

LEGAL FRAMEWORK FOR PROTECTION OF CHILD ABUSE

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ABSTARCT

Child abuse remains a pervasive and distressing issue with profound implications for individuals, families, and societies at large. This abstract provides an overview of the multifaceted nature of child abuse, encompassing its various forms, contributing factors, and far-reaching consequences. The forms of child abuse are diverse, ranging from physical, sexual, and emotional abuse to neglect. Each form inflicts distinct and often overlapping harms on the victim, impeding their physical, emotional, and cognitive development. Moreover, the perpetration of abuse frequently occurs within familial or trusted environments, complicating detection and intervention efforts.

Contributing factors to child abuse are multifactorial and encompass individual, familial, societal, and cultural dimensions. These may include parental stress, substance abuse, socioeconomic disparities, intergenerational transmission of violence, and inadequate support systems. Understanding these factors is crucial for developing targeted prevention and intervention strategies. The impact of child abuse reverberates across the lifespan, affecting not only the immediate well-being of the child but also their long-term health outcomes and socioemotional functioning. Survivors of child abuse often grapple with a myriad of challenges, including mental health disorders, substance abuse, difficulties in forming healthy relationships, and a heightened risk of re-victimization. Efforts to address child abuse require a comprehensive approach that encompasses prevention, early detection, intervention, and support services. Key strategies may include education and awareness campaigns, strengthening child protection policies, enhancing access to mental health services, and promoting resilience-building interventions for both children and families.

In conclusion, tackling child abuse necessitates a concerted and multifaceted effort that engages individuals, families, communities, and policymakers. By prioritizing prevention and early intervention, we can strive towards creating safer environments where children can thrive, free from the scourge of abuse.

I. Introduction

Almost one third of the world population comprises children. Therefore, they deserve to be cared and protected to keep up and improve posterity. They are important component of the social structure and the potential future careers of culture. Social justice, therefore, demands justice to children. The need to provide protection to children was first stated in the Geneva Declaration of the rights of child, 1924 and was later recognized under the Universal Declaration of Human Rights, 1948. The great headway had been made in the year 1989 when

United Nation adopted international convention on rights of child. The 1989 United Nations Convention on the Rights of the Child assigns substantial responsibilities to states parties in order to protect children from all forms of sexual abuse. As a result, every states should take all necessary national, bilateral, and international steps to combat perversion and persuasion to engage in illicit sexual practises. CRC was ratified by India on December 11, 1992. As a result, it is our government's responsibility to make sure that the rights of children against sexual violence, as defined in the convention,

are enshrined in our country's legal structure. In furtherance of this convention several laws are enacted by Parliament which were in addition to already prevalent laws in India in regard to protection of children

II. Constitution of India

The constitutional provisions are discussed here under:

i. Preamble:

The Indian Constitution is the longest and largest constitution. Many key provisions for transforming childhood, child raising, and the abolition of the child labour system in India were introduced by the writers of the Indian Constitution. In 1976, the 42nd Constitutional Amendment added the word 'socialist' to the preamble. It was explained in ***D.S. Nakara V. Union of India***¹³⁴⁹, that the main objective of the socialist state of India is to eliminate income inequalities and a decent standard of living for the workers. The Constituent Assembly fully took into consideration the importance of children and made necessary provisions for the education of children and the elimination of the problem of child labor in Indian society.¹³⁵⁰

ii. Article 14

People of India, including children, must be treated equally in front of the law and afforded equal protection by the law, free of bias and irrationality. This right which is provided in the Indian Constitution protects the rights of children so that their dignity and integrity as a child is not exploited. Children being vulnerable have more chance to be treated unequally in the Indian society.

"The state shall not refuse to any individual within the territory of India equal treatment under the law or equal protection under the law," says Article 14. Thus article 14 uses to expressions "equality before the law" and "equal protection of the law".

"Equality before the law" is somewhat a negative concept implying the absence of any special privilege in favor of individuals and the equal subject of all classes to the ordinary law. "Equal protection of the law" is a more positive concept implying equality of treatment in equal circumstances.¹³⁵¹ However one dominant idea common to both the expressions is that of equal justice.¹³⁵²

Equality before law-

Equality before the law indicates that the law should be equal and equally applied among equals, and that like should be treated equally. The right to sue and sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence.

