



## Child Rights and National-International Framework in COVID-19 pandemic

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### Abstract:

*In the 21<sup>st</sup> century, the whole world is facing a pandemic of COVID-19. We can say that 2020 is not a good year of current calendar. In this situation, we have to understand the illness of child in epidemic and role of national and International Framework in the development of child. There are many children suffering from such diseases and dropped out from the primary education. Children are suppressed and an irritated with present lockdown system. There are so many effects exposed on children like physical and mental health, education, food, personal development, care and love. As a result, it is necessary to know, what is the outcome of COVID-19 on children? How the international framework important for the protection of child rights in the pandemic situation? Which international guideline or convention or declaration and organization are more significant and helpful to reduce crime rate against children in India and protective laws for them? So, it's a time to protect child in such pandemic situation in the world wide. It is essential to required support from the International organization. Therefore, the role of international framework to prevent and protect every child from any crime is most important.*

*The Authors want to highlight the current situation of child in India. It is a very crucial period for all of the people around world. The paper containing with current scenario of child rights and international framework in India. The impact of COVID-19 on child, crime against children, protective and preventive laws of India.*

### Methodology

*The Researchers has followed purely Doctrinal Methods for collecting data from the various online sources, newspaper, guidelines of WHO<sup>1</sup>, UNICEF<sup>2</sup>, and current Judgments on issues of Child Rights.*

### Objectives

- *To Study present situation of children in India*
- *To study rules, regulation and guideline for betterment of children in India.*
- *To find out the relevancy and adequate laws for child protection*
- *To find out the impact of COVID-19 on children*

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**Keywords:** *Child Rights, International Organizations, Protective Laws and Current situations in India*

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<sup>1</sup> See website, emergency link and covid – 19 survey by World Health Organization reports, available on <https://www.who.int/accessed on 02/09/2020>.

<sup>2</sup> UNICEF FOR Every child, prevent child deaths and agencies warn, class room precautions during COVID-19, UNICEF works for the rights of every child, every day, across the globe, see <https://www.unicef.org/accesed on 02/09/2020>.

## 1. Introduction

Children are the future of our country. In India, children are treated as God. Children are considered as quasi property and economic assets of the country. First responsibility of child's care is on his/her Mother and Father. Secondly, the responsibility is on the State to protect child and provide the proper safeguard for protection of their rights. Thirdly, International framework is most important part to protect and prevent child from any crime. In most of the countries, Children and Women are considered as weaker section of the society. This is universal crisis which affect a long-life.

Therefore, the child rights have been recognized from the womb of mother and after birth of child, till attained the majority. The purpose of child rights and international framework is to protect and prevent from any exploitation, abuse, any crime and ill treatment. Moreover, convention on child rights reminds us that "in the universal declaration of human Rights<sup>3</sup>, childhood is entitled to special care and assistance, the child is physical and mentally immature for that needs a special safeguard and care including appropriate legal protection".

## 2. Definition of Child under different Laws and Conventions

There is difficult to give proper definition of child. We have gone through the different definition at national and international level. Every country has their social and cultural setting and economic condition. Let's see the different definition of child as under:

1. The Convention on Child Right<sup>4</sup> in its Article- 1 defines a child as, "A child is every human being below the age of 18 years unless, under the law applicable to the child, majority is attaining earlier".
2. The united national child rights define the child same as Convention on Child Right (CRC<sup>5</sup>), "A child as a one who is under the age of 18 years or as defined by land's law, whichever is earlier".
3. The South Asia Association for Regional cooperation (SAARC)<sup>6</sup> in its Article 1 of Part 1 defines Child as "A national of any member State of the SAARC, below the age of 18 years unless, under the national law, majority is attaining earlier".
4. In India, Article 24 of the Indian Constitution<sup>7</sup> declares that "No child below the age of fourteen years shall be employed in any factory, mine or engaged any other hazardous employment". So we can say that in India for the purpose of employment, a child defines a one who is the under the age 14 years. But the age limit for childhood is not singular in all sector, for example, person attain voting right at 18 years, age of marriage is 18 for girls and 21 for boys.
5. So, we can say that different national and international laws consider a child as a person who is between the ages of 14 to 18 years.

