination, Equality, POCSO Act.

### INTRODUCTION

Children's rights are human rights that are especially aimed at children under the age of 18, to be protected, developed, and allowed to participate in society. All these rights apply to every child, irrespective of race, gender, nationality, or economic background. Articles 14, 19, and 21 are constitutional provisions forming a jurisprudential paradigm called the "Golden

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Triangulation", that is, the complex normative constellation personifying the essence of human prerogatives:

Egalitarian balance, existential autonomy, and vitalistic preservation. The UNCRC defines children's rights as the right to survival, which includes basic needs such as food, health, and a safe environment, protecting children from violence, abuse, and exploitation, the right to development and access to education, play, and all-round development; and the right to participation, including freedom of expression and involvement in decisions affecting them. Core foundations recognise children as distinct human beings with particular needs, protect their bodily and psychological integrity, and ensure their dignity and capacity for development. Children's rights encompass broad support, considering the vulnerability of children while building them into healthy and knowledgeable individuals.

## **HISTORICAL BACKGROUND FOR CHILDREN'S RIGHTS**

Children's rights emerged as a result of slow-moving historical changes in social perspectives. During the periods of pre-industrial times, children were generally conceived as property of their respective parents, with legal protection being unestablished. Some key historical events:

**19th century:** The primary legal protections manifested when France created laws for safeguarding children in the fields of their profession and education.

**1924:** The League of Nations implemented its first Universal Declaration of Children's Rights. End.

**1959:** The Declaration of the Rights of the Child was adopted by the UN General Assembly with 10 principles.

**1989:** The UN Convention on the Rights of the Child became the iconic international instrument passed unanimously, providing 54 articles that define the economic, social, and cultural rights of children during transformative periods. The Industrial Revolution marked a critical juncture in transformation, focusing on the vulnerability of children through rampant child labour and exploitation. At this point, society increased its knowledge of the welfare of children, transitioning from viewing them as 'small adults' to recognising them as individuals entitled to special protections.

## **SAFEGUARDING CHILDREN AND THEIR RIGHTS**

Children have the same basic rights as adults, but their age calls for special protection and care. Some of the key rights of children include having a safe environment, the right to education, the right to play, and the right to be heard in matters affecting them. Protection of these rights will help children have happy childhoods and continue to grow well into adulthood. Unfortunately, these rights are violated so frequently that the violations are largely accepted. Children are forced to work, married too young, or suffer emotional, physical, or sexual abuse.

## **OUR RIGHT TO DIFFERENTLY ABLED CHILDREN**

All children are equal human beings, and they deserve to be treated as such. Disabled children are no different from any other children; the only difference is that they are more susceptible and dependent on their surroundings. They have the same need for love and respect as all other children. They also need to play, learn, and be appreciated and respected.

Like all other children, they should be challenged to employ all their senses, and the most natural way of learning this is through play. Self-confidence plays a vital role in the development and learning process of children, and disabled children are no exception. Their families and community can play an important role here, too. Children with disabilities, however, also need and have the right to spend time with a diverse group of children so that they can learn how to live and participate in a real world that respects and accepts their individuality.

## **RIGHTS FOR THE AUTISTIC CHILDREN**

Autistic children in India have the right to be properly assessed and supported by expert doctors, psychologists, and trained therapists. The Constitution of India secures for them the rights of justice, liberty, belief, and worship.

Article 15 (1) states that no Indian citizen, even if they are a victim of a condition like autism spectrum disorder, can be discriminated against by the government on any grounds such as religion, caste, or sex.

Article 15 (2) declares that Indian citizens, including those with various disabilities and disorders, shall not face restrictions on any grounds regarding access to places dedicated to the general public.

People belonging to the Scheduled Castes and Tribes are granted benefits through special laws. Individuals with autism cannot be treated as untouchable, as this is a punishable offence. Every person has their life and liberty guaranteed. Forced labour and the employment of children below the age of 14 years, including those suffering from autism or other disabilities, is an offence. No disabled person can be forced to pay taxes. Every disabled person has the right to petition the Supreme Court for their rights.<sup>1</sup> Like other people, the property of an autistic person can be owned or inherited. When a disabled person is deprived of their property, the deprivation and its lack of legal authority will be challenged before a court of law.

### **FREE MENSTRUAL HYGIENE SCHEME**

The government has launched a few programs under which sanitary napkins are provided to children either for free or at subsidised rates. Some of them are -

**National Menstrual Hygiene Scheme:** It's made available to girls at an affordable price of Rs 6 per pack through ASHAs. It will improve knowledge and usage of menstrual hygiene.