Equal protection of the Laws-

The rule is like that like should be treated alike and not that unlike should be treated alike¹³⁵³.

The rule of law imposes a duty upon the state to take special measure to prevent and punish brutality by the police methodology. The rule of law embodied in article 14 is the "basic feature" of the Indian constitution and hence it cannot be destroyed even by an amendment of the constitution under article 368 of the constitution¹³⁵⁴.

The word "any person" in article 14 of the constitution denote that the guarantee of the equal protection of laws is available to any person which includes any company or association or body of individuals. The protection of article 14 extends to both citizen and non citizens and to natural person as well as legal person. The equality before the law is guaranteed to all without regard to race, color or nationality.

¹³⁵¹ Dicey---Law of the Constitution, p.49 (10thed.)

¹³⁵² Sheo shankar v. State of M.P., AIR 1951 Nagpur 53 (

¹³⁵³ Dr. V.N. Shukla--- Constitution of India, p.27 (5thed.).

¹³⁵⁴ Indria Nehru Gandhi v. Raj Narain, AIR 1975 SC

¹³⁴⁹ 1983 AIR 130,1983 SCR (2) 165

¹³⁵⁰ AIR 1983 SC 130

iii. Article 15- Special Laws for Children

Article 15 of the Indian Constitution prohibits discrimination. Nowhere in this article precludes the state from creating particular provisions for women and children, as per Article 15(3). It is very clear from Article 15(3) that “special provision” does not mean unequal treatment but it is established for the well being and development of the children in India. By virtue of this Article several enactments have been passed by parliament.

iv. Protection under Article 21

Article 21 states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Prior to Maneka Gandhi’s decision, Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The state could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi’s decision article 21 now protects the right of liberty and personal liberty of citizens not only from the executive action but from the legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by the law, provided that the procedure is just, fair and reasonable.

The right guaranteed in Article 21 is available to ‘citizens’ as well as ‘non-citizens’. Under the umbrella of Article 21 Apex Court by way of Judicial Activism has included several rights mandating protection of children. Few of such rights are discussed here under:

➤ Right to food for needy children

In an important judgment in the **PUCL v. Union of India**¹³⁵⁵ case, the Supreme Court ruled that starving people due to inability to buy food

have the right to food under Article 21 and therefore the states should be exempted. Available for free, especially if unused and rotting. The court ruled that in such a situation all elderly, vulnerable, disabled, homeless women, homeless men, pregnant and lactating women and homeless children would get food. As a result, the court ordered the states to immediately make available all surplus food stored in buckets through Public Distribution System (PDS) shops to curb hunger and malnutrition.

➤ Protection against physical attacks enrute school.

In **Swapan Kumar Saha v. South Point Montessori High School and others**¹³⁵⁶, held that it is the duty of the school administration to ensure that children can get out of school safely. The court concluded that overcrowding on school buses infringed on school children’s right to safely operate school buses under Article 21 of the Constitution. The state was ordered by the court to take corrective action to implement the provisions of the Motor Vehicles Act, 1988 Justice directed school officials to comply with the law.¹³⁵⁷

➤ Right to education was recognized to be implied in right to life:

In **Mohini Jain v. State of Karnataka**¹³⁵⁸, The right to life and dignity of a person under Article 21 can only be realized if they are accompanied by the right to education. The Court ruled that the right to education at all levels is a fundamental right within the meaning of Article 21 of the Constitution and it is unlawful to charge a per capita entry fee and reflect peoples’ right to education.

In **Unni Krishnan V. State of Andhra Pradesh**¹³⁵⁹ states in which the right to education has been proclaimed a basic right of children aged 6 to 14 years by a court of justice. The court disagreed with Mohini Jain’s conclusion that children of all

¹³⁵⁶ 2007 2 GLR 10

¹³⁵⁷ AIR 2008 (NOC) 236 (Gau).

¹³⁵⁸ AIR 1992 SC 1858

¹³⁵⁹ (1993) 1 SCC 645

ages have the right to education, ruling instead that the right to free education is only available to children under the age of 14, therefore Mohini Jain's lawsuit was dismissed on this basis. The state's liability after the age of 14 is decided by economic performance and progress, according to the court.