## 3. Why the International Framework for the protection of Child rights is needed

As we know the situation is worst in worldwide. This COVID-19 pandemic has raised alarm of crime in the country and put a very drastic effect on poor and middle class of family. Among all of them the most effected category in the present situation are labours. In India, it is still raising cases of Corona patient in the top list of worlds. There is various crime reported in the worst pandemic situation. The poor class family are totally jobless and workless in the pandemic situation.

Let's have a look into an impact and effect of COVID -19 on child as follow:

<sup>3</sup> Declaration of the rights of the child, 1959, origin of declaration and principle of child rights, see <https://www.humanium.org/en/declaration-rights-child-2/> accessed on 3/09/2020.

<sup>4</sup> Convention on Child Rights, available on <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>5</sup> Ibid

<sup>6</sup> See, <https://evaw-global-database.unwomen.org/es/countries/asia/india/2002/south-asian-association-for-regional-cooperation> accessed on 20/08/2020.

<sup>7</sup> Author J.N.Pandey, constitutional law of India, Central law agency, 54<sup>th</sup> edition 2017, Article 24.

### **A. Migrant labour<sup>8</sup> and their children after lockdown**

The sudden announcement of lockdown all over world and country by the Prime Minister of India put all the country in inevitable situation. They have sealed a border and appealed all the people across the India not to move from the place for 1 month. The transportation, school, colleges, hostel and shops were announced to remain closed. Due to such closing of business and hotels, many working labour are facing a huge problem of earning. It is an immediate loss of family income with uncertain situation of reopen. It affected the economic conditions including food and water, education, and there are chances of violence, exploitation and abuse.

The people are moving towards their state and home due to such lockdown. There are many families moved with their children. There is no proper arrangement of state and respective government in such epidemic situation to help migrant labour. This will grossly affect the health of child, physical as well as mental health of the child and their family. They are not getting proper food, shelter and basic needs due to such COVID-19.

### **B. Farmer and their children**

India is combination of rural and urban sector. It is known as agriculturist country. The most of people are dependent on agriculture sectors. They are living in village area and earning by selling crops, milk and green grass. Due to pandemic effect, farmer are getting very low rate of crops and selling products at the agriculture market. It is very difficult condition for them to get fruitful profit. They sacrifices for their children and family also. It is very difficult to get a good education due to low income and higher fees in the educational institutional. Therefore, the child must avail with good resources to get an access in lower rate of any instruments. It is a responsibility of all national and international organization to take care of such child and prevent them from any unusual treatment in the family as well as in country.

### **C. Education policy**

The worst thing is that students are promoted in the primary level without any exams and basic activities. Due to pandemic, school and college remain closed more than 6 months. They are confused to choose a new field and get an admission in the any institution. This is an uncertain situation of epidemic in worldwide. In United States of America, schools were opened but due to infections of corona dieses, many students get infected. So, the United States of America has closed all schools again. Therefore, In India college and schools remains closed for many months and at present try to open schools with social distancing with the permission of parents.

Due to such pandemic, educational Institution has been shifted from classroom teaching to online teaching in the private schools and colleges as well. Students have to get involved with phone/laptop and television for long period of time due to long lecture series of the days. That badly affect their eyes. There are many children, particularly poor household do not have access of internet and mobile phones and laptops. Student's needs to access to technologies but due to home based learning there are lacking in it. The students are not in condition to choose their way in uncertain situation of academic field. They are also affected with mental and physical health issues for a long time of lockdown in the countries. I.e., depression, anxiety and suicidality.

### **D. Games and Child pornography**

This is a year of growing up with technology. It will include child to young and old aged person. The ratio of using internet had increased during the lockdown which were less before COVID-19. Mostly young generation and children are engaged with different mobile applications mostly in games that put

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<sup>8</sup> Amidst COVID-19, why did government not plan for child protection steps? By Enakshi Ganguly, 02 April, 2020, 7:48 Pm IST, available on <https://www.thequint.com/amp/story/voices/opinion/coronavirus-lockdown-child-protection-juvenile-justice-children-homes-govt-aid-emergency-services>

negative effect on their mind. The children are spending their time into games instead of meeting and playing in the ground. Who are responsible for these things? It is primary duty of parents to stop their children from using mobile. After that the responsibility is on government to protect the children from the offence which arise due to electric device.