#### **State-Specific Programs:**

**Andhra Pradesh:** The Swechha Scheme facilitates free napkins to school-going girls.

**Rajasthan:** The Udaan Initiative offers free sanitary napkins at schools, colleges, and Anganwadi centres.

**Add-on Benefits:** Oxo-biodegradable sanitary napkins are provided at Rs. 1 per pad by the Pradhan Mantri Bhartiya Jan Aushadhi Pariyojana. The idea is to support menstrual hygiene, reduce period poverty, and provide healthy conditions and education.<sup>2</sup>

### **INDIAN CONSTITUTION AND CHILDREN'S RIGHTS**

The Indian Constitution is the fundamental instrument of law in the country that brings along with it fundamental rights and directive principles for every citizen. The fundamental rights imposed upon the state in the Indian Constitution are supposed to affirm the primary

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<sup>1</sup> 'Rights in India for Autistic Children with Special Needs' (Autism Connect, 21 March 2020) <https://www.autismconnect.com/blogs/rights-in-india-for-autistic-children-with-special-needs/> accessed 19 June 2025

<sup>2</sup> Mudgal M, 'Improving Menstrual Hygiene in India: The Fight against Period Poverty' (2 May 2025) Observer Research Foundation <https://www.orfonline.org/expert-speak/improving-menstrual-hygiene-in-india-the-fight-against-period-poverty> accessed 19 June 2025

responsibility of the state in ensuring that all the needs of children are met and their basic human rights fully protected. If fundamental rights are violated, they can be brought before the courts. The directive principles lay down the guidelines that the government has to follow. If they are violated, they cannot be taken before the courts, but due to judicial interpretation, many directive principles have now become enforceable through legal actions brought before the courts.

The Fundamental Rights in the Constitution that directly relate to children are:

1. Article 15(3) mandates special provisions for children by the state.<sup>3</sup>
2. Article 21-A provides free and compulsory education to all children aged 6 to 14 years, in such a manner as the state may determine by law. Article 21-A of the Constitution of India envisages that children in the age group of 6 to 14 years have a fundamental right to education.<sup>4</sup>
3. Article 23 forbids the trafficking of human beings, including children.<sup>5</sup>
4. Article 24 enunciates that no child under the age of 14 years shall engage in any hazardous employment, mining, or any other dangerous industry.<sup>6</sup>

The Directive Principles of State Policy that are directly related to children are:

1. Articles 39(a) and 39(f) lay down that state policies are directed towards securing the tender age of children.
2. Article 45 provides that the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.<sup>7</sup>
3. Article 51-A states that it shall be the fundamental duty of the parent and guardian to provide opportunities for education to their child or, as the case may be, their ward between the ages of six and fourteen.

The 86th Constitutional Amendment established the Right to Education as a constitutional right. Due to longstanding practice, the government amended the Constitution in 2001 to enshrine the right to education as one of the Fundamental Rights. However, as of now, the respective state laws have not been created. The Government of India has finalised a draft Bill

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<sup>3</sup> The Constitution of India art. 15 (1950)

<sup>4</sup> The Constitution of India art. 21A (1950)

<sup>5</sup> The Constitution of India art. 23 (1950)

<sup>6</sup> The Constitution of India art. 24 (1950)

<sup>7</sup> The Constitution of India art. 45 (1950)

on the Right to Education Bill, 2005, as an effort to give effect to the 86th Constitutional Amendment.<sup>8</sup>

## THE RIGHT TO EDUCATION

Education is a Human Right. People have a legitimate right to education, and at the very least, primary schooling should be free and accessible to everyone.

Furthermore, education is crucial in the attainment of other human rights. Human Rights are an integral part of society. All over the world, a large number of children lose the chance to get an education because:

1. They are made to work
2. They are forcibly drafted into military engagements.
3. Their families can't afford the cost of education.
4. Undeserving discrimination and racism overshadow their chances of getting an education.
5. They face abuse while seeking education.