Although the SC ruled in the Unni Krishnan case that the right to education is a fundamental right for children aged 6 to 14, the situation has not improved even after that. There was a demand from all sides to make education a fundamental right. As a result, the government enacted the 2002 Constitutional Law (86th Amendment) that would make education a fundamental right.

v. Article 21-A Right to free and compulsory education

The Constitution Act of 2002 (86th Amendment) added a new section 21A after Article 21 and made education a fundamental right for all children between 6 and 14 years of age. "All children between the ages of 6 and 14 will receive free and obligatory education in the manner established by the state," it said. Education is widely accepted as a fundamental human right. One of the most important components of a democratic government's success is education. An educated citizen should elect representatives to form the government. Education provides human dignity to the person which contributes to the development of their country. It is the duty of the Constitution's framers, who recognise the value of education, to provide it under Article 45, as one of the State's commands, to all children up to the age of 14 within ten years of incorporation. To provide free and compulsory education to has completed six years. The goal was to end illiteracy in the country.

The right to education is enshrined in international law by virtue of Article 26 of the UDHR and Article 13 and 14 ICESCR. These articles mandate education for all the children

irrespective of their religion, caste, gender or financial status. Article 21-A ensures that no children are deprived of their basic education and everyone is provided with elementary education.

vi. Article 23

Article 23 of the constitution prohibits traffic in human being and beggar and other similar forms of forced labor.

'Traffic in human beings' means selling and buying men and women like goods and include immoral traffic in women and children for immoral or other purposes.¹³⁶⁰ Though slavery is not expressly mentioned in article 23, it is included in the expression 'traffic in human being'.¹³⁶¹

Individuals are protected under Article 23 not only from the state, but also from private citizens. It places a direct obligation on the state to undertake measures to remove the ills of "human trafficking," as well as begging and other forms of forced labour, wherever they may be present.

The system of 'bound labour' is prohibited by article 23 since it is a type of forced labour within the terms of the article. It should be highlighted that both citizens and non-citizens can benefit from this article's protection.

'Beggar' and 'other forms of forced labor' are prohibited by this article. "Beggar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit forced labor as a punishment for a criminal offense. The protection is not confined to beggar only but also to other forms of forced labor. It means to compel a person to work against his will.

In *Peoples Union for Democratic Rights v. Union*

¹³⁶⁰ Raj Bahadur v. Legal Remembrance, AIR 1953 Cal. 522.

¹³⁶¹ Dubar Goala v. Union of India, AIR 1952 Cal 496.

of India,¹³⁶² the Supreme Court considered the scope and ambit of article 23 in detail. The court ruled that article 23 has a broad and unrestricted scope, striking down "human trafficking" and "beggar and other types of forced labour" wherever they may be found. It is not merely "beggar" which is prohibited by article 23 but also all other forms of forced labour.

In *Bandhua Mukti Morcha v. Union of India*¹³⁶³, the supreme court held that when an action is initiated in the court through public interest litigation alleging the existence of bonded labour the government should welcome it as it may give the government an opportunity to examine whether bonded labor system exists and as well as to take appropriate steps to eradicate that system. This is the constitutional obligation of the government under article 23 which prohibits 'forced labor' in any form. Article 23 has abolished the system of bonded labor but unfortunately no serious effort was made to give effect to this article. It was only in 1976 that parliament enacted the Bonded Labour System (Abolition) Act, 1976, providing for the abolition of bonded labor system with a view of view to preventing the economic and physical exploitation of the weaker sections of the people.

vii. Article 24

"No children underneath the age of 14 shall be employed in any factory or mine, or employed in any hazardous occupation," according to the article. Hazardous conditions may include construction work or railway. This article does not prohibit and harmless work. This Article provides the regulation and prohibition of child labour in India. Child Labour is defined as the work which deprives children of their childhood, potential and their dignity; it is something which causes a threat to their physical and mental development. UNICEF estimates India with such a high population has a high rate of child labourers. India, after its

independence from the colonial rule, has passed many constitutional protections and laws on child labour.

Children under the age of 14 are not allowed to work in industries or in hazardous jobs, according to Article 24 of the constitution. This provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation.

III. Directives Principles of State Policy

There are many provisions in the DPSP which specify how the state is responsible for the protection of rights of children.