There are so many cases reported about death due to game addiction i.e. blue whale game and Pubg game. Recently 59 gaming and other application were banned by the Indian Government. The second thing is that growing availability of child pornography on the internet and other evolving technologies. Even children with access to technology are not necessarily safe. The rate of watching pornography is highest in the India. So, it is a problematic situation for the girl child.

#### 4) International and provincial context on child rights

There are vibrant and sound framework for the protection and promotion of Child rights at the international level are as under:

##### 1. Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights (UDHR)<sup>9</sup> is millstone document in the history of human being. We can say that magna carta of modern year. Universal Declaration of Human Rights had focused attention on the human being in which the provisions related to children are included, though it recognized the fact that children need the special care and protection. United Nation adopted this declaration on 10<sup>th</sup> December, 1948. It contains 30 articles.

Articles 25 and 26<sup>10</sup> of the Universal Declaration of Human Rights deals with the provisions related to children.

Article 25 (2)<sup>11</sup> makes the special provision that ‘Motherhood and childhood are entitled to special care and assistance’. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26 (1)<sup>12</sup> provides that “Everyone has the right to education”.

Article 26 (3)<sup>13</sup> provides that “parents have a prior right to choose the kind of education that shall be given to their children”.

Therefore, we can say that UDHR is a first step towards the protection of rights of child.

##### 2. Declaration of the Rights of the child:

In 1959 for the 1<sup>st</sup> time, the United Nation<sup>14</sup> Assembly adopted the declaration of the Rights of the Child, which dealt with children. It defines children’s rights related to protection, education, health care, shelter and good nutrition. The declaration in its preamble points out the special care and protection of the child.

This declaration lays down certain principles for the children are as under:

- a. The right to equity.
- b. The right to a name and nationality.
- c. The right to special protection for the child’s physical, mental and social development.

<sup>9</sup> United Nations, peace, dignity and equality on healthy planet, preamble, Article 1, see <https://www.un.org/en/universal-declaration-human-rights/> accessed on 28/08/2020.

<sup>10</sup> Supra note 9

<sup>11</sup> ibid

<sup>12</sup> id

<sup>13</sup> id

<sup>14</sup> United Nation Human Rights, office of the High commissioner, conventions on the child rights, available on <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- d. The right to education.
- e. The right to protection against discrimination.
- f. The right against exploitation.
- g. The right to understanding and love by parent and society.

### 3. United Nations Children's Fund (UNICEF)<sup>15</sup>

United Nations Children's Fund is most important and major International instrument for the protection and promotion of child rights in the world. After the Second World War, It was the responsibility to all nations to protect the rights of child because the effect of second world was greater on children and they need special care and protection. United Nations Children's Fund adopted on 11<sup>th</sup> December, 1946. The main and foremost purpose of this organization is to provide education, welfare and basic needs of the children in the world. This organization also focused on improving the health of children.

### 4. European Convention on Human Right<sup>16</sup>

Regional Human Rights System, are regional instrument and mechanisms, play an increasingly important role in the protection and promotion of Human Rights of Child. Regional Human Right instruments (e.g., Treaties, Convention, and Declaration) help to localize international human right norms and standards, neglecting the particular human rights concerns of the region. Currently, the three most well established regional human rights systems are located in Europe, the America and Africa.

The Convention was signed in Rome on November 4, 1950 and came into force on September 3, 1953. This is the first International Human Rights Agreement which provided rights and freedom to everyone in Countries that belong to council of Europe and also put the obligation on State parties to protect and promote the human rights of everyone within the Jurisdiction the rights it set forth. The Convention also provides enforcement machineries (i.e., European Commission, European Court, and Committee of Ministers).

In this convention, mostly the term "everyone" used that means the convention protects the rights of child. The convention provides right to life, liberty and security (Articles 2 & 5), right to education, prohibition of slavery and forced labour (Art. 4).