**Mohini Jain v. State of Karnataka (1992):** The Supreme Court of India held that education is a fundamental right under the Constitution, which implies that there should be an obligation on the state to provide schooling. The court further held that the practice of private schools charging capitation fees is against the right to education.<sup>9</sup>

**Unnikrishnan J.P. v. State of Andhra Pradesh (1993):** The Supreme Court of India has ruled that every citizen has the right to education, recognising it as a fundamental right. Children who do not have access to education have the right to file a writ of mandamus against the relevant legal authority.<sup>10</sup>

## RIGHT TO EDUCATION OF CHILDREN OF MIGRANT WORKERS

In India, over time, the number of internal migrant labourers has significantly increased. Many of them are stuck in insecure and exploitative jobs within urban informal sectors, leading to numerous challenges in their lives. The seasonal mobility of this precarious labour force

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<sup>8</sup> The Constitution of India art. 51A (1950)

<sup>9</sup> Mohini Jain v. State of Karnataka (1992) 3 SCC 666

<sup>10</sup> Unni Krishnan, J.P. v State of Andhra Pradesh (1993) AIR 2178 (SC)

negatively impacts the accompanying children at various levels. One of the important vulnerabilities of these children in their migration process is the systematic exclusion from their constitutional Right to Education (RTE), thereby creating a prospect for their career and aspirations regarding their well-being. The RTE Act, 2009, in India provides for free and compulsory elementary education of the same quality to all children within the age group of 6-14 years. Unfortunately, migrant children are largely excluded from the Right to Education, which leads to learning gaps and pushes them toward child labour.

## **SECTION 22 OF THE POCSO ACT, 2012: GIVING FALSE COMPLAINTS AND FALSE INFORMATION**

**Key Provisions:** It applies to those who file false complaints against any other person about sexual offences in sections 3, 5, 7, and 8 of the Act. The punishment is up to 6 months of imprisonment or a fine, or both.

**Special Clause for False Complaints Against Children:** If a non-child falsely accuses a child, knowing that they are victimising him or her, then the following punishments may be meted out: Imprisonment for up to 1 year, a fine or both.

This section is designed to prevent abuse of the law while protecting children from possible false accusations that could damage their reputation or legal standing.

### **Anirudh Ajay Kumar Garg vs The State of Maharashtra and Ors (2023):**

**Facts:** Anirudh Ajay Kumar Garg, the complainant in the case at hand, brought a criminal complaint. The complainant said that their family's male domestic servant had sexually assaulted the respondents' minor son. The accused lived and worked in the jurisdictions in which the offences arose. Considering the serious allegations related to Child Sexual Abuse, it was addressed appropriately. The complaint was made under the proper provisions of the Indian Penal Code and the Protection of Children from Sexual Offences (POCSO) Act. The complainant also applied to the relevant Court by Section 200 of the Criminal Procedure Code (Cr.P.C.), which specifies the procedure to be followed for admitting an offence when an application for complaint has been made before a magistrate.

**Judicial decision:** The matter was initially heard by a Metropolitan Magistrate. The Metropolitan Magistrate held a preliminary inquiry into the action. The case was then heard,

and judgment was given by the Bombay High Court on September 30, 2021. The Bombay High Court agreed there was a prima facie case based on the facts before it. The Bombay High Court found that the Metropolitan Magistrate had acted incorrectly in law by avoiding the law. The Bombay High Court ruled in favour of the petitioner and allowed the criminal allegation to proceed. The respondents filed a Special Leave Petition (SLP) to the Supreme Court of India, being unhappy with the ruling of the High Court. On October 7, 2021, the Supreme Court heard the matter and issued a 38-page judgment that held the SLP was dismissed. The Supreme Court found there was no basis on which it could set aside the High Court ruling. The Supreme Court concluded that the appellant had probably applied the law correctly and had properly allowed the criminal trial to proceed on the allegations being heard on the merits.<sup>11</sup>

## **CHILD RIGHTS CONVENTION (1989)**

### **Who is a child?**

The Convention on the Rights of the Child 1989 (CRC) defines the term 'child' as every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. According to the Constitution and the Census of India, anyone below fourteen years is considered a child. The CRC was officially adopted by the UN General Assembly on November 20, 1989. It remains one of the most widely accepted human rights treaties in history. All civil, political, economic, social, as well as cultural rights that are held on behalf of a child are regarded in the CRC.

**Main Principles under the CRC:** Non-Discrimination Article 2 All children must be protected, and their rights should not be denied or differentiated based on any type of caste, race, sex, or religion.