➤ Article-39

Article 39 (e) prohibits the tender age of the children from being abused. Article 39 (f) ensures that the children grow in a healthy manner and are protected from exploitation.

Article 39 (e) and (f) go hand in hand, and it is self-evident that one of the goals is for the state to direct its policy toward ensuring that infancy and youth are protected from exploitation and moral and material abandonment. These constitutional provisions show that the framers of the Constitution were particularly concerned about protecting and safeguarding the interests and welfare of children.

Welfare of Children:

The necessity of a child welfare programme in a civilised society cannot be overstated, because the prosperity of the entire nation is dependent on the well-being of its offspring.

The Indian government has developed a national policy for the welfare of children in accordance with the guidelines given in Article 39 (e) and (f) of the Constitution. "The nation's children are a tremendously vital asset," the policy proclaims. The policy sets out measures which the government of India seeks to adopt for the welfare of children and to protect them from cruelty and exploitation.

¹³⁶² AIR 1982 SC 1943.

¹³⁶³ AIR 1984 SC 802.

In pursuance of article 39(f), the Supreme Court has directed release of all children below the age of 16 years from jails. Instead, the Supreme Court has exhorted the states to set up necessary remand homes and juvenile courts. A child is a national asset and, therefore, "it is the duty of the state to look after the child with a view to ensuring full development of its personality"¹³⁶⁴

Aside from articles 39 (e) and (f), the constitution contains a few further measures aimed at promoting the welfare of children. The state is allowed to create specific accommodations for children under Article 15(3). Trafficking is restricted under Article 23. Article 24 makes it illegal to hire minors under the age of 14 in any hazardous occupation. Article 21A mandates that all children under the age of 14 receive free and compulsory education, while article 45 mandates that all children under the age of six receive early childhood care and education.

The Supreme Court has shown concern from time to time for the welfare of children. Several public interest litigation cases have been filed in the courts raising specific problems concerning children. Reading articles 15(3), 24, 39(e) and (f), the supreme court has emphasized in **Lakshmi Kant Pandey v. Union of India**¹³⁶⁵, upon the great significance of child welfare in the country. According to the Supreme Court, the health and well-being of a community's children determines its overall well-being. "The constitutional provisions indicate the enormous anxiety of the constitution-maker to protect and defend the interests and welfare of children in the country," the court noted in reference to the numerous constitutional provisions. In the instant case, the questions of adoption of Indian children by foreign parents, and the abuses arising out of the system, were brought to the notice of the court.

The court has issued detailed guidelines to regulate adoption of Indian children by

foreigners pending a law being made for the purpose by parliament. The court has emphasized that the primary purpose of giving the child an adoption is his own welfare, and, therefore, great care must be exercised in permitting the child to be given in an adoption to foreign parents.

In **Vishal Jeet v. Union of India**,¹³⁶⁶ the malady of child prostitution was brought to the notice of the supreme court through a public interest litigation writ petition. The court expressed its anguish on the pitiable condition of child prostitutes. The court referred to the constitution provisions having a bearing on the problem, such as, articles 23, 35(a)(ii), 39(a), (e) and (f).

➤ **Article 41**

Article 41 mandates the state to make appropriate provisions for safeguarding the right to labour, education, and public assistance in circumstances of unemployment, old age, disease, and disablement, as well as other cases of unjustified want, within the limitations of its economic ability and growth.

The mandate is on the state to make "effective provision" for inter alia, education. Thus it is open to the state governments to regulate the setting up of private educational institutions having regard to the educational needs of the locality.¹³⁶⁷ Where the state made effective provisions for securing the right to education by resolving to make land available at concessional rates to educational institutions, it was held that an educational institution has no legal or constitutional right to demand the allotment of any particular piece of land.¹³⁶⁸

➤ **Article 45**

Early childhood care and education are covered by Article 45 for children under the age of six. Initially, article 45 obliged the state to make every effort to offer free and obligatory

¹³⁶⁴ Sheela Barse v. Union of India, AIR 1986 SC 1773 : (1986) 3 SCC 596.

¹³⁶⁵ AIR 1984 SC 469.

¹³⁶⁶ AIR 1990 SC 1412 : (1990) 3 SCC 318.