Protocol No. 7 (Art. 5) provides that Spouses shall enjoy equality of right and responsibility of a private law character between him, and in their relation with their children, as to marriage, during marriage and in the event of its dissolution. But this Article does not prevent the States from taking such measures as are necessary in the interest of the Children.

## 4. Indian Laws framework

### 1. Constitutional Provision regarding Child Rights<sup>17</sup>

Constitution of India is a Supreme Law of the land. Constitution of India set the basic legal framework for the protection and promotion of child rights. Part - III of the Constitution of India deals with Fundamental Rights. There are many rights provided in Constitution for the welfare and development of children. For instance, Article 24 prohibits "Employment of Children (who is under the age of fourteen) in factories, mines or any other hazardous place". The purpose of this Article is to save the children from exploitation. Article 23 of the constitution prohibits "immoral traffic in women or girls or children". Articles 14, 15, 21, 21(A), 19 are also deals with the protection and promotion of child rights.

<sup>15</sup> Supra note 2

<sup>16</sup> See, [https://www.echr.coe.int/Documents/Convention\\_Eng.pdf](https://www.echr.coe.int/Documents/Convention_Eng.pdf)

<sup>17</sup> Supra note 7, Article 14, 15, 19, 21, 21A, 39 e and f.

Part – IV of Indian Constitution lay down the various provisions relating to Directive Principles of State Policy. They impose positive obligation for welfare of children on State. For instant, Article 39(e) and (f) provides for the protection of the health and strength of children below the age of fourteen years. Same as Article 45 provides free and compulsory education and care for all children upto 6 years of age.

If any rights given under part III violated, one can move the Supreme Court and High Court for the implementation of such rights. And also during this pandemic the Supreme Court of India and High Courts of each State plays the most important role for the protection and promotion of child rights. For instance, the Supreme Court took Suo Moto cognizance of news reports of 35 children in a Shelter home in Roypuram, Chennai<sup>18</sup> who tested positive for covid- 19. In this situation, the Supreme Court has directed the State of Tamil Nadu to file a report on issue of spread taken for safeguarding the health of the remaining children.

Also, the High court of Different state are paying attention on the issue of educational fees. The Gujarat High Court has ruled that the private school providing online classes can charge the tuition fee only and cannot take any other fees like transport, stationary etc. during covid-19.

## **2. Commission for Protection of Child Rights Act, 2005<sup>19</sup>:**

The main purpose to enact the Commission for protection of Child Right Act, 2005 is to provide the safeguard and protection of children. For the fulfillment of that purpose, the act provide the provisions for the constitution of a National Commission and State Commission for the protection of child rights.

## **3. National Commission for Protection of Child Rights**

It is apex child rights body which put emphasis on the principle of universality and inviolability of child rights and recognizes the tone of urgency in all the child related policies of the country.

The commission's mandate under Section 13 of CPCRA Act<sup>20</sup>, 2005 is "to ensure that all laws, policies, programmes and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child".

It was set up in March, 2007. This commission works under the Ministry of Women and Child development. The child defined under this commission is as a person up to the age of 18 years. It is the responsibility of commission to establish the Children's Courts for the speedy trial of offences against children or of violation of child rights.

During the covid- 19 lockdown, the children face many problems but after unlock the problems has not ended but increased for instant, increase child trafficking accidents. The central Government has raised a concern over potential increase in child trafficking incidents. So the NCPCR, under the Women and Child Ministry, recently framed a methodology for a "family centric approach to counter child trafficking" for the first time. The body had also listed hotspots in the country that have reported highest instances of Child trafficking as well as measures to prevent them.

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<sup>18</sup>See, [https://m.timesofindia.com/city/chennai/sexual-abuse-of-children-may-rise-during-lockdown-say-activists/amp\\_articleshow/76786107.cms](https://m.timesofindia.com/city/chennai/sexual-abuse-of-children-may-rise-during-lockdown-say-activists/amp_articleshow/76786107.cms)

<sup>19</sup> Ministry of Law and Justice, see <https://wcd.nic.in/sites/default/files/The%20Gazette%20of%20India.pdf>

<sup>20</sup> National Commission for Protection of child Rights, Government Of India, visit <https://www.ncpcr.gov.in/>

#### 4. Juvenile Justice (Care and Protection) Act, 2015<sup>21</sup>

The Juvenile Justice (Care and protection) Act, 2015 deals with the two categories of children that is to say “child in conflict with laws” and “child in need of care and protection”. The main object of this act is to provide care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting child friendly approach in the adjudication and disposal of the matter.