Major Rights in the CRC:

- Right to Education (Articles 28-29) – Right to free and compulsory primary education.
- Right to Health (Article 24) – The right to health care and nutrition.
- Right to Protection (Articles 19, 34, 36, 37) – Protection from abuse, neglect, and exploitation. The CRC has a total of 54 articles and has been ratified by almost all UN

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<sup>11</sup> Anirudh Ajay Kumar Garg v State of Maharashtra and Others (2021) 10 SCC 456 (SC)



member states, except the United States (which has signed but not ratified it). The treaty also has two optional protocols addressing:

1. Child involvement in armed conflict.
2. A complaints mechanism for children's rights.

## **LEGAL PROTECTION FOR COVID-19 ORPHANS**

The COVID-19 pandemic adversely impacted orphaned and abandoned children in India, and the challenges that these children face also expose significant gaps in legal protections and referral systems. The problems faced by these children are complex, particularly regarding orphaned children who lost one or both parents to COVID-19.

The main law supporting the protection of children in India is the Juvenile Justice (Care and Protection of Children) Act, 2015, which covers orphaned children as victims by recognising that they require care and support if impacted by any disaster. Orphaned and abandoned children are assigned to Child Welfare Committees (CWCs); however, the question of whether CWCs are effective remains. Children are often accommodated in temporary shelter homes (SHs), where they can receive care, but there is a lack of sufficiently trained staff to quickly navigate the process of responding to questions about children submitted for care. CWCs often do not have qualified personnel to assess children's needs within their specified timeframe, resulting in children waiting for solutions. A lack of protocols and their enforcement often leads to poorly coordinated referrals and inadequate data on the time spent with each child placed in care.

The time taken to complete the legislative process for declaring a child free for adoption under Section 38 of the JJ Act is prolonged due to bureaucratic hurdles. Bureaucratic issues limit many shelter homes as viable options, as they end up primarily acting as temporary stops to rehabilitation. Additionally, the time taken to rehabilitate children during a CARA (Central Adoption Resource Authority) investigation does not yield timely outcomes, as many children remain without safety or permanency before the completion of a CARA investigation. Moreover, the system can also employ various aspects of tracking and the bonding process related to the National Child Tracking System. Many children exist outside formal systems of care, and the lack of systems addressing care for children outside placements puts them at risk. Ultimately, the impact of the pandemic has brought increased attention and urgency to

addressing the problems of orphaned and abandoned minors as major risks in a post-COVID era.

### **GRAVE VIOLATION AND IMPACT OF CONFLICT ON CHILDREN**

The grave violations of children in armed conflicts include the killing and injuring of children, the voluntary recruitment and use of children by military or armed groups, abduction, attacks on schools and health facilities, and denying humanitarian aid and access to basic health services. Wars and armed conflicts are evolving quickly, bringing new and growing threats to children. Deliberate assaults on unarmed civilians are rising across the globe. We see schools being bombed and attacked, children being abducted and exploited, and starvation being used as a weapon of war. In today's armed conflicts, the battlefields of the past have disappeared.

Instead of children experiencing violence or being displaced from their homes, we see children's homes and schools as direct sites of violence and trauma. This war has repositioned children not only as victims and witnesses but also as a significant part of armed conflict, and the results are devastating. Wars last longer and occur more frequently in cities, destroying the mechanisms needed to feed, provide water, and offer children medical services. The targeting of schools and educational institutions, along with the growing attacks on health facilities, places an increased and unfair level of responsibility on children. Many children are suffering from the most severe psychological and physiological impacts of the various forms of violence we witness every day. Children are going hungry, dying from preventable diseases, missing school, and facing a greater risk of recruitment and use by armed groups. Many children are being pushed to their frontlines, often without humanitarian assistance. Children in armed conflicts often suffer more severe and long-lasting effects than adults.

### **CONCLUSION**

Therefore, I believe that this research has extensively elaborated on the significant consequences that the violation of human rights brings regarding the fundamental rights of a child. The Indian Constitution's Golden Triangle refers to the core rights guaranteed under Articles 14, 19, and 21. It presents an unchallengeable framework for the protection of individual rights. Though many authorities guard human rights, they often lack the necessary skills. Therefore, the primary task should be the development of these skills. It is a challenging task to control the violation of human rights, and it becomes very difficult. There are laws, but they need to be made more effective with proper punishments against violations.

The violation of human rights often violates children's rights, as they are the most vulnerable members of society. In these cases, the violation of human rights destroys children's ability to thrive and grow within a safe and nurturing environment. There should be developments in technology to make it more efficient and effective. This article presents an in-depth exploration of the violations of children's rights. It aims to provide readers with valuable insights into various legal Aspects and Articles that safeguard these Children's Rights in society.