¹³⁶⁷ Govt. of A.P. v. J.B. Educational Society, (2005) 3 SCC 212 : AIR 2005 SC 2014.

¹³⁶⁸ Meerut Development Authority v. Assn. of Management Studies, (2009) 6 SCC 171.

education to every children till they reach the age of 14 years within ten years of the constitution's adoption. Article 45 was replaced in 2002 by article 21A, which made the right to free and compulsory education a basic right. According to Article 45, the state must make every effort to offer early childhood care and education to all children until they reach the age of six.

The directive in article 45 has not been fully implemented as yet although more than 50 years have elapsed since the independence. Employment of child labor in hazardous industries, like making of fireworks, is rampant. As the Supreme Court has pointed out in **M.C. Mehta v. State of Tamil Nadu**¹³⁶⁹. ".....reality is that in this country like many others, children are exploited a lot. Child labor is a big problem and has remained intractable, even after 50 years of our having become independent, despite various legislative enactments.....prohibiting employment of a child in a number of occupations and avocations."

According to this article, the state must make every effort to provide all children with early childhood education and care until they reach the age of six. According to this Act of the Indian Constitution, the state shall protect the child and is responsible for the development within them. The state shall ensure the safe growing environment, where their childhood can be experienced by themselves without any external threat. After that, it is the responsibility of the state to provide them with free and compulsory education.

No matter how the condition of the child is, even if they are not protected by their own parents or they are denied with their rights by their own parents. The State has to take strict measures for the well being of the child.

➤ **Article 46**

Article 46 requires the state to promote the economic and educational goals of the weaker parts of the population, particularly the schedule

classes and tribal communities, and to safeguard them from social injustice and exploitation in all forms. In **Society for Un-Aided Private Schools of Rajasthan v. Union of India**¹³⁷⁰, Apex Court stated that the expression "weaker sections" in article 46 is wider than "backward class". The backward citizens in article 16(4) do not comprise of all the weaker sections of the people but only those which are socially, educationally and economically backward, and which are not adequately represented in the services under the State. Further, the expression "weaker sections" can also take within its compass individuals who constitute weaker sections or weaker parts of the society.

➤ **Article 51(c)**

Article 51 (c) does not deal with the enforcement or implementation of treaties. Unless municipal law is changed, and international convention does not bind. It is only the municipal law which binds the courts.¹³⁷¹ However, the Supreme Court has referred to several international conventions while interpreting several fundamental rights. For example, In **People's Union for Civil Liberties v. Union of India**¹³⁷², the court referred to article 17 of the ICCPR, 1966 and article 12 of UDHR so as to derive from article 21 a right to privacy in India. The court observed in this connection:

"International law today is not confined to regulating the relation between the states. Scope continues to extend. Today matters of social concerns, such as, health, education and economics apart from human rights fall within the ambit of international regulations. International law is more than ever aimed at individuals. It is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law."

¹³⁷⁰ AIR 2012 SC 3445 (3490) : (2012) 6 SCC 1 : (2012) 4 SCALE 272

¹³⁷¹ Jolly George Varghese v. Bank of Cochin, AIR 1980 SC 470 : (1980) 2 SCC 360.

¹³⁷² AIR 1997 SC 568 : (1997) 1 SCC 301.

¹³⁶⁹ AIR 1997 SC 699, 701.

i. Fundamental Duties

Fundamental duties refer to the basic obligations of a citizen in India. It contains about 11 duties which are to be followed by the citizen of India. It is defined as the moral obligation of all citizens to help promote a spirit of patriotism and to uphold the unity of India. Article 51A (k) provides for provision for children's education.

Every Indian citizen who is a legal guardian owes it to his or her kid or ward between the ages of six and fourteen to give chances for education for his or her child or ward. Through this provision, the Constitution strictly mentions the providing of education as the duty of the parent as it is for the future and development of the country.

Article 51A (k) was introduced as Fundamental Duty in 2002 along with article 21A as a fundamental right. Article 21A read with article 51A (k) distributes and obligation among the state and parents: the state is concerned with free education, parents with compulsory.