In Covid – 19 crises, the central has advised childcare institution to send them back who are in conflict with the law. Consequently, “the NCPCR<sup>22</sup> has asked State Government to prepare a list of such children in observation and special homes, so that they can be released.”

#### 5. Protection of Children from Sexual Offences (POSCO), Act, 2012<sup>23</sup>

Sexual offences are on the top these days. We read about sexual crimes in the newspapers every day. Even during the lockdown this type of cases has not stopped. “In the month of June in Coimbatore, three minor boys were booked under Protection of Children from Sexual Offences (POSCO) Act for molesting 11 years old girl”. During the lockdown the different NGO, institutions plays most important role to protect the children from sexual abuse. “Sakshi, an NGO<sup>24</sup> educating youth to prevent Child Sexual Abuse (CSA) in their families and communities, has trained around 10,000 National Service Scheme volunteers across the country and 1,249 in Tamil Nadu since the lockdown began”.

#### 6. Right to Education Act, 2009<sup>25</sup>

After 86<sup>th</sup> Amendment of the constitution, the Right to Education Act, 2009 was enacted. After this Act, Article 21(A) inserted in Constitution of India which provides Free and Compulsory education of children. Right to Education is a Fundamental Right.

Right to Education Act imposes the duties and responsibility on appropriate Government, local authority to providing free and compulsory education to children. The purpose behind this Act is to ensure that no child in their initial age deprived from their educational right.

In current situation the right to education is widely affected. Schools and universities have closed down due to covid- 19. “According to UNESCO<sup>26</sup>, over 1.2 billion students are affected by nationwide and localized school closures, representing around 73% of the total of enrolled students worldwide”. Online classes are conducted by school and colleges but every child cannot afford the electrical gazette due to their economic condition and also there are issue regarding the data connectivity arises in online classes. All of these reasons affecting the children’s learning.

#### 7. The Immoral Traffic (Prevention) Act, 1956<sup>27</sup>

Trafficking in human being is prohibited under the Constitution of India under the Articles 23(1). The immoral traffic (Prevention) Act, 1956 is the foremost legislation for prevention of trafficking for commercial sexual exploitation of children. This Act protects the girl child from sexual exploitation.

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<sup>21</sup>Juvenile justice care and protection act, 2015 A2016-2 pdf, available on <http://legislative.gov.in/actsofparliamentfromtheyear/juvenile-justice-care-and-protection-children-act-2015>

<sup>22</sup> Supra 20

<sup>23</sup> See, <http://legislative.gov.in/sites/default/files/A2012-32.pdf>

<sup>24</sup> Supra 18

<sup>25</sup> MHRD, Department of school education & Literacy Ministry of human development Government of India visit <https://www.mhrd.gov.in/rte>

<sup>26</sup> United Nations educational, scientific and cultural organization, See, <https://en.unesco.org/>

<sup>27</sup> [https://www.indiacode.nic.in/handle/123456789/1661?view\\_type=browse&sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1661?view_type=browse&sam_handle=123456789/1362)

India has also approved the SAARC<sup>28</sup> Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The SAARC Convention deals with the problem of trafficking.

## 5. Conclusion

In the light of the above issues and effect of COVID-19 on child is very dangerous. We have covered many things related to child and their rights violation, exploitation, abuse and ill-treatment during Pandemic. It is a high time to protect and prevent child from such crimes in family, society and in the state wide. It is many times crimes in hidden form and child cannot approach any organization or court for such crimes. Therefore, it is responsibility of every father and mother, teacher, member of different organization to implement strict action towards accused. So, the national and international framework is not piece of paper but better future of our children. It will be more helpful in crime against children. It will also helpful in every single step of their life.

**“It is better to act right than seek right”-Lailah Gifty Akita<sup>29</sup>**

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