Notwithstanding parental duty, the state also has a role to play in ensuring that compulsory education is feasible³⁶. However article 51A (k) does not penalize parents or guardian for failing to send children to school.

b. Indian Penal Code, 1860

There are several provisions enumerated in Indian Penal Code which pertains to children and they are discussed here under:

i. Children incapable of committing crime:

Section 82 of Indian Penal Code provides a complete immunity to children below 7 years. Under the age of seven years, no infant can be guilty of a crime, for under that age an infant is by presumption of law, *doli incapax*, and cannot be endowed with any discretion. If the accused were a child under seven years of age, proof of that fact would be *ipso facto* an answer to the prosecution.

Furthermore, Section 83 specifies that nothing

done by a minor beyond the age of seven but under the age of twelve constitutes an offence. As a result, acts committed by children aged seven to twelve will be protected if it can be demonstrated that the youngster in question lacks the maturity of knowledge to identify the nature or resulting consequences on that particular occasion.¹³⁷³ It is pertinent to note that, it has to be shown, while seeking protection under this section, that the accused is not only twelve but has not attained sufficient maturity of understanding. If no evidence or circumstance is brought to the notice of the court, it will be presumed that the child accused intended to do what he really did. However, there is complete liability to punishment after twelve years of age.

ii. Obscenity:

Section 292 and 293 were added in accordance with the resolution passed by the International Convention for Suppression and Circulation of, and traffic in, Obscene Publications which was signed at Geneva in September 1923 and were subsequently amended by Indian Penal Code (Amendment) Act, 1969. These provisions deal with obscenity. However word 'obscene' is nowhere defined in IPC, but in common parlance it denotes the thing that is offensive to modesty or decency, lewd, filthy and repulsive.

Section 292 prohibits the sale, hiring, distribution of any obscene material in form of any book, pamphlet or drawing figure etc.

It is pertinent to note that the concept of obscenity differ from country to country depending on the standard of morals of contemporary society. Therefore Hicklin Test¹³⁷⁴ was applied by Supreme Court¹³⁷⁵ while deciding whether any publication is obscene or not. It reads as:

" the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are

¹³⁷³ Per BHANDARI, J: Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1, at page 653.

¹³⁷⁴ R v. Hicklin (1868) 3 QB 360.

¹³⁷⁵ Ranjit D. Udeshi v. State of Maharashtra; AIR 1965 SC 881

open to such immoral influences, and into whose hands a publication of this sort may fall.....It is quite certain that it would suggest to the minds of young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character"

Recently, Apex Court has doubted the 'Hicklin test' as a correct test for determining 'obscenity' and argued that 'contemporary morals and national standards and not the standards of a group of susceptible or sensitive persons' is the correct test. 'Community standard test' rather than 'Hicklin test' to determine obscenity, it asserts, sounds more correct.¹³⁷⁶

Section 292 provides for simple or rigorous imprisonment for a term up to two years and a fine of up to two thousand rupees on first conviction. And on subsequent conviction, imprisonment may extend to five years and the amount of fine to five thousand rupees.

Section 293 deals with such obscene material, as encompassed under section 292, when they are sold, let on hire or distributed to young person i.e., under the age of twenty years. This section contemplates provision of enhanced punishment, when obscene material is sold, distributed or exhibited to young person, of simple or rigorous imprisonment for period of three years and fine of two thousand on first conviction. And on subsequent conviction, imprisonment may extend up to seven years and the amount of fine may be increased up to five thousand rupees.

These sections are very important in curbing the menace of child pornography in addition to specific provision in this regard in POCSO Act, 2012.

iii. Abetment to Suicide

Suicide has not been declared as crime by the IPC obviously because once a person successfully commits suicide, that person is no longer alive to be prosecuted and the crime abates with him. However, an attempt to

commit suicide is punishable under section 309 and abetment of suicide is also made punishable under section 305 and 306. Here, section 305 pertains to child. It states that if any person under the age of eighteen years of age commits suicide and whoever abets them to does such an act shall be punished under the punishments under the act.

This section provides for stringent punishment of death penalty or life imprisonment or imprisonment for a term not exceeding 10 years to a person if he abets a child to commit suicide.

iv. Offences relating to children

The offences related to children under IPC⁴¹ include causing of miscarriage, injuries to unborn children, abandonment and exposure of infants and concealment of births and secret disposal of death bodies of children. These sections are discussed in brief here under:

Section 312 provides for the offence of causing miscarriage. It is not an offence if done in good faith for saving life of women. Further **Section 313** deals with such cases wherein miscarriage is caused without consent of women.

➤ Section 315 :

This section provide for Infanticide in the Indian Penal Code which comes in the category of crimes against children. This Section of the Indian Penal Code provides punishment for the act of killing an infant.

➤ Section 316

This section states that, whoever does the act of causing death of quick unborn child by act amounting to culpable homicide. It is a graver variation of section 315. In both these sections, the offence contemplated is death of an unborn child. Under section 315, the act is done with the intention to cause death of unborn person. But under section 316, the act is done with mensrea or the intention to commit culpable homicide, which act though does not result in the actual death of the mother, but results in the death of the quick unborn child.

¹³⁷⁶ AVEEK SARKAR v. STATE OF WEST BENGAL (2014) 4 SCC 257, para 24.

➤ **Section 317**

It specifies the exposing and desertion of a kid under the age of twelve by a parent or other person responsible for the child. The exposure and abandonment by a father or mother of a child under the age of 12 will be punished for the same. It reads as:

This section is applicable only where the exposure or abandonment is of a child below 12 years of age. This section is meant to protect the interests of children below the twelve years of age, because they are not in position to protect themselves. The primary responsibility is cast on parents and adults, who may have custody of child to bring up the child and to provide adequate care for children of tender age. It equally applies to legitimate and illegitimate children.¹³⁷⁷

➤ **Section 318**

There is a general policy adopted in almost all countries that there is full publicity given to births and deaths. In India, there is Registration of Births and Deaths Act, 1969 which makes it compulsory on part of every person to register every birth and death with the local authorities. Birth and death certificates are necessary for many civil transactions. In India, birth of girl child is still considered as a curse and a burden, resultantly female feticide is very high. In most of such cases, the body is secretly disposed of and in view of this scenario section 318 is present in Indian Penal Code, which punishes the act of secretly disposing of dead body of the child.

As per this Section, the secret burying or disposal should be of the dead body of child. This means that the child should not be in the stage of a mere embryo or fetus but should have reached such a stage of development and maturity that it may be born alive and be capable of living. The word 'body' indicates that the fetus must have developed in mother's womb into a human shape. Further,

the child should be dead. If the child were alive at the time of secret disposal then no offence is made out under this section.

CONCLUSION

India is a place of discrepancies. No other country has had such a profound impact on ethnic groupings, mutually unintelligible languages, topography and climate, faiths and cultural practises, and economic growth levels. India has a population of over one billion and over 400 million children. At one time we were all children. This is something that is common to all of us. Many of us have children or are somehow involved in the lives of youngsters. We want our children to be happy, strong, healthy, and successful as they grow up. We want them to be fortunate. They are the next generation of parents, grandparents, caretakers, educators, physicians, cops, magistrates, civic leaders, trust leaders, legislators, and policymakers. It is apparent that violence against children is not a unique occurrence, but rather a complex problem with deep roots. The events and settings that contributed to the formation of such aggression, as well as encouraged such behaviour through passivity and inaction, are always the source of this genesis. Some youngsters become more violent than others in this environment, and they forgive themselves. How we deal with crimes affecting children will have a direct impact on future families and communities. The legislative framework and the criminal justice system are the main watchdogs for child sexual abuse. Both groups will only look into child sexual assault after it has occurred. Furthermore, both are more concerned with bringing justice to the victims of child sexual abuse than with preventing it. As a result, it does not concentrate on classification solutions to lessen or eradicate the negative consequences of child sexual abuse. Furthermore, the majority of cases of child sexual abuse have not been adequately reported to criminal justice or child protection groups, and the existing institutional approach to child sexual abuse does not provide adequate justice or protection. The development of new,

¹³⁷⁷ Harisingh Gaur; Penal law of India, vol 3, 11thed, Law publishers, Allahabad, 1998 p 1133

sophisticated techniques to preventing child sexual abuse is underway. However, while such approaches have great potential to prevent child sexual abuse, they are new and have not yet been fully tested. There is a need to further evaluate and strengthen trends in existential leadership, circles of responsibility and support, including public news targeting victims of child sexual abuse and child sexual abuse.